

Nullity of court decisions in Swiss law: A comprehensive analysis

Nullity (Nichtigkeit) represents one of the most fundamental concepts in Swiss procedural law, serving as an extraordinary remedy for decisions that suffer from such severe defects they cannot be permitted to have legal effect. Unlike mere procedural errors that render decisions voidable, nullity applies when court decisions violate core jurisdictional limits or fundamental legal principles so gravely that they are considered void from inception.

Swiss law's approach to nullity reflects a careful balance between legal certainty and procedural integrity. The Federal Supreme Court has established that **nullity must be observed by all authorities at all times**, [\(Globalarbitrationreview +2\)](#) operating as an absolute bar to legal validity rather than a mere ground for appeal. [\(Bger +3\)](#) This comprehensive analysis examines how nullity functions across Switzerland's civil, criminal, and administrative courts, drawing from current statutory provisions, Federal Court jurisprudence, and established legal doctrine.

Legal grounds and the high threshold for nullity

Swiss courts apply an exceptionally stringent standard when determining whether decisions warrant nullification. The Federal Supreme Court emphasizes that **"deficiencies in content only rarely result in the nullity of an order"** [\(FPC Review\)](#) - requiring extraordinarily serious violations that fundamentally undermine a decision's legitimacy. [\(FPC Review\)](#)

Four primary categories of defects can render court decisions null and void. **Lack of jurisdiction** constitutes the most straightforward ground, occurring when courts act without subject-matter competence (sachliche Unzuständigkeit) or territorial authority (örtliche Unzuständigkeit). The Federal Court's decision in BGE 138 III 471 illustrates this principle: when the wrong court type hears a case - such as a district court deciding matters reserved for commercial courts - any resulting judgment lacks legal validity from inception. [\(Lexology\)](#) [\(Bger\)](#)

Serious procedural irregularities form the second major category, encompassing violations of fundamental due process rights. These include denial of the right to be heard (rechtliches Gehör) where parties had no opportunity to participate, improper tribunal composition, or decisions by judges lacking independence or impartiality. [\(Bger\)](#) The severity requirement remains paramount - minor procedural defects create voidability rather than nullity. [\(FPC Review\)](#)

Substantive deficiencies rarely trigger nullity unless they represent **extraordinarily serious violations** of constitutional rights or fundamental legal principles. Similarly, formal defects must demonstrate exceptional gravity, such as complete absence of legal basis or violation of mandatory procedural forms essential to decisional validity.

Distinguishing nullity from voidability: Fundamental differences

The distinction between nullity (Nichtigkeit) and voidability (Anfechtbarkeit) represents a cornerstone of Swiss procedural law, with profound practical consequences. **Null acts produce no legal effects from the beginning** (ex tunc), operating automatically without requiring party action. Courts must recognize nullity ex officio, even when parties fail to raise the issue, and no limitation periods restrict when nullity can be invoked. (Mondaq)

Voidable decisions, conversely, remain valid until successfully challenged through prescribed procedures. These defects typically affect specific parties' rights rather than undermining the decision's fundamental validity. **Time limitations strictly govern voidability** - parties must act within statutory appeal periods or the decision becomes unassailable. Swiss law applies the principle of "favor sententiae," preferring to classify defects as creating voidability rather than nullity wherever possible to promote legal certainty. (LAWMEDIA AG)

This distinction profoundly affects strategic considerations. A party discovering jurisdictional defects years after a decision can still invoke nullity, while procedural irregularities creating mere voidability become irrelevant once appeal deadlines pass. The Federal Court consistently maintains this bright-line distinction to balance finality concerns with protection against fundamental legal violations. (Wikipedia) (Europeanlawinstitute)

Procedural frameworks across court systems

Swiss law provides distinct procedural pathways for addressing nullity depending on the court system involved, though certain universal principles apply. The **Civil Procedure Code (ZPO)** governs nullity in civil courts through Articles 341 and 397, (Globalarbitrationreview) operating under party disposition principles that generally require formal motions to raise nullity claims.

