

Yearbook of International Sports Arbitration 2015

Antoine Duval · Antonio Rigozzi
Editors

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Editors

Antoine Duval
ASSER International Sports Law Centre
T.M.C. Asser Instituut
The Hague
The Netherlands

Assistant Editor

Erika Hasler
Levy Kaufmann-Kohler
Geneva
Switzerland

Antonio Rigozzi
Faculté de droit
Université de Neuchâtel
Neuchâtel
Switzerland

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Preface¹

The publication of this inaugural issue of the Yearbook of International Sports Arbitration could not be more timely. 2015 has been a momentous year for the Court of Arbitration for Sport and international sports (law) in general, and 2016 promises to be just as eventful.

On a systemic level, just as the curtains were drawn on 2014 with the *SV Wilhelmshaven* case taking the stage,² 2015 was off to an explosive start with the Munich *Oberlandesgericht*'s decision in Claudia Pechstein's dispute against the International Skating Union.³ Pechstein's challenge to the CAS system, which led to the German regional court's decision refusing to enforce a CAS award that had previously been upheld by the Swiss Federal Tribunal, has been seen as a dramatic setback for the world court of sports. The questions raised in and around the *Wilhelmshaven* and *Pechstein* cases deserve the international sports community's utmost attention and cannot be left unanswered: a point starkly illustrated, among others, by the CAS's unprecedented initiative, in March 2015, of issuing a press release stating its position in the aftermath of the OLG München's decision in the *Pechstein* case. That said, as recognized by the German court itself, the value of having a single body adjudicating international sports disputes by fast, flexible and relatively inexpensive arbitration cannot reasonably be questioned.

In light of the foregoing, it is only fitting for the YISA 2015 to open with Jan Paulsson's firm reminder of the indispensable function the CAS was set up to fulfil in the international sports arena. The CAS's usefulness and legitimacy arise from and must be assessed in the light of that very function. Professor Paulsson rightly points out that, without the CAS, the international sports community would return to the chaos that reigned before that institution's establishment. In view of this, those who call for the CAS's dismantlement bear the responsibility of putting

¹The editors would like to thank Erika Hasler for her outstanding editorial assistance and Marine Montejo for her support in reviewing the proofs.

²See Duval's commentary at pp. 315–334.

³See Maisonneuve's commentary at pp. 335–347.

forward a valid and viable alternative. Returning to the *status quo ante* is an untenable proposition.

The fairness and usefulness of the CAS system must also be assessed in light of the (quality of) the awards rendered by its panels in the ever-growing number of cases that are adjudicated every year.⁴ While commentators and the courts were busy discussing the virtues and flaws of the CAS system, CAS panels continued to play their fundamental role in interpreting sports regulations and deciding disputes. In this respect too, 2015 has witnessed many important developments. The *Juventus* case showed the importance of the interpretive approach and techniques adopted in dealing with complex regulations and confirmed that CAS is far from being a kind of rubberstamp body confirming the sports-governing authorities' decisions.⁵ In this case the arbitrators showed that they were fully prepared to test the validity of sports regulations against the relevant national law as well as the broader EU law context, and to disapply any regulation or interpretation that would not meet such legality test.

Reverting to Prof. Paulsson's appraisal, more than three decades after its creation, the CAS remains above all "a fascinating example of transnational institution-building". This is apparent, *inter alia*, in the influence of different legal traditions upon its practice and procedures.⁶ The increasing sophistication of the system was equally visible, in the past year's case law, in the panels' approach to procedural issues such as standing to appeal⁷ and the impact of the amended Article R57 of the CAS Code on the admissibility of evidence,⁸ but also in their jurisdictional rulings.⁹

The CAS's case law in 2015 was further marked by the sensitive questions arising from violent nationalist incidents and the attendant issues of liability.¹⁰ More generally, football law—from transfers and so-called sell-on clauses¹¹ to domestic rules on the promotion and relegation of clubs¹²—has continued to generate interesting decisions.

While football disputes take up a great share of the CAS's docket, another source of complex legal questions as well as high-profile disputes is anti-doping. 2015 has seen the entry into force of the third edition of the WADA Code, and the decisions applying the WADC's new provisions have begun to emerge.

⁴2015 was also a record-breaking year with regard to the number of new cases registered, almost 500 (see Reeb M. (2015) Message from the Secretary General. CAS Bulletin (Issue 2) 4).

⁵See Duval's commentary at pp. 155–168.

