Back to the Future: The First CAS Arbitrators on CAS's First Award (TAS 86/1, *HC X. c. LSHG*) and Its Evolution Since Then

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Abstract On 30 January 1987, a panel composed of arbitrators François Carrard, Hans Nater and Jean Gay rendered an award resolving a dispute that had arisen between Hockey Club X. and the Swiss Ice Hockey Federation (LSHG), further to an incident during a match in the Swiss National Championship of 1985. The *HC X. c. LSHG* award was the very first award rendered by the then fledgling Court of Arbitration for Sport (CAS). History has shown that the establishment of the CAS responded to a real and important need in the international sports community, but this was far from certain at that time. Today, as the designated last-instance adjudicating body in most international sports regulations, and having issued more than 3,000 awards, including in the course of 11 editions of the Olympic Games, the CAS is universally seen as the "supreme court" of world sports. Arbitrators Carrard, Nater and Gay have kindly accepted to share their memories of that first case, their views on the CAS's development over the 30 years that have elapsed since the issuance of their award, and some ideas for the future of this unique institution.

Keywords CAS · Arbitration · *Ex aequo et bono* · IOC · CAS list

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1 Introduction

On 30 January 1987, a panel composed of arbitrators François Carrard, Hans Nater and Jean Gay rendered an award resolving a dispute that had arisen between Hockey Club X. and the Swiss Ice Hockey Federation (LSHG), further to an incident during a match in the Swiss National Championship of 1985. The HC X. c. LSHG award[1] was the very first award rendered by the then fledgling Court of Arbitration for Sport (CAS).[2] History has shown that the establishment of the CAS responded to a real and important need in the international sports community, but this was far from certain at that time. Today, as the designated last-instance adjudicating body in most international sports regulations, and having issued more than 3,000 awards,[3] including in the course of 11 editions of the Olympic Games,[4] the CAS is universally seen as the "supreme court" of world sports. Arbitrators Carrard, Nater and Gay have kindly accepted to share their memories of that first case, their views on the CAS's development over the 30 years that have elapsed since the issuance of their award, and some ideas for the future of this unique institution.

1. Thirty years ago you were a member of the arbitral panel which rendered the very first CAS award, what do you remember about the facts and procedure of that case?

H. Nater: The case involved a Swiss hockey club and the Swiss National Hockey League. A qualifying match was interrupted following a fight among the players and the coach of one of the teams. In the first instance, a regional committee of the Swiss Hockey League conducted an extensive investigation based on detailed reports by the referees and, inter alia, imposed a fine on the coach's club (HC X.). We dismissed HC X.'s appeal and upheld the first instance decision. We considered that the sanction imposed was within the Respondent's discretion and in line with the applicable regulations. The crux of the case was whether the club could be fined although its coach had been discharged from any wrongdoings on the ground that he acted without intent when he intervened personally in the fight with a hockey stick in his hands. We also considered whether the security measures taken by the

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[1] TAS 86/1, *HC X. v. Ligue Suisse de Hockey sur Glace (LSHG)*, Award of 30 January 1987 (hereinafter: the Award), rendered by a panel composed of François Carrard (President), Hans Nater (Co-arbitrator) and Jean Gay (Co-arbitrator), available in the CAS Archives, at http://jurisprudence.tas-cas.org/Shared%20%Documents/Forms/AllDecisions.aspx.

[2] The CAS officially started its operations in June 1984, when the first edition of the CAS Statutes and Regulations, which were adopted by the IOC in 1983, came into force. See the "Important dates" section on the CAS website at http://www.tas-cas.org/en/general-information/statistics.html.

[3] See CAS Statistics, 1986–2016, available at http://www.tas-cas.org/fileadmin/user_upload/CAS_statistics_2016_.pdf.

[4] CAS ad hoc divisions have been operating at major international sports events, starting with the Summer Olympic Games in Atlanta in 1996. Since 1998, ad hoc divisions have also been set up to deal with disputes at the Commonwealth Games, and since 2000 to deal with football disputes, first at the European Football Championships, and, since 2006, also at the FIFA World Cup.

