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Court of Arbitration for Sports

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I. INTRODUCTION: THE MEANING OF ARBITRATION

In general, the notion of arbitration defines the way in which a dispute is settled by a third person. Specifically in the context of legal terminology, however, it “signifies an institution which consists in the settlement of a certain category of disputes by judges who are chosen by the litigants (mainly of private nature).”\(^1\) The notion of arbitration as an institution has existed since antiquity and was already known in the Hellenic inter-city law, which, in one sense, “presented very few variations throughout history” and constitutes the first form of dispensing justice. The settlement of disputes by arbitration has prevailed since the times of Homer. The first complete description of an arbitral trial is found in rhapsody S of Iliad and concerns the trial of the buckler of Achilles and the rhapsody \(\Psi\), Aeas and Archilochos.

During the games organized by Achilles in honor of his friend Patroclus, controversies were observed as to the outcome of the games and as to the achievement of win in various sports.

The substance of these disputes concerned the contestation of win by illegal means during the games and were settled by judges, named arbitrators\(^2\) (Table 1).

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CONTESTATION OF WIN IN HOMER

1. "καὶ νῦκεν ἡ παρέλασσ’ ἡ αμφίρεστον ἐθηκεν"  
   "and either he would surpass him or he would contest his win"  
   Ομήρου Ιλιάς Ψ, 382

2. "<<τω κεν μίν παρέλασο' οὐδ' αμφίρεστον ἐθηκεν"  
   "he would surpass him and he would not win without contestation"  
   Ομήρου Ιλιάς Ψ, 528

3. "<<αλλ’ ἀγετ' Ἀργείων νητόρες ἡδὲ μέδοντες, ες μέσον 
   αμφητέρωι δικάσατε, μεδ' επ' ἀρωγή"  
   "But go ahead, Leaders and Governors of Argians, judge both of us partially, not in order to be on my side."
   Ομήρου Ιλιάς Ψ, 573

TABLE 1: Sports disputes in Homer, Patroclus Games.

Also, in Homer’s Odyssey (θ 97-258), we find such arbitrators, as judges of the athletes during the games, organized by Alkinoos, King of Phaeacs, in honour of Ulysses. These arbitrators were called “Aesimnites Diallactici.”

The arbitration is, therefore, considered as a first instance jurisdictional organ. Finally, in the 7th century B.C., under Zaleukos Law, as has been reported by Polyvios (XII, 16, 4) and by Diodoros Sikeliotis (XII, 20, 3), Arbitration was recognized as an institution for the settlement of private disputes.

During the era of Athens Democracy, the Arbitrators Law was in force for the settlement of disputes.3 According to the arbitration agreement, the case was referred to the arbitrators, through an invitation in writing, and the arbitration agreement was drawn up.4

3. Certain information on arbitration is given by Demosthenes in his speech against Midias, 594, 94.
   Also, information on arbitration is given by Aristotle in the “Athenean Republic,” 53 “αἱ ἀποτελήμενοι ἡ αἰτίη ἡ εἰσίν, ἡ αἰτίη ἡ ἐξηκοστὴν ἔτος ἔτη,” in: Retorian 1374 b, 19. See also Dimitrios Panagiotopoulos, Olympic Games Law 52-55, (Ant. Sakkoulas ed. 1991). The settlement of these disputes seemed to be based on the application of common law, as well as on the general clause of “Arbitration,” of “Negotiation” in the sense of interference, which comprises the elements of will, good faith and indulgence, as described by Aristotle in “Rhetoric.”

4. Demosthenes to Apatourios: "καὶ γράφαντες συνθήκας επιτρέπουσιν ενὶ μὲν διαίτητα” and Demosthenes to Dionisodoros, 18 “ταῦτα νῦν ω ἄνδρες 
   δίκαια προκαλεσάμενων ημῶν Διονυσσίδωρον τουνοί πολλάκις, και επὶ πολλά 
   ημέρας εκτεθῇ τὴν πρόσκλησιν εὐθείας ἕφι παντελῆς ημᾶς εἶναι, εἰ
In the context of International Law, arbitration acquires a specific, slightly different meaning: arbitration of internal law and the international arbitration constitute “different juridical categories.” International arbitration is a different institution within the frame of which international disputes are settled, “by a judgement of binding force for the litigants, issued by a third party before which the opposing parties have brought their disputes.”

In the context of international law, the term “arbitration” has a different meaning. The international institution defined by this term presents certain particularities and is therefore differentiated in essence and in form from the respective national term. International arbitration can be defined as the method of settlement of international disputes by a judgment of binding force for the opposing parties, issued by a third part before which the litigants have brought their dispute. International arbitration, in the wider sense of the term, includes all judicial phenomena which do not come within the jurisdiction of the international or the national courts and are characterized by the free choice of the jurisdictional organ by the opposing parties.

Arbitration as an institution has to be distinguished from judicial settlement. The fundamental difference is that, in arbitration, the composition, organisation and function of the jurisdictional organ are determined by the litigant parties. In contrast, in judicial settlement, the litigant parties are before a pre-existing organizational and procedural structure that they can hardly influence.

International arbitration requires the existence of an agreement between the litigants with regard to the settlement of the dispute by a jurisdictional organ, the composition of which is determined by the litigant parties themselves. In arbitration, the litigant parties are free to decide about the procedural rules by which they wish to be judged. It also requires the binding character of the judgment and the creation of res judicata. The dispute should be settled on the basis of respect for the law, a condition that distinguishes arbitration from the other methods of peaceful settlement which are not judicial. Arbitration should be based on a special agreement, in terms of which the litigant parties select this method of peaceful settlement.


In the field of the International Olympic Movement and of the Olympic Games, the “supreme arbitrator” is the International Olympic Committee (I.O.C.). In addition to Olympic sports, the I.O.C., in accordance with the Olympic Charter, also deals with those sports that have not been qualified as Olympic. This is because sports, considered in a wider sense, include the “education of youth” and the “promotion of moral virtues,” in a “spirit of mutual understanding and friendship, thus contributing to the creation of a better and more peaceful world.” Therefore, the mission of the I.O.C. exceeds the limits of the Olympic Movement, including universal sports. This shows that such an international organisation will certainly be confronted with disputes that approach conflicts, either between natural persons or legal entities.

Many of the disputes arising in the Olympic Movement and the Olympic Games come under the provisions of the Olympic Charter, as well as the rules of other national or international athletic organisations. The settlement of many disputes, which do not belong to the ordinary context of athletic activities and are not considered typically athletic, does not come within the jurisdiction of an organ of the Olympic Movement. The nature of these activities seems to have led the I.O.C. to find a solution in order to settle such disputes, both in the restricted field of the “Olympic spirit” and the wider scope of international sports. In 1983, during the Session of the I.O.C. in New Delhi, and following a suggestion of the Executive Committee, the statutes and creation of the Court of Arbitration for Sports were approved. The creation of such a court had been planned: the idea had been set forth since the Olympic Congress in Baden-Baden in 1981. In 1987 during the 85th Session of the I.O.C. in Rome, the idea of creating a Court of Arbitration was developed with the purpose of covering activities “more or less directly connected with sports”.

