

## **PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

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**Summary:** *The court of arbitration for sport in Lausanne, Switzerland is the main court in the world of international sports. The Court settles the disputes arising in international sports in a specialized and efficient way through taking into account both rights and obligations of athletes and sports organisations. The proceedings rules of the court are in the code of arbitration for sport. The code created by the International Council of Arbitration for Sport tries to settle the sport related disputes in the best possible way to meet rights of the parties. In this procedure that is revised several times, core and fundamental legal principles such as process and procedural fairness are considered. Considering the significance of procedural rules in providing justice for parties in a dispute, this study is aimed in studying the different aspects of procedural rules of the court of arbitration for sports. At first we will take a look into the Code of the Court of Arbitration for Sport. In the next point the award enforcement will be shortly handled and at last the question of the existing of Lex Sportiva will be discussed.*

**Keywords:** *procedural rules, proceedings, procedural fairness, procedural rules, the court of arbitration for sport, CAS, Arbitration, Lex Sportiva*

## **1. Introduction**

Today sport is no longer a small leisure activity but has an enormous importance, in economic terms, as well as a political and peace-making instrument in the world. In the world of sport, legal disputes can arise very quickly. These disputes may arise between clubs, associations, athletes, managers, coaches and others involved in the sport. The reasons for the lawsuit can be innumerable, marketing law, clothing of athletes, doping trials, not being admitted to a competition, fines, disciplinary penalties, disqualification, suspension, etc., to name but a few. With increasing time, there was a strong need for an international sports arbitration court to do justice to the international complexity of sports law.

Current doping in cycling and equestrian sports, bribery scandals in handball and football, disputes over points, bonuses, ups and downs, temporary injunctions and the start permit are disputes that obtain an international arbitration court in sports matters.

CAS is a body independent of any sports organisation that provides services to facilitate the settlement of sporting disputes through arbitration or mediation through rules of procedure adapted to the specific needs of the sporting world<sup>1</sup>.

CAS has very few restrictions on the types of cases it may consider for arbitration, provided that both parties are accessible to arbitration. CAS Arbitration provides an independent and impartial forum for the quick and final resolution of the often-complex problems that arise in disputes over participation in athletes. An international pool of referees does this with expertise in sports law. The CAS Appeals Procedure also provides an efficient and impartial means of assessing the suitability of athletes for other international sports competitions. CAS cases are generally open to the public and can be viewed on the CAS Web site.

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<sup>1</sup> <https://www.tas-cas.org>

## 2. The Code

The Code of Sports<sup>2</sup>-related Arbitration (the Code) was adopted in November 1994 and has governed the International Arbitration Court for Sport Organization and Procedure since its inception and is based in Lausanne, Switzerland. It is divided into two parts; the statutes of the bodies responsible for the settlement of sports disputes (Art. S1 - S3 Joint Disposition, S4-S5 The International Court of Arbitration for Sport<sup>3</sup> (ICAS), S6-S7 Attribution, S8 - S11 Operation, S12 -Mission, S13-S 9 Arbitrators and mediators, S 20 S22 Organisation of the CAS, S23-26 Miscellaneous Provisions and the Rules of Procedure (Art. R27 - R37 General Provisions, R38-R46 Special Provisions fpr Applicable to the Ordinary Arbitration Procedure, R47-R59 Special Provisions Applicable to the Appeal Arbitration Procedure, R63 Interpretation, R64 -R65Costsa of the Arbitration Proceedings, R67-R70 Miscellaneous Provisions)). It was subsequently revised and amended in 1995, 1999, 2003 and 2004, 2012, 2013, 2016 and 2017. With the introduction of the Code in 1994, CAS was further divided into two divisions: The Ordinary Arbitration Division and the Appeal Arbitration Division. As already mentioned, the CAS has two different arbitration bodies: the ordinary writ department such as the contract disputes and the appeal department; this provides for appeals of decisions of associations or clubs. Membership of ICAS consists members of each international community consisting of the International Federation Olympic Committee (ASOIF) and AIOWF Association of the Winter Olympic, the Association of National Olympic Committees (ANOC) and the IOC and the ICAS itself. Although arbitration is considered far more efficient in terms of both cost and time, CAS and ICAS arbitration usually takes several months. For this reason and because of the need for quick decisions in Olympic competitions,

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<sup>2</sup> [https://www.tas-cas.org/fileadmin/user\\_upload/CAS\\_Code\\_2021\\_\\_EN\\_.pdf](https://www.tas-cas.org/fileadmin/user_upload/CAS_Code_2021__EN_.pdf)

<sup>3</sup> <https://www.tas-cas.org/en/icas/code-icas-statutes.html>

special ad hoc CAS courts are formed. These ad hoc CAS bodies are established to deal with disputes within 24 hours.

