

Research Paper

Structure and Competence of the Court of Arbitration for Sport (CAS) in the Settlement of Sporting Disputes

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Received: 1 February 2021

Revised: 15 march 2021

Accepted: 30 march 2021

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Keywords:

Arbitration, CAS, Sports Law,
Dispute Settlement,
Sporting disputes

Abstract

Arbitration, as a commonly used method of resolving all kinds of disputes, today, has a special place among the stakeholders, especially in sporting disputes. The use of this method in resolving sporting disputes can reduce the number of parties seeking recourse to the courts as arbitration is a faster and more precise method in resolving such disputes. The Court of Arbitration for Sport (CAS) is one of the international institutions established to resolve sporting disputes through specialized arbitration. Even though more than three decades have passed since the establishment of this Court, and the Court has since handled several essential cases (like one case where one of the parties was Iranian), the Court's jurisdiction and structure are not yet well known even among the scholars, let alone the layperson. Therefore, a proper understanding of this arbitration mechanism is necessary. Consequently, the present article seeks to examine the jurisdiction and structure of the tribunal in resolving sporting disputes and suggests ways in which the CAS can further improve on the already good work that it is doing.

Citation: Mohammadi M, Chanda S, Saha K. Structure and Competence of the Court of Arbitration for Sport (CAS) in the Settlement of Sporting Disputes. Res Exer Law. 2021; 1 (1): 1- 13.

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Introduction

Sport is one of the most significant sectors of the world economy, with a huge turnover and several stakeholders involved in it in different ways. The sports industry is also a huge business enterprise, accounting for more than 3 per cent of world trade (1). Sport has ensured and improved the health (both physical and mental) and safety of the society. The role of sport and sporting activities has gone beyond a mere physical activity or a form of recreation and entertainment to encompass various health, social, cultural, economic, environmental and, more importantly, political, and international functions. Nowadays, professional sport is spread all over the world and international documents have also paid attention to sport in some ways. The internationalization of many sports has caused the states to pay attention to international sports competitions as outstanding fields for safeguarding national interests and achieving their political and international goals (2). Numerous sports organizations have been established over the past few decades to facilitate and regulate international sporting competitions. However, holding countless domestic and international sporting competitions raises legal issues and contractual and non-contractual disputes that need to be resolved by specialized sports institutions. In the early 1980s, sports disputes increased and "with the development of professional sports, sports clubs, sports federations and related organizations the number and quality of sports disputes started to change. Under these circumstances, the lack of an impartial and specialized international institution to handle the disputes received more attention than before" (3). In 1981, Juan Antonio

Samaranch, as the new President of International Olympic Committee (IOC), proposed the idea of the establishment of a judicial body to deal with sporting disputes. One year later, at a meeting of the IOC in Rome, Judge Kéba Mbaye, who was a member of the International Court of Justice, was appointed director of review and preparation team of a court for sports (3). Shortly afterwards, the Court for Arbitration for Sports (CAS) was established. Thereafter, with the financial support of the IOC, the CAS started to operate under the direction of Mbaye and Schwaar. Since then, the Court has performed its duties through arbitrators numbering at least 150, as well as with the assistance of court clerks acting under the supervision of the Secretary-General of the Court (4). In 1983, the initial statute of the Court of Arbitration for CAS was ratified by the IOC. Since its inception, the CAS has indeed been able to gain the trust of the international sporting community and has been recognized widely, so that today most national and international sporting organizations have recognized the Court and its jurisdiction. The issues which are resolved by the Court are from a vast range, from the Olympic Games and other sporting events which are referred to the CAS such as football disputes, doping issues, suspension of athletes and international trade agreements. Of course, football cases form the bulk of the proceedings before the CAS, so that the number of these cases (football cases) is almost equal to the sum of all other sports as 45% of the Court's cases are appeals from the Fédération Internationale de Football Association (FIFA) decisions (5). The CAS Statute of 1984 was accompanied by a set of procedural Regulations. Under these rules, the CAS was to be composed of 60 members appointed by

