



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2019/A/6281 Polish Karate Federation v. World Karate Federation (WKF)

AWARD ON ADMISSIBILITY

delivered by

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole arbitrator: Ms Carine Dupeyron, attorney-at-law, Paris, France

in the arbitration between :

Polish Karate Federation, Warsaw, Poland

Represented by Mr Wiktor Celler, attorney-at-law, Kancelaria Prawno Finansowa, Lodz, Poland

-Appellant-

and

World Karate Federation (WKF), Madrid, Spain

Represented by Mr Jorge Ibarrola, attorney-at-law, Libra Law, Lausanne Switzerland

-Respondent-

I. PARTIES

1. The Polski Związek Karate (“**PZK**” or the “**Polish Karate Federation**” or the “**Appellant**”) is a Polish organization for karate in Poland with its registered office in Warsaw, Poland.
2. The World Karate Federation (“**WKF**” or the “**World Karate Federation**” or the “**Respondent**”) is an internationally recognised Olympic Committee sport organization for karate with its registered seat in Madrid, Spain.
3. The Appellant and the Respondent are hereafter referred as “the Parties”.

II. FACTUAL BACKGROUND

4. Below is a brief summary of the main facts and allegations based on the Parties’ written submissions and the Court of Arbitration for Sport (“CAS”) file. Additional facts and allegations found in the Parties’ submissions, pleadings and evidence may be set out, where relevant, in other parts of this Award.

The exclusion of the Polish Karate Federation from the World Karate Federation

5. On 9 April 2018, a meeting was organized between the Polish Karate Federation and the World Karate Federation in Paris, during which the removal of the Polish Karate Federation from the World Karate Federation was discussed, as a consequence of different breaches of the WKF rules and regulations by the former.
6. On 13 April 2018, the Executive Committee of the World Karate Federation decided that the Polish Karate Federation would no longer be a member of the World Karate Federation. One week later, the Polish Karate Federation appealed that decision before the Disciplinary Commission of the World Karate Federation.
7. On 3 September 2018, the Disciplinary Committee confirmed such removal.
8. This decision was submitted for ratification to the World Karate Federation Congress (the “**WKF Congress**”) at its session of 5 November 2018.
9. According to the Minutes of the 5 November 2018 WKF Congress, Mr Waclaw Antoniak, Vice-President of the Polish Karate Federation, was present and was heard by the Congress participants when the disaffiliation was discussed: “*The representative of the Polish Karate Federation Mr. W. Antoniak was given the floor to address the Congress*”. After his intervention, the permanent disaffiliation of the PZK was decided by the majority of the 97 countries present, with 2 votes against and 18 abstentions (the “**Decision**”).

The terminated CAS 2018/A/6053 proceeding

10. On 23 November 2018, the Polish Karate Federation filed a Statement of Appeal before the CAS against the World Karate Federation with respect to the decision issued by the Executive Committee of the World Karate Federation of 13 April 2018.

11. On 5 December 2018, the CAS Court Office acknowledged receipt of the appeal received on 26 November 2018 against the World Karate Federation. The CAS Court Office stated its understanding that the Polish Karate Federation filed an “*application for arbitration regarding the decision of the Executive Committee of the World Karate Federation dated 13th of April 2018*”.
12. On 14 December 2018, the CAS Court Office officially opened an arbitration case under the reference “*CAS 2018/A/6053 Polski Zwiqzek Karate (Polish Karate Federation) v. World Karate Federation*” and informed the Appellant that it had to:
 - File its Appeal Brief within 10 days following the expiry time limit for the appeal, or
 - Inform the CAS Court Office that the Statement of Appeal was to be considered as the Appeal Brief within the same 10 days following the expiry time limit for the appeal, as per Article R51 of the Code of Sports-related Arbitration (“CAS Code”).
13. The CAS Court Office recalled the Appellant that the appeal would be deemed withdrawn if the Appellant failed to comply with these requirements.
14. On 4 January 2019, the Respondent requested that the appeal proceedings be terminated, as the Appellant had failed to comply with article R51 of the CAS Code.
15. By a letter dated 14 January 2019, the CAS Court Office stated that:

“*Since the appealed decision was notified to the parties on 5 November 2018, the Appellant should have filed its Appeal Brief by 6 December 2018. I have received no communication from the Appellant in this regard to date*”.
16. On 16 January 2019, the CAS Court Office noted that:

“*The Appellant filed its Statement of Appeal on 23 November 2018. The Appellant was however invited to advise the CAS Court Office whether it had filed its Appeal Brief within the prescribed deadline.*”
17. On 18 January 2019, the Appellant advised the CAS Court Office that it had not understood the content of the letter of 14 December 2018 and stated that the documents sent on 23 November 2018 had to be considered as its Appeal Brief.
18. Subsequently, on 27 March 2019, the President of the Appeals Arbitration Division (“the Division President”) considering the foregoing, terminated the procedure *CAS 2018/A/6053 Polski Zwiqzek Karate (Polish Karate Federation) v. World Karate Federation* as the Appellant had not filed the Appeal Brief or informed the CAS Court Office that its Statement of Appel was to be considered as the Appeal Brief within the time limits provided for in the CAS Code.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

19. On 29 March 2019, the Appellant filed with the CAS an undated Statement of Appeal, labelled “*Statement of Claim*”.

20. On 15 April 2019, the CAS Court Office advised the Appellant to complete its appeal in accordance with Article R48 of the CAS Code within (3) days from receipt of the letter or “*the CAS Court Office shall not proceed*”.
21. On 7 May 2019, the Appellant filed additional information in accordance with Article R48 of the CAS Code regarding its Statement of Appeal. The Appellant’s Counsel also clarified the Appellant’s position: “*The decision which I am appealing on behalf of the Polish Karate Federation is a resolution of the World Karate Federation of 5 November 2018*”.
22. By a letter dated 16 May 2019, the CAS Court Office acknowledged “*receipt of the undated ‘Statement of Claim’ filed on 29 March 2019 [sic] and completed submission filed on 7 May 2019*”. In the same letter, the CAS Court Office informed the Parties that it had opened an arbitration appeal proceeding under the reference “*CAS 2019/A/6281 Polish Karate Federation v. World Karate Federation*” and specified that it had been assigned to the CAS Appeals Arbitration Division and will therefore be dealt in accordance with Articles R47 *et seq.* of the CAS Code.
23. On 21 May 2019, the Respondent objected to the admissibility of the appeal considering that:
 - An appeal had already been filed against the Decision and “*that procedure was terminated by a termination order issued on 27 March 2019*”;
 - In addition, the appeal deadline against the Decision ratified at the WKF Congress of 5 November 2018 decision has elapsed long ago, at the latest on 26 November 2018.
24. The Respondent therefore asked the President of the CAS Appeals Arbitration Division to terminate the proceedings *CAS 2018/A/6281*.
25. On 23 May 2019, the Appellant filed an Appeal Brief (the “**First Appeal Brief**”), which was received by the CAS Court Office on 28 May 2019. In such Appeal Brief, the Appellant requested the CAS to:
 - Annul “*the resolution of the World Karate Federation Congress of 5 November 2018 approving the decision of the Disciplinary Committee of 3 September 2018*”; and
 - Issue an injunction to “*order the temporary operation of the PZK within the WKF until the dispute is finally settled*”.
26. On 27 May 2019, the Respondent asked for “*The deadline for the Respondent to state its position regarding the number of Arbitrators be stayed until the President of the CAS Appeals Arbitration Division decides on the admissibility of the Appeal*”. In case its request was denied, it asked that the dispute be referred to a panel of three arbitrators.
27. On 29 May 2019, the CAS Court Office advised the Parties that:
 - The President of the CAS Appeals Arbitration Division would decide over the admissibility of the appeals in accordance with article R49 of the CAS Code;