Fig. 1 Gilbert Schwaar (*Source* Musée Olympique)

Fig. 2 Villa le Centenaire (*Source* Musée Olympique)

Fig. 3 Messrs Mbaye, Samaranch and Schwaar (*Source* Musée Olympique)

club hosting the game met the regulatory requirements. Without answering the question, which had not been submitted to us, we noted that even if the organizing club were found to have fallen short of its obligations in that regard, that would not have sufficed to justify the lifting of the sanction against the coach's club.

As to the procedure, no hearing was held, and thus we decided solely on the basis of the parties' written submissions. In hindsight, the importance of the decision (which was rendered *ex aequo et bono*)[5] resides in its 'political' message: hockey (and all sports) games must not degenerate into war zones, and it is incumbent upon the federations to see to it that this doesn't happen.

F. Carrard: On a more personal level, I still recall that, given that this was the first case ever, the then Secretary General of the CAS (the late Gilbert Schwaar)[6] was very happy to have us. He extended a wonderful hospitality, and had a sumptuous buffet lunch set up for us arbitrators as we met at the CAS.

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[5] See page 2 of the Award, third paragraph from the bottom: "[t]he parties agreed that only Swiss law would apply, and have expressly authorized the CAS to decide their dispute *ex aequo et bono*" (free translation), with a reference to Article 31(3) of the *Concordat intercantonal sur l'arbitrage* of 1969, the inter-cantonal treaty which at the time governed both domestic and international arbitration in Switzerland. Article 31(3) of the *Concordat* provided that "[t]he arbitral tribunal shall make its determination according to the rules of the applicable law, unless the parties have, in the arbitration agreement, authorized it to make its determination *ex aequo et bono*" (free translation).

[6] Dr. Gilbert Schwaar was Secretary General of the CAS from 1984 to 1994 (see Fig. 1).

J. Gay: Yes, I too remember Secretary General Schwaar's radiant smile in welcoming us! Another thing I remember is that we had a breathtaking view of Lac Léman from the windows of the meeting room in the Villa du Centenaire…[7]

2. How did it feel to be sitting as arbitrators in the first ever CAS case?

F. Carrard: As I had already been involved in a number of arbitrations, both ad hoc and institutional, at the time I had no particular feeling with respect to this one, other than the satisfaction of seeing the idea of the CAS becoming a reality.

H. Nater: For my part, I remember that, having become acquainted with alternative dispute resolution concepts in my time at Harvard Law School just a few years earlier, I was persuaded that the mechanisms developed in commercial arbitration could be transferred to sports disputes. As chairman of the internal dispute resolution chamber of the Swiss Ski Federation I felt that we needed an independent arbitral tribunal to adjudicate legal disputes between athletes, clubs and federations. Hence, I was very proud that we were involved from the outset in an exemplary case, which (i) demonstrated the necessity of introducing sports arbitration at a professional level, and (ii) helped convince the federations to include a CAS arbitration clause in their regulations.

J. Gay: I was aware that ours was one of the very first cases before the CAS, but I did not realize that it would result in the institution's first award ever. I cannot deny that, retrospectively, I feel some pride at this idea!

3. The award indicates that the CAS was seized of the dispute on the basis of an ad hoc submission agreement concluded by the parties.[8] In your view, did the CAS's availability and ability to deal with that type of dispute play a role in encouraging federations to provide for CAS arbitration in their regulations?

F. Carrard: In order to answer this question, it might be useful to recall the actual origins of the CAS. In 1979, the National Olympic Committee of Taiwan sued the International Olympic Committee (IOC) before a civil court in Lausanne, challenging the IOC's decision on the status of the athletes of the People's Republic of China at the upcoming 1980 Winter Olympics in Lake Placid. In the wake of these court proceedings, Juan Antonio Samaranch, the then President of the IOC, expressed a strong desire to avoid returning in front of any local state courts, which did not appear to have an adequate understanding of the international sports world.[9]

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[7] Until it moved to its current location in the Château de Béthusy (in 2005), the CAS was seated at the *Villa du Centenaire*, between the Beau Rivage Palace hotel and the Olympic Museum, on the Quai d'Ouchy in Lausanne (see Fig. 2).