the IOC, the International Federations (IF), the National Olympic Committees (NOC) and the IOC President (15 members each). Additionally, all the operating costs of the CAS were to be borne by the IOC. In principle, the proceedings were free of charge, except for disputes of a financial nature, where the parties were required to pay a share of the costs of proceedings (6). Not surprisingly, the Court faces several challenges (7). Although mandatory arbitration clauses were inserted in statutes and bylaws of various sport governing bodies, they may limit some human rights (8). Also, scholars believe that a closed list of arbitrators may undermine impartiality of the CAS (9). This article tries to explain the structure and jurisdiction of the CAS in detail. Therefore, in this article, an attempt is made to address the most important issues related to the functioning of the CAS and to examine them from the perspective of the sports law. In addition, a closer look at the CAS and the mechanism for the implementation of its rulings can be useful and effective in studying and researching for the establishment of national sports arbitration bodies in various countries (which are already established in several countries around the world). To answer this question, after explaining the nature of sporting disputes and the necessity of the establishment of a body for resolving these disputes, the structure, jurisdiction and implementation of the rulings of the CAS will be discussed in detail. As a result of the expansion of legal disputes arising from sporting activities and international sporting competitions, the necessity of establishing of an independent court was felt more than ever. Due to the specificity of the lawsuits and disputes in sports, it was necessary to create a court that, in addition to specialization in the same

area, could investigate the cases swiftly and flexibly. The primary purpose of the establishment of the CAS was to settle the international sporting disputes outside the ordinary courts.

The Necessity of the Establishment of a sporting dispute settlement body

In February 1992, a horse-rider named Elmar Gundel lodged an appeal for arbitration with the CAS based on the arbitration clause in the International Federation for Equestrian Sports statute (FEI), challenging a decision pronounced by the federation. This decision, which followed a horse doping case, disqualified the rider, and imposed a suspension and fine upon him. The award rendered by the CAS on 15 October 1992 was found partly in favour of the rider (the suspension was reduced from three months to one month after arbitration) (6). Elmar Gundel, discontented with the CAS decision, filed a public law appeal before the Swiss Federal Tribunal. The appellant primarily disputed over the validity of the award, which he claimed was rendered by a court which did not meet the conditions of impartiality and independence needed to be considered as a proper court of arbitration (6). The Swiss Federal Tribunal (SFT) noted, inter alia, that the CAS was not an organ of the FEI, that it did not receive instructions from the federation and retained sufficient personal autonomy with regard to it. In its judgment, the SFT drew attention to the numerous links which existed between the CAS and the IOC: the CAS was financially supported almost exclusively by the IOC, the IOC was competent to modify the CAS Statute, and the considerable power given to the IOC and its President to appoint the members of the CAS. In the view of the SFT, such links would have been seriously sufficient to call into question the independence of the CAS in

the event of the IOC's being a party to proceedings before it (6). This view of the SFT meant that the CAS had to be made more independent of the IOC, both organizationally and financially. Thus, the ground for future developments and important changes in the body of the CAS emerged. Following a recommendation by the Swiss Federal Tribunal, the CAS reduced its level of dependence on the IOC (10). The Gundel judgment led to a major reform in the CAS. The regulations were completely revised to be more efficient, to modify the structure of the institution and to make it definitively independent of the IOC which had sponsored it since its creation. The biggest change resulting from this reform was the creation of an "International Council of Arbitration for Sport" (ICAS) to look after the running and financing of the CAS, thereby taking the place of the IOC (6). The establishment of ICAS and the separation of the CAS from IOC was a turning point that guarantees the independence and impartiality of this legal institution (3). The establishment of ICAS and the new structure of CAS was approved on 22 June 1994 in Paris by signing the "Agreement concerning the constitution of the ICAS", known as the "Paris Agreement". This was signed by the highest authorities representing the sports world, including the presidents of the IOC, the Association of Summer Olympic International Federations (ASOIF), the Association of International Winter Sports Federations (AIWF) and the Association of National Olympic Committees (ANOC) (6). The ICAS is composed of 20 members who are required to sign a declaration undertaking to exercise their duties independently and impartially. The ICAS has 4 sports members from outside the Olympic movement, 4 members from the International Olympic Committee (IOC), 4 members from the Association