(Teichmann-law +3) Courts possess limited ex officio powers to examine nullity (Article 55 ZPO), primarily for jurisdictional issues. (Globalarbitrationreview) (Bger)

Criminal procedure demonstrates markedly different characteristics under the **Criminal Procedure Code (StPO)**. (Wikipedia) The inquisitorial tradition grants criminal courts extensive ex officio authority to identify and address nullity, reflecting the system's emphasis on discovering material truth. (Hawaiiankingdom) Articles 139-141 StPO specifically address evidence exclusion for procedural violations, (SpringerLink) with courts obligated to investigate both incriminating and exculpatory circumstances under Article 6(2) StPO. (SpringerLink)

Administrative proceedings follow the **Federal Administrative Procedure Act (VwVG)**, which incorporates both party-initiated and ex officio nullity examination. The Federal Administrative Court serves as the primary forum for challenging federal administrative decisions, with cantonal administrative courts handling regional matters. (GloLex +4) Administrative nullity often involves complex questions of agency competence and discretionary authority.

The Federal Supreme Court functions as the ultimate arbiter for nullity questions across all three systems, (Wikipedia) (Europeanlawinstitute) providing consistency through its jurisprudence while

respecting procedural distinctions. (GloboLex +5) Commercial courts in major cantons (Zurich, Berne, Aargau, St. Gallen) handle specialized nullity questions in business disputes, (Globalarbitrationreview (GLI)) applying civil procedure rules with particular attention to jurisdictional clarity given their limited subject-matter competence. (Globalarbitrationreview +4)

Concrete examples from Swiss jurisprudence

Swiss courts have developed nullity doctrine through landmark cases that illuminate practical application. **BGE 138 III 471** exemplifies jurisdictional nullity: contractors included a District Court jurisdiction clause in their construction contract, but subsequent legal changes granted commercial courts mandatory jurisdiction over such disputes. The Federal Court held that material jurisdiction cannot be subject to party agreement - when the District Court proceeded despite lacking competence, its decision faced nullification. (Bger)

Child protection proceedings demonstrate administrative nullity principles. In **BGer 5A_977/2018**, the Child Protection Authority continued making decisions after another court assumed jurisdiction through competence attraction rules. The Federal Court confirmed that authorities losing competence through legal mechanisms cannot render valid decisions - their subsequent acts constitute nullities regardless of substantive merit.

The principle that authorities cannot revoke decisions under appeal appears in **BGE 97 III 3**, where a debt enforcement office attempted to withdraw and replace its seizure decision after a complaint was filed. The Federal Court declared this withdrawal null and void, protecting the appeals process integrity by preventing authorities from circumventing supervisory review through unilateral revocation. (Bger)

Criminal procedure provides explicit statutory regulation through StPO Articles 139-141, which mandate evidence exclusion and potential proceeding nullification for fundamental rights violations. (SpringerLink) **Evidence obtained through torture, denial of defense counsel access, or methods violating human dignity** triggers automatic exclusion and may render entire proceedings null (SpringerLink) - representing Europe's most comprehensive statutory approach to criminal procedural nullity. (SpringerLink)

Time limits and the absolute-relative distinction

Swiss law's treatment of nullity time limits reveals crucial distinctions between absolute and relative nullity. **Standard appeal deadlines do not constrain absolute nullity claims** - violations of public order or mandatory rules can be raised without temporal restriction. The Federal Court's pronouncement that nullity "must be observed by all authorities applying the law at all times" confirms this principle's breadth. (Bger+3)

Regular appeals face strict deadlines: 30 days for cantonal appeals (10 days in summary proceedings) and 30 days for Federal Supreme Court appeals (Lexology) in disputes exceeding CHF 30,000. (Lexology) (Europeanlawinstitute) Relative nullity claims must comply with these standard

limitations, as they protect private rather than public interests and remain subject to party confirmation or waiver.