- The Appellant had not filed his position on Respondent’s objections of the admissibility of the Appeal; and
 - Unless the Appellant objects before 3 June 2019, the Respondent would be granted its request to suspend the deadline to submit its position regarding the number of Arbitrators.
28. On 30 May 2019, the Appellant filed with CAS, a second time, the document labelled “Statement of Claim” dated 30 May 2019, together with another Appeal Brief (the “**Second Appeal Brief**”) dated 28 May 2019. Due to an administrative oversight however, the Second Appeal Brief was not immediately forwarded to the Respondent but was sent on 5 December 2019 and was commented by the Respondent on 16 December 2019. In the Second Appeal Brief, which focused on admissibility issues, the Polish Karate Federation claimed that:
- The time limit to lodge an appeal against the Decision did not start to run since the PZK did not receive the “*final decision (WKF Congress resolution) together with its written justification*”;
 - The presence of a representative at the relevant WKF Congress does not determine the receipt of a decision; and
 - The “*previous proceedings [CAS 2018/A/6053] concerned the complaint against the decision of the Disciplinary Committee*” of 3 September 2018 and not the Decision.
29. On 31 May 2019, the CAS Office Court acknowledged receipt of the First Appeal Brief and invited the Respondent to file its Answer within a twenty-day deadline in accordance with Article R55 of the CAS Code, as well as its position on the Appellant’s request for provisional measures pursuant to Article R37 of the CAS Code within seven days. As a reminder, the Appellant’s request was to “*order the temporary operation of the PZK within the WKF until the dispute is finally settled*”.
30. On 3 June 2019, the CAS Court Office received a letter from Respondent (dated 27 May 2019) stating that:
- It would be premature to answer on provisional measures considering the admissibility of the appeal is not ruled upon yet; and
 - All procedural deadlines shall be suspended until the admissibility is ruled upon.
31. On 5 June 2019, the CAS Court Office noted the Respondent’s request “*pursuant to Article R32(3) of the CAS Code, that the Appeals Arbitration Division President suspends the present arbitrations and stays all the procedural deadlines until the issue of admissibility of the appeal is ruled upon.*” And informed the Parties that, unless an objection from the Appellant, “*the present procedure and all procedural deadlines of this arbitration are suspended until the President of the Appeals Arbitration Division’s decision on the issue of admissibility*”. The deadline to nominate the Arbitrator(s) was also suspended.
32. On 12 June 2019, the CAS Court Office acknowledged receipt of the Appellant’s position of 7 June 2019 on the Respondent’s objections on the admissibility of the

appeal and referred the Parties to its letter of 29 May 2019. The CAS Court Office reminded the Parties that all deadlines remained suspended.

33. On 8 July 2019, the CAS Court Office informed the Parties that the Division President had decided that the admissibility shall be determined by a Panel/Sole Arbitrator, once constituted. The CAS Court Office also invited the Respondent to state its position regarding the Appellant's request to submit the Appeal to a Sole Arbitrator, no later than 10 July 2019.
34. On 15 July 2019, the Respondent informed the CAS Court Office that the WKF would not pay its share of the advance for costs and restated its preference for a Panel of three arbitrators.
35. On 22 July 2019, the CAS Court Office informed the parties that, pursuant to Article R50 of the CAS Code, the Deputy Division President had decided that the case shall be determined by a Sole Arbitrator, who would be appointed in due time.
36. On 15 August 2019 and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Sole Arbitrator would be Mr. Dirk-Reiner Martens, Attorney-at-law in Munich, Germany (the "**Sole Arbitrator Mr. Martens**").
37. By a letter dated 20 August 2019, the Respondent:
 - Restated its objections to the admissibility of the Appeal considering that it had been terminated by the decision of 27 March 2019, alternatively, that it was filed three months late;
 - Also disputed the admissibility of Appellant's response dated 12 June 2019 on admissibility for being filed late;
 - Concluded by asking the Sole Arbitrator to proceed with the termination of the *present* arbitration proceedings.
38. On 28 August 2019, the Sole Arbitrator Mr. Martens invited the Appellant to produce its position on the Respondent's objection of admissibility within ten days. The Sole Arbitrator Mr. Martens also disclosed having been involved in a previous arbitration involving the World Karate Federation.
39. On 6 September 2019, the Appellant upheld its position as set forth in the petition of 27 March 2019, in the letter dated 23 May 2019 as to evidence and in the Second Appeal Brief of 28 May 2019.
40. On the same day, the CAS Court Office informed the Parties that the Appellant's letter regarding the admissibility was received and invited the Respondent to provide its position/observation regarding the Appellant's letter of 6 September 2019 within ten days. It also asked the Parties whether they believed a hearing would be necessary and noted that the deadline to challenge the Sole Arbitrator after his disclosure had lapsed.