[8] See page 2 of the Award, *in medio*: "[t]he parties agreed to submit their dispute to the CAS in accordance with a submission agreement signed in Lausanne on 10 November 1986" (free translation).

[9] A follow up suit—including a motion for an order enjoining the Lake Placid Games from going forward unless the Taiwan delegation was authorized to represent China—was also brought by a Taiwanese athlete before the courts of New York, and that motion was granted in the first instance, before being dismissed on appeal (see, e.g., Rigozzi 2005, para 216).

At the time I was external Counsel to the IOC, and Mr. Samaranch asked me to suggest some alternative forms of dispute resolution. As I had experience with the arbitral procedures of the International Chamber of Commerce (ICC), I suggested that the Olympic movement could launch an institution which could be comparable to the ICC Court of arbitration. Mr. Samaranch accepted my proposal and passed it on to his closest advisor and friend, Judge Kéba Mbaye, who was then Vice-president of the International Court of Justice in The Hague. The initial concept developed by Judge Mbaye, which was adopted in 1983,[10] was that of an institution available for resolving disputes between the constituents of the Olympic movement. Originally, the CAS was not conceived nor designed to deal with appeals against lower instance disciplinary decisions.[11] The culture of the Olympic and sports movement at that time was still based on fair play, consensus and acceptance of the decisions rendered by sports juries and disciplinary commissions. Hence, until CAS arbitration clauses started to be inserted in the sports federations' statutes,[12] its jurisdiction to deal with a particular dispute could only be based on a specific agreement between the parties.

H. Nater: Indeed, in this case an ad hoc agreement to arbitrate the dispute was the only way for the parties to access justice, given that: (i) the High Court of the Canton of Zurich had refused to entertain an application for annulment filed by HC. X against the Swiss Hockey League's decision,[13] and (ii) the Statutes of the Swiss Hockey League did not yet contain an arbitration clause in favour of the CAS. The Zurich High Court had dismissed HC X.'s application mainly for procedural

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[10] See Reeb 1998, p. XXIII, noting that the CAS Statutes were officially ratified by the IOC in 1983 and came into force on 30 June 1984 (see Fig. 3).

[11] The provisions governing jurisdiction and the conclusion of a CAS arbitration agreement were contained in Articles 19 et seq. and 24 et seq. of the CAS's then Statute and Regulations respectively, which essentially provided for the possibility of concluding an *ex ante* arbitration agreement (to be notified to the CAS upon conclusion and completed later, in case of dispute, with certain particulars), or an *ex post* submission agreement with regard to a specific dispute, providing for its referral to the CAS.

[12] In 1991, the CAS published a "Guide to arbitration", featuring several model arbitration clauses. Among these, there was one suggested for inclusion in the statutes or regulations of federations, which read as follows: "[a]ny dispute arising from the present Statutes and Regulations of the… Federation which cannot be settled amicably shall be settled finally by a tribunal composed in accordance with the Statute and Regulations of the [CAS] to the exclusion of any recourse to the ordinary courts. The parties undertake to comply with the said Statute and Regulations and to accept in good faith the award rendered and in no way hinder its execution". The International Equestrian Federation (FEI) was the first sports-governing body to adopt that model clause. As noted by Mavromati and Reeb 2015, p. 2, "[t]his was the starting point for several 'appeals' procedures even if, in formal terms such a procedure did not yet exist. After that, other national and international sports federations adopted the appeals arbitration clause, which led to a significant increase in the workload of the CAS".

[13] See page 2 of the Award, *in medio* "HC X. brought an application for annulment against the LSHG's Appeals Chamber's decision before the Obergericht [Higher Cantonal Court] in Zurich, which declared the application inadmissible […] on 15 August 1985" (free translation). *Obergericht des Kantons Zürich*, 3rd Civil Chamber, *Erledigungsbeschluss* of 15 August 1985.

reasons. Most importantly, its ruling stated in an *obiter dictum* that the match result that had been imposed as a sanction—defeat by *forfait*—was to be considered a field of play decision, lying outside the jurisdiction of a state court.[14] Thus, the *HC X. v. LSHG* case provided a perfect illustration of the need for establishing a sports arbitration institution like the CAS.