The costs of CAS arbitration are relatively low compared to litigation. Arbitration facilitates access to dispute resolution for all athletes, including those with limited financial resources.

The geographical location of the CAS is Lausanne, Switzerland. Cases shall be kept there unless both parties have agreed by order of the President of the Executive Board. The seat of the CAS is within the jurisdiction of the Swiss Federal Act on Private International Law. The language of the courts and therefore the arbitration is either French, English or Spanish. There is a possibility that the Executive Committee and the parties concerned may agree that another language may be used.

However, the translation and interpreting costs shall be borne by the parties.

The jurisdiction of CAS may be determined either by the rules that form part of the sports documents of an association or by ad hoc arbitration agreements in major competitions.

A CAS Award works with a binding arbitration agreement specific to the sport. CAS makes it very accessible and relatively easy for arbitration. If there is an appeal, a party concerned must file an application for arbitration with the CAS Court of Justice. The request shall include: a) the name and address of the respondent; (b) a statement of the facts and legal arguments, including the questions raised; (c) a copy of the contract containing the arbitration or other document providing for such arbitration in accordance with the rules of procedure; and (d) any request for numbers and the election of arbitrators. All applications for arbitration must first be declared admissible by CAS. A Board is composed of the Executive President of the Court and two other members appointed by the President of the CAS for one year.

The board consists of three arbitrators selected from a list of CAS members. Once the first two members of the panel have been selected, the plaintiff nominates one. Each party shall nominate an arbitrator. After the first two members of the panel have been selected, the plaintiff nominates one or more CAS members and asks the other party to accept one of them as the third arbitrator. If the plaintiff has not thus appointed a third arbitrator within the time limit set after the nomination, the President of the Swiss Federal Court shall be responsible for determining the third arbitrator. Until the conclusion of this appointment, both parties may agree on a third arbitrator of their choice.

CAS also decides on its own jurisdiction if another court decides on its own proceedings. The court must be appointed, and the defendant must also select a judge from the list of arbitrators. The parties may jointly select a judge or elect a panel of three judges. It should be noted here that the sliding clause is decisive. Thereafter, the parties will receive a process message about the procedure. Here the procedure to be dealt with is shown to the parties (competence of CAS, the decision to be taken, the arbitrators, representatives of the parties, language of the hearing, applicable law, dates of the negotiations and verdict).

The proceedings then begin with the filing of the arbitration and payment of the court order. If payment is made within the deadline, the deadline for the claim is granted. Here, all actual statements and legal interpretations must be made. The appointment procedure is scrutinized and critically appraised as necessary. After the statement of grounds, the complaint comes. After appointment of the judges of the two parties, the president of the committee after consultation with the two parties is ordered (by the CAS office). In addition, an "Ad Hock Clerk" may be ordered in some cases. The court does not issue summonses to witnesses or experts. The parties should take care of that. A statement of the testimonies should be submitted to the court in advance. Many procedural steps should also be left to the

parties (such as the bringing of witnesses and experts). The proof procedure should be extended even more than a matter of the parties, without a restriction of the court. It goes without saying that the costs in the proceedings have to be borne by the acting party as well as the translation costs, if these are desired. Now the procedure is ready for the oral proceedings, whereby applications can be submitted for the completion of the written procedure. Although the language of the court is English, French and Spanish, it can be heard in any language desired by the parties. It is appealed in this work that the languages of the CAS are extended as in the United Nation and not only in English, French and Spanish. This is plausible. Upon delivery of the tenor, the judgment is already enforceable without waiting for the reasons.

### **3. CAS Award and Enforcement**

A CAS Award is a foreign arbitration body in all countries except Switzerland, and Swiss law governs the majority of CAS decisions based on the location. Therefore, the CAS awards require judicial recognition by the national courts in order to be legally enforceable outside Switzerland. The 1958<sup>4</sup> United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards provides for the judicial recognition of CAS arbitral awards by national courts. Arbitral awards may be enforced in countries where the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards has been signed.