41. Additional correspondence was exchanged regarding the hearing and on 11 September 2019, the CAS Court Office clarified that such hearing would be dedicated to admissibility and requested the Parties to give their position by 16 September 2019.
42. On 16 September 2019, Respondent sent a letter stating that:
 - The appeal *CAS 2018/A/6053* was terminated on 27 March 2019 because no Appeal Brief was filed;
 - The appeal *CAS 2019/A/6281* was filed late [29 March 2019] because and noted that the Appellant was “*fully aware of the WKF Resolution since 5 November 2018*” therefore the “*deadline to appeal against the WKF Resolution expired on 26 November 2018*”;
 - The Sole Arbitrator shall rule that the appeal *CAS 2019/A/6281* is inadmissible and that the Polish Karate Federation shall bear all costs;
 - A hearing is not necessary and that the Sole Arbitrator may decide on the basis of the Parties’ written submissions only.
43. On the same day, the Appellant requested a hearing on the admissibility of the appeal.
44. On 18 September 2019, the Sole Arbitrator decided that he was sufficiently well informed not to hold a hearing on admissibility and to decide the appeal based on the Parties’ written submissions only.
45. On 18 October 2019, the Appellant requested that the hearing be held in the second half of November. The Respondent commented on the same day and on 21 October 2019, the CAS Court Office confirmed that there would not be a hearing.
46. On 13 November 2019, the Division President extended the deadline to communicate the Arbitral Award to the Parties until 28 February 2020.
47. On 25 November 2019, the CAS Court Office informed the Parties that the Sole Arbitrator Mr. Martens passed away and that another Sole Arbitrator would be shortly appointed.
48. On 27 November 2019, the Deputy Division President appointed as Sole Arbitrator Carine Dupeyron, Attorney-at-law, Paris, France, in accordance with Articles R36 and R54 of the CAS Code.
49. On 5 December 2019, the CAS Court Office corrected the administrative oversight referred to hereinabove, consisting in not immediately transmitting the Appellant’s letter of 28 May 2019 to Respondent, who was granted until 12 December 2019 to provide its comments.
50. On 12 December 2019, the Respondent asked CAS for a 5-day extension, which was granted and on 16 December 2019, the Respondent filed its comments on the Appellant’s letter of 28 May 2019, which restated its request to terminate the proceedings.

IV. JURISDICTION

51. The jurisdiction of the CAS over the present procedure is based upon Article 21.12 of the WKF Statutes which provides that:

“Affiliated members and Individuals shall commit themselves to accept no authority other than the one of the WKF. An appeal before the Court of Arbitration for Sport (TAS / CAS) is only possible after having exhausted all the internal resources foreseen in the WKF Statutes and Disciplinary Rules.”

52. The jurisdiction of the CAS to hear the present dispute on the Decision ratified at the WKF Congress is undisputed by the Parties.

V. APPLICABLE LAW

53. Article R58 of the CAS Code provides as follows:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”

54. This provision is in line with Article 187, paragraph 1 of the Swiss Private International Law Act (PILA), which in its English translation states as follows: *“The arbitral tribunal shall rule according to the rules of law chosen by the parties or, in the absence of such choice, according to the law with which the action is most closely connected.”*

55. Based on the above and considering that the WKF, i.e. the sports-related body which issued the Decision within the meaning of Article R58 of the CAS Code, has applied the WKF Statutes and Disciplinary Rules in adjudicating the present case, the Sole Arbitrator will decide this dispute in accordance with the WKF Statutes and Disciplinary Rules. To the extent necessary, the Sole Arbitrator will apply the Spanish law, the law of the country in which WKF is domiciled. However, the Sole Arbitrator underlines that no provision of Spanish law was invoked or submitted by the Parties in this arbitration.

VI. THE SOLE ARBITRATOR’S DECISION ON ADMISSIBILITY

56. While the following description only contains a summary of the Parties’ various written submissions and does not purport to be comprehensive, the Sole Arbitrator has thoroughly considered all the evidence and arguments submitted by the Parties, even if no specific reference is made to those arguments in the following outline of their positions and in the ensuing decisions.

The provisions of the CAS Code applicable to the present appeal procedure

57. It is undisputed between the Parties that the Appeal subject of the present procedure is directed against a decision taken by the WKF Congress during its Meeting on 5 November 2018, ratifying the decision of the WKF Disciplinary Committee of 3 September 2018 to exclude the Appellant from the World Karate Federation.
58. It is also undisputed that, since the WKF Statutes do not provide any time limit for an appeal, Article R49 of the CAS Code applies and provides the time limits applicable to the appeal of the Decision, and reads as follows:
- “In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, **the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against.** The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties.”*
59. It is followed by Article R51 of the CAS Code, which states:
- Within ten days following the expiry of the time limit for the appeal, the Appellant shall file with the CAS Court Office a brief stating the facts and legal arguments giving rise to the appeal, together with all exhibits and specification of other evidence upon which it intends to rely. Alternatively, the Appellant shall inform the CAS Court Office in writing within the same time limit that the statement of appeal shall be considered as the appeal brief. The appeal shall be deemed to have been withdrawn if the Appellant fails to meet such time limit.***
60. Accordingly, the time limit of “*twenty-one days from the receipt of the decision appealed against*” set forth in article R49 of the CAS Code applies.
61. Then, the Appellant has ten days to file a “*brief stating the facts and legal arguments giving rise to the appeal*” or “*inform the CAS Court Office within the same time limit that the statement of appeal shall be considered as the appeal brief*”, as detailed in Article R51 of the CAS Code.
62. While the Parties agree on the application of the above provisions of the WKF Statutes and of the CAS Code, the Parties disagree on the computation of these time limits, and particularly on the starting date of the time limit for appeal under Article R49 of the CAS Code.
63. The Respondent also argued, as a preliminary argument, that the Termination Order of 27 March 2019 in the case CAS 2018/A/6053 does not allow the Appellant to file a second appeal against the Decision.
64. The Sole Arbitrator’s decisions on these arguments are hereinafter developed in sections B and C.

