

International and national courts of arbitration for sport – experiences and essential requirements

The need for national/international sport-arbitration tribunals

Position and significance of national arbitration tribunals

Experiences with the business and operation of arbitration tribunals

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The need for national/international sport-arbitration tribunals

Consequences of globalisation of international sport:

- Risk of an unforeseeable fragmentation of the legal system
- National courts protect the athletes according to their law
- **Principle of equality in sport**

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The need for national/international sport-arbitration tribunals

The Principle of equality demands,

a consensus of opinion on sport law and it's installation
therefore

- **First starting point:** *procedural law*

Law of jurisdiction, sentences of arbitration tribunals worldwide
Execution New York Convention 10.6.1958 (UNÜ)

- **Second starting point:** *substantive law*

Principle of state nonintervention, disputes in nat./internat. sport must
settled autonomously (Lex Sportiva)

- **Finally:** *worldwide implementation WADA-Code,*

promote independent legal system of sport/arbitral jurisdiction and
mandate to install national arbitration tribunals

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Position and significance of national arbitration tribunals

Basic requirements

- Requirement of autonomy

International sport-arbitration tribunals operate

- independent of state influence
- independent of all sport-associations

National arbitration tribunals have to be independent as well,
because they must replace the state court!

Arbitration awards the same effect as verdict of state court

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Position and significance of national arbitration tribunals

Basic requirements

- Arbitration clause and validity

Procedure explicitly stipulated to arbitration tribunal
either → order in the statutes of the association
or → contractual agreement association/individual athlete

Problem of disparity:

Sport associations condition: Participation in competitions
and arbitration tribunals is unwilling waiver of state legal
protection

Arbitration tribunal must guarantee equal treatment

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Position and significance of national arbitration tribunals

Jurisdiction of an arbitration tribunal

- Disputes arising from association imposed sanctions
- Disputes on competition qualifying procedure
- All other disputes, involving substantive law based decisions

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Position and significance of national arbitration tribunals

Advantages of the arbitration tribunals

- Special expertise of the arbitrators
- Swiftness of decision-making
- Better Acceptance
- Standardized adjudication in sport law

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Experiences with business and operation of arbitration tribunals

Basic experiences with the organisation

- The arbitrators
 - Organise allocation of duties among judicial body
 - Fixed lists of arbitrators – well balanced
 - Qualification of arbitrators
- Foundation/Installation
 - Found a new institution or incorporate within pre-established institution
- Financing
 - Calculation of all possible costs
 - Provided by the associations – by the legal costs of the parties
- Code of procedure
 - Drawn from pre-established codes of commercial tribunals

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Experiences with business and operation of arbitration tribunals

National sport arbitration tribunal and associations

Transfer of legal disputes into an independent court of arbitration

- Doping disputes
 - First option → sanction imposed through disciplinary board
 appeal procedure within the association
 review through the national court of arbitration
 second instance TAS/CAS
 - Second option → sanction imposed through the disciplinary board
 immediate review through the national court of arb.
 second instance TAS/CAS
- Other disputes in sport
 - Decision through disciplinary board of association
 - Appeal-Procedure within the association or immediate review through the national arbitration

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Experiences with business and operation of arbitration tribunals

Experiences from practical work

- Regarding Organisation of the court
 - Independence definitely respected
 - Chairman: Organize and plan the procedure tightly-strictly
 - Continous communication between chairman and judges
- Regarding Organisation of the procedure
 - Quick procedure demands exact schedule
 - Briefs deadlines for defence and replication
- Regarding hearing of the court
 - General hearing – independent location – technical equipment
 - Organize the hearing carefully
- Decision of the court
 - Decision making immediately after the hearing – written decision follows

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