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International Sports Arbitration

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The Court of Arbitration for Sport (CAS) in Lausanne, Switzerland, is colloquially referred to as a Supreme Court for sports disputes and evidence of its influence is found throughout the sporting world. Since its establishment in 1984 it has registered in excess of 5,000 arbitration proceedings.

In this article we will seek to give an insight into what makes international sports arbitration unique, paying particular attention to the CAS system, the key elements of which we will also outline.

Whilst sports arbitration shares many characteristics with commercial or investment arbitration, and although many sports arbitrators also sit in standard commercial and investment cases, it also has many interesting features that distinguish it from non-sports-related arbitration.

What are the advantages and unique aspects of sports arbitration?

Speed

Perhaps the main differentiating feature of sports arbitration is its speed. For the resolution of a sports dispute to be effective, it generally must be concluded before a particular competition takes place. For example, a finding by an arbitral tribunal that a particular athlete may compete at the Olympic Games, would be of limited value if the arbitral award were issued after the competition in question has already finished.

The most striking example of the speed of sports arbitration is the ad hoc division of CAS which is active only for the duration of specific international sporting events, eg, the Olympics¹ or the FIFA World Cup. According to the Ad Hoc Rules for the Olympic Games, arbitral awards should be issued within 24 hours of the lodging of the application for arbitration, and the equivalent time limit for the FIFA World Cup is 48 hours.

The swift resolution of these disputes allows the competition to proceed on schedule and ensures the integrity of the final sporting results by avoiding retroactive appeals or protests to change sporting results. Whilst the ad hoc division is a very positive demonstration of what can be achieved, it is also an environment in which the arbitrators must tread carefully in order to ensure that the procedural rights of all parties are upheld, particularly given the extremely short time limits within which the latter are to prepare their written and oral submissions.²

Another leading example of the speed of sports arbitration are the expedited proceedings provisions which require the cooperation of all parties. Without the parties' agreement the tribunal cannot impose the same extremely short procedural time limits as apply under the Ad Hoc Rules. However, as event organisers usually wish to safeguard the integrity of a sporting competition's final results, quite often all parties are willing to agree to an expedited arbitration procedure in order to resolve all legal issues in advance of the competition.³

Finally, the availability of effective provisional and conservatory measures even before the constitution of the arbitral tribunal

is another and interesting element of sports arbitration. Before the CAS, such measures can be requested even before the filing of a request for arbitration in ordinary proceedings or from the notification of the decision under appeal in appeal proceedings. Sports arbitration tribunals regularly issue orders in response to requests for provisional measures – typically requests for a stay of execution of the decision under appeal – and in instances where the tribunal has not yet been appointed, sports arbitration bodies often have a mechanism whereby a designated person (eg, the president of the CAS appeals arbitration division), may grant provisional measures pending the appointment of the tribunal.

The effectiveness is further demonstrated by the fact that sports governing bodies almost invariably comply with any orders issued by the CAS.⁴ Another specific feature of sports arbitration is that several sports arbitration rules provide that the sports arbitral institution expressly prohibits the parties from seeking provisional measures from state courts. It is submitted that the only means by which the CAS system can effectively demonstrate that state court intervention is not needed is to clearly prove that the CAS is capable of issuing its own effective interim protection. Our experience with the CAS suggests that when the situation is really urgent, the CAS is able to give a very short time limit to the respondent⁵ and to issue an order within a time period that is comparable to the time limits in which state courts grant *ex parte* relief.⁶

Special expertise

The CAS policy of maintaining a closed list of arbitrators effectively limits the fundamental freedom of the parties to appoint the arbitrator of their choice but was upheld by the Swiss Supreme Court in the *Lazutina* case on the ground that it ensures that the arbitrators are specialists in the area of sports and will thus be able to issue fast and consistent decisions.⁷

It is not the case that all sports arbitrations are concluded quickly, but the standard time limits would be regarded by most arbitration practitioners as being very short indeed. For example, in a CAS appeals arbitration, the statement of appeal must be filed with the CAS within 21 days from the communication of the decision under appeal, unless the applicable regulations provide for a different time limit (sometimes shorter). This time limit cannot be extended and any delay will lead to the dismissal of the appeal.⁸ Once the statement of appeal has been filed, the appellant has a further 10 days to file an appeal brief stating the facts and legal arguments giving rise to the appeal and to produce the evidence being relied upon. The respondent must then file its complete answer within a time limit of 20 days. Finally, the panel sets itself the objective of issuing its final award within three months of having received the case file.⁹