Does the Termination Order in the case CAS 2018/A/6053 prevent the Appellant from lodging an appeal against the Decision?

The Respondent's position

65. The Respondent argues that, on 23 November 2018, the Appellant already filed an appeal against the Decision, which gave rise to the opening of the case CAS 2018/A/6053.
66. To support its assertion that the CAS 2018/A/6053 case concerned the Decision, the Respondent refers to a letter dated 14 November 2018 from the Appellant, in which it stated that “*the resolution of the WKF Congress of 5 November 2018 on the ratification of the WKF Executive Committee of April 13, 2018, is the subject matter of these proceedings [CAS 2018/A/6053]*” and to a letter from the CAS Court Office dated 14 January 2019 acknowledging that “*the Appellant's appeal is directed against the decision of the WKF Congress of 5 November 2018*”, which were not challenged by the Appellant.
67. Thereafter, the Respondent noted that due to the failure of the Appellant to file its Appeal Brief within the time limit required under the CAS Code, the Division President issued a Termination Order on 27 March 2019 which put an end to these proceedings.
68. According to the Respondent, this is sufficient to conclude that an appeal against the Decision cannot be filed again.

The Appellant's position

69. For the Appellant, the previous procedure CAS 2018/A/6053 concerned the decision of the Disciplinary Committee of 3 September 2018 only and was terminated when PZK “*after analyzing the WKF's position, shared the view that in fact the complaint was lodged against the wrong decision.*”
70. The Appellant therefore states that there has been no prior appeal against the Decision and that, in any event, it was justified to lodge an appeal on 29 March 2019.

The Sole Arbitrator's decision

71. The Sole Arbitrator underscores that a Termination Order is an administrative measure based on the application of article R51 of the CAS Code, which provides that if the Appellant fails to meet certain time limits for the filing of its Appeal Brief, “*the appeal shall be deemed to have been withdrawn*”.
72. Hence, the Termination Order is not an award and has no *res judicata* effect.
73. Accordingly, the question relating to the scope of the appeal has no relevancy here, and the Sole Arbitrator does not deem necessary to determine whether the procedure CAS 2018/A/6053 was limited to the decision of the WKF Disciplinary Commission of 3 September 2018, as reflected in the Appeal Brief and in the Termination Order, or if this scope has been extended to the Decision, as stated in the letter of the Appellant of

14 November 2018 and the CAS Court Office letter of 14 January 2019 in the procedure CAS 2018/A/6053.

74. In the case CAS 2018/A/6053, the Appellant failed to file its Appeal Brief within ten days following the expiry of the time limit for the appeal and also failed to inform the CAS Court Office within the same deadline, i.e. on or before 6 December 2018, whether its Statement of Appeal could be considered as its Appeal Brief. The Division President accordingly applied the relevant provision of the CAS Code and declared the appeal withdrawn and terminated the procedure.
75. However, in the Sole Arbitrator's view, this administrative measure does not prevent the Appellant from lodging another appeal if the conditions for the admissibility of such appeal are still met.
76. This is what will be determined hereinafter and in particular whether the time limit to do so had expired or not.

Has the time limit to lodge an appeal against the Decision under article R49 of the CAS Code expired when the Appellant filed its Appeal Brief with CAS on 29 March 2019?

77. Article R49 of the CAS Code provides that “[...] *the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against.*”
78. It is undisputed between the Parties that the decision appealed against is the ratification by the members of the World Karate Federation of the removal of the Polish Karate Federation from its membership, which was decided during the Congress held on 5 November 2018.
79. It is also undisputed between the Parties that the CAS Court Office, on 15 April 2019, acknowledged receipt of the Appeal Brief filed by the PZK on 29 March 2019, i.e. more than 21 days from the date of the Decision itself.
80. The essence of the present dispute on admissibility focuses on the interpretation of the expression “*from the receipt of the decision appealed against*” of Article R49 of the CAS Code, i.e. whether the awareness by a party of a decision through the presence of its representative at the meeting where the decision was ratified could be characterized as “*receipt*” of such decision by such party.