8. Id. art. 1, at 6.
10. K. Mbaye, The Court of Arbitration for Sports, supra note 9, at 3. See G. Schwaar, Tribunal Arbitral du Sport (TAS), in PROCEEDINGS OF THE 1ST INTERNATIONAL CONGRESS ON SPORTS LAW, 429-35 (1993). The sports service agreement, which is made by and between a salaried basketball player and an Association hav-
According to the letter and the spirit of the statutes of the Court of Arbitration for Sport, "an arbitral institution, known as Court of Arbitration for Sport (CAS)\(^{11}\) is created from now on, in order to facilitate the settlement of any private contention arising out of athletic exercise, as well as of all activities related to sports."\(^{12}\) The founder of the CAS is the International Olympic Committee, an international organization before which the CAS may be brought as defendant. Eventually, this could constitute a serious reason for doubting the independence of the CAS vis-à-vis the I.O.C.; however, it should be emphasized that the independence of the Court for Sport as an organ of arbitration is guaranteed by its very statutes and by the way it is organised, regardless of the fact that it has been founded by an international organisation.\(^{13}\)


The Court of Arbitration for Sport (CAS) is an arbitration institution, placing at the disposal of the parties concerned a fast and not expensive procedure. The CAS was established, in order to achieve settlement of any such disputes, as may eventually arise in the sporting field. In view of the said advantages, especially where the legal costs are concerned, evidently the scope of this Court's activities is designated and limited to any such affairs as are related to the sports. In the event that a dispute does not fall within the scope of Article 4, the CAS may refuse to judge it, thus depriving the parties of the opportunity to avail of the advantages related thereto.

\(^{12}\) K. Mbaye, The Court of Arbitration for Sports, supra note 9, at 8. Sentence of the Federal Swiss Court (FSC) of the 15th March 1993: A rider contested the independence of the CAS. The FSC recognized that the CAS is a real Court of Arbitration, independent of parties, which exercises a juridical competence on the decisions of Associations after appeal.

\(^{13}\) K. Ioannou-S. Perrakis, supra note 1, at 122. See also the cases which are reported in ATF dated March 15, 1993, G.c/FEI, cons.3d. According to the Swiss Law on Arbitration, an Arbitration Committee, acting in its capacity as internal organ of the Federation, which is party of the dispute, does not actually present any guarantees of independence. Decisions made by these organs are simply evidence of the will of the federation concerned: in fact, they are administrative rather than judicial acts. The fact that an organ passes a judgment on a dispute, although being a party thereof, is simply incompatible with the required guarantee of independence.

On the occasion of a recourse, according to public law, which was brought before the Federal Court against a judgment on appeal passed by the CAS, this
According to its statutes, the CAS has its headquarters in Lausanne, Switzerland, and it can be transferred to another place, upon the request of one of the litigants and in agreement with the other litigant or upon the request of both litigants. Any transfer of the headquarters of the CAS has to be approved by the Plenary Session, and has to be certified by a decision of the "Executive President."

The CAS is governed by a set of statutes that includes 76 articles in total; these articles determine the composition and the formation of the court, its competence, its function, the applicable law, the arbitration agreement and the procedure to be followed. Article 76 of the statutes of the CAS provides that the statutes will be completed by a regulation, which has to be voted by the members of the CAS with a majority of two thirds (2/3). The same majority is also required for the modification of the statutes that governs the CAS. A modification can be decided by the Session of the I.O.C., upon the suggestion of the Executive Committee.

Supreme Swiss Court of Justice declared the independence of the CAS and recognized it as a real court of arbitration.

The CAS does not accept any instructions from the International Federation, on the contrary it sufficiently preserves its personal autonomy towards it, given that the latter places at the disposal of the CAS only three (3) arbitrators out of sixty (60) arbitrators in total making up the formation of the CAS. On the other hand, according to Article 7 of the CAS Statutes, fifteen (15) members at least must be elected from within the International Olympic Committee, the International Federations and the National Olympic Committees, as well as the Federations, where they actually belong. The parties are given, therefore, the opportunity to appoint one of these persons as arbitrator or umpire, provided that this person does not depend on the federation nor on any part thereof. Furthermore, in this case, the guarantee of independence for the said arbitrators is established by Article 16 of the CAS Statutes, laying down the reasons of challenge. Under these circumstances, it is generally approved that the CAS presents certain guarantees of independence, to which the Swiss Law has already submitted the legal exclusion of the ordinary proceedings . . . . In the end, the fact that the CAS is an institutional organ cannot in any way prevent it from being considered as a real arbitration court.

14. CAS Statutes, art. 2
15. Id. art. 2, regulation (CAS), sec. 1; see The administrative base of CAS, art. 1; see also K. Mbaye, The Court of Arbitration for Sports, supra note 9, at 8.
16. CAS Statutes, art 76, see also Reglement of CAS.
17. Id. art. 75 see K. Mbaye, The Court of Arbitration for Sports, supra note 9, at 7, 8. The operational costs of the CAS are chargeable to the International Olympic Committee, meaning that the parties have a very small participation in the arbitration costs, even where financial cases are concerned. On the contrary, where giving of opinions is concerned, the procedure is free of charge. See CAS Case 92/81.
II. COMPOSITION AND FORMATION OF CAS

The Court of Arbitration for Sport is composed of the President, the Executive President, the members of the Divisions and the Secretariat.

A. The President and the Members of CAS

In accordance with the statutes of the Court of Arbitration for Sport, the President of the I.O.C. is also the President of CAS, who, in one sense, maintains "a purely dignitary post since he has no judicial competence within the CAS."18 The person who assumes the effective and substantial presidency of the CAS is the Executive President, who is, nevertheless, appointed by the President of the I.O.C. and the President of CAS; the Executive President, whose term of office is renewable, is chosen among the members of the CAS.19

The Executive President oversees the execution of the preliminary acts of the procedure,20 and intervenes whenever it is deemed necessary, in accordance with the provisions of the statute and of the regulation, regarding the process of the cases from their submission until the issue of the judgment.21 According to the regulation, the Executive President exercises his duties until his successor takes over;22 however, in case of an impediment or if no successor has been appointed, the Executive President is substituted by a member of CAS, who is appointed by the President of CAS.23

The Court of Arbitration for Sport, in terms of its statutes, is composed "by 40 members at the maximum."24 According to MBE, "nowadays, the number of members rises to 60."25 The criteria that govern the choice of the members of the CAS, as shown in the letter and spirit of the statutes, are: publicly recognised personality, legal education and knowledge in the "field of sports."26

19. CAS Statutes, art. 6.
20. Id. art. 34, par. 1, Reglement of CAS, § 1, art. 1 and § 4, the councils art. 12, par. 4.
21. Id. art. 27, Reglement of CAS, ch. V, Disputes Proceedings, § 1, art. 33, § 4, art. 50, § 9, art. 64, para. 2 ch. VI; see also K. Mbaye, The Court of Arbitration for Sports, supra note 9, at 9.
22. Id. § 3, the Presidency, art. 10, para. 1.
23. Id. art. 11.
24. Id. § 3, Composition, art. 6, para. 1.
26. See supra note 22.
The members of CAS are appointed; by the I.O.C., which may select them among its own members; by the International Federations, which may propose some of their members; by the Union of the National Olympic Committees, which chooses among its members or others; or by the President of the I.O.C., who may select persons who do not belong to the I.O.C., the International Federations (IF), the National Olympic Committees (NOC) or the NOC Union.27 The list of the members of the CAS is made according to a geographical distribution, as planned by the I.O.C., the IF and the National Olympic Committees.28 The CAS consists of three members from Europe, two from Africa, two from America, two from Asia and one from the South Sea Islands.

