

THE ROLE OF THE COURT OF ARBITRATION FOR SPORT (CAS) IN SAFEGUARDING HUMAN RIGHTS IN INTERNATIONAL SPORTING EVENTS

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Abstract - *The Court of Arbitration for Sport (CAS) is a renowned institution in the realm of international sports law known for resolving disputes and upholding the integrity of sporting events. It can be considered one of the highest courts for resolving disputes related to this field at the international level. This article delves into the relationship between the CAS and human rights in sports. It also navigates through the legal framework underpinning human rights in sports, including international conventions and treaties. Through a meticulous analysis of landmark cases adjudicated by the CAS, ranging from issues of discrimination to doping and gender equality, the article illuminates the evolving jurisprudence surrounding human rights within the sporting arena. However, despite its successes, the CAS faces criticism and difficulties that raise issues with independence, openness and fair access to the legal system. Given these intricacies, the paper proposes potential paths meant to reinforce the CAS's function as an advocate for human rights, such as improved measures of transparency, a wider range of arbitrators, and closer partnerships with human rights groups. This paper highlights the vital relationship between the CAS, sports law and human rights through case studies and comparative observations. It also paves the road for a more ethical and fair future in regulating international sports governance.*

Keywords: Court of Arbitration for Sport (CAS); Doping; Gender Equality; Human Rights; Sports Law


INTRODUCTION

The Court of Arbitration for Sport (CAS) headquartered in Lausanne, Switzerland was established in 1983 by the International Olympic Committee (IOC). It stands as the preeminent forum for resolving international sports disputes and maintains additional offices in Sydney, Australia and New York ensuring global accessibility (*History of the CAS*, www.tas-Cas.org, Feb. 20, 2024). CAS serves as the primary venue for adjudicating conflicts across various sporting disciplines and is also the final appeals forum for most sport federations. This Court provides an alternative way especially for athletes and sports federations to resolve their disputes through an independent and accomplished sports adjudication body (McLaren, 12 Marq. Sports L. Rev. at 515). While it is considered the supreme body in the sports arena, it's important to note that its decisions can be challenged under Swiss Law signifying its setup as an independent arbitral institution.

CAS comprising at least 150 arbitrators hailing from 37 different nations, CAS boasts a roster of experts proficient in both arbitration and sports law. These arbitrators appointed for renewable four-year terms by the International Council of Arbitration for Sports, adhere to a stringent "letter of independence" to safeguard impartiality in their rulings. Notably, the CAS's leadership structure includes a permanent President who also presides over the ICAS, illustrating the intertwined nature of its governance (Blackshaw, 2 Ent. L. at 61).

The genesis of CAS traces back to the visionary initiative of IOC President Juan Antonio Samaranch, conceived to address disputes arising within the Olympic realm (*History of the CAS*, 2024). However, CAS's close association with the IOC raised questions about its autonomy, prompting scrutiny from the Swiss Federal Supreme Court. While acknowledging CAS as a bona fide arbitration court the Swiss court underscored the institution's extensive ties to the IOC. A pivotal reform emerged from this scrutiny, leading to the establishment of the "International Council of Arbitration for Sport" (ICAS) tasked with managing and funding CAS, thereby replacing direct IOC oversight. ICAS assumes responsibility for administrative and financial matters, delineating a more independent operational framework for CAS.

The inception of the Court of Arbitration for Sport (CAS) by the IOC aimed to address crises of legitimacy within the sports realm. The introduction of the International Council of Arbitration for Sport (ICAS) marked a step towards enhancing CAS's independence. However, lingering concerns persist regarding CAS's autonomy or casting doubt not only on its legitimacy but also on the



impartiality of CAS tribunals in arbitrating disputes involving Olympic Movement members. These concerns stem from CAS's initial self-regulation and its significant financial ties to the Olympic Movement. It can't be denied that funding system of CAS creates some reasonable doubt for athletes that CAS may be in favour of their parent organization who is funding them. Nevertheless, If we look as the contributory capacity of athletes is far below that of the top sports organization in terms of funding of CAS still receives its almost entire budget from the IOC and other top sports organizations. Thus, we cannot entirely consider it an independent body (Shahrokhi, 11(1) Indian J. Arb. L. at 17).