Another aspect that parties and their counsel should be acutely aware of are the potential practical difficulties associated with such fast-moving proceedings. Parties will often be afforded short time limits to file submissions on procedural and/or substantive issues

and as a result, sports arbitration, and CAS arbitration in particular, is generally a challenging process for both parties and their counsel. For that reason, it is not a forum in which lawyers who are unfamiliar with either the procedural aspects of international arbitration, or the substantive aspects of sports law, can easily 'cut their teeth', as the very short nature of the time limits to file submissions leaves very little time for research during the arbitration. As a result, parties who are familiar with the CAS and its unique pressures tend to appoint counsel whom they know to have already appeared regularly before the CAS, and who are familiar with the processes and jurisprudence of the institution.

Although the presence of experienced arbitrators and counsel generally assists the arbitration process, it is regrettable that the expanding volume of case law with which arbitrators and counsel should be familiar, coupled with the increasing procedural sophistication of parties and counsel, make it ever more difficult for new lawyers to become established in sports arbitration. This has created a somewhat vicious circle, whereby it is becoming increasingly difficult for parties to place their faith in counsel whose experience in CAS arbitration is limited. However, the publication of CAS Code Commentaries¹⁰ has gone some way to helping lawyers with limited experience.

Consistency and transparency

The emergence of the CAS as an 'international supreme court' for sports disputes has provided greater consistency between legal decisions in the sports world and has created a body of case law upon which sports arbitration users can rely. Although all CAS arbitrators are subject to a general duty of confidentiality, and CAS ordinary proceedings remain confidential unless the parties agree otherwise, Article R59 of the CAS Code of Sports-Related Arbitration (the CAS Code) provides that in all CAS appeals cases, which account for the vast majority of the total CAS caseload, 'the award [...] shall be made public by the CAS, unless both parties agree that [it] should remain confidential'. As a result, the CAS has published a large proportion of its awards, initially through its three-volume Digest of CAS Awards, and more recently through CAS Bulletins and an online database.¹²

One of the most interesting aspects of sports arbitration is that awards issued by an arbitral tribunal tend to be regarded as authoritative precedent by subsequent arbitral tribunals from the same sports arbitration institution. While sports arbitration awards are not binding legal precedents, previous awards are regarded as being of highly persuasive value, and as such, arbitral tribunals that deviate from an established line of 'jurisprudence' are generally expected to provide reasons for such a deviation in the text of their award.¹³

Of course, different tribunals inevitably reach different conclusions in relation to some issues, particularly when such issues are novel.¹⁴ However, once a body of consistent case law has been established in relation to any issue, tribunals usually show deference to the rulings of prior tribunals, unless the case can be distinguished or new arguments brought forward.¹⁵

Cost

Contrary to the stereotype of millionaire footballers, individual athletes are often entirely dependent upon government subsidies or minor sponsorship agreements, whereas their counterparty in an arbitration is often a sport governing body that is able to rely upon significant financial resources. Therefore, it is particularly important that the proverbial Goliath is not permitted to financially bully the weaker party into submission, particularly as many

athletes or players already feel significant pressure not to enter into a legal dispute with their employer or their sport's governing body, in view of the dominant position of the latter within the sport.

Three aspects of CAS arbitration that should provide comfort to impecunious athletes are:

- the moderate filing fee of 1,000 Swiss francs;
- the system of contribution towards legal costs; and
- the arbitration costs regime which applies in appeals of decisions which are exclusively disciplinary in nature and rendered by an international federation or sports body.

In the context of legal costs and pursuant to article R64.5 of the CAS Code '[...] the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses [...]'. The CAS practice provides some comfort to all parties as any contribution that may be required to pay in the event of losing the case is rarely reflective of the actual legal costs incurred. Of course, considering this practice from a different perspective, it is also true that even when parties are fully successful in their appeal, they can still only hope to recover a certain proportion of their legal costs.¹⁶

With respect to arbitration costs, the positive financial aspect for athletes related to arbitration costs concerns those athletes who are involved in 'decisions which are exclusively of a disciplinary nature and which are rendered by an international federation or sports body', commonly anti-doping cases. In such cases, article R65 of the CAS Code provides that no arbitration costs shall be paid by the parties.¹⁷

Given the mandatory nature of sports arbitration, whereby the athlete generally has no option but to sign up to arbitration if he wishes to compete at a high level within his sport,¹⁸ another area which needs to be considered in this context is the availability of legal aid for the parties, as the submission of disputes to arbitration deprives the athlete of any legal aid that may have been available to him before state courts. Article S6 of the CAS Code provides that '[the International Council of Arbitration for Sport] may create a legal aid fund to facilitate access to CAS arbitration for individuals without sufficient financial means and may create CAS legal aid guidelines for the operation of the fund'. In parallel with the publication of the 2013 edition of the CAS Code applicable guidelines have been published by the CAS.¹⁹ Where legal aid is granted, the athlete will be exempted from paying the court office fee, the advance on arbitration costs and will be offered pro bono counsel.

