

Kluwer Arbitration Blog

2024 PAW: Sports Law and the Upcoming Olympics – What Role for Arbitration?

Janice Feigher (Feigher Dispute Resolution) and Hervé Le Lay, Charles Denis (MCL-Arbitration) · Thursday, March 21st, 2024

On 19 March 2024, as part of the 8th edition of Paris Arbitration Week, the *Comité Français de l'Arbitrage* (CFA) organized a much-awaited and well-attended event on Arbitration, Sports Law and the Olympics, only a few months before the opening ceremony of the Olympic Games Paris 2024. Attendees were welcomed by [Janice Feigher](#) (Secretary General of the CFA, Counsel and Arbitrator at Feigher Dispute Resolution) as host speaker, at the *Maison de la Chimie* in Paris.

The panel was composed of renowned sports arbitration specialists [Hervé Le Lay](#) (Partner at MCL Arbitration and Arbitrator at the Court of Arbitration for Sport (CAS arbitrator)), [Matthieu Reeb](#) (CAS Director General), [Carole Malinvaud](#) (Partner at Gide, Board Member of the International Council of Arbitration for Sport (ICAS) and Chair of the CAS Ordinary Division) and [Prof. Antonio Rigozzi](#) (Founding Partner and Head of the Sports Arbitration Department of Levy Kaufmann-Kohler, counsel in sports arbitrations and arbitrator in sports-related disputes outside the CAS).

On General Role and Operation of CAS

The event kicked off with a presentation by Hervé Le Lay of the general role and operation of the CAS. Located in Lausanne, the arbitral institution is a success. Not only is it now one of the busiest international arbitral institutions (with 900 cases per year on average), but it also ensures the rendering of effective awards under its *aegis*, as confirmed by the Swiss Federal Tribunal (SFT) in 1993 in the *Gundel* case and by the European Court of Human Rights (ECtHR) in 2018 in the *Pechstein* case. As per the CAS Rules, all arbitral proceedings are to be seated in Switzerland, thus concentrating challenges to its awards before the SFT. Those remain quite rare and have a very low success rate.

Created in 1984 on the initiative of the International Olympic Committee (IOC), the CAS eventually parted ways with the latter and gained its full independence, with the ICAS taking over the managing role of the institution in 1994. The ICAS' role is key as it aims at safeguarding the independence of the CAS, deciding on challenges against arbitrators and appointing them where necessary. It also administers the list of CAS arbitrators, which now includes more than 450 names.

The arbitration proceedings under the CAS rules are twofold, either “ordinary” or on “appeal”. As regards the latter, it generally consists of appeals against decisions of federations or sport-related bodies. This is a full appeal in which the arbitrators have a full *de novo* review power. In such proceedings, the basis of the CAS’ power is often to be found in the statutes of the federation or sports-related body whose decision is appealed. Appeal proceedings encompass a wide variety of disputes, ranging from disciplinary decisions (antidoping, match fixing, etc.) to electoral or membership disputes within federations, and also employment-related disputes, particularly in football. Awards are generally published. Ordinary proceedings are more akin to commercial arbitrations and mainly consist in contractual disputes (e.g., on agent’s fees, transfer pricing, employment, etc.), based on arbitration clauses included in contracts. Ordinary awards are generally confidential.

The CAS is a sports-related institution, hence the question of its jurisdiction *ratione materiae*. In this respect, the drafting of the rules is very broad, with article R27 providing that “*Such disputes may involve matters of principle relating to sport or matters of pecuniary or other interests relating to the practice or the development of sport and may include, more generally, any activity or matter related or connected to sport*”. In this regard, Matthieu Reeb commented that he knew of only one example where CAS considered, at a very early stage, that it could not hear the dispute for lack of connection to sports, namely when the animal rights organisation PETA filed a complaint against the organization of rodeos (*i.e.*, a cultural and not a sport event) during the Olympic Winter Games Salt Lake City 2002 as part of the cultural program. The discussion then moved on to the possible jurisdiction of the CAS over E-sport disputes and all panelists agreed on the possibility of this development happening in a near future.