The list of the members of CAS has to be published in one or more editions of juridical information or in any other newspaper or regularly published review, as specified by the President of the CAS;29 any amendment thereof must similarly be published.30 After being appointed, all members of CAS must submit a written declaration signed by each one of the members.31

The declaration has to be ratified by the competent authorities of the member’s country or by the Swiss Confederation.32 A member who loses the quality for which he has been appointed is replaced within six months.33 If such person is member of a hearing committee and deals with a particular case, however, they will not be replaced until the judicial case is terminated.34 If the member is appointed following after a suspension of his duties, as described above, the member must sign a “new formal individual declaration.”35

The purpose of the “individual declaration” is to ensure the objectivity of the judgment of the members, their independence in making decisions, as well as secrecy during deliberations. In some

27. Id. § 3, Convention, art. 7; see also, K. Mbaye, The Court of Arbitration for Sports, supra note 9, at 10.
28. Regulation of CAS, ch. 1, section 2, art 2.
29. Id. art 3, par 2.
30. Statutes CAS, art. 7, par. 6, line 2.
31. “I solemnly declare in my honour and being fully conscious that I will fulfill appropriately and duly my duties as arbitrator, that I will keep secrecy as regards every deliberation and voting and that I will act in absolute objectivity and complete independence.” See also Statutes CAS, art. 10, line 2.
32. Regulations of CAS, art. 8; see also K. Mbaye, The Court of Arbitration for Sports, supra note 9, at 10.
33. Statutes CAS, art. 8. para. 1.
34. Id. art. 9 and IV, council, arts. 13, 14.
35. Regulation of CAS, art. 9.
respects, the "members of CAS are completely independent of the I.O.C. in the performance of their duties."36

According to the provisions of the statutes and the regulation of the CAS, persons from all over the world may become members of the CAS; the CAS can therefore be classified among the "universal international courts."37

B. Formation of the Judicial Committees

For every case brought to the CAS, a hearing committee is composed of a group of three arbitrators "selected compulsorily among its members."38 As regards the selection of arbitrators who will participate in the particular hearing committee, it is the litigant parties who play the determinent role. Each one of the litigants has the possibility to appoint an arbitrator, while afterwards both litigant parties have the possibility to agree upon the appointment of the umpire.39 In accordance with the regulation of the CAS, after the appointment of the two members of the committee, "the plaintiff chooses one or more members of the CAS and invites the other party to accept one of them as the umpire."40 The defendant is invited to express his opinion about the person suggested by the plaintiff, and in case he does not accept him, he makes his own suggestions.41 If no agreement is reached, the litigant parties agree on the following: 45 days after the notification of the appointment of an umpire,42 "the umpire is appointed by the President of the Federal Court of the Swiss Confederation (F.C.S.C.), following a deliberation with the two suggested arbitrators."43 The appointment of the umpire at the hearing committee is requested from the F.C.S.C. by the Executive President of the CAS,44 and the umpire acts as president of the committee."45 Till the umpire is appointed by the F.C.S.C., the litigant parties have the discretion to reach an agreement about the umpire of the hearing committee.46

36. K. Mbaye, The Court of Arbitration for Sport, supra note 9, at 3.
37. K. Ioannou-S. Perrakis, supra note 1, at 131.
38. Statutes CAS, IX, clubs, art. 11, para. 1.
39. Id. art., 12, para. 2.
40. Reglement CAS, § 4, art., 12, para. 1.
41. Id. art. 12, para. 2, 3.
42. Id. art. 12, para. 4.
43. Statutes CAS, art. 12, para. 2.
44. Reglement CAS, art. 12, para. 4.
45. Statutes CAS, art. 12, para. 2; see also K. Mbaye, The Court of Arbitration for Sport, supra note 9, at 11.
46. Reglement CAS, art. 13.
Each hearing committee has to reach a decision within six months, starting from the day of signature of the arbitration agreement. If the deadline expires, the President of the committee requests an extension of time from the Executive President, who, with the agreement of the President of the CAS, grants an extension of six months; nevertheless, any further extension may be granted solely by the President of the CAS. Each extension cannot exceed a six month period. The decisions issued by the hearing committee "are deemed to have been taken by the CAS itself." Any member of a committee can resign for personal reasons, can be exempted from the hearing of a case, or may not be accepted by a litigant who will, then, request his replacement by the Executive President. No justification is required for the resignation of an arbitrator, whereas any requested exemption or replacement has to be followed by a justified petition addressed to the Executive President; precise references to the relevant provisions of the statutes have to be included in the petition. The grounds of exemption are divided into two groups: grounds of compulsory exemption and optional grounds. In the latter cases, the members of the hearing committee estimate whether the reason invoked by the litigant parties constitutes a reason for exemption or not. The relevant petition states briefly the reasons that dictate it, and it is submitted at the beginning of the procedure or as soon as the plaintiff makes the grounds for exemption known. The procedure of replacement of an exempted arbitrator is the same procedure that has been followed for the member’s appointment.

47. Statutes CAS, art. 11, para. 2.
48. Id. at 11, para. 2. Where filing of a petition before the CAS is not subject to a prescribed time limit, then it is subject to a reasonable time limit, always taking into consideration the circumstances of each particular case. See CAS 90/44, September 24, 1991. More than four (4) months have passed between the date when the petition of the National Federation was overruled and the date when the petition for arbitration was officially filed. Is this term reasonable? Neither the Statutes, nor the Regulation of the CAS, nor the Statutes of the said International Federation provide any time limit within which a petition must be brought to be discussed before the CAS. Of course, according to a principle of law, in the event that no time limit is especially prescribed, the case must be brought before the CAS within a reasonable time. The sense of the reasonable time generally results from the special circumstances of the case. In particular, in the case on trial, the Court judges that the period between the filing of the petition and the delivering of the award remains reasonable.
49. Id. art. 11, para. 3.
50. Id. art. 13, exception objection, art. 15.
51. Id. art. 15, Reglement CAS, art. 14.
52. Id. art. 15, paras. 1, 2.
53. Id. art. 16.
54. Id. art. 17, Reglement CAS, § 6, arts. 16, 17.
compulsory exemption are enumerated in the statutes of the CAS and concern the degree of kinship of the arbitrator with one of the litigants; the existence of a contention regarding the request under examination; the existence of a debt; the existence of a trial during the last five years; the existence of a particular relationship of the arbitrator with one of the litigants, such as guardian or employer, business partner, etc; and the existence of friendly or hostile relations.\textsuperscript{55} In addition to the hearing committees, the statutes of the CAS also provide for a Council of Applications, which examine all applications submitted to the CAS before their hearing.\textsuperscript{56} The President of the Committee of Applications is the Executive President of the CAS or one of two persons appointed as members of the committee by the President of the CAS for a year.\textsuperscript{57} The Committee of Applications is convoked by the Executive President. It holds a meeting to decide the acceptance or rejection of the applications of the litigants.\textsuperscript{58} The Committee of Applications can give its opinion on whether an application is admissible or not, but this opinion is always subject to the final decision taken of the hearing committee which is called to settle the dispute.\textsuperscript{59}