J. Gay: Exactly. At the time, no federation provided for appeals before the CAS, meaning that a submission agreement (*compromis arbitral*), whereby the parties agreed to bring a particular dispute before the CAS, was necessary to ground the tribunal's jurisdiction. In this case, the parties agreed to do so after the Zurich court had declared the claimant's action inadmissible before it. I am also certain that the issuance of this first award, resolving the dispute between a club and its national federation, and the few others that followed it shortly afterwards[15] helped convince international sports federations to include express clauses in their regulations providing for CAS jurisdiction.

4. You are all still involved in CAS and sports arbitration nowadays. How has it changed, from your (insiders') point of view?

F. Carrard: The CAS itself and sports arbitration more generally have immensely changed and evolved since those early days. The CAS now more and more operates as an institutional chamber of appeal against disciplinary decisions issued by sports bodies.

J. Gay: Particularly after the 1994 reforms and the adoption of the Paris Agreement,[16] we have seen the CAS grow, from one success to the next, always under the scrutiny of the Swiss Supreme Court, to become the world's central institution for international sports disputes. The magnitude of that growth is reflected in the most recent statistics.[17] This evolution is certainly due to the quality of CAS awards and to its efficient organisation.

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[14] Ibid., para 4.1. For an overview of the evolution of the case law on the judicial (or arbitral) review of field of play decisions, see in particular CAS OG 96/006, *Mendy v. AIBA*, Award of 1 August 1996, with reference to the SFT's case law and Prof. M. Baddeley's analysis in point.

[15] In 1987, 8 new cases were filed with the CAS (both in "ordinary" and in what was then known as the "consultation procedure" [note by the editors: this procedure was abrogated in 2012]), and from there onwards, until the adoption of the Paris Agreement establishing the CAS appeals procedure in 1994, that number gradually grew from one year to the next, reaching a total of 131 proceedings initiated (see CAS Statistics, 1986–2016, available at http://www.tas-cas.org/fileadmin/user_upload/CAS_statistics_2016_.pdf).

[16] The Paris Agreement, adopted in June 1994, established the International Council of Arbitration for Sport (ICAS), provided that the CAS would be financed by international federations and national Olympic committees in addition to the IOC (until then the sole provider of funds), and reorganized and streamlined CAS proceedings, introducing the distinction between ordinary and appeals arbitrations, each governed by a specific set of rules within the newly drafted CAS Code of Sports-related Arbitration, which entered into force in November 1994.

[17] CAS Statistics, 1986–2016, available at http://www.tas-cas.org/fileadmin/user_upload/CAS_statistics_2016_.pdf.

H. Nater: No question, the CAS has become the most reputable organisation worldwide to resolve sports disputes. It is true that the quality of its proceedings and decisions has significantly improved and has reached a level equal to commercial arbitration. Highly qualified international (commercial) arbitrators have joined the CAS over the years and contributed to its success as the leading institution of sports arbitration. In a recent article, Professor Jan Paulsson, one of the most reputed experts in international sports arbitration (and in international arbitration), spoke of the interim CAS award in the hyperandrogenism case of *Dutee Chand*[18] as "an exceptionally thorough award", adding that it would no doubt be the "road to chaos", if, instead of the CAS, the courts of 200 different states were to get involved in resolving disputes arising from the issue of hyperandrogenism (or similarly complex and sensitive questions), applying their own public policy to resolve such disputes.[19]

5. Did you expect, back then, that the CAS would become such a central institution in global sport?

J. Gay: Not really. I reckoned that the CAS could eventually play a significant role in purely sporting disputes, in particular between athletes and their federations (once the latter started to include CAS arbitration in their regulations). What I did not anticipate was that a similar development would take place also with regard to sports disputes involving commercial and/or pecuniary issues.