Enforcement

Although the option of enforcing a sports arbitration award pursuant to the New York Convention²⁰ is of course available to parties, in practice it is rarely necessary to pursue this course of action, as sports governing bodies spontaneously comply with arbitral awards and have sufficient internal authority and enforcement mechanisms to impose the awards against their members.²¹ In this respect it is interesting to note that the Swiss Supreme Court has explicitly upheld such 'private enforcement systems' by deciding that a CAS award confirming the imposition by FIFA of a sanction against a football club on the ground that it did not comply with a FIFA disciplinary committee decision was not inconsistent with public policy.²²

One emerging area of particular relevance to Swiss lawyers practising in sports law relates to enforcing certain of CAS financial awards through asset-freezing proceedings before local courts in Switzerland. As many football clubs and national associations

participate in competitions where money is to be paid by governing bodies based in Switzerland, there is a growing awareness that this provides a viable means to recover amounts owed.²³

How is the CAS organised?

The CAS is headquartered in Lausanne but also has two 'decentralised offices' in Sydney and New York and a number of alternative hearing centres in Kuala Lumpur, Shanghai, Abu Dhabi and Cairo as a result of a number of individual partnership arrangement deals struck by the CAS. The CAS provides four separate and distinct dispute resolution services: ordinary arbitration, appeals arbitration, ad hoc expedited arbitration at major sporting events and Mediation. The ordinary and appeals arbitration divisions are each headed by a president, who can take charge of the initial steps in an arbitration before the arbitral tribunal is appointed.

The CAS ordinary division is a classic arbitration service, resolving mainly commercial disputes, and its general structure and workings will be familiar to any practitioners with experience of the ICC, AAA or other commercial arbitration institutions. Arbitrations which take place under the CAS's Ordinary Arbitration Rules are those that have been referred to the CAS as a first instance arbitral body, usually pursuant to an arbitration agreement contained in a settlement agreement or a commercial contract, such as sponsorship or licensing agreements.

Appeals arbitration, while very commonplace in the sporting world, is usually somewhat of a novelty for other arbitration practitioners. Appeals arbitration consists of appeals filed against decisions issued by other arbitral or disciplinary tribunals, typically either national sports arbitration bodies or the internal disciplinary or judicial bodies of international sports federations. The cases brought before the CAS appeals arbitration division account for the vast majority of the CAS's caseload.

The CAS also has a mediation service which it promotes as an alternative to CAS arbitration. In addition, as previously mentioned, the CAS establishes an expedited arbitration service during major sporting events, which is referred to as the CAS ad hoc division.

Independence

There has been a certain level of criticism both in the media and in academic journals referring to a lack of independence of the CAS. A long-standing claim has been that the CAS is not sufficiently independent from the International Olympic Committee (IOC), which founded the CAS in 1984. Indeed, following a landmark case before the Swiss Supreme Court in 1993²⁴ a number of reforms to the CAS structure were put in place which sought to insulate the CAS from any allegations of potential or perceived lack of independence. The decision in *USOC v IOC* provides possibly the most eloquent example of the independence of CAS in relation to the IOC.²⁵ In this case CAS held as invalid and unenforceable an IOC decision which prohibited athletes who had been suspended for more than six months for an anti-doping rule violation from participating in the next Olympic Games following the expiry of their suspension.²⁶

In a landmark ruling in June 2016, the German Federal Tribunal ruled that arbitration clauses to refer disputes between athletes and sporting federations to the CAS are valid and rejected arguments that sporting federations were abusing their dominant position by requiring athletes to go to CAS. The decision held that it was not an abuse of a dominant position as it was based on the mutual interests of the athletes and the federations.²⁷ The ruling followed an appeal from a decision of a state court in

Germany, the Munich Higher Regional Court, which had sent shockwaves around the sports arbitration community. An athlete had challenged the validity of an arbitration clause in favour of the CAS and it was found that the International Skating Union (ISU) had abused its dominant position by unilaterally imposing such clauses on its athletes.²⁸ Whilst the decision of the lower court in Germany drew attention to a number of issues including the nature of an athlete's consent in sports arbitration and highlighted concerns about the independence and impartiality of the CAS, the reality is that since the events giving rise to this case in 2009 there has been considerable changes to the CAS rules and its organisation which the decision does not take into account. Examples of such amended procedural rules include the nomination of arbitrators, the development of the legal aid program and the appointment of new ICAS members not active in or connected to sports-bodies.