of Summer Olympic International Federation (ASOIF) and 4 members from the Association of Winter Olympic International Federations (AIOWSF), and 4 members from the Association of National Olympic Committee (ANOC). The ICAS members are elected for a 4-year renewable term. The ICAS had the power to appoint arbitrators and mediators of the CAS (11). The ICAS is the supreme body of the CAS (4). The main duty of this body is to monitor the independence of the CAS and the rights of the parties, and for this purpose, ICAS supervises the CAS, administratively and financially. The main purpose of ICAS is to facilitate the resolution of disputes related to sports through arbitration and mediation, as well as to ensure the independence and impartiality of the CAS. One of the duties of the ICAS is to appoint the Arbitrators of the CAS, and in fact, the parties referring to this court are required to select their arbitrators from the designated list (12). The impartiality of the ICAS members unequivocally means that the members of this body can in no way play a role in the proceedings that are referred to the CAS, whether as an arbitrator or an advisor to one of the parties to the case (1). They will maintain their neutrality through the mandatory Confidentiality required by Article 43 of the Code of Sports-related Arbitration. In this regard, Article 11 of the Code of Sports-related Arbitration states:

"A member of the ICAS or the Board may be challenged when circumstances allow legitimate doubt to be cast on her/his independence vis-à-vis a party to an arbitration which must be the subject of a decision by the ICAS or the Board pursuant to Article S6, paragraph 4. She/he shall pre-emptively disqualify herself/himself when the subject of a decision is an arbitration procedure in which a sports-related body to which

she/he belongs appears as a party or in which a member of the law firm to which she/he belongs is an arbitrator or counsel. The disqualified member shall not take part in any deliberations concerning the arbitration in question and shall not receive any information on the activities of the ICAS and the Board concerning such arbitration" (13). In theory, at least, this is how it is supposed to function: as two independent bodies working without influencing each other's work.

Jurisdiction of the CAS for Sporting Dispute Settlement

For the CAS to hear all disputes referred to it, first, it must have confirmed its jurisdiction. The CAS can deal with disputes that are directly or indirectly related to sports (12). Article 27 of the Code of the Sports-related Arbitration stipulates that the Court has jurisdiction over disputes relating to sports. However, as Matthieu Reeb, the Secretary-General of the Court, recalls, "The court has never disqualified itself simply because the dispute was not a sport related dispute" (1). Therefore, the CAS does not even deal with disputes of a technical nature, such as the technical performance of the referee on Field of Play and, only in a few cases, has examined the rules of the game. The reason for non-acceptance of such disputes is because the organizers of games or matches are in a better position to apply the technical rules of the game in their time until the incident is challenged and is later examined by the court. Even if the officials of the games make a mistake, according to the sports court, this is a risk of the game that the athletes must accept, and it is a matter that adds to the attractiveness of the game itself. In addition, if such lawsuits related to the referee's mistakes are accepted, a large volume of complaints will be submitted to the

Court, because the referee's mistakes (whether they have occurred or not) are of the most recurring problems in all sports and bring with them the protests of athletes routinely. In terms of its nature, there are basically two general categories of disputes that can be referred to the Court:

1. The cases with a commercial nature
2. The cases with a disciplinary nature.

The first category basically includes the implementation of contracts, such as those related to sponsorship, the sale of television rights, the staging of sports events, player transfers, relationships between players or coaches, and clubs and agents (employment contracts and agency contracts). Disciplinary cases represent the second group of disputes submitted to the CAS, of which a large number are doping-related. In addition to the doping cases, the CAS is called upon to rule on various disciplinary cases (violence on the field of play and abuse of a referee etc.). Such disciplinary cases are generally dealt with in the first instance by the competent sports authorities, and subsequently become the subject of an appeal before the CAS, which then acts as a court of last instance (6). Of course, the provision of other conditions, such as the recognition of the right to appeal before the CAS in the statute of the relevant sports organizations is important (14). It goes without saying that the first group of cases may also first be heard by a national or international settlement authority, such as the judicial body of FIFA or national federations. If the issues related to the interpretation of matters of fact or matters of law are raised, in line with the athletes' absolute responsibility for doping and other cases, the principle of interpretation of the rules is used in favour of the athlete, and in fact the athlete's interests prevail over the

interests of the federations and the Olympic committees. Thus, if the rules seem unreasonable and arbitrary, they will be voided. One example of such prohibited laws is that a club has the right to extend the contract, but the player is deprived of this right (15). Or another example can be the disproportionate punishments or retroactive retaliation. Thus, the interests of the athlete take precedence over the interests of the federations and the Olympic committees (15). Given the nature of the disputes and the Rules of the Court, it appears that there is an intermediate policy in the international sports law specifically for accepting the jurisdiction of the International Court of Sport, and, in fact, the international federations have required the national federations that in the event of a sports-related dispute, there must be a mandatory condition in the statutes of the national federations to refer to the Court of Arbitration for Sport. On the other hand, individuals with a posteriori or prior approval can refer to the International Court of Sport in the event of a dispute (16). For example, in Article 61 of the Olympic Charter, the International Olympic Committee entrusts the Court with resolving all disputes arising out of Olympic competitions. In fact, the arbitration process would begin provided that the bodies related to sport had provided a mechanism for arbitration in their statutes or regulations by the Court. The Olympic Charter, for example, stipulates that all participants in the Olympic Games sign an agreement that requires them to submit their disputes exclusively to the Court of Arbitration for Sport (17). According to the award of 24 August 2004 in Hellenic Olympic Committee (HOC) & Nikolaos Kaklamanakis v. International Sailing Federation (ISAF), (18) which has become a part of the jurisprudence of

the CAS, the Court will always have jurisdiction to overrule the rules of any sport federation if its decision-making bodies conduct themselves with a lack of good faith or not in accordance with due process" as mentioned in the matter of Hellenic Olympic Committee (HOC) & Nikolaos Kaklamanakis v. International Sailing Federation (ISAF) (18) even if the relevant international federation declares that the award and decisions cannot be appealed (1). Therefore, in a general category, the jurisdiction of the CAS for sporting disputes are as follows:

The Court's hearings as an ordinary body: As a rule, a dispute is referred to the Court when the parties agree to do so according to Article R-27 of the CAS Code. These Procedural Rules apply whenever the parties have agreed to refer a sports-related dispute to the CAS. Such reference may arise out of an arbitration clause contained in a contract or regulations or by reason of a later arbitration agreement (ordinary arbitration proceedings).

The Court's proceedings as an appeal body: The CAS also serves as an appeal body for sports-related disputes. According to the latter part of Article R-27 of the CAS Code, the "reference ... may involve an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies or a specific agreement provide for an appeal to the CAS (appeal arbitration proceedings)."

The Anti-doping Division: Another function of the Court is dealing with doping-related cases. According to Article 20 (b) of the Code of Sports-related Arbitration, the CAS shall constitute a panel to deal with disputes concerning anti-doping matters. The proceedings in the CAS are conducted in

accordance with the rules of the World Anti-Doping Agency (WADA) and within the framework of the principles of rule procedure (3).