H. Nater: Frankly, no, I did not expect things to go this far. That said, back then, I did realize that the CAS had significant potential for development. First, many of the major sports federations had their domicile in Switzerland and were subject to Swiss law. Moreover, I considered Switzerland, thanks to its liberal concept of arbitration (which was soon to be anchored in Chapter 12 of the Swiss Private International Law Statute),[20] to be a leading hub for international arbitration. Thus, the necessary elements for the CAS to become what it is today were already in place.

F. Carrard: I am not sure I recall exactly what I expected then. I guess that I had hoped that the CAS would become an important institution for the Olympic and sports movement, but I had no specific idea as to its evolution. Having said this, I do now have a more precise view of where the institution should go from here, perhaps for its next thirty years, as I explain in my answer to question 7 below.

[18] CAS 2014/A/3759, *Dutee Chand v. Athletics Federation of India & The International Association of Athletics Federations (IAAF)*, Award of 24 July 2015.

[19] Paulsson 2015.

[20] Enacted in 1987, Chapter 12 of the Swiss Private International Law Act, which entered into force in 1989, replaced the *Concordat* (see footnote 5 above) as the statute governing international arbitration in Switzerland.

6. Why do you think the CAS became such a go-to dispute resolution body? What are the specific institutional features that make it so attractive?

F. Carrard: The fact that the arbitrators on the CAS list are required to have both legal training and a sports background[21] has certainly been an incentive for sports persons and clubs to submit their disputes to the CAS rather than to the ordinary state courts.

J. Gay: As I said earlier, in my view the quality of the awards and the excellent administrative organization of the CAS are the keys to its success. Today, the CAS has a list of more than 350 arbitrators who, at the same time, are competent and reputed from a legal point of view, but also benefit from in-depth knowledge and understanding of the sports world. This double requirement definitely gives CAS the edge over other *fora* for international sports disputes.

H. Nater: True. In short, the CAS has been able to attract experts in arbitration who are also familiar with sports, and who found in Switzerland an ideal legal environment to shape the CAS into what it is today. Professor Riemer, one of the leading scholars on the Swiss law of associations was making this point when he entitled one of his articles on sports law "World Sports Law Power Switzerland" ("Sportrechts-Weltmacht Schweiz").[22]

7. If you could change something in the functioning or institutional set-up of the CAS, what would it be?

H. Nater: In my view, the CAS should strive for operational excellence and intensify the training and continuous education of arbitrators and CAS counsel on the operational level. A few practical ideas to improve the CAS's operational excellence could be: providing for recourse to court reporters in complex cases;[23] scrutiny of awards; introducing a mandatory requirement for the arbitrators to establish, at an early stage, a procedural calendar in cooperation with the parties.

J. Gay: To me, it is obvious that ADR methods other than arbitration, in particular mediation, should be reinforced before the CAS. There is in fact a set of CAS Mediation Rules,[24] but I believe they should be reviewed and updated to

[21] The CAS Code provides, in Article S14 (last amended in 2016), that: "[t]he ICAS shall appoint personalities to the list of CAS arbitrators with appropriate legal training, recognized competence with regard to sports law and/or international arbitration, [and] a good knowledge of sport in general […]".

[22] Riemer 2004.

[23] At present, the CAS Code provides that "Minutes of the hearing may be taken" (Article R44.2). In practice, the CAS takes an audio recording of the hearing which may be provided to the parties upon request. Obviously, this is a much less practical working tool than a proper transcript. Several other examples that may provide inspiration also for CAS proceedings, where appropriate, can be found, for instance, in the ICC Techniques for Controlling Time and Costs in Arbitration (available at https://iccwbo.org/publication/icc-arbitration-commission-report-on-techniques-for-controlling-time-and-costs-in-arbitration/).

[24] CAS Mediation Rules adopted in 2013 (amended in 2016), available at http://www.tas-cas.org/fileadmin/user_upload/CAS_Mediation_Rules_2016__clean_.pdf.

reflect the more recent developments and current standards of practice in the field. Moreover, even if most CAS mediators are highly competent, only a minority of them have in-depth knowledge of the sports world. As just seen, this is key advantage of CAS arbitrators, and I fail to see why it should not be the same for CAS mediators.