In what legal framework does the CAS operate?

Pursuant to article R28 of the CAS Code, '[t]he seat of the CAS and of each Arbitration Panel ('Panel') is in Lausanne, Switzerland'. The same provision applies to the arbitral tribunals of the CAS Ad hoc divisions sitting, for example, at the Olympic Games. The location of the hearing has no consequence on the legal seat of the arbitration, which remains in Lausanne.²⁹ As each CAS panel constitutes an international arbitral tribunal seated in Switzerland, all CAS proceedings are subject to the provisions of Switzerland's Private International Law Act (PILA), which ensures that there is procedural consistency between CAS cases. Chapter 12 of the PILA is widely regarded as being 'arbitration friendly'.³⁰

Pursuant to article 190 of the PILA, CAS awards are final upon communication to the parties and can only be challenged on very limited grounds before the Swiss Supreme Court.³¹ In addition, the Swiss Supreme Court has held that advance waivers of any right to challenge the award pursuant to Article 192(1) of the PILA are in principle unenforceable in sports arbitrations, given that the athletes' purported consent to such exclusion agreements 'obviously [does] not rest on a free will' and is therefore 'tainted *ab ovo*'.³²

The procedure before the appeals arbitration division is governed by the General Provisions of the CAS Code (articles R27 to R37), and by the Special Provisions Applicable to the Appeals Arbitration Proceedings (articles R47 to R59 of the CAS Code).

What kind of disputes does the CAS resolve?

In 2016, the CAS registered a record number of 599 arbitrations.³³ The disputes resolved by the CAS are extremely diverse in nature, and can vary between straightforward commercial disputes which happen to exist in a sporting context, to very sport-specific disputes concerning actions or incidents arising on the field of play.

Football employment disputes

The most common cases before the CAS are appeals from decisions of FIFA, the world governing body for football, which has its own internal judicial system. This type of dispute typically arises from the termination of the employment contracts of players or coaches, or the movement of players between clubs. As a consequence of such movement, remuneration is generally payable to the player's previous clubs, either pursuant to contractual agreements between the parties or according to the complex series of regulations that apply to football transfers, both in a national and international context.³⁴

Disciplinary disputes, in particular anti-doping matters

The second most common type of disputes before the CAS are appeals against disciplinary sanctions, the largest subsection being appeals against sanctions for anti-doping rule violations. Since the CAS was designated as the exclusive appeals body for all international anti-doping cases, it has received a constant stream of appeals against decisions based on anti-doping rules. In many cases, the appellant in an anti-doping case is a sportsperson who is appealing against a suspension imposed upon him or her, but the CAS also regularly receives appeals from WADA and international sports federations, requesting that a sanction against a particular sportsperson be increased.

CAS anti-doping cases typically involve factual evidence regarding the circumstances of the alleged violation, expert evidence regarding the validity or otherwise of the scientific findings and the positive test, and legal arguments regarding the interpretation and implementation of the relevant anti-doping rules.

Match-fixing and ethical disputes

An evolving trend of cases in the area of match-fixing and corruption has emerged in recent years. The number of cases in this area is likely to grow as the workload of the CAS reflects the issues that are prevailing in sport at the time. One particular problem faced by the CAS in adjudicating upon these activities is the difficulty faced by private sport governing bodies without coercive investigatory powers in gathering sufficient evidence. When considering the standard of proof of 'comfortable satisfaction', which is typically applied in such proceedings, CAS panels regularly note that the panel should keep in mind the fact that corruption is, by its nature, concealed and that those involved will seek to use evasive means to ensure that they leave no trace of their wrongdoing.³⁵

Main features of the CAS appeals procedure

The appeals arbitration procedure is the most frequently used within CAS and it provides a distinctive framework for sports arbitration. It is a *de novo* procedure, the arbitral tribunal having 'full power to review the facts and the law'.³⁶ The following paragraphs will outline the main features of this procedure.