C. The Secretariat of CAS

In order to carry out its duties, the CAS is assisted by a Secretariat administrated by the Secretary General.\textsuperscript{60} The Secretary General receives all documents, keeps the records and makes any necessary notification. The Secretary General also takes the minutes of meetings and he prepares the rolls for the hearings of the committees that he attends.\textsuperscript{61} The Secretary General is responsible for all internal workings of the CAS. The President of CAS may assign to the Secretary General duties of a judicial nature.\textsuperscript{62}

From the above analysis, it can be deduced that the CAS is an organ, composed of more than one member; that is, it is a large

\textsuperscript{55} Id. art. para. 1, 17; see also, K. Mbaye, The Court of Arbitration for Sport, supra note 9, at 13.
\textsuperscript{56} Id. VII Agreement of arbitration, art. 20, para. 3.
\textsuperscript{57} Id. art. 20, para. 3 and Reglement CAS, ch. V, Proceedings of Arbitration, § 1, Council of Applications, art. 33.
\textsuperscript{58} Reglement CAS, as ab., art. 35, L. 2.
\textsuperscript{59} Statutes CAS, art. 20 para. 3, L. 2; K. Mbaye, The Court of Arbitration for Sport, supra note 9, at 12.
\textsuperscript{60} Id. VI Court’s Secretariat, art. 18, paras. 1, 3.
\textsuperscript{61} Id. art. 18, paras. 2, 3. Reglement CAS, ch. 11, Keeper of Archives of Court’s Office, arts. 20, 21.
\textsuperscript{62} Reglement CAS, art. 23; see also K. Mbaye, The Court of Arbitration for Sport, supra note 9, at 11.
arbitration organ, the composition and the form of which are of legal significance so far as its status is concerned. The form and the composition of the hearing committee of the CAS are similar to those of the multilateral jurisdictional organs. In international practice, these are the "Mixed Committees", the members of which are appointed by "two or more states separately." According to Ioannou-Perrakis, "the contemporary form of the arbitration organs is qualified as Court of Arbitration, with one or many members and with any kind of composition." In international practice, however, the term "court" signifies the "advanced form of bodies of many members in which 'neutral' arbitrators participate." It seems that, due to its composition, as it is stated in its statutes and its regulation, the CAS fulfills the conditions set by the Court of Arbitration, according to the form established by the Alabama arbitration concerning international sports. (Court of Arbitration for Sport). That is, the fundamental criterion of the CAS resides in the fact that its composition is decided by the litigant parties; it is composed "of judges of their choice," and as an ad hoc jurisdictional organ, it is of arbitral nature and not of a judicial one.

III. THE COMPETENCE OF THE COURT OF ARBITRATION FOR SPORT (CAS)

The competence of the Court of Arbitration for Sport, as it is defined in its statutes, does not interfere with the competence of the organs that administer different sports in compliance with the Olympic Charter. The categories under which a sports dispute may fall are the following: general sports, the field of the Olympic Movement, and the Olympic Games. The issues of these disputes may be divided into "technical" and "non technical groups." The competence of the CAS, in terms of its statutes, is related to "non technical issues," to those athletic disputes over which neither the I.O.C. nor the International Federations have any jurisdiction. These athletic disputes may concern matters of "principle," conven-

63. K. Ioannou-S. Perrakis, supra note 1, at 131.
64. Id. at 132.
65. Id. at 123, 133; see also, K. Mbaye, The Court of Arbitration for Sport, supra note 9, at 3.
67. K. Ioannou-S. Perrakis, supra note 1, at 124.
68. IOC, Olympic chapter, 1990, arts. 16, 25, 30, and the explanatory disposi-
tions of arts. 16, 23, 25, and the regulations of the I.O.
69. K. Mbaye, The Court of Arbitration for Sport, supra note 9, at 5.
70. K. Mbaye, The Court of Arbitration for Sport, supra note 9, at 3; Recueil TAS, The different sectors of interference of the CAS, 1993, at 5, 6.
tional rules or financial questions. The athletic disputes which belong to the first category focus on the general principles that govern athletics, while those classified in the second category derive from activities directly or indirectly related to sports and are mainly of commercial nature. In one sense, the founder of the Court of Arbitration for Sport "has endeavoured to take into consideration the evolution in theory and in legislation that characterises nowadays the international marketability." 71 The statutes of the CAS establish the principle of independence as far as the arbitration agreement is concerned, since its competence is focused on the "interpretation of the said arbitration agreement." 72 Therefore, it may be deduced that the CAS is competent to examine all kinds of disputes which are subject to arbitration. 73 Disputes resulting from "the exercise or the development of sports" 74 may be settled within the competence of CAS. Such disputes may arise out of agreements signed by different unions regarding the transfer of some athletes, the purchase or sale of athletic material, the organization of athletic events, etc. 75 In other words, these disputes are the fruit of all kinds of athletic activities, concerning matters of principle and issues of economic or commercial nature, as well as of "economic interest", arising out of the exercise and the development of sports. 76 These issues can be handled through arbitration, provided that "no different settlement has been foreseen by the Olympic Charter." 77 In terms of the statutes of the CAS, the dispute should be of a private nature. 78 In other words, the "sphere of activity of the CAS is restricted." 79 Nevertheless, the fact that the jurisdiction of the CAS is confined to disputes of a private nature, concerning matters of principle or issues of financial or other economic interest, arising out of the exercise and development of athletics, qualifies the CAS as a court with a rather restricted, specific competence. "International courts which have the authority to judge international disputes of a certain category" are qualified as courts with specific competence. 80 The entities that can bring a