⁶See Ioannidis' article at pp. 17–38.

⁷See Zagklis' commentary at pp. 219–234 and Anderson's commentary at pp. 203–218.

⁸See Levy's commentary at pp. 169–186.

⁹See Crespo and Torchetti's commentary at pp. 275–297.

¹⁰See Zagklis' commentary.

¹¹See Lambrecht's commentary at pp. 187–202 and Colantuoni and Devlies' article at pp. 73–91.

¹²See Haindlova's commentary at pp. 299–312.

The regulations may have changed, but the challenging questions arising from the constantly evolving doping techniques and the difficulty of integrating scientifically sound detection and analytical methods, as well as appropriate evidentiary rules and practices into a coherent (and fair) legal framework remain unabated. In the *Dutee Chand* case, one of the most sensitive decisions in 2015, science and the law have again shown their respective limits at the crossroads of eligibility rules based on gender.¹³ Still in the realm of disciplinary and eligibility disputes, only months after the conclusion of the Council of Europe's Convention on the Manipulation of Sports Competitions (in September 2014), Vanessa Vanakorn's case in the wake of the 2014 Sochi Winter Olympic Games was the object of much media attention. The CAS award in the *Vanakorn* case shows that while sports-governing bodies have a legitimate interest in vigorously fighting any kind of sports fraud or manipulation, be it doping or match-fixing, the athletes' rights and fundamental principles of law cannot be overlooked.¹⁴

International sports arbitration is not the exclusive remit of the CAS. In addition to the important role played by the courts¹⁵ and national sports arbitration tribunals (which will certainly be the object of future studies in this Yearbook), the Basketball Arbitral Tribunal, soon to celebrate its 10th anniversary, is undoubtedly another very successful experiment in the institutionalized resolution of sports-related disputes. The significance of the BAT can no longer be ignored by sports law practitioners and academics, which is why, after the short introduction included in the present volume,¹⁶ the YISA will devote a specific section to the review of its case law in future issues. Finally, being seated in Switzerland, both the CAS and the BAT are subject to the supervisory jurisdiction of the Swiss Federal Tribunal. Accordingly, every volume of the YISA will include a final section providing an overview of the SFT's most significant decisions with regard to sports arbitration in the relevant year.¹⁷

The production of this inaugural volume would have been impossible without the dedication of our contributors, who deserve our deepest gratitude. The diversity of their profiles and backgrounds is truly remarkable, and I hope that more sports arbitration practitioners and scholars will be attracted to this new publication in the future, contributing to giving international sports arbitration its *lettres de noblesse*...

Neuchâtel, Switzerland

Antonio Rigozzi

¹³See Viret and Wisnosky's article at pp. 39–72 and commentary at pp. 235–273.

¹⁴See Anderson's commentary.

¹⁵See Blackshaw and Pachmann's article at pp. 93–110 and Maisonneuve's commentary.

¹⁶See Hasler's article at pp. 111–152.

¹⁷See Hasler and Hafner's commentary at pp. 351–388.

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Abbreviations

CAS	Court of Arbitration for Sport
CAS Code	Code of the Court of Arbitration for Sport
CC	Swiss Civil Code
CCP	Swiss Code of Civil Procedure
CHF	Swiss Franc
CJEU	Court of Justice of the European Union
CO	Swiss Code of Obligations
CONI	Comitato Olimpico Nazionale Italiano/Italian Olympic Committee
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
EU	European Union
FIBA	Fédération Internationale de Basketball
FIFA	Fédération Internationale de Football Association
FIFA DC	FIFA Disciplinary Code
FIFA DRC	FIFA Dispute Resolution Chamber
FIFA PSC	FIFA Player Status Committee
FIFA RSTP	FIFA Regulations on the Status and Transfer of Players
FIFA TMS	FIFA Transfer Matching System
IBA Rules	International Bar Association Rules
ICAS	International Council of Arbitration for Sport
IOC	International Olympic Committee
ITC	International Transfer Certificate
NYC	New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards
OJ	Official Journal
PILA	Swiss Private International Law Act
SFT	Swiss Federal Tribunal/Tribunal fédéral suisse
SGB	Sports-Governing Body
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UCI	Union Cycliste Internationale

UEFA	Union of European Football Associations
UEFA FFP	UEFA Financial Fair Play Regulations
WADA	World Anti-Doping Agency
WADA Code	World Anti-Doping Code