Proceedings before the Court as

Mediator: Since 22 November 1994, the Code of Sports-related Arbitration has governed the organization and arbitration procedures of the CAS. It is a type of dispute resolution that has an informal and non-binding effect that gives the parties the right to negotiate with the assistance of a mediator to settle the dispute peacefully by agreeing. According to Article 1 of the Code of Sports-related Arbitration, the "CAS mediation is a non-binding and informal procedure, based on an agreement to mediate in which each party undertakes to attempt, in good faith, to negotiate with the other party to settle a sports-related dispute. The parties are assisted in their negotiations by a CAS mediator (19). The proposed clause for mediation of the CAS, which can be included in a contract, is that any dispute or claim should be referred to the CAS in case of occurrence (20). However, disputes related to other disciplinary matters such as doping issues, match-fixing, and corruption, are excluded from CAS mediation (19).

Legal mechanism for enforcing the Awards of CAS and its challenges

The International sports law and international instruments such as the Olympic Charter and the FIFA Statutes prohibit any political interference by the governments in sport and seek to resolve disputes solely within the sports family (10). This is a fundamental principle in sports and is based on the specialization of sporting institutions in comparison to public courts. The CAS has now gained the trust of the international sporting community and is the final forum of lawsuits for those

involved in sporting disputes – such as disputes over the Olympic games and other sports, football disputes, doping disputes and international trade agreements (12). A brief look at the awards and cases submitted to the CAS to resolve disputes reinforces the fact that the Court has established its position as an impartial body in resolving sports disputes over the past three decades. It has been welcomed in such a way that in 1986 the Court issued only two awards, but in 2016 only 3123 awards were issued, which indicates an increase in the rulings and rulings of the Court (21). Addressing the various issues raised in the field of sports law, the Court has played a significant role in clarifying some of the issues raised since its inception by establishing a significant law case. In fact, the CAS has played a relatively influential role in the field of international sports law with its well-established jurisprudence and recourse to some general legal principles and norms. The CAS, in making *lex sportiva*, carries out different functions, namely the development of common legal principles, the interpretation of global norms and the influence on sports law-making, and the harmonization of global sports law (22).

Enforcement of the CAS awards

The CAS's arbitral award is binding on the parties from the time of notification (23). In principle, the binding basis of the Court's awards in its Ordinary Arbitration capacity stems from the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958). This convention, adopted by most of the countries of the world, deals with the recognition and enforcement of foreign arbitral awards, and is one of the decisions made by the Court in cases of sports disputes. An American court, for

example, has recognized the jurisdiction of the CAS concerning the issue of disqualifying an athlete to participate in the 2008 Beijing Olympics (24). Referring to the New York Convention, the American court stated that the court should not review claims directed to the CAS. The court ruled that the jurisdiction to decide on athletes' eligibility to participate in competitions belongs exclusively to the United States Olympic Committee, and therefore upheld the ruling of the International Court of Arbitration for Sport. On the other hand, there is almost no concern concerning appeal awards of the CAS and their binding force, since today the vast majority of sports organizations at the national, continental and international levels, according to their statutes, recognize the jurisdiction of the Court and the rulings issued by this arbitral tribunal. They consider it binding and therefore have provided the mechanism for enforcing the rulings of that court. For example, the Swiss Federal Tribunal has stated in one of its rulings that the ruling of the CAS to uphold the FIFA Disciplinary Committee's sanction is not contrary to public policy and has therefore affirmed the internal executive system. At present, "all international federations and a large number of non-Olympic federations consider the CAS arbitration as the final destination of international disputes in the field of sports" (12). Also, according to the CAS rules, all CAS awards are Swiss awards. Therefore, it is assumed that they are subject to the New York Convention. There are also reservations for the students that the New York Convention Arbitration Law applies under these circumstances. A lot of the sports controversies turn on charges of doping by amateurs. The two points of contention are who is at fault, and how long he or she deserves to be suspended. Under the New York

Convention, of course, each country is given the opportunity to decide on the importation of goods from other countries which qualify as commercial under their national law (25). Many nations have made similar claims. In view of the nature of the agreement under the New York Convention being "commercial," is there a comparable arbitration process for student athletes? An athlete who typically wins a CAS award may have more ability to contest the award's recognition and enforcement than expected. In the US, awards are almost always governed by Chapter 1 of the Federal Arbitration Act (FAA) and state court procedures. It could be especially important if the athlete or whistle-blower tries to litigate issues of liability or seeks to overturn the Court of Arbitration for Sport's decision (26).