71. K. Mbaye, The Court of Arbitration for Sport, supra note 9, art. 14.
72. Statutes CAS, at 25.
73. K. Mbaye, The Court of Arbitration for Sport, supra note 9, at 15.
74. Statutes CAS, 11 powers, art. 4, para. 1; see also Affair CAS 92/81 (noting that dispute must be related to sports in order to be solved by CAS).
75. K. Mbaye, The Court of Arbitration for Sport, supra note 9, at 15.
76. Statutes CAS, art. 4, para. 2.
77. Id. art. 4, para. 1.
78. K. Mbaye, The Court of Arbitration for Sport, supra note 9, at 16.
79. K. Ioannou & S. Perrakis, supra note 1, at 131.
80. Statutes CAS, art. 5, L. 1.
case before the CAS are the following: the International Olympic Committee; the International Federations; the National Olympic Committees and their unions which are recognized by the I.O.C.; the Organizing Committee of Olympic Games; the National Federations and athletic unions, provided that they have a legitimate interest in the case.81 However, apart from the above mentioned committees and federations, any natural person or legal entity may have recourse to the CAS, provided that it has a legitimate interest, as well as the "capacity and the right of attendance."82 In compliance with the aforesaid rule, even public entities can have recourse to the CAS; this means that the statutes of the CAS follow any evolution that has taken place in the field of international arbitration, such as the waiver by the States of a competence normally reserved to its national judges.83

The CAS constitutes an international organ of arbitration for sports, with specific competence, which judges on the basis of its statutory provisions, and is competent to settle disputes arising from the exercise and the development of sports. In general, its competence covers all athletic activities related to matters of principle and to issues of economic interest for which the Olympic Charter has not foreseen any other kind of settlement. From the above analysis, it becomes obvious that the CAS does not differ at all from any "regular court of arbitration"84 that guarantees its own independence.

81. Id. art. 5, L. 2.
82. K. Ioannou & S. Perrakis, supra note 1, at 167; see also J.P.A. Francois, La Cour Permanente d'Arbitrage, RCADI, vol. 87, 1955 (1969); see also, K. Mbaye, The Court of Arbitration for Sport, supra note 9, at 16. He himself reports that "this resignation has been inserted to the agreement of the CIRDI of 1955."
83. See Statutes of CAS, art. 69 and Regulation art. 65-67. The CAS acts in three different capacities, regarding the settlement of disputes: either as a first and exclusive instance organ of arbitration, or as a second and final instance organ following an appeal by one of the parties against a decision made by the internal organs of a national or an international sports federation. The third function of the CAS refers to giving of legal opinions on sports issues.
84. CAS, Code of Sports-Related Disputes. 1. Joint Dispositions article 51 states that in order to settle, through arbitration, sports-related disputes, two bodies are hereby created: The International Council of Arbitration for Sport (ICAS) and the code of Arbitration for Sport (CAS). The disputes referred to in the preceding paragraph include in particular, those connecting with doping. The disputes to which a federation, association or other sports body is a party are matters for arbitration in the sense of this Code only insofar as the statutes or regulations of the said sports bodies or specific agreement so provide. The seat of the ICAS and the CAS is established in Lausanne, Switzerland. Article 52 provides that the Task of the ICAS is to facilitate the settlement of sports-related disputes through arbitration and to safeguard the independence of the CAS and the rights of the parties. To this end, it looks after the administration and the financing of the CAS. Article 53 provides that the CAS, which has a list of arbitrators, procures
IV. THE ARBITRATION AGREEMENT

The Arbitration Agreement includes the drawing up and signing of a document in terms of which the litigant parties indicate their wish to submit their litigation to the arbitration of the CAS, the selection of the Arbitrators, and the possibility to draw up jointly an agreement in writing regarding the settlement of their litigation throughout the entire judicial procedure and till a judgment is pronounced.

A. Agreement in Writing

Parties who decide to bring before the CAS litigation to be settled, have to draw up and sign an agreement that they agree to submit their litigation to the arbitration of the CAS. 85

This agreement is deposited at the Registrar of the Court and is drawn up with the co-operation of the litigating parties who decide its terms and form (a private contract, an original act or report from the CAS). The following elements should be indicated in an arbitration agreement: 86 Agreement upon stipulation in a contract:

"Every dispute arising hereof, which the litigant parties are not in a position to settle, will be definitely settled by a court constituted in accordance with the laws and the regulations of the Court of Arbitration for Sport. The parties undertake to comply with the aforesaid laws and regulations and to apply bona fide the judgement that will be pronounced."

Agreement entered between the parties in case of dispute:

85. Statutes CAS, art. 19. According to the Greek jurisprudence, the arbitration agreement is a sui generis contract governed by private law. Any arbitration agreement for the settlement of future disputes is legal only if drawn up in writing. The document, which is required for this arbitration agreement has constituent and not probative value. See Multimembered District Court of Athens, Judgement 2543/1992 in 41 LEGAL TRIBUNE 535. Compulsory arbitration, namely the arbitration imposed to the parties concerned without their agreement, is contrary to the constitution, as is provided by Greek Law, because the parties are thereby deprived of their natural judge. GREECE CONST. art. 9. This is also the prevailing opinion in the jurisprudence. Athens Court of Appeal, Judgment 1556/1994 in 48 ARMENOPoulos 464. According to Greek law, the arbitration agreement cannot be terminated by implicit waiver of the contracting parties. See Athens Court of Appeal, Judgment 4468, 4469/1992.

86. K. Mbaye, The Court of Arbitration for Sport, supra note 9, at 30.
“The parties agree that the dispute arising between them and relating to the X case, has to be settled by a court constituted in accordance with the laws and the regulations of the Court of Arbitration for Sport. The parties undertake to comply with the aforesaid laws and regulations and to apply bona fide the judgement that will be pronounced.”

By the arbitration agreement, the arbitrators are selected, the legal issues of the dispute are enumerated, and the identity of the litigating parties and their representatives in the Swiss Confederation are mentioned. There is also a fixed period during which all documents concerning the litigation must be sent to the CAS. All terms which the litigant parties agree to apply to their “trial are fixed.”87 In the event some of the above mentioned points have not been included, the arbitration agreement may be completed at a later time.88

The CAS may proceed to interpret the terms of the arbitration agreement, taking into account the opinions of the litigating parties.89 The representatives and consultants selected by the litigating parties must declare in writing that they accept the role for which the litigating parties have chosen them, and that they undertake the obligation to receive notifications of announcements and documents for communication.90

An application of both litigating parties with regard to the competence of the CAS to settle the dispute must be attached to the arbitration agreement. This application is examined by a council known as the “Council of Applications,”91 which is composed of the Executive President of the CAS, acting in quality of president, and by the other two members of the CAS.

The Council of Applications will give its opinion upon the validity of the application, that is, whether the CAS is competent to settle the litigation or not. If application is rejected by the Council due to incompetence of the CAS, the litigating parties can appeal the judgement within a period of fifteen days, beginning on the date they are notified. The final judgement upon the considered

87. Statutes CAS, art. 20.
88. Id. art. 20, see also, the Regulation of the CAS, art. 28.
89. Id. art. 25, see also, the Regulation of the CAS, art. 30.
90. Id. art. 21, see also, the Regulation of the CAS, art. 27.
91. Id. art. 20, see also, the Regulation of the CAS, art. 33.
issue falls within the jurisdiction of the competent Council asked to settle the dispute.92

The arbitration agreement cannot include terms incompatible with the statutes of the CAS. On the contrary, it is compulsory that the following clause is included in every agreement: "The parties hereby undertake to comply with the provisions of the statutes of the Court of Arbitration for Sport and apply bona fide the judgement that will be pronounced."93

If a specific term included in the agreement cannot be enforced or if no term providing for the powers of the arbitrator is included herein, the CAS, in order to cover the said gap, applies the Swiss law, its principles and its procedures.94

If any of the litigating parties die before the dispute referred to the CAS is settled and his/her heirs have not yet reached the age of majority, the procedure initiated by the arbitration agreement is not led to an end. In such a case the six month period fixed by the statutes may be extended according to the rules of the applicable Swiss legislation concerning the suspension.95

At the beginning of the arbitral procedure, the litigating parties must agree upon the official language (English or French) that they are going to use. In the case of disagreement, the President of the Council decides about the language to be used based on the arbitration agreement and bearing in mind the opinion of the other members of the Council.96

It is possible for the litigants to agree to use a language other than English or French. In such a case the consent of the competent Council is required.97 The litigants are charged with the expenses of translating the texts that the Council deems of decisive importance for the dispute submitted for arbitration.