Arbitral tribunal

Whilst panels before CAS are normally made up of three member panels there also exists the possibility for sole arbitrators (usually where it is an urgent matter and the parties are agreeable). Article R33 of the CAS Code provides that '[e]very arbitrator shall appear on the list drawn up by the ICAS', ie the CAS List of Arbitrators. Having originally comprised 60 members, the CAS list now consists of approximately 368 arbitrators, each appointed for a renewable period of four years. This is a closed list and in CAS arbitrations all arbitrators must be appointed from this list. The practice of maintaining a closed list has been criticised,³⁷ although the Swiss Supreme Court upheld the system in the case of *Larissa Lazutina*³⁸ and the German Federal Tribunal did the same in *Pechstein*.³⁹

Rules of law applicable to the merits of the dispute

With regard to the applicable substantive law in CAS arbitrations, Article R58 of the CAS Code provides that the arbitral tribunal '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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision'. In practice, as most international sports federations are domiciled in Switzerland, Swiss law is applied as the substantive law in the majority of cases before the CAS.

As each international federation has its own set of statutes and regulations, arbitral tribunals can often apply these regulations and issue an award without any explicit reference to national law. However, given that Swiss procedural law is applicable in every CAS case, and Swiss substantive law is applicable in the majority of CAS cases, Swiss law clearly has an important role to play in CAS arbitration. As a result, non-Swiss lawyers in CAS arbitrations are increasingly assisted by Swiss lawyers or legal experts. On the procedural side, there is an increasing level of sophistication in CAS disputes where evidential practices more familiar to civil/criminal courts and commercial arbitration are becoming identifiable in sports arbitration. Examples include significant document production requests involving email searches⁴⁰ and the submission and acceptance of polygraph evidence.⁴¹ In the area of football specifically, and with the enforcement by UEFA of its financial fair play rules against football clubs, it is likely that these matters will soon come before the CAS where the involvement of financial experts giving evidence will become more common.

Other international sports dispute resolution bodies

Many international sports federations have their own system of dispute resolution and appoint tribunals for the resolution of disputes arising in their sport.⁴² However, in the majority of instances, these systems could not accurately be described as independent arbitration, due to the tribunals not being sufficiently independent from the sports organisation responsible for their constitution.

One example of a 'true' arbitration system is the Basketball Arbitral Tribunal (BAT), which was set up by the International Basketball Federation (FIBA) for the resolution of financial disputes between players, agents and clubs. Notably, FIBA is never a party to BAT proceedings, thus reinforcing the independence of the BAT as a true arbitral system. BAT arbitration, seated in Geneva, involves a simple, English-language procedure with a sole arbitrator, who is appointed by the BAT president. Provisional and conservatory measures are available to the parties and the final award is issued by the arbitrator within six weeks of the end of proceedings. Some notable features of BAT arbitration are that hearings are held only upon application, and the arbitrators decide the cases *ex aequo et bono*, that is, on the basis of general considerations of justice and fairness, without reference to any particular national or international law.

Conclusion

In conclusion, arbitration has proven to be an extremely successful method of resolving sports disputes, and as a result it has gained the favour and confidence of the sporting world. This success has inevitably led to a massive increase in the number of sports arbitrations taking place in recent years.

Perhaps the greatest challenge that the sports arbitration community is now faced with is the need to put structures in place to ensure that the increase in the number of arbitrations does not lead to a decrease in the quality of the awards being issued.

One ideal approach that merits attention is the establishment of a high-quality 'national CAS' in every country for the resolution of national level disputes, and a similarly high-quality arbitral body in each sport, to resolve international disputes.

If this could be achieved the right of appeal to the CAS could be restricted, and the role of the CAS could evolve from that of a body which re-hears appeals on a *de novo* basis, to that of a review body whose primary function would be to scrutinise the procedural fairness of the arbitral proceedings at previous instances. In effect, it would fulfil a similar role to that which is currently performed by the Swiss Supreme Court in relation to the CAS. It remains to be seen whether a real appetite for such a pyramidal structure will evolve and whether its implementation would be feasible.