Challenges facing the implementation of the Court's awards

The jurisprudence of the CAS and the development of transnational sports law have created the practice that international federations have priority over national institutions in a conflict of jurisdiction. For example, Article 59 of the FIFA Statute states that the decisions of the FIFA prevail on courts of law if there is a conflict (27). The only way to appeal these awards will be to refer to the Swiss Federal Tribunal (SFT). However, the grounds for an appeal to the Swiss Federal Tribunal are minimal. The interference of national courts in the arbitration is one of the threats that undermine the credibility of the arbitration institutions. In this regard, one can refer to the German Civil Court proceedings in the Claudia Pechstein case, overturning the CAS' award and challenging the independence of the CAS (23). But the Swiss Federal Court of Justice decided

that domestic courts should not hear her case after the CAS (28).

General arbitration and the CAS

A concise outline of international developments in arbitration will give a basic investigation of CAS's decisions. Commercial law, arbitration of international disputes is widely viewed as the preferred method of resolution. Even though international arbitration has a few advantages like: cases are arbitrated in a nonpartisan third country and awards are even more effortlessly authorized all throughout the world through the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (29). Through its numerous points of view one can say there are several benefits and impediments of arbitration. So, on the positive side, there are things like security, privacy, procedural adaptability, encouraging lower costs and speedier results (30). Other than that, arbitration hearings are infrequently open to the media or people in general, with participation typically restricted to the actual parties, their legitimate delegates, and transcribers. However, the utilization of adversarial procedures techniques instead of mediation may deliver a portion of the prosecution's problem like expenses, delays, and a negative approach methodology (30). Most significantly, from the legal perspective, arbitration awards typically grant influence towards the parties involved, have no precedential worth, and therefore they do not contribute to the advancement of the law (30). There are significant distinctions between deliberate and forced arbitration and the compliance that the IOC demands of athletes make this an illustration of forced arbitration. As arbitration in the USA, there are "fundamental differences" in "knowledge, consent, and

equal bargaining power between the individual employee and employer" (31). Forced arbitration has been transformed into "a juggernaut that has changed the nature of statutory enforcement of worker protection laws" and is "an inadequate substitute for the public vindication of statutory workplace rights in our civil justice system" (31). Remarking on the general trends relating to compulsory mediation and "relationships of grossly disparate bargaining power," American judges once concluded that "the law, including the FAA, should be a shield for the weak and powerless and not a hammer for the strong and powerful" (31) as a particularly pertinent proclamation concerning athlete's rights. Even though it serves IOC and CAS interests to promote Olympic persona and sports exceptionalism- athletes as "peace ambassadors or representatives" and members of one big "Olympic family" – athletes are workers, and the sporting arena is their working environment or workplace to act on (32) One legal commentator noticed that even though athletes' contracts with NSOs were "common of private dispute resolution regulated in the code of civil procedure", it was questionable whether athletes' agreement was voluntary in a context-setting towards the imposing monopoly business model over their sport (33). However, because of the Olympic industry's global power and impact, it is improbable that its members will acknowledge an "outside" help on administration or governance issues. On the other hand, there are some drawbacks for athletes: numerous IFs have several decades of involvement with the same CAS arbitrators, as do the specialized law firms that represent them (34). Furthermore, since some IOC members have additionally been CAS arbitrators, these overlapping roles lead

to the potentially irreconcilable situation or conflict of interest.