92. The Regulation of the CAS art. 36.
93. Statutes CAS art. 22. According to the CAS Statutes and Regulations, this Arbitration Court cannot possibly pass a decision, which partly settles the dispute, nor a decision by which the parties agree to terminate the difference. This void can only be covered by the jurisprudence, according to Article 34 of the Swiss Intercantonal Agreement on Arbitration, which actually refers to the principles governing, according to the Swiss Law, any decision or agreement between the parties concerned. See CAS Decision 92/85.
94. Id. art. 23.
95. Id. art. 24.
96. Id. art. 26; See also the Regulation of the CAS art. 31
97. Id. art. 26; see also the Regulation of the CAS art. 32.
B. Possibility of an Agreement During the Arbitral Procedure

Before the ordinary arbitral procedure (written or oral) starts, the Council has the possibility of attempting to reach a settlement following summary proceedings.98

The possibility can either be stipulated in the arbitration agreement or be requested by one of the litigating parties.99 Even if such a provision is not included in the arbitration agreement, nor a compromisory settlement is required by the litigants, the Executive President of the CAS may ask the competent Council to state its position on the issue in question100 if the Executive President thinks that a compromisory settlement may be reached.

If the Council decides to attempt a compromisory settlement following summary proceedings, it informs the litigating parties and calls the plaintiff to deposit in writing his/her claims against the defendant within a specific time limit. These claims are notified to the defendant, who is called to submit to the Council his/her response within a fixed period of time.

If either the plaintiff or the defendant does not submit to the Council his/her claims or responses or fails to submit them in time, an end is put to the summary proceedings and to the endeavour to reach a compromise. The dispute is then settled following the ordinary procedure, written and oral.

If the litigating parties agree on arriving at a compromise solution and accomplish the above mentioned acts, the Council calls them to provide it with supplementary arguments. The litigants can attend the meetings of the Council either in person or by representatives and be assisted by a Consultant.

After having heard the supplementary arguments of the litigating parties, the Council draws up its proposals and notifies the litigants, who have to comment them within a certain period of time. The litigants should also declare whether they agree or disagree with these proposals. The litigants can agree in full with the proposals of the Council, or agree on certain points and disagree on others. In the event of a partial agreement, the ordinary procedure will be followed to settle the dispute.

The agreement shall be signed by the President of the Council, the Secretary General and the litigants. The following sentence precedes the signature of each party: “He has signed and under-

98. Id. art. 29.
99. Id. art. 30; see also the Regulation of the CAS art. 39.
100. Id. art. 31.
takes to execute *bona fide* the obligations arising from the present settlement.\(^{101}\)

The litigants may draw up an agreement at any moment before the judgement is pronounced.\(^{102}\) In terms of such an agreement, the dispute is settle on their own initiative and the competent Council is requested to approve the agreement.\(^{103}\) One of the litigants, may however, notify the Registrar of the Court Office of his renunciation from the litigious agreement even without the consent of the opponent. The latter is then duly informed by the Court Office and has to acknowledge his/her opinions and remarks within fifteen days. If no agreement is reached by the deadline, the dispute is settled according to the ordinary procedure.\(^{104}\)

The decisions passed by the CAS remain secret and are not published, unless the parties otherwise agree, or the CAS considers it advisable that the decision be published,\(^{105}\) despite the fact that any of the parties concerned may disagree.\(^{106}\)

V. CAS JURISPRUDENCE\(^{107}\)

A. The CAS as a First Instance Organ

CAS Case 86/01, January 3, 1987

*Subject:* Re-Examination of Disciplinary Sanctions - Breach of the Fair-Play Rules.

"When a Coach takes a cane and turns it against other players, or against the referee, this is contrary to the fair-play rules, which must be strictly observed at every game. Objectively, the nature of X's attitude could possibly entail such a disciplinary sanction."

CAS Case 87/10, July 15, 1989

*Subject:* Coach Labor Agreement - Term - Invalid Termination - Principle of Good Faith.

\(^{101}\) *Id.* art. 32.

\(^{102}\) *Id.* art. 33.

\(^{103}\) *Id.* art. 34.

\(^{104}\) *Id.*, art. 35-38, 58 par. 2, and 59.

\(^{105}\) CAS Regulation art. 61, para. 1. According to article 50 of the CAS Statutes and to article 49 of the CAS Regulation, the hearing of the case is held in camera.

\(^{106}\) Opinions given by the CAS may be published without restrictions. *See* CAS Regulation art. 67.

The diligence, that a Sporting Club Committee must display where its contractual relations with its referee are concerned, and the principle of good faith make necessary the conclusion of at least two-year-term contractual commitments. The need for this kind of agreements is even more enhanced by other factors, such as the conclusion of a leasehold agreement (by the referee) lasting up to the end of the second season. No doubt that the attitude of the said sporting club can be explained by the fact that this club gradually realized the enormous financial risk it was obliged to take, but this cannot possibly release it from its assumed responsibilities.

CAS Case 87/27, July 31, 1990

Subject: Exclusive Radio Broadcasting Agreement - Invalid Termination

The Arbitration Court verified that the termination of the agreement in question made by the International Federation, in April 1989, was not legal, since it did not actually observe the terms of the agreement, although the latter remained in force. After having considered the relative facts, the CAS granted to the plaintiff Broadcasting Company partial damages, to the extent designated by the reasonable judgement of this Arbitration Court, according to the provisions of the Swiss Law in force.

CAS Case 90/44, September 24, 1991

Subject: Participation in the Preliminary Qualification Games - Racial Discriminations by an International Federation Against a National Federation - Principle of Equality and Principle of Non-discrimination Against the Members of a Federation.

According to the provisions of the Status of the said International Federation "discriminations are allowed against national federations or against individuals (contestants, officials, judges, delegates etc) on the basis of their race, sex, religion or political beliefs" . . .

"in the future . . . this International Federation will be obliged to choose the place, where the preliminary qualification games are to be held under its own responsibility, namely in a country where the plaintiff national federa-
tion will be given the opportunity to participate in the games and to prove its chances”.