LITERATURE REVIEW

In the article, "Introducing the Court of Arbitration for Sport: The Ad Hoc Division at the Olympic Games" by Richard H. McLaren (2001), the author discusses the evolution and function of the Court of Arbitration for Sport (CAS), emphasizing its role as an independent and authoritative body for resolving sports-related disputes. McLaren outlines the CAS structure, jurisdiction, and procedural framework, highlighting its significance in developing the *lex sportiva*, or the body of sports law. The article delves into the types of disputes typically handled by CAS, including issues related to athlete eligibility, doping violations, and manipulating sporting rules for strategic advantage. McLaren illustrates how CAS has established a reputation for fairness and competence in applying international sports regulations, contributing to its acceptance and utilization by various sports organizations globally. However, the article also addresses several limitations of CAS. One significant limitation is the potential influence of the International Olympic Committee (IOC) and other sports governing bodies on CAS's operations, given that these entities are primary funders and stakeholders in CAS. Although reforms in 1994 aimed to enhance CAS's independence, concerns remain regarding subtle institutional pressures that might affect arbitrator impartiality and decision-making processes. These pressures could manifest in ways that, over time, might bias outcomes in favour of governing bodies over individual athletes. The article suggests that additional measures, such as greater transparency in arbitrator appointments and alternative funding mechanisms, are necessary to safeguard CAS's independence and impartiality further.

Ian Blackshaw (2003) In his article "The Court of Arbitration for Sport: An International Forum for Settling Disputes Effectively 'Within the Family of Sport'." he provides a comprehensive overview of the Court of Arbitration for Sport (CAS). He details the evolution of CAS, highlighting its role as a specialized, independent, and efficient forum for sports arbitration that is less formal and more expedient than traditional court systems. Significant reforms in 1994, which enhanced CAS's independence from the International Olympic Committee (IOC), are also emphasized. These reforms included establishing the International Council of Arbitration for Sport (ICAS) to manage and fund CAS. Despite these advancements, Blackshaw acknowledges CAS's ongoing challenges regarding its perceived independence and the complexity of maintaining impartiality in disputes involving IOC interests. The article also underscores the growing importance of CAS's mediation services, particularly for commercial disputes, and its advisory opinion capabilities, which provide non-binding guidance on sports-related legal issues. While CAS plays a crucial role in sports dispute resolution, the article notes certain limitations related to its independence due to its historical and financial ties with the IOC. This connection raises concerns about impartiality, especially in cases where the IOC is a party to the dispute. Furthermore, the procedural complexity and cost of accessing CAS may pose barriers for some athletes and smaller sports organizations.

Michael Straubel (2005) In the article "Enhancing the Performance of the Doping Court: How the Court of Arbitration for Sport Can Do Its Job Better" critically examines the role and effectiveness of the Court of Arbitration for Sport (CAS) and the American Arbitration Association-Court of Arbitration for Sport (AAA-CAS) in handling doping cases within the sports world. It highlights that both institutions were established to bring order to the previously chaotic and inconsistent adjudication of international sports disputes. However, Straubel argues that while CAS and AAA-CAS are well-structured for resolving typical contract disputes through arbitration, they face significant challenges when dealing with doping cases due to their quasi-criminal nature. Doping cases necessitate protections akin to those in criminal proceedings, such as the presumption of innocence and due process, which the current arbitration framework does not adequately address. Straubel suggests several reforms, including creating a separate chamber within CAS for doping cases, using arbitrators without connections to sports governing bodies, and a more rigorous burden of proof. Despite some progress, Straubel concludes that further steps are essential to ensure fairness and legitimacy in doping adjudications.

The limitations noted include the inherent structural inadequacies of CAS and AAA-CAS in handling quasi-criminal doping cases and the need for significant procedural reforms to address these issues effectively.