Conclusion

The CAS had evolved far beyond its original form in the mid-1980s when the IOC established it. Changes in the structure of the CAS included the birth of the ICAS in 1994, which has contributed significantly to the stability of the CAS as the highest arbitration body competent to deal with sporting disputes. During the first decade, the CAS was primarily an appeals body for doping decisions. The main activities of the CAS were limited to this. With the establishment of the ICAS and the building of international confidence in referring sports claims to the Court, the jurisdiction of the CAS also extended to include a wide variety of sports law issues. Nowadays, the reference clauses to the CAS are adopted in the relevant laws of most national and international federations. The jurisdiction of the CAS as a reference to decide on matters within its jurisdiction is recognized not only in relation to Olympic sports but also in relation to Olympic non-Olympic sports. The Court's awards lead to the development of the sports law. There is no doubt that the CAS by publishing its decisions and awards, which some experts have called *lex sportiva* (27) can be effective in developing this very important legal field for the global sports society, because it can create a uniform and relatively predictable procedure in sports cases, and this will be very desirable for athletes and sports lawyers. Structurally though, there remain several major hindrances to the CAS as explained above. Based on the same, the following recommendations can help improve the structure and competence of the CAS for it to better its purpose of being the premier sporting dispute resolution body in the world:

Introduce an internal appellate system for its own decisions:

As discussed above, appeals from the decisions of the CAS were laid before the Swiss Federal Court, and its problems have been discussed above. What would serve the stakeholders better is an internal appellate system for its own decisions.⁽¹⁾ Given the high stakes and the complexity of cases that the CAS must deal with, an internal appellate system would work in its favor as it would prevent erroneous judgments of the body and safeguarding the rights and interests of the parties before it (35); thereby improving the integrity of the institution. This is not a novel either. Prominent international institutions have already established such measures, like the World Trade Organization (WTO) in 1995 under Article 17 of the Understanding on Rules and Procedures Governing the Settlement of Disputes⁽²⁾ which has served the organization really well, and therefore it makes a strong case for similar measures to be adopted by the CAS.

Assert its independence from the ICAS and the IOC:

While the ICAS has helped the CAS establish itself in its formative years, the present association with the ICAS (to the extent of ICAS influencing its functioning) has done more harm than good to the reputation of the CAS as an impartial and independent body. To stake its claim as a truly independent body with integrity

¹ The CAS does have an Appeals Body which hears appeals against decisions of competent international and national sporting governing bodies. However, reference to the same must be explicitly made in the governing code of the body, like it is in the WADA Code, making decisions of the WADA appealable before the CAS.

² World Trade Organization. Dispute Settlement: Appellate Body. World Trade Organization. 2021.

that various stakeholders can trust it to be impartial, the CAS needs to assert its independence from the ICAS, in which, as explained above, it is structurally rooted. Given that the ICAS exercises some structural critical decisions like appointing CAS arbitrators and amending the CAS Code, (36) it is imperative that their influence be reduced to ensure that the integrity and legitimacy of the CAS decisions are not hampered. Additionally, the overlapping of the roles of CAS arbitrators and IOC members (as explained above) can pose a significant threat; and therefore the CAS should take active steps to dissuade such involvement as it could lead to a perception of collusion in the CAS, especially in cases where the IOC is itself a disputing party.

Reforming the Conflict-of-Interest Rules: As an extension of the recommendation on the independence and impartiality of the CAS, the CAS should consider reforming its Code to allow a better understanding of the conflict-of-interests which may arise. While R.33 of the CAS Code asks the arbitrator to immediately disclose conflicts-of-interests in such a situation, it would be better if the CAS adopted the approach taken in this regard by the International Chambers of Commerce (ICC) International Court of Arbitration Code, which requires the conflicts-of-interests be adjudged from the point of view of the parties (37). This party-centric approach will not only improve the image of the CAS but also make the parties believe that the CAS truly cares for them.

Ethical Considerations

Compliance with ethical guidelines

This article does not contain any studies with human participants or animals performed by any of the authors.

Funding

Research costs are paid for by researchers.

Authors' contributions

All authors contribute to the design and implementation of the research, to the analysis of the results and to the writing of the manuscript

Conflicts of interest

According to the authors of the present article, there was no conflict of interest.

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