Administrative contexts demonstrate hybrid approaches. Naturalization decisions, for instance, permit nullity declarations within two years of discovery but impose an absolute eight-year maximum from the decision date. [Legalexpat](#) This balanced framework recognizes both legal certainty needs and the public interest in correcting fundamental administrative errors.

Formal requirements and standing

Swiss procedural law imposes stringent formal requirements for nullity claims. **All submissions must be written, signed, and demonstrate "concrete substantiation of facts"** [Bakermckenzie](#) - general allegations prove insufficient. [Bger](#) Language requirements mandate submission in the canton's official language, though international arbitration proceedings may utilize English.

[Globalarbitrationnews](#) [Lexology](#)

Standing rules differentiate sharply between nullity types. Absolute nullity permits invocation by "any person" given its public order implications, with courts potentially raising issues ex officio.

Relative nullity restricts standing to those whose interests the violated rule protects, preventing third parties from exploiting technical defects affecting only specific litigants.

Nullity petitions must contain specific factual allegations, identified legal grounds, evidence references linking statements to supporting documents, and clearly articulated relief requests.

[Bger +2](#) While legal representation remains optional in many proceedings, the complexity of properly pleading nullity often necessitates professional assistance. Corporate parties must act through authorized representatives, with missing powers of attorney subjecting submissions to cure-or-dismiss procedures. [Lexology](#)

Effects and remedies following nullity declarations

Nullity declarations produce comprehensive retroactive effects under Swiss law's "ex tunc" principle. **Null decisions lose all legal existence**, cannot be enforced or invoked, and create no res judicata effects. This void ab initio status distinguishes nullity from successful appeals that merely reverse erroneous decisions while acknowledging their temporary validity. [Mondaq](#)

Courts possess broad remedial authority following nullity findings. Options include remanding cases for proper proceedings, ordering repetition of procedural acts to cure defects, excluding improperly obtained evidence, and potentially awarding damages for harm caused by null proceedings (subject to fault requirements). The specific remedy depends on the nullity's nature and the feasibility of corrective measures.

Third parties who acted in reliance on null decisions face complex situations. Swiss law generally requires reversing actions taken pursuant to void decisions, though good faith protections may limit restitution scope. **Enforcement attempts based on null judgments constitute**

independent wrongs, potentially triggering liability for executing authorities who proceed despite nullity indicators. (Mondaq)

Res judicata implications prove particularly significant. Since null decisions lack legal validity, they cannot bar subsequent proceedings on identical claims. (Globalarbitrationreview +3) Parties remain free to reinitiate disputes properly, though statutes of limitations for underlying claims continue running. (Bger) This perpetual vulnerability to challenge underscores why courts carefully limit nullity findings to truly fundamental defects.

Conclusion

Swiss nullity doctrine embodies sophisticated legal architecture balancing competing imperatives. The system protects fundamental procedural rights and jurisdictional boundaries through automatic invalidation of seriously defective decisions, while promoting legal certainty by restricting nullity to exceptional circumstances. (GlobaLex) Clear distinctions between absolute and relative nullity, combined with differentiated procedures across court systems, create nuanced frameworks addressing diverse legal contexts.

Modern Swiss practice demonstrates both continuity with civil law traditions and adaptive responses to contemporary challenges. The Federal Supreme Court's jurisprudence maintains doctrinal coherence while permitting flexible application across civil, criminal, and administrative domains. (GlobaLex +4) As procedural complexity increases and cross-border disputes multiply, nullity principles provide essential safeguards against fundamental legal violations while respecting the finality necessary for effective judicial systems.

For practitioners, understanding nullity's extraordinary nature remains crucial. The doctrine offers powerful remedies for egregious violations but demands precise invocation complying with formal requirements. Strategic assessment must weigh nullity's broad temporal availability against the high substantive thresholds courts impose. In a legal system prioritizing both individual rights protection and institutional efficiency, nullity serves as the ultimate procedural safety valve - rarely opened but essential to systemic integrity.