CAS Case 91/45, March 31, 1992

Subject: Sponsor Agreement - Definition - Term - Absence of Legal Grounds for Termination by the Sponsor - Athlete’s Joint Responsibility - Athlete’s right to Practise a Supplementary Sport.

As results from the aforesaid facts, as a whole, the parties have entered a sui generis agreement, comprising certain aspects of the licence agreement, the mandate agreement and the agency agreement; this kind of agreement is frequently used in the sport practice and is generally known as ‘the Procurement Agreement’ . . . . As a matter of fact, such a procurement agreement is subject to a certain time-limit between the conclusion and the implementation of the contract . . . . Consequently, the fact that the athlete has granted his name and his good reputation to the sponsor for promotional reasons, refers to certain aspects of the licence agreement . . . . In particular, the qualification given to this agreement is in conformity with the prevailing legal theory, which actually considers the various kinds of sponsor agreements, including the procurement agreements, as sui generis contracts, comprising certain aspects of other contracts, either named or not . . . . In this case, the Court judged that the athlete was actually in breach of the contract, since he failed to inform S of the fact that he (the athlete) intended to practise a supplementary sport and that he was, therefore, obliged to slightly reduce his activities in the field of his principal sport . . . . Notwithstanding the obligation of previous notice to the sponsor, the Court is hereby pointing out that the plaintiff, namely an athlete practising the aforesaid sport, was free to practise also a supplementary sport. In fact, the sponsor was not justified to prevent the athlete from practising another supplementary sport, provided that this practice was not prejudicial to the sponsor.

CAS Case 92/80, March 25, 1993

Subject: Basketball Player’s Double Nationality - Single Sports Nationality - Applicable Law: non-application of the Swiss,
German and European Community Law - Applicable Federation Law - Time limit in case of not arbitrary change of the sports nationality.

The basketball player B has, by birth, both the American and Belge nationalities. He played as a foreigner with a Swiss team, during the season 1990-1991 and with a French team during the following season. In the process, he was engaged by a Belge team, for the period starting on August 1, 1992 and ending on July 31, 1995. On August 20, 1992, the International Basketball Federation (FIBA) let the Royal Basketball Federation of Belgium know that, according to its Regulations governing the national status of the players, B had the American basketball nationality in the European games of the teams and that he was entitled to request the change of his basketball nationality, provided that a three-year period has passed before he is given the opportunity to play under the Belge basketball nationality.

Both B and the FIBA referred the case to the CAS. The basketball player requested that this Arbitration Court declare that, since the player is a Belge citizen by birth, he is entitled to participate with his team in the games, which are going to be held within the framework of the European Cup and of the National Belge Championship, as a professional player having the Belge nationality. He pointed out, in particular, the right of free movement for workers within the European Union, which is especially prescribed by Article 48 of the Rome Treaty, also maintaining that the application of the FIBA rules actually submits this freedom to certain restraints.

As is prescribed by Article 187, paragraph 1 LIDP, the Court of Arbitration gives its awards, according to the legal provisions chosen by the parties, or in absence of such an option, according to the provisions of law, to which the case on trial is more related. In this case, the Court of Arbitration judged that, in absence of option by the parties, the only relation the dispute has with Switzerland is that the latter happens to be the country where the arbitration is held; nevertheless, this fact cannot possibly
establish the application of the Swiss Law in substance. The CAS, therefore, excluded the application of this law.

Thus, the CAS judged that, where B's financial activities are concerned—and not his participation in the European games of the teams, which is irrelevant to this field of activity—his engagement as American or Belge basketball player by the Belge team has nothing to do with another member state. Consequently, it seems that no mention can be made to the freedom of movement for workers within the European Union, in accordance with Article 48 of the Rome Treaty and, therefore, the Court excluded any such application of the European Community Law in this case.

... 

In the event that the parties have not designated any national law as applicable in the case on trial, then the case is governed by the FIBA Status and Regulations.... The Federal Law, governing the said Federation, happens to be a series of private law provisions with international force, which must be applied within the framework of the Basketball regulations. Thus, for the settlement of the dispute on trial, the Court of Arbitration actually applied this Federal Law, without having recourse to any national law whatsoever in substance. On the other hand, the provisions of the said Federal Law have been interpreted, in conformity with the general principles of law. In substance, the CAS overruled B's petition, mentioning at the same time the confusion, which actually exists between the notion of a player's "legal nationality" and his "basketball nationality", according to the terms of Articles 1.6 and 1.7 of the FIBA Regulations.

In particular, the CAS estimates that there are two different notions: the first refers to the player's personal status, resulting from the nationality of one or more countries, while the other is a purely sport sense, determining the criteria for the qualification of athletes and for their participation in the international sports events. This means that there are two different legal orders—one governed by public law and another governed by private law—which neither coincide nor conflict with each other. Thus, the provisions of the FIBA Regulations governing the Basketball player's single sports nationality are not
contrary to the sovereignty of States, especially regarding the nationality and their relative competence.

The CAS estimates that the FIBA Regulations, based on the unity of sports nationality for basketball players, cannot be arbitrary. The said Regulations must respond to this International Federation's legal requirement to obstruct any change of basketball nationality, which does not result from the player's free will or interest, and to preserve, therefore, the player's right and opportunity to choose another sports nationality. Furthermore, the CAS points out that, during the three-year waiting period, which is especially prescribed to this effect, the player B has not been prevented in any way whatsoever from practising his professional activities, since he had always the right to play with his team as a foreigner. On the other hand, participation in the European games does not merely depend on the payer's personal qualification, but also on his team's qualification. In the CAS's opinion, the said waiting period does not appear disproportionate.

CAS Case 92/81

Subject: Exclusive Licence Agreement - Links Relating the Dispute with Sports - Invalid Termination

In this case, the bond connecting the dispute with the sporting field results from the fact that the vessels mentioned in the contract are sports vessels. Besides, it seems that the conclusion of the contract is not only related to the plaintiff's certain technical qualities, but also to his reputation as a navigator (since the agreement actually refers to this player's participation in maritime games) . . . nothing can prevent the CAS from accepting to settle a dispute, which has been submitted to it by the parties, even though this dispute does not actually fall within the scope of Article 4 of the Statutes. To this effect, the members of the Court of Arbitration must all agree. This is the case, when the dispute is somehow related to the sports, but these bonds cannot be considered satisfactory.
B. The CAS as a Court of Appeal

A great number of cases judged on appeal by the CAS actually refer to the doping of horses. One of them is, in our opinion, more interesting, having to do with the rider’s responsibility, so it is quoted hereinbelow, while the others are merely mentioned.

CAS Case 92/73, September 10, 1992

Subject: Doping of Horses - Rider’s negligence - Medical Treatment by Use of Prohibited Substances - Obligation for Description Of the Treatment - Extenuating Circumstances.

As a matter of fact, the rider’s responsibility is evident, for the following two reasons:
At first, the appelant was obliged to make sure that the substance having been given to his horse was not a prohibited product. Even though it should be taken into account the fact that, apparently, his veterinarian was not well informed, or that, in any case, he did not bring to the rider’s attention the fact that “Benadryl” was a prohibited product, this does not mean that, since the composition of the product was clearly indicated on the label of the bottle, the rider had not at his disposal everything concerning the purity of the product.