### **4. Lex Sportiva**

It is true that one of the interests of this court is to develop a jurisprudence that can be used as a reference by all players in world sport, thereby promoting the harmonisation of the judicial rules and principles applied in the world of sport<sup>5</sup>.

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<sup>4</sup> [https://uncitral.un.org/en/texts/arbitration/conventions/foreign\\_arbitral\\_awards](https://uncitral.un.org/en/texts/arbitration/conventions/foreign_arbitral_awards)

<sup>5</sup> Reissinger 2010: 9

Sports law has evolved and consolidated over the years, particularly through the settlement of disputes, a set of unwritten legal principles for national and international sports federations must be consistent, regardless of the presence of such principles.

The term *lex sportiva* and its role in international sports law: what makes this codex encourage the claim that the term *lex sportiva* could be perceived as confusing, as it refers to several different legal forms. It can be argued that it consists of four different types of laws. These are in particular; relevant text (contractual), concepts of fairness, basic principles of contract law to be interpreted and, more importantly, a due process. The rules of the game are set internationally. In this respect, the *Lex Sportiva* is a right deeply rooted in human culture

It can be extended to the general principles of global sports law derived from the different practices of sports organisations that have codes that regulate themselves. The use of these extracted practices is applied by CAS, which interprets and selects the best examples and then produces a best practice set of standards.

It is argued that CAS uses the *lex sportiva* principles as safeguards to prevent unfair treatment of athletes and clubs alike, especially with regard to contractual disputes.

One of the main advantages of developing a *lex sportiva* is the need for coherence between CAS decisions. The advantages according are 1. the efficiency of the legal process 2. the predictability or stability of expectations and 3. the equal treatment of similarly situated parties 4. the complete transparency and independence. 5. Legal certainty.

One area that has greatly increased the legitimacy of *lex sportiva* is doping arbitration. These arbitral awards become clearer on issues such as jurisdiction and

review of anti-doping cases. As an example, the decisions of February 2018<sup>6</sup> concerning the 28 Russian athletes<sup>7</sup> for whom the ban has been lifted, and thus they were able to participate in the Winter Games in South Korea. The CAS case law was highlighted in the case as one of the three main sources chosen by the bodies in deciding the case, the other two being the Olympic Charter and Swiss international procedural law. In particular, CAS case law has clarified and developed a number of principles of sports law, including the concepts of strict liability (in doping cases) and fairness, which could be seen as part of an emerging *lex sportiva*. Doping is an area that has been swelling recently in terms of collective sports law. Within the scope of its competence for cases, the CAS may also effectively apply its case-law by applying the principles of good governance. Its task is not only to interpret legality, but also to create best practice. CAS has developed this idea of best practice to take a strong stand, not to check what could be called on-field decisions by arbitrators, judges or other officials.

Critics of *lex sportiva* are that all their decisions, even the most confidential, should be well documented to create a more robust version. The CAS should make its case law more accessible by publishing copies, records and the like of all but the most confidential issues. Many CAS judgments are generally available on its website, although parties wishing to keep their cases secret are normally entitled to do so.

### **5. CAS Critics**

The CAS is also criticised<sup>8</sup> for the danger of the current exchange of arbitrators and legal counsel, as it could give the impression of bias towards certain parties. However, it can be argued that this is inevitable, and even more so that the

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<sup>6</sup> <https://www.tas-cas.org/fr/medias/actualites/article/the-cas-hearing-in-the-matter-of-39-russian-athletes-vs-the-ioc-will-commence-on-22-january-2018.html>

<sup>7</sup> <https://www.tas-cas.org/fr/medias/actualites/article/cas-issues-decisions-concerning-russian-athlete-anastasiya-bazdyreva-and-russian-athletics-coach-vla.html>

<sup>8</sup> Martens 2004: 203

constant exchange of arbitrators prevents a familiarity that can develop between the parties and the arbitrators themselves. The ultimate goal, of course, is to have an independent arbitration body that is completely independent of a sports federation, even if this can take some time, since the concept of "world sports law" is still relatively new.

Therefore, special courts and uniform rules must be applied to sports-specific disputes in order to create this idea of more appropriate facilities and instruments that are able to determine such outcomes, such as an athlete's right to participate in the game.

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