CAS proceedings tend to become longer and costlier nowadays. While there certainly are procedural mechanisms available to counter this trend, one should not forget that all disputes, including in sports, have a strong emotional component. Indeed, the psychological dimension often plays a particularly important role in sports disputes. Many jurisdictions have recently encouraged and developed the use of mediation to resolve disputes efficiently by taking this psychological element into adequate account. I believe the CAS should also follow this fruitful approach, by improving its mediation rules and promoting their use where appropriate.

F. Carrard: Personally, I would go farther than these proposals, at least as far as the CAS appeals division is concerned. It seems to me that few are those who remember that most of the decisions brought before the CAS are not civil or criminal rulings (the CAS has no authority in criminal matters), but rather disciplinary decisions. True, such decisions may well affect not only the sports career of the persons concerned, but also their professional life, reputation and financial situation. In that context, the CAS has developed a rather peculiar and specific legal culture.

As an institution based in Switzerland, the CAS was meant to resolve disputes by means of simple, quick and hopefully cheap proceedings. However, the current situation is different: under the clear influence of the Anglo-American legal culture, the CAS's disciplinary procedures have been transformed into long, heavy and costly proceedings, far from the type of proceedings that were originally envisaged. The increasingly complex procedures that have developed tend, in turn, to demand more and more resources, with a parallel increase in costs. I am convinced that the time has come for a serious reconsideration of many aspects of these disciplinary procedures, towards a simplification and acceleration. If properly applied, Swiss law offers such possibilities. These are currently not used enough for fear of appeals to the Swiss Supreme Court. However, that fear is excessive in view of the usually good quality of the decisions rendered by CAS panels and arbitrators.

More specifically, I am convinced that the time has come to strengthen and 'upgrade' the CAS into a new form of International Sports Court of Justice, directly recognized by the international community. In other words, I believe the CAS should be maintained, but should benefit from further direct support and recognition from governments. I am aware that such views are not easily accepted by those who consider that sport must at all costs proclaim and defend its autonomy. I remember the times—which are not so far away—when most sports leaders considered that doping matters should never be dealt with by governments. But, as history has shown, times are changing and so is the legal order in which sport operates, both at the domestic and at the international level. Based on a rather long experience, taking into account the extraordinary increase of litigation in sport and the changes in the legal culture affecting sport, I consider that, unfortunately, dispute resolution

based on consent—which is a core concept of arbitration—is probably not sufficient any more to resolve all sports disputes. In essence, I consider that one solution could be the integration of the CAS into the international institutional community, in a format to be carefully prepared, studied, tested and implemented most likely (and logically) through a treaty or an international convention.

8. In your opinion, which is/are the most important decision(s) rendered by the CAS to date?

J. Gay: I find it difficult and would even feel a bit foolhardy to try and single out one particular decision as the "most important" one. It seems to me that what is more important is the general overall quality of the awards rendered by the CAS, as well as the legal framework from which they arise. These are the elements one should concentrate on, and which make the CAS stand out as a dispute resolution body.

F. Carrard: It goes without saying that the most important decisions rendered by the CAS to date are those which have been issued in favour of my clients! Seriously speaking, I have seen so many cases that I am not in a position to identify decisions which I would consider as "most important". In spite of my deep involvement in the Olympic and sports movement for the last 40 years or so, I still consider that the most important decisions are those rendered by state supreme courts on CAS decisions.