In his comprehensive book “Sports Law,” Mark James provides an in-depth examination of the legal landscape surrounding sports. The third edition, published in 2017, is essential for students, practitioners, and academics alike. James meticulously covers governance and regulatory frameworks, detailing the roles of influential bodies such as the International Olympic Committee (IOC) and FIFA in maintaining fair play and integrity in sports. The book also delves into the intricacies of contracts and commercial issues, analyzing athlete contracts, sponsorship deals, and broadcasting rights with precision. James offers a thorough exploration of dispute resolution mechanisms, focusing on the Court of Arbitration for Sport (CAS) and its evolving jurisprudence. The book critically addresses doping and ethics, highlighting the regulatory efforts of the World Anti-Doping Agency (WADA) and the challenges of enforcing anti-doping rules. Additionally, it examines liability and safety issues, providing insights into legal standards for negligence and the duty of care owed by sports organizations. Praised for its clarity and real-world applicability, “Sports Law” remains a definitive guide, reflecting the dynamic nature of sports law and offering invaluable insights for its readers.

Tsubasa Shinohara (2023) In the article “Human Rights in Sports Arbitration: What Should the Court of Arbitration for Sport Do for Protecting Human Rights in Sports?” examines how the Court of Arbitration for Sport (CAS) can better address human rights concerns in its rulings, despite not being a human rights court. The article focuses on key cases like Caster Semenya v. IAAF, where CAS ruled against Semenya’s participation in female sports events due to her naturally high testosterone levels, which CAS deemed gave her an unfair advantage. Shinohara highlights the lack of comprehensive human rights protections in CAS’s framework, noting that CAS primarily adheres to sports regulations and often neglects broader human rights implications. The article argues that CAS should integrate international human rights principles into its adjudication process and suggests that athletes should be able to claim human rights violations before CAS. The author also emphasizes the need for procedural reforms within CAS to enhance its role in safeguarding human rights, such as ensuring public hearings and greater transparency. However, the study’s primary limitation is its reliance on theoretical arguments without extensive empirical data, and the analysis is predominantly based on a few high-profile cases, which may not represent the full spectrum of human rights issues in sports arbitration. Furthermore, the proposed reforms require significant structural changes within CAS and cooperation from international sports governing bodies, which may face resistance due to existing institutional frameworks and interests.

Reza Shahrokhi (2023) In the article “Financial Independence of the Court of Arbitration for Sports: Why Can CAS Be Considered a Truly Independent Body?” delves into the financial mechanisms that underpin the Court of Arbitration for Sport (CAS) and their implications for its independence. The author outlines the evolution of CAS and the structural reforms to enhance its autonomy from the International Olympic Committee (IOC) and other sports federations. A significant focus is on the funding model of CAS, examining whether the financial contributions from sports organizations, particularly the IOC, compromise its independence. The analysis suggests that despite reforms and the establishment of the International Council for Arbitration for Sport (ICAS), concerns persist about the potential influence of funding on CAS’s impartiality. The article argues that while the current funding system is indispensable due to the unique nature of sports arbitration, diversifying funding sources could further mitigate perceptions of bias. However, the author acknowledges that fully eliminating these concerns is challenging, given the inherent financial disparities between athletes and large sports organizations.

HUMAN RIGHTS STANDARDS IN INTERNATIONAL SPORTS GOVERNANCE

Sports organizations play a pivotal role in regulating sports at international levels with the International Olympic Committee (IOC) and sports federations like the World Athletics standing out as major dominant entities. The IOC, which is regarded as the highest authority in the modern Olympic Movement and also governs the different National Olympic Committees (NOCs). Operating under the Olympic Charter which is a set of principles and rules adopted by Olympic committees, the IOC and affiliated bodies are bound by its provisions.



The Olympic Charter underscores fundamental principles concerning human rights notably under Principles 4 and 6 in, which asserts that “The practice of sport is a human right. Every individual must have the possibility of practicing sport without discrimination of any kind and in the Olympic spirit, and it requires mutual understanding with a spirit of friendship, solidarity and fair play (Olympic Charter, Principle 4).” This principle underscores the inclusive nature of sports, emphasizing that participation should be accessible to all, irrespective of background or identity. Similarly, another Principle underlines that “The enjoyment of the rights and freedoms set forth in this Olympic Charter shall be secured without discrimination of any kind such as race, color, sex, sexual orientation, language, religion, political or other opinions, national or social origin, property, birth or other status (Olympic Charter, Principle 6).” This principle reinforces the commitment to ensuring equal opportunities and rights for all individuals involved in sports, regardless of diverse characteristics or affiliations.