The determination of the start date to file an appeal under article R49 of the CAS Code

a) *The Respondent's position*

81. The Respondent considers that the time to appeal started on 5 November 2018, which is the date of the WKF Congress that ratified the Decision. Specifically, the Respondent considers that the presence of a representative of the Polish Karate Federation and his intervention during the World Karate Federation Congress as established by the minutes, are sufficient to establish the Appellant's awareness of the Decision, and accordingly the proper “*receipt of the decision appealed against*” by the Polish Karate Federation as per the wording of article R49 of the CAS Code.

82. To support its reading of Article R49 of the CAS Code, the Respondent quotes the award on jurisdiction and admissibility rendered by CAS in the proceedings *CAS 2016/A/4817* on 1 June 2017, which states in relevant parts:

*“For the purposes of Art. R49, the CAS Code means that **the decision must have come into the sphere of control of the party concerned (or of his/her representative or agent authorized to take receipt)**. It does not imply that the party concerned actually took note of the content of the decision concerned. Instead it suffices that the party concerned had a (reasonable) possibility of taking note of the decision.”*

83. In the case *CAS 2016/A/4817*, the Respondent underscores that the Panel had even questioned the good faith of the party that denied such receipt and underscored potential consequences in terms of estoppel.

84. The Respondent also suggests, based on the procedure *CAS 2016/A/4817*, that the knowledge of the concerned decision appealed against, which can be deducted from the presence of a person representing the concerned party when such decision was made, prevents such party from raising a defense based on its lack of “receipt”.

In other words, for Respondent, it is not necessary that the addressee receives the decision physically and/or that the decision be reasoned, the knowledge or awareness of the decision is sufficient for the time limit to appeal to start running.

85. The Respondent also refers to the award issued by CAS in the procedure *CAS 2007/A/1413* on 20 June 2008, which was rendered under Swiss law, confirming, in the following terms:

*17. Under Swiss law, in cases of appeals against decisions issued by associations pursuant to Article 75 of the Swiss Civil Code (SCC), **the dies a quo of the time limit for the filing of the appeal is not when the decision has been made, but when the party appealing the decision has been notified of such decision**. More precisely, the time limit starts to run **when the appellant has become aware** of the decision. It is not necessary that the decision be formally notified to him by the decision-making body; it is sufficient if the appellant knows of the decision (see, e.g., HEINI/SCHERRER, Basler Kommentar, Zivilgesetzbuch I, p. 498 f.).*

*18. According to certain commentators, based on good faith principles, **the time limit for the filing of the appeal should already start to run if the appellant had the possibility to know, and should have known, about the decision** (OSWALD D., *La relativité du temps en relation avec l’art. 75 CC*, to be published in *Mélanges SSI*, Basel 2008; HEINI/SCHERRER, Basler Kommentar, Zivilgesetzbuch I, p. 498 f.; DONZALLAZ Y., *La notification en droit interne Suisse*, Staempfli Editions SA, Berne 2002, p. 574 and cases cited).*

*19. **The moment when a person becomes aware of a decision depends on the circumstances of the case**. It may be, for example, when the decision is made if that party participates to the relevant assembly or meeting, it may be when it receives the minutes of the relevant meeting, or when it receive formal notification of the decision. In addition, based on good faith principles, the time limit may start to run before the appellant acquires actual knowledge of the decision, if, in the particular circumstances of the case, the party should have enquired about the decision, for example in cases where that party knew that a decision was to be made, or has been made.*

86. Hence, based on the Minutes of the Meeting of the WKF Congress, which state that the Appellant had a representative at the Congress on 5 November 2018, the Respondent concludes that the Appellant was aware of the Decision from that moment, i.e. that it

“received” the Decision on that day, as per Article R49 of the CAS Code. Accordingly, the time limit for appeal started on 5 November 2018 and expired on 26 November 2018.