Notes

- 1 The 2016 Rio Olympics marked the first time where an international sports tribunal was in charge of doping-related matters as a first-instance authority, through the newly established CAS (ad hoc) anti-doping division.
- 2 See Gabrielle Kaufmann-Kohler, *Arbitration at the Olympics*, The Hague (2001).
- 3 See, for example, CAS 2014/A/3628 *Eskişehirspor Kulübü v UEFA*, para. 15.
- 4 See Antonio Rigozzi & Fabrice Robert-Tissot, "Consent" in Sports Arbitration: Its Multiple Aspects, in E. Geisinger/E. Trabaldo-de Mestral (Eds.), *ASA Special Series No. 41 - Sports Arbitration as a Coach for Other Players*, Huntington (NY) 2015, pp. 59-94.
- 5 In CAS 2011/A/2472 the CAS ordered the Saudi Arabian Football Federation (SAFF) to answer within 24 hours a request by a club to be allowed to play the King's Cup Final. The CAS was then in a position to issue an order avoiding the disruption of the competition.
- 6 In cases of utmost urgency, the CAS can also issue ex parte orders.
- 7 Decision by the Swiss Supreme Court of 27 May 2003, reported in ATF 129 III 445, *Larissa Lazutina & Olga Danilova v CIO, FIS & CAS*, at para. 3.3.3.2, Yearbook Comm. Arb'n XXIX (2004), p. 206, 219. The complete original French text is reported in ASA Bull. 2003, p. 601 et seq.
- 8 Antonio Rigozzi, *Le délai d'appel devant le Tribunal arbitral du sport - Quelques considérations à la lumière de la pratique récente in Le temps et le droit - Recueil de travaux offerts à la Journée de la Société suisse des juristes*, Basel (2008), pp 255-272, 271.
- 9 This time limit is often extended particularly in cases where there is a particular level of complexity which can contribute to a lengthy written decision being prepared.
- 10 See Michael Noth & Antonio Rigozzi/Erika Hasler, *Sports Arbitration under the CAS Rules*, in Arroyo (Ed.), *Arbitration in Switzerland: The Practitioner's Guide*, Kluwer Law International (2013); See also, Despina Mavromati & Matthieu Reeb, *The Code of the Court of Arbitration for Sport: Commentary, Cases and Materials*, Wolters Kluwer (2015).
- 11 Matthieu Reeb, *Digest of CAS Awards Volume I*, Bern (1998) and Volumes II & III, The Hague (2002 and 2004).
- 12 <http://jurisprudence.fas-cas.org/sites/caselaw/help/home.aspx>.
- 13 See Gabrielle Kaufmann-Kohler, *Arbitral precedent: Dream, Necessity or Excuse?*, *Arbitration International* 2007, pp357-378.
- 14 See Antonio Rigozzi & Brianna Quinn, *Inadvertent Doping and the CAS*, Review of CAS jurisprudence on the interpretation of Article 10.4 of the Current WADA Code, published on 27 November 2013. Available at <http://www.lawinsport.com/articles/anti-doping/item/inadvertent-doping-and-the-cas-part-i-review-of-cas-jurisprudence-on-the-interpretation-of-article-10-4-of-the-current-wada-code>.
- 15 See for example, CAS 2013/A/3365 *Juventus FC v Chelsea FC*; CAS 2013/A/3366 *A.S. Livorno Calcio S.p.A. v Chelsea FC*.
- 16 The Swiss Federal Supreme Court has noted in passing that "it would be desirable for the CAS to specify the concept of 'contribution' within the meaning of Art. R64.5 of the Code, in order to give a framework to the discretionary power of the arbitrators in these matters" (See decision by the Swiss Supreme Court 4A_600/2010 of 17 March 2011 at 4.2, free translation). While this would undoubtedly increase predictability, it might also reduce the arbitrators' discretion to take all the circumstances of the case into account. It is anticipated that as long as the CAS arbitrators do not abuse such discretion and justify their decision on costs in the award there is no need to issue specific guidelines.
- 17 It should also be noted that even in cases where the parties are required to pay the arbitration costs, CAS arbitrators work for an hourly rate that is generally significantly less than their usual commercial rate.
- 18 See decision by the Swiss Supreme Court X [Guillermo Canas] v ATP Tour [TAS], 4P. 172/2006 of 22 March 2007, reported in the *Official Collection of the Supreme Court's Decisions* (ATF) ATF 133 III 235, 243; also reported in ASA Bull. 2007, p. 592 and translated in Swiss Int'l Arb.L.Rep 2007, pp. 65-99.
- 19 For a more detailed discussion on the issue of legal aid and the recent revisions of the CAS Code see Michael Noth & Antonio Rigozzi/Erika Hasler *Sports Arbitration under the CAS Rules*, in Arroyo (Ed.), *Arbitration in Switzerland The Practitioner's Guide*, Kluwer Law International (2013).
- 20 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).
- 21 The New York Convention plays an important role in excluding the jurisdiction of State courts to hear actions on the merits where there is a CAS arbitration agreement.
- 22 Decision by the Swiss Supreme Court 4P.240/2006 of 5 January 2007.
- 23 Fabrice Robert-Tissot, *Enforcement of claims in football-related matters - A practitioner's view* (Available remedies to obtain the payment of monetary claims, in particular based on Court of Arbitration for Sport (CAS) awards), *Football Legal* # 5, May 2016, pp. 106-120.
- 24 See *Elmar Gundel v Fédération Équestre Internationale*: Decision by the Swiss Supreme Court 4P.217/1992 of 15 March 1993, reported in ATF 119 II 271.
- 25 See CAS Award in CAS 2011/O/2422 *USOC v IOC*.
- 26 This decision was revisited by the CAS Ad Hoc division at the Rio Olympics where Russian athletes successfully appealed against portions of an IOC decision which excluded them from participation at the games, CAS OG 16/03 *Karabelshikova & Podshivalov v FIFA & IOC* and CAS OG 16/04 *Efimova v. ROC, IOC & FINA*.
- 27 Bundesgerichtshof (BGH) Judgement from 7 June 2016 - KZR 6/15 - OLG München LG München I. Available at http://www.bundesgerichtshof.de/EN/Home/home_node.html. See also the CAS Media Release of 7 June 2016 available at http://www.fas-cas.org/fileadmin/user_upload/Media_Release_Pechstein_07.06.16_English_.pdf.
- 28 Oberlandesgericht (OLG) München, 15 January 2015, Az. U 1110/14 Kart. <https://openjur.de/u/756385.html>.
- 29 *Angela Raguz v Rebecca Sullivan & Ors*, [2000] NSW 240, at para. 97, ASA Bull. 2001, p. 335, 349, underscoring the "vital distinction between the so-called place (or seat) of arbitration and the place or places where the arbitrators may hold hearings, consultations or other meetings".
- 30 See *Elmar Gundel v Fédération Équestre Internationale*: Decision by the Swiss Supreme Court 4P.217/1992 of 15 March 1993, reported in ATF 119 II 271; ASA Bull. 1993, p. 398. An English translation is reported in CAS Digest I, p. 545. See also Mealey's International Arbitration Report Vol. 8 Issue 10 October 1993, p. 12, with a note by Jan Paulsson.