For organizations like World Athletics, as integral components of the Olympic movement, adherence to the Olympic Charter becomes imperative. Upholding these principles not only fosters a spirit of inclusivity and fairness within sports but also reinforces the core values of mutual respect, solidarity and equitable participation. As stewards of the Olympic spirit, sports organizations have a collective responsibility to promote and safeguard the fundamental human rights enshrined within the Olympic Charter.

Human rights protection in sports is paramount for fostering inclusivity, fairness and dignity among athletes and stakeholders. Upholding human rights principles ensures equal opportunities for participation regardless of individuals’ backgrounds, ethnicity, gender, or other characteristics (*United Nations*, 1948). It promotes fairness by preventing discrimination and ensuring that athletes are treated equitably in competitions and training environments. Moreover, human rights protection in sports safeguards the health and safety of athletes, addressing concerns such as doping and physical or emotional abuse (*World Health Organisation*, 2015). Adherence to human rights standards in sports demonstrates social responsibility on the part of sports organizations and governing bodies, contributing to the promotion of tolerance, diversity and social justice (*International Olympic Committee, Olympic Agenda 2020: 20+20 Recommendations*, 2016). By aligning with international standards and conventions, sports organizations uphold universally recognized principles of human rights (*United Nations*, 1966). In essence, the protection of human rights in sports not only promotes a more equitable and inclusive sporting environment but also reflects broader societal values of fairness, equality and respect.

In the realm of sports, the need for human rights protection is evident from an early age as individuals engage in sporting activities from childhood. Ensuring fairness and equal opportunities across gender and demographic categories is essential. Discrimination in any form must be actively prevented especially in events governed by the regulations established by bodies such as the International Olympic Committee (IOC) and other federations. The Court of Arbitration for Sport (CAS) frequently refers to these regulations in its decisions, highlighting its pivotal role as the primary governing body in this sphere. Thus, it is incumbent upon CAS to rigorously uphold human rights principles in its adjudications thereby contributing significantly to the ethical standards of international sports governance.

CAS AWARDS AND VIEWS ON HUMAN RIGHTS

The Court of Arbitration for Sport (CAS) oversees all sports-related matters has the authority to hear disputes related to sports. It can handle cases directly linked to sports or those indirectly connected to them. CAS hears cases when the rules of sports federations permit the parties to refer to it, or when they agree to follow CAS’s rules. Typically, CAS deals with issues like eligibility, commercial disputes, doping cases and disciplinary matters. However, its authority is not limited to these issues alone (James 2017). Sports organizations typically adhere to their own set of regulations, which may differ from human rights laws. Nevertheless, there are instances where sports groups opt to integrate human rights principles into their regulations. They do so to ensure fair treatment for all individuals involved. Although human rights laws may not directly govern sports organizations, these groups have the flexibility to incorporate them into their regulations if they wish to prioritize fairness and equality (Shinohara, *Liverpool Law Rev.*). In some instances, the Court of Arbitration for Sport (CAS) has been criticized for disregarding potential violations of human rights, as evidenced by cases related to such



as the gender testing of Dutte Chand and Caster Semenya. In these cases, CAS asserted its role as primarily focused on determining eligibility rather than addressing human rights concerns (Barrabi, *Fox Business*, Sept. 9, 2020). Despite allegations of human rights violations, CAS maintained its position that its mandate is limited to assessing eligibility issues within the context of sports regulations.

The Court of Arbitration for Sport (CAS) serves as a critical arbiter in sports-related disputes, including those concerning human rights issues. However, CAS's jurisdiction and authority are limited when it comes to directly addressing human rights concerns within the realm of sports governance. In the case of *Dutee Chand v. AFI & IAAF*, CAS 2014/A/3759 (2015) and *Mokgadi Caster Semenya v. IAAF* CAS 2018/O/5794 & 5798 (2019), CAS primarily focuses on interpreting and applying the rules and regulations set forth by sports organizations like the International Association of Athletics Federations (currently known as World Athletics). While CAS can assess the legality and fairness of these regulations based on sports law and principles, its mandate does not extend to adjudicating broader human rights issues. CAS operates within the framework of sports law and regulations established by sports governing bodies only, and as a result, its decisions are largely confined to determining compliance with these rules rather than addressing underlying human rights considerations. While athletes like Chand and Semenya may raise human rights concerns in their cases, CAS's scope of authority is constrained by the specific regulations governing the sport.