b) *The Appellant’s position*

87. The Appellant considers that the time limit for appeal had not yet started to run when it filed its appeal in March 2019.
88. The Appellant alleges in that regard that it never received the Decision physically, even though it repeatedly asked for it and that the Decision has never been published. Since, for the Appellant, “*the time limit for filing a complaint is counted from the date of effective delivery of the final decision (WKF Congress resolution) together with its written justification”, its appeal filed on 29 March 2019 was still filed in time, absent any notification of the Decision and obviously of any reasoning.*
89. The Appellant also considers that the presence of a representative at the relevant Meeting has no incidence of the “*determination of the statute of limitations,*” which can be understood as the start of the time limit period for appeal in this case.
90. Finally, the Appellant adds that it did not have the opportunity to speak at the 5 November 2018 Congress and to present its arguments. This amounts, for the Appellant, to a violation of its right to defend itself. The Appellant suspects on that question that the absence of any notification of the Decision was meant to “*preventing PZK from taking the actions envisaged by law*”.

c) *The Sole Arbitrator’s decision*

91. The Sole Arbitrator has first focused her attention to the wording of Article R49 of the CAS Code and notes the following:
- The expression “*receipt of the decision*” which is at stake in these proceedings, is not defined in the CAS Code;
 - However, the word “*receipt*” differs from the expressions “*Communication*” or “*Notification*”, which are used in other articles of the CAS Code and specifically refer to the delivery of documents related to arbitration proceedings.
92. Turning to CAS case law, the award on jurisdiction and admissibility rendered in CAS 2016/A/4817 on 1 June 2017 is certainly the most relevant here, as it defined the wording “*receipt of the decision appealed against*” of R49 of the CAS Code as follows:
- “For the purposes of Art. R49, the CAS Code means that the decision must have come into the sphere of control of the party concerned (or of his/her representative or agent authorized to take receipt). It does not imply that the party concerned actually took note of the content of the decision concerned. Instead it suffices that the party concerned had a (reasonable) possibility of taking note of the decision.”*
93. The Sole Arbitrator believes that the award issued in the procedure CAS 2007/A/1413 on 20 June 2008 is less relevant, as it was not rendered under R49 of the CAS Code. Moreover, this award refers to computation of time under Swiss law, which does not apply in the present circumstances. Hence, the solution adopted in that award is only an

illustration of an approach by one arbitral tribunal seized with a clause with a wording similar – but not identical – to R49 of the CAS Code. It accordingly has limited relevance here.

94. The Sole Arbitrator concurs with the interpretation of the expression “*receipt of a decision appealed against*” in Article R49 of the CAS Code in the award rendered in the procedure CAS 2016/A/4817 cited by the Respondent, also referred in most recent case law such as CAS 2019/A/6241, which is also, in her view, confirmed by the vocabulary used in the CAS Code.
95. In other words, the Sole Arbitrator agrees that the time limit to lodge an appeal starts to run from the moment the concerned party has become aware of the decision, or, as stated, when the decision has come into the “*sphere of control*” of the concerned party.
96. The Sole Arbitrator also notes that such awareness must be proven by the party raising it, including from the circumstances of the case.
97. Here, the Decision was ratified by a vote of the members of the World Karate Federation at the Congress held on 5 November 2018.
98. As attested by the Minutes of the Congress produced by the Respondent, Mr. Waclaw Antoniak, acting as representative of the Polish Karate Federation, was present and was given the floor to comment the proposed sanction, prior to the vote. The Sole Arbitrator remarks that nor the presence of Mr. Antoniak neither his status as the Appellant’s representative have been challenged by the Appellant. The Appellant argues that the Polish Karate Federation was denied its right to be heard, but the Appellant does not provide any evidence in support of this assertion and moreover it has not challenged the authenticity or accuracy of the minutes of the WKF Congress of 5 November 2018.
99. The Sole Arbitrator therefore concludes that the presence of Mr. Antoniak at the WKF Congress is established and concludes that it is sufficient to characterize the awareness of the Decision by the Appellant. This means that, as from the day of the Congress, the Sole Arbitrator considers that the Polish Karate Federation had a clear knowledge of the Decision and that the time limit provided in article R49 of the CAS Code started to run on 5 November 2018.
100. As explained above, the Sole Arbitrator also considers that the facts that Mr. Antoniak might not have been offered the floor to comment the sanction envisaged and/or that the Decision was not drafted and therefore did not develop a reasoning in writing are not conditions that have been set to prevent the start date of the appeal from starting to run. This is absent from the text of Article R49 of the CAS Code and from the case law discussed here.
101. Moreover, the Sole Arbitrator does not see any logical reason why the alleged absence of a debate during the Congress or the lack of justifications of the Decision in writing would constitute a denial of justice. Indeed, after it was ratified, the Decision remained subject to a recourse before the CAS -if exercised in accordance to the rules applicable to it- where an adversarial debate between the Parties could be held.