- 31 For a comprehensive analysis of the remedies available against CAS awards, see Antonio Rigozzi, Challenging Awards of the Court of Arbitration for Sport, *Journal of International Dispute Settlement*, Vol. 1, No. 1 (2010), pp217-254, available at <http://jids.oxfordjournals.org/cgi/reprint/1/1/217>.
- 32 See decision by the Swiss Supreme Court X [*Guillermo Canas*] v *ATP Tour* [*& TAS*], 4P.172/2006 of 22 March 2007, reported in ATF 133 III 235, 244, *supra* footnote 18.
- 33 See CAS 2016 official statistics available at http://www.tas-cas.org/fileadmin/user_upload/CAS_statistics_2016_.pdf..
- 34 See, for example, the FIFA Regulations on the Status and Transfer of Players.
- 35 CAS 2010/A/2172, *UEFA v Oriekhov*, para 54; CAS 2013/A/3062, *UEFA v Sammut*, para. 93; CAS 2014/A/3537 *Vernon Manilal Fernando v. FIFA*, para. 82.
- 36 For an analysis of the CAS Ordinary Proceedings, see Gabrielle Kaufmann-Kohler, Philippe Bärtsch, The Ordinary Arbitration Procedure of the Court of Arbitration for Sport, in Robert Siekmann et al. (eds), *The Court of Arbitration for sport 1984-2004*, The Hague (2006), pp134-159. For a comprehensive review and analysis of the CAS Ad Hoc Division for the Olympic Games, see Gabrielle Kaufmann-Kohler, *Arbitration at the Olympics* (*supra* footnote 2), *passim*.
- 37 Oberlandesgericht (OLG) München, 15 January 2015, Az. U 1110/14 Kart. <https://openjur.de/u/756385.html>
- 38 *Larissa Lazutina & Olga Danilova v CIO, FIS & CAS*, Swiss Supreme Court, 27 May 2003, *supra* footnote 7.
- 39 See above footnote 27.
- 40 CAS 2011/A/2621 *Bin Hammam v FIFA*; CAS 2016/A/4501 *Blatter v FIFA*.
- 41 CAS 2011/A/2384 & 2386 *UCI and WADA v Contador and RFEC*.
- 42 Although the majority of international federations allow for an appeal of their own decisions to the CAS, some sports such as rugby and Formula One do not provide for such an appeal, except where mandated by the WADA Anti-Doping Code.



