

CAS Arbitration

Why does Swiss law matter?

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- Main feature of Swiss arbitration law which are important for sport arbitration

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- Why you will find so many reference to Swiss law in CAS awards

⇒ **Fosters equal treatment among athletes**

Why arbitrate sports disputes?

- **What kind of sports dispute?**
 - Contractual
 - Challenges of sports governing bodies' decisions
- **Why arbitration?**
 - **Avoid state court intervention / interference**
 - Maintain some control over the process
 - **Allow athletes (and clubs) an effective access to justice**
 - Fair, (relatively) inexpensive, fast(er than state courts)

Why does Swiss law matter?

- **Always determines the CAS legal framework**
 - Is CAS arbitration genuine “arbitration” in legal terms?
 - Is the arbitration agreement valid?
 - Which kind of disputes can be decided through arbitration?
 - What are the applicable procedural rules/guarantees?
 - Is preliminary relief available?
 - What are the rules of law applicable to the merits?
 - What are the remedies against the CAS awards?
- **Often applies to the merits of the dispute**

CAS Legal Framework

- **Seat of the Panels always in Lausanne**
- **Swiss arbitration law always governs**
 - Chapter 12 PILA
 - Based on party autonomy
 - Are free to chose the procedural rules (art. 182 PILA)
- **CAS Code (= CAS Arbitration Rules)**
 - Statute of CAS (art. S1 et seq.)
 - Arbitration Rules (art. R27 et seq.)

Is CAS 'true arbitration'? ...

⇔ Sufficiently independent

- **CAS arbitration (closed) list (art. R33 CAS Code)**
 - **compiled by the ICAS**
 - *one-fifth are chosen by the IOC, the IFs and the NOCs*
 - ❖ Predominant role of governing bodies
 - *one-fifth are chosen among persons independent of these bodies*
 - ❖ Who checks this?
 - *one-fifth "chosen after appropriate consultations with a view to safeguarding the interests of the athletes ."*
 - ❖ What does this mean? Who checks?
- **CAS financing (Olympics TV Rights)**

“YES” says the Swiss Supreme Court

- **Upheld the closed list**
 - Enough names to find somebody suitable
 - Really?
 - Need to ensure the quality of the arbitrators and the consistency of the case law
 - Aren't there better ways to achieve this?
 - Only caveat: should indicate by whom each arbitrator was proposed to be on the list
 - Was this done? Why not?
- **No issue as to the financing**
 - Analogy with administrative courts

Equal (broad) access to arbitration

- **Art. 177 PILA: all disputes of financial nature**
 - Including doping and labor disputes
- **Art. 178 PILA: arbitration agreement**
 - Can be validly contained (by reference) in the applicable sports regulations and is thus mandatory
- **Art. 187 PILA: applicable (rules of law) – avoid national idiosyncrasies**
- **Art. 190 PILA: one single shot appeal**
- **Equal access to justice**

Applicable “Rules of law” (187 PILA)

Art. R58 CAS Code: Law Applicable to the merits

“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”

How Swiss law applies under R58?

- **Sports regulations can provide for the application of Swiss law (cf. FIFA Statutes)**
- **Numerous International Governing Bodies are incorporated in Switzerland**
 - **Validity and interpretation of the applicable sports regulations**
- **Panels often refer to Swiss law to determine principles of law the application of which they deem appropriate**
 - **CAS 2006/A/1025 *Mariano Puerta v. ITF***
 - **TAS 2005/A/983&984 *Club Atlético Peñarol***

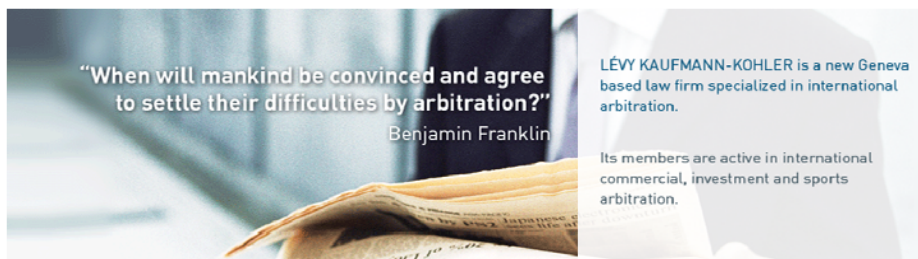
Art. 62(2) of the FIFA Statutes

“The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”

- **What are the relationships between Swiss law and the law applicable to the contract?**
 - **Inconsistent case law**
 - Indirect choice of law – but what if the contract contains another direct choice of law?
 - **Swiss law is often used as a sort of “public policy” to disregard idiosyncratic national legislations**

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“When will mankind be convinced and agree to settle their difficulties by arbitration?”

Benjamin Franklin

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