Was the appeal filed in accordance with article R49 of the CAS Code?

a) The Respondent's position

102. The Respondent considers that the appeal period started on 5 November 2018 and, consequently, that the Appellant's appeal filed on 29 March 2019 was late, in light of the expiry of the time limit for appeal on 26 November 2018, which is 21 days after the receipt of the Decision.
103. The Respondent, alternatively, argues that, even assuming that the CAS rightfully acknowledged receipt of the undated appeal filed on 29 March 2019 on 15 April 2019, and formally opened an appeal proceedings on 30 April 2019, the Appellant filed its First Appeal Brief on 23 May 2019, that is more than ten days set forth in Article R51 of the CAS Code.
104. This also constitutes a reason to terminate this proceeding.

b) The Appellant's position

105. The Appellant considers that its appeal of the Decision is admissible since there has been no “*effective delivery of the final decision (WKF Congress resolution) together with its written justification*”. The time limit to appeal has therefore never started to run.

c) The Sole Arbitrator's decision

106. The Sole Arbitrator already decided that the “*day of receipt of the decision appealed against*” in this case against is 5 November 2018. Applying a twenty-one day period to this date as per article R49 of the CAS Code, the Sole Arbitrators considers that the time limit for appeal lasted until 26 November 2018.
107. Further, in accordance with Article R51 of the CAS Code, the Sole Arbitrators considers that the Appeal Brief should have been filed no later than 6 December 2018.
108. It is undisputed that the undated appeal was filed with CAS on 29 March 2019 and that the CAS Court Office acknowledged receipt of it on 15 April 2019: both dates are past the time limit for appeal, which is 26 November 2018.
109. Having made this determination, it is unnecessary to look at the date of filing of the Appeal Brief, which was undisputedly submitted past the filing date of 6 December 2018 under Article R51 of the CAS Code.
110. The Sole Arbitrator therefore concludes that the present appeal was filed late, that its inadmissible and accordingly that this appeal procedure shall be terminated and removed from the CAS roll.

VII. COSTS

111. According to article R64.4 of the CAS Code, at the end of the proceedings, the CAS Court Office shall determine the final amount of the costs of arbitration, which shall

include the CAS Court Office fee, the administrative costs of the CAS calculated in accordance with the CAS fee scale, the costs and fees of the arbitrators, the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale, a contribution towards the expenses of the CAS, and the costs of witnesses, experts and interpreters.

112. It is followed by article R64.5, which states: *“In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties.”*
113. On 15 July 2019, the Respondent informed the CAS Court Office that the World Karate Federation would not pay its share of the advance for costs *“given the significant threat that the Appellant will not reimburse it should its appeal be unsuccessful”* and requested that the Appellant bear all costs of the present procedure
114. The Appellant did not express its position as to the costs of the present proceeding.
115. Taking into consideration the outcome of this appeal, the Sole Arbitrator finds it reasonable that the Appellant shall bear the full costs of this arbitration, as determined by the CAS Court Office at the end of the proceedings. In addition, taking into account all relevant circumstances, the Sole Arbitrator holds that the Appellant shall pay the amount of CHF 2'000 (two thousand Swiss francs) to the World Karate Federation as a contribution towards the costs, legal fees and other expenses that the Respondent has incurred with respect to this arbitration procedure. The Appellant shall bear its own legal fees and expenses.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal lodged by Polski Związek Karate (the Polish Karate Federation) on 29 March 2019 against the World Karate Federation with respect to the decision issued by the WKF Congress of 5 November 2018 is inadmissible.
2. The present procedure *CAS 2019/A/6281 Polski Związek Karate (Polish Karate Federation) v. World Karate Federation* is therefore terminated and removed from the CAS roll.
3. The costs of the present arbitration to be determined and served to the Parties by the CAS Court Office shall be entirely borne by Polski Związek Karate (the Polish Karate Federation).
4. Polski Związek Karate (the Polish Karate Federation) shall pay CHF 2'000.00 (two thousand Swiss francs) to the World Karate Federation as a contribution towards its legal fees and expenses. Polski Związek Karate (the Polish Karate Federation) shall bear its own legal fees and expenses.
5. All further motions and requests for relief are dismissed.

Seat or arbitration: Lausanne, Switzerland
Date: 7 May 2020

THE COURT OF ARBITRATION FOR SPORT



Carine DUPEYRON
Sole Arbitrator