Special Role of CAS During the Olympics

Matthieu Reeb and Carole Malinvaud then discussed the special role of the CAS during the Olympics and how it ensures the swift and effective resolution of disputes in such events. Right before the Atlanta 1996 Summer Olympics, the ICAS created an *ad hoc* Division specifically aimed at resolving Olympic Games disputes, with the tagline “*fair fast and free*”. With the professionalization of athletes, the creation of a special structure and of a fast-paced mechanism compatible with the rhythm of the Olympic Games was deemed necessary to avoid time-consuming proceedings before national courts which might paralyze some events. Six procedures were registered in the first edition, proving this initiative to be efficient. The CAS *ad hoc* Divisions are also used for other sports events such as the FIFA World Cup, the UEFA Euro and the Asian Games.

Ad hoc Divisions have been organised during all Olympics ever since, being composed of 12 arbitrators (9 for the Winter Games) from different countries and profiles, potentially working around the clock as decisions are to be rendered within 24 hours. Proceedings are conducted in English, French or Spanish and are free. A group of pro bono lawyers is usually available. There are ongoing discussions about the creation of such a pro bono lawyers group to legally represent athletes with less financial means during the upcoming Olympics in Paris.

The *ad hoc* Divisions have jurisdiction to hear any disputes arising on the occasion or in connection with the Olympics, from 10 days before the opening ceremony and up to the closing ceremony. In this respect, article 1 of the Arbitration rules applicable to the CAS *ad hoc* Division

for the Olympic Games, refers to “[...] *any disputes covered by Rule 61 of the Olympic Charter*”. The said Rule 61 states that “[a]ny dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport, in accordance with the Code of Sports-Related Arbitration” and all athletes consent to such dispute resolution method in the entry form they have to sign. This does not cover field of play matters (i.e., decisions made by referees or umpires or juries), unless there are fraud or corruption allegations, but this is a high threshold to reach. A number of disputes relates to the eligibility of athletes to compete in the Olympic Games.

Provisional measures can be awarded, applying the classic criteria in arbitration of risk of irreparable harm, chances of success and balance of the parties’ interests. In this respect, the panelists referred to the well-known saying “*the most important thing is not to win but to participate*”. This was notably an important factor for the arbitrators when deciding that Kamilia Valieva, a Russian figure-skater, could participate despite a positive anti-doping test reported in the middle of the Olympic Winter Games Beijing 2022. The consequences of not letting her compete were deemed more material and irreparable than those of letting her compete.

The Role of Counsel in Arbitration at the Olympics

The event ended with insightful remarks from Prof. Antonio Rigozzi on the role of counsel in arbitration proceedings during the Olympics. The starting point here is the 24-hour time frame, which must necessarily lead practitioners to forget common practices in arbitration, including selection of arbitrators, case management conferences, expert reports, written witness statements, procedural calendars and sophisticated submissions. Prof. Rigozzi described the proceedings as “*rock n’ Roll, with no safety net*”, for the sake of time-effective results.

Prof. Rigozzi’s main advice to practitioners in the room was to prepare and focus on decisive aspects and winning points, by studying each of the 12 arbitrators of the “*season*” and identifying potential trends, ways of interpreting regulations, etc. One must also know the applicable law, namely the Olympic Charter and the federations’ regulations, which leave room for interpretation. What is more, one ought to be familiar with past decisions on common issues during the Olympics (eligibility cases, anti-doping, etc.).

Finally, Prof. Rigozzi emphasized the decisive role of hearings in Olympics arbitration. Amid the potential lack of evidence, arbitrators have a fact-finding role they deem important to fulfill. Hence counsel should expect that new documents, new arguments, etc. will be admitted in what are usually very long and exhaustive hearings. During the Paris Olympics, for the first time in history, the *ad hoc* Division will sit in an actual court room at the *Tribunal Judiciaire* of Paris.

To make sure you do not miss out on regular updates from the Kluwer Arbitration Blog, please subscribe [here](#). To submit a proposal for a blog post, please consult our [Editorial Guidelines](#).

Profile Navigator and Relationship Indicator


Access 17,000+ data-driven profiles of arbitrators, expert witnesses, and counsels, derived from Kluwer Arbitration's comprehensive collection of international cases and awards and appointment data of leading arbitral institutions, to uncover potential conflicts of interest.

Learn how **Kluwer Arbitration** can support you.



Newly updated

Profile Navigator and Relationship Indicator Tools

 Wolters Kluwer

Request your free trial now →

This entry was posted on Thursday, March 21st, 2024 at 8:06 am and is filed under [CAS arbitration](#), [Paris Arbitration Week](#), [Sport arbitration](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.