

Are CAS Arbitrations Governed by the New York Convention?

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Last week I attended a wonderful conference at Pepperdine Law School on international sports arbitrations administered by the Court of Arbitration for Sport (CAS). It is a remarkably sophisticated regime that deserves far greater attention than it typically receives by the international arbitration community.

Under the CAS Rules, all CAS tribunals have their seat in Lausanne, Switzerland and therefore all CAS awards are Swiss arbitral awards. Consequently one would think that their enforcement outside Switzerland would be governed by the New York Convention. But I have my doubts that the New York Convention governs these disputes. The disputes in question almost always relate to allegations of doping by amateur athletes. The issues in dispute are questions of liability—did the athlete fail a presumptively-valid drug test—and punishment—typically suspension from competition for a fixed period of time.

Under the New York Convention, of course, each country is given the option on ratifying the New York Convention “to declare that it will apply the Convention only to differences arising out of legal relationships . . . which are considered as commercial under the national law of the State making such declaration.” The United States and numerous other countries have made such declarations.

So in light of the limitation of the New York Convention to only “commercial” relationships, one wonders whether the typical doping and suspension arbitrations

of an amateur athlete are governed by the New York Convention. (Obviously there will be many CAS awards that do deal with “commercial relationships”, particularly in the professional sporting context.)

If not, then this means that an athlete who loses a CAS award—which is typically the case in the doping context—may have broader authority to challenge the recognition and enforcement of the award than one might expect. At least in the United States, this likely would mean enforcement of CAS awards under Chapter 1 of the FAA and state arbitration laws (and perhaps federal common law of foreign arbitral awards). This could be particularly important if the athlete seeks to re-litigate the question of liability or punishment and seeks the non-recognition of the CAS award.