H. Nater: Speaking of court decisions, for me, historically, the most important one for the CAS was *Raguz v. Sullivan*.[25] A dispute arose between Australian women judokas Angela Raguz and Rebecca Sullivan as to who of the two should represent Australia for the under 52 kg category at the upcoming Olympic Games in Sydney. Ms. Sullivan appealed before the CAS against the Judo Federation's decision to nominate Ms. Raguz as Australian representative. A CAS panel composed of Australian arbitrators held a hearing in Sydney and upheld Ms. Sullivan's appeal, whereupon Ms. Raguz sought the annulment of the CAS award before the Australian courts. By declining jurisdiction to hear the annulment action, the New South Wales Court of Appeal confirmed that, by virtue of the CAS arbitration agreement in the relevant regulations, even if the proceedings were entirely conducted in Australia, the "agreed juridical seat or place of arbitration was Switzerland". This strong precedent had the effect of "sealing" the CAS global system of dispute resolution, based in Switzerland, against interference by national courts elsewhere in the world, thereby marking the breakthrough for the CAS to become the most important sports arbitration tribunal in the world. Suddenly, top lawyers and arbitrators from all over the world, English barristers, QCs from Canada, Australia and England joined the CAS as arbitrators or came to plead as counsel before it. This rendered the proceedings more professionalized by applying common law procedural standards.

[25] Raguz v. Sullivan [2000] NSWCA 240; http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/nsw/NSWCA/2000/240.html?stem=0&synonyms=0&query=raguz&nocontext=1.

9. In the past few years, it has become increasingly common to hear CAS users complain about the time it takes for CAS arbitrators to issue their awards in "standard" appeals proceedings (as opposed to CAS Ad Hoc Division awards for instance). The award you rendered in case TAS 86/1 is only a few pages long, while nowadays the awards rendered by panels in the Appeals Division regularly exceed 50 pages. Considering Article R59's requirement that "[t]he award shall state brief reasons" (with the French version providing that the award shall be "sommairement motivé"), what are your thoughts on this trend?

F. Carrard: As just mentioned, I am convinced that the CAS could and should impose simpler, quicker and cheaper procedures. This would be perfectly compatible with the applicable law.

H. Nater: Time is of essence in sports arbitration, and, regretfully, complaints about delays are sometimes justified. In order for their rulings to be as brief as possible and as long as necessary, CAS arbitrators would be well advised to refrain from inserting too many *obiter dicta* and educational comments in the award. Further, it may help to determine, at the hearing, which are the questions that the parties wish the panel to resolve in the award and the ones which they wish to drop. Well prepared and efficiently conducted hearings may help to focus in the award on the relevant issues at stake. Finally and as mentioned earlier, it seems to me that CAS arbitrators would be well advised to apply some case-management techniques and follow other practices that are now common in commercial arbitration, such as establishing a procedural calendar or at least a schedule of the hearing, holding an organizational pre-hearing telephone conference call with counsel, using a court reporter for the hearing, etc.

More generally, CAS arbitrators should always strive to be cognizant of cultural differences and apply a certain degree of sensibility in adjudicating what are often transnational, but also cross-cultural conflicts between international federations and their members.

J. Gay: These criticisms must be addressed. It is important that CAS awards be rendered as quickly as possible and present a clear and thorough analysis, which is compatible with the requirement for stating "brief reasons". There are however numerous objective difficulties that can arise in attempting to achieve this goal, in particular the fact that disputes become increasingly complex and the cultural differences that exist between arbitrators from different legal backgrounds. I do not think the rules need changing, but more work may need to be done, especially as the list of arbitrators becomes longer, on establishing, as a first step, a 'common culture' among CAS arbitrators, possibly also through the regular CAS seminars.

10. How do you see the future of the CAS? Is it here to stay or will it be challenged by the national courts (as in the *Pechstein* case)?

H. Nater: All depends on the quality and reputation of the CAS. The CAS survived "Pechstein", and, with the support of the Swiss Federal Tribunal emerged as the leading transnational institution to resolve sports disputes.

J. Gay: I agree. The CAS responds to a real need and it is definitely here to stay, at least as long as its panels keep on rendering sound decisions…

F. Carrard: I repeat that, in my opinion, the future of the CAS requires its "upgrading" and transformation into an International Sports Court of Justice recognized by the international community through an international convention or treaty. To that effect, an international convention such as the UNESCO Antidoping Convention[26] could be considered so that the signatory governments would support the activities of the CAS and directly enforce its decisions. Similarly, the public authorities should provide the CAS with direct assistance for a number of procedural measures such as evidence gathering, discovery, subpoena, etc. By upgrading the CAS, the international community, including the Olympic and sports movement, would render a precious service not only to sport itself, but also to society at large by releasing state courts from an excessive load of sports litigation. I recall that the timeframe within which the UNESCO Antidoping Convention was adopted was quite short. If there is a real will, there will be a way.