On the other hand, it is evident that the rider was obliged to keep the veterinarian of the games informed of the medical treatment having been given to his horse. In fact, everyone responsible for the horse has the aforesaid obligation even though the horse is subject to a legal medical treatment, in accordance with Article 177 paragraph 5.3 of the General Regulations. Furthermore, this obligation results from Article 1009, paragraph 11, of the Regulations, according to which if a horse is subject to a medical treatment following an illness or injury occurring right before or during the games, then the Veterinary Committee / Delegation will be obliged to relatively inform the President of the Judges of the games, so that they decide together whether the horse is still in the position to participate or to keep on participating in the games.

Consequently, within the spirit of the fight against doping, which has been assumed by the Federation on behalf of the riders, their obligation to designate which medical treatments can possibly give rise to certain problems before the games.

Nevertheless, the rider is entitled to plead for certain extenuating circumstances. He demonstrated full confidence to his veterinarian, who procured the Prohibited
product to the horse. As a matter of fact, he gave to the horse an apparently classical substance, which is widely used by veterinarians. However, the bottle containing the Prohibited substance, although it mentions the composition, does not explicitly mention that this product is a prohibited substance. In the end, the rider honestly confessed, at the hearing of the case, that he had submitted his horse to a medical treatment with Benadryl.

CAS Case 91/53, February 10, 1992

Subject: Doping of Horses - Non Observance of the Right For Previous Examination of the Parties - Double Alternative Time-limit.

CAS Case 91/56, July 25, 1992

Subject: Doping of Horses - Counter-evidence for Acquittal - Badly Closed Bottles for the Specimen of Urine - Principle of the Benefit of Doubt.

CAS Case 92/63, October 15, 1992

Subject: Doping of Horses - Legal Presumption - Reversion of the Burden of Proof - Possibility of Counter-evidence for Acquittal.

CAS Case 92/70, October 13, 1992

Subject: Doping of Horses - Methods of analysis - Principle of the Benefit of Doubt - Presumption of Innocence.

CAS Case 92/71, October 20, 1992

Subject: Doping of Horses - Rider’s Deliberate Attempt to Change the Performance of his Horse - Medical Treatment by use of Prohibited Substances - Rider’s Obligation for Diligence.

CAS Case 72/74, January 29, 1993

Subject: Doping of Horses - Urine Analysis - Use of Bottles made of Malleable Plastic - Unjustified Accusation
CAS Case 92/84, February 27, 1993

Subject: Doping of Horses - Observance of the Right for Previous Examination of the Parties - Non Acceptance of Oral Proceedings

CAS Case 92/86, April 19, 1993

Subject: Doping of Horses - Presumprion of Deliberate Attempt, According to New Articles 177.5.2 and 177.5.3 of the General Regulation of the Federation - Reversion of the Burden of Proof - Absence of Evidence For the Rider's Good Faith.

C. Opinions Given by the CAS

The following summaries of opinions given by the CAS refer to subjects such as the participation in the Olympic Games of athletes having been punished for use of doping substances, the exclusion of a member of an International Federation, the observance of the terms of the Statutes, the nature of martial arts in sports, the sense of professional sports reporter and the right of accreditation in the major sport events.

Opinion 86/02, November 10, 1986

Subject: Question of the International Olympic Committee, Regarding a Petition of a National Olympic Committee - Participation or Not in the Olympic Games of Athletes Having Been Punished for Use of Doping Substances.

The CAS estimates that a decision made by the National Olympic Committee as to the exclusion from the Olympic Games of an Athlete having been punished for use of doping substances is contrary to the Directives of Article 26 of the Olympic Chart, provided that the following requirements occur:

- It must be evidenced that the athlete has knowingly (or deliberately) contravened the rules on doping or has “manifestedly violated”, in any possible way, the fair-play spirit in sport practice.
- In case of breach of the rules on doping, the substances found must be on the list of prohibited products, according to the Medical Code of the International Olympic Committee.
- The procedure prescribed by the Medical Code of the International Olympic Committee must be strictly observed.
CAS Opinion 87/03, March 1987

Subject: Question of the President of the International Olympic Committee - Unification of a Sport of Martial Arts.

The President of the International Olympic Committee is requested to take every possible action, so that the said sport not be comprised in the Programme of the Olympic Games, unless this sport has already been unified.

CAS Opinion 88/15, August 31, 1988

Subject: Exclusion of a National Federation member of an International Federation - Statutory Conditions - Respect of the Right for Previous Examination.

Any decision regarding the exclusion of a Federation must be taken by the Council and must be ratified, in the process, by the Congress. . . . Consequently, the CAS judges of a Federation - member of the International Federation cannot possibly request that a petition for the exclusion of another federation be comprised in the agenda of an ordinary Congress, without having previously observed the procedure prescribed by the Status. . . . The right of previous examination is fundamental, according to the Swiss Law and, therefore, the Congress of the International Hockey Federation cannot possibly decide on the exclusion or the expulsion of a national federation-member, if the latter has not been given the opportunity to be previously examined.

CAS Opinion 91/51, June 18, 1991


A Professional Sports Reporter is considered any such person who:
- Has been recognized as a professional reporter by the competent public or private authorities of the country of which this person is a citizen, or of the country where they permanently or temporarily resident, or of the country where they practice its professional activities, and
- Actually practises, as their principal professional activity, the job of reporter specialized in sports, either in a sports newspaper or sports
magazine, or in the sports column of a newspaper of general information, or in a news agency or in a radio or television station"

The decisions regarding the accreditation of reporters in the major international sports events fall within the competence of the international sports organizations, governing the said sports, or of the organizations designated to this effect by them. . . . The competent organs for the accreditation must guarantee that fair priority will be granted to the professional sports reporters—members of a national association recognized by the AIPS, provided that it will be always assured the required presence of any other person working in the mass media.

VI. CONCLUSION

The selection of arbitration for the settlement of a dispute establishes a legal relation. This legal relation is materialized by the arbitration agreement and the possibilities provided by it, as described above. It is a means of applying general and abstract rules of law in each case. It involves a more flexible procedure of a "trial" than a state trial. Its criteria are based on either internal or private international rules.

It could be maintained that the arbitrators of the CAS are not the "natural-legal" judges of the disputes submitted for arbitration. In other words, they do not incarnate the competent jurisdictional authority.

The following argument can be opposed to this opinion: the arbitration agreement expresses the real wish of the parties concerned to exclude the jurisdiction of the state courts and provides the arbitrators with the necessary power. It makes them by operation of law "natural-legal" judges.

However, the possibility to contest the CAS as the most impartial organ of settlement of disputes is based on the aforesaid considerations: the founder of the CAS is the International Olympic Committee, an international organization, which may be brought to it by a legal action. This is why the foundation of a Supreme Council of International Arbitration for Sports has to be completed as soon as possible. The responsibility of guaranteeing full independence to the CAS will be transferred to this Council.108