Antonio Rigozzi
Lévy Kaufmann-Kohler

Antonio Rigozzi is a founding partner at Lévy Kaufmann-Kohler, a leading international arbitration firm based in Geneva, Switzerland.

As the head of Lévy Kaufmann-Kohler's international sports arbitration practice, Antonio works with a team of specialist associates to advise and represent athletes, teams and sports governing bodies, mainly before the Court of Arbitration for Sport (CAS), the Basketball Arbitral Tribunal (BAT) and the Swiss courts, including the Swiss Supreme Court.

Antonio's clients include prominent international sports-governing bodies, as well as elite-level athletes, clubs and teams. His areas of expertise in sports dispute resolution include contract, financial, disciplinary and doping disputes, as well as post-dispute attachment of assets and enforcement matters.

Antonio also teaches international sports law and arbitration at the University of Neuchâtel, and lectures for several LLM programs in Switzerland and abroad.

He is the co-author of the first article-by-article commentary of the CAS Code ('Sports Arbitration Under the CAS Rules', in Arroyo, M (ed), *Arbitration in Switzerland – The Practitioner's Guide*, Alphen aan den Rijn, 2013) and the author of a well-known treatise on international sports arbitration (*L'arbitrage international en matière de sport*, Basel, 2005), and currently heads a team of researchers drafting the first comprehensive commentary of the World Anti-Doping Code.

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Established in 2007, Lévy Kaufmann-Kohler is headed by Laurent Lévy, Gabrielle Kaufmann-Kohler, Antonio Rigozzi, Sébastien Besson and Sabina Sacco. The Geneva-based firm specialises and is widely recognised as a leading practice in international commercial, investment and sports arbitration. In addition to acting as arbitrators, the firm's members also give advice with regard to all aspects of arbitration and international law and regularly act as counsel in arbitration and arbitration-related proceedings both in Switzerland and abroad.

Lévy Kaufmann-Kohler's sports team has been recognised by *Who's Who Legal*, with Antonio Rigozzi being described as 'truly excellent' (*Who's Who Legal 2015*) while Sébastien Besson 'is to be recommended without hesitation' (*Who's Who Legal 2015*). Over the past years the team has acted on the most high profile and complex arbitrations in sports law, including *Juventus v Chelsea*, *US Olympic Committee v IOC*, *WADA & UCI v Contador*, *Karpov Inc v FIDE*, *Platini v FIFA* and *Blatter v FIFA*. With multilingual lawyers and a global network of contacts in the sports law industry, LKK's sports specialists are well placed to assist any client in the field of sport.

The firm also benefits from the vast experience and expertise of Gabrielle Kaufmann-Kohler, who was closely involved in the setting up of the CAS, in particular the CAS ad hoc division for the Olympic Games, over which she presided until the 2000 Sydney Olympic Games. Professor Kaufmann-Kohler has also chaired the BAT from its inception in 2006 until 2011 and was a member of the International Jury of the 32nd Edition of the America's Cup.



Sébastien Besson
Lévy Kaufmann-Kohler

Sébastien Besson joined Lévy Kaufmann-Kohler as a partner in May 2015. He is a well-known practitioner and respected scholar with long-standing experience in international arbitration in Switzerland and abroad.

Sébastien's practice includes sport disputes and arbitral proceedings before the CAS where he has acted as counsel or legal expert in several high profile cases.

Sébastien Besson also teaches sport law (including association law and contracts) and dispute resolution in sport at the University of Neuchâtel and has published extensively in the field of international arbitration and sport disputes. He notably contributes to a yearly review of sport case law in the *Revue de l'arbitrage*.



William McAuliffe
Lévy Kaufmann-Kohler

William McAuliffe is an associate in Lévy Kaufmann-Kohler in Geneva where he practises principally in the area of sports arbitration. As well as advising athletes, clubs, and governing bodies on sports related disputes, William appears regularly as counsel before the Court of Arbitration for Sport in Lausanne. An Irish qualified solicitor, also admitted to practice in England and Wales, William previously worked in the litigation department of a large commercial law firm in Dublin. William has spent time working in law offices in London and New York where he has had the opportunity to gain international litigation experience.

William holds a law degree from University College Cork and an LLM in European Law from University College Dublin. He is also a graduate of the FIFA Master in Management, Law and Humanities of Sport organised by the International Centre for Sports Studies (CIES) in Neuchâtel, Switzerland, incorporating academic courses in De Montfort University (Leicester), SDA Bocconi (Milan) and the University of Neuchâtel.

He has given lectures on sports law and arbitration law in Ireland, Switzerland, the Netherlands and Turkey.



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