Biographical Notes

François Carrard studied law at the University of Lausanne, where he obtained his Ph.D. in 1964. He was admitted to the Vaud Bar in 1967 and joined a family firm which was turned into his firm, Carrard & Associés, in 2008. Since 1979, he acted as legal adviser to the International Olympic Committee (IOC), of which he became Director General in 1989, a position he held until 2003. During his tenure at the IOC, Dr. Carrard oversaw the organization's structural and governance reforms in the wake of the Salt Lake City Olympic Games corruption scandal. At the time of the *HC X. c. LSHG* case, beyond his work as a legal adviser to sports organizations, Dr. Carrard had acquired significant experience in international dispute resolution, including commercial arbitration. In addition to his sports law and arbitration practice, Dr. Carrard is a specialist in corporate, banking and financial law, and has sat on the board of several companies. In August 2015, he was appointed Chair of the FIFA Reform Committee, in charge of delivering a comprehensive governance reform program for the world governing body of football. The Committee's Report was issued in December 2015 and adopted by FIFA in February 2016. Dr. Carrard is currently a partner with the firm Kellerhals Carrard.

Hans Nater studied law at the Universities of Edinburgh and Zurich, where he obtained his Ph.D. in 1970, and at Harvard Law School, where he gained an LL.M. in 1974. Dr. Nater was admitted to the Zurich Bar in 1973, and has practiced as an attorney in Switzerland and in the USA. In 1975, he co-founded the firm Stiffler & Nater in Zurich. A well-known litigation and arbitration specialist, Dr. Nater has served as an arbitrator in numerous CAS cases and in many commercial cases. At the time of the *HC X. c. LSHG* case, Dr. Nater acted as an attorney in Zurich,

[26] UNESCO's International Convention Against Doping in Sport of 19 October 2005. To date, the Convention has more than 180 State parties (see http://portal.unesco.org/en/ev.php-URL_ID=31037&URL_DO=DO_TOPIC&URL_SECTION=201.html).

specializing in commercial law and litigation. He further served as a member of the CAS ad hoc Divisions at the 2002, 2004 and 2006 Olympic Games in Salt Lake City, Athens and Torino. He was also an arbitrator with the Claims Resolution Tribunal for Dormant Accounts in Switzerland (CRT). Dr. Nater was President of the Zurich Bar Association from 1991 to 1992, and Vice-President of the Swiss Olympic Committee from 1987 to 1996. A prolific writer, Dr. Nater has published extensively in diverse fields of law, including professional legal services, product liability, corporate governance and telecommunications. Dr. Nater is a founding partner of the firm Nater Dallafior in Zurich.

Jean Gay studied law in Lausanne and was admitted to the Valais bar in 1977. He became partner in a law firm in Martigny in that same year. At the time of the *HC X. c. LSHG* case, Mr. Gay practiced as a solicitor and notary, mainly in the fields of matrimonial law and civil liability. Since 2001, he has been specializing in the practice of mediation and ADR in a variety of fields, acquiring advanced certifications in Switzerland and abroad. Between 2007 and 2015 he served as the President of the French-speaking section of the Swiss Chamber of Commercial Mediation. A passionate automobile racing driver, between 1982 and 2004 he was a member of the Appeals Tribunal of the FIA (Fédération Internationale de l'Automobile), in 2005 he became president of the Swiss National Disciplinary Commission for Automobile Sports, and, since 2013, he is a Judge with the FIA International Court of Appeal. He has lectured on mediation in various programs, including most recently the University of Fribourg in Switzerland. In 2012, he published a study on mediation in sports ("La médiation: Processus et application dans le domaine du sport"). Mr. Gay operates his law firm and mediation practice out of Genève and Martigny, Switzerland.

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