The Court of Arbitration for Sport (CAS) appears to lack the capacity to effectively address human rights issues, as evidenced by its handling of cases involving athletes such as Dutee Chand and Caster Semenya. In both instances, CAS failed to adequately address concerns related to human rights violations. For example, in the cases of Dutee Chand and Caster Semenya, CAS focused primarily on determining the eligibility of the complainants rather than delving into the forceful medical interventions being imposed. Despite the clear indication of a lack of human rights protection in these cases, CAS did not address this aspect satisfactorily. In the Dutee Chand case, while CAS displayed a positive approach by suspending the hyperandrogenism policy for two years due to the inability of the International Association of Athletics Federations (IAAF) to demonstrate its impact on athletic performance, it only provided a temporary solution. CAS did not permanently revoke the regulation based on grounds of human rights violations or alignment with the objectives of the IAAF constitution. In essence, CAS's handling of cases involving Dutee Chand and Caster Semenya reflects its limitations in effectively addressing human rights concerns within the realm of sports law.

The Court of Arbitration for Sport (CAS) also plays a crucial role in adjudicating doping-related disputes within high-performance sports. With doping being a significant concern, CAS handles more appeals related to doping than any other issue. The World Anti-Doping Agency (WADA) which is established by the International Olympic Committee (IOC) in 1999. It entrusts CAS with the final resolution of anti-doping disputes which is outlined by WADA's Anti-Doping Code (Straubel, 36 Loy. U. Chi. L.J. at 1203). While CAS does not participate in formulating anti-doping regulations, it upholds WADA's standards in doping cases. The World Anti-Doping Agency (WADA) is conducting an Initial Human Rights Impact Assessment (IHRIA) to evaluate how its anti-doping program aligns with athlete human rights. Proposed by WADA's Athlete Committee, the IHRIA aims to ensure that WADA respects athletes' human rights as it leads global anti-doping efforts. Led by Senior Independent Expert Ms. Snežana Samardžić-Marković, the assessment involves consultations with athletes and stakeholders to assess the program's impact on athlete rights. It follows a structured approach based on international human rights principles and aims to embed human rights within WADA, identify risks to athlete rights and take appropriate actions to address them. The IHRIA is currently in the commitment and embedding phase, with completion expected by mid-2024, leading to the development of a roadmap to fulfil WADA's human rights responsibilities in anti-doping efforts. (*WADA Initiates Assessment to Ensure That the Human Rights of Athletes Are Respected under the World Anti-Doping Program*, 2023)

The limitations of CAS in addressing human rights matters underscore the need for greater collaboration and coordination between sports organizations and human rights bodies. While CAS plays a crucial role in resolving disputes within the sports domain broader human rights issues often require engagement with international human rights organizations, policymakers and legal frameworks beyond the scope of sports governance. Despite its limitations, CAS decisions can influence broader discussions on human rights in sports and prompt stakeholders to reconsider existing regulations and practices. By raising awareness of human rights implications in sports disputes, CAS decisions contribute to ongoing

dialogues and efforts to promote greater accountability, transparency and respect for human dignity within the sporting community.

SPORT GOVERNANCE FOR THE PROTECTION OF HUMAN RIGHTS

The International sports sector operates within a complex framework governed by various local, national, regional and international entities, both governmental and non-governmental. This intricate structure includes sports regulatory bodies, which interact with human rights processes at different levels. Despite the critical role played by sport's governing bodies in global sports regulation, the protection of human rights within their policies and enforcement procedures has been inadequate. Various international legal documents underscore the significance of safeguarding human rights in sports, particularly in addressing prevalent issues of gender discrimination, highlighting the importance of its protection. The Universal Declaration of Human Rights (UDHR) stands as a cornerstone, advocating for equal rights and freedoms for all individuals, irrespective of gender, race, or other differentiators (United Nations, 1948). Complementing the UDHR, the Yogyakarta Principles and the Brighton Declaration advocate for inclusivity and non-discrimination in sports, focusing on advancing women's and girls' rights in athletic endeavours (*International Working Group on Women and Sport*, 2014). Similarly, the Beijing Platform for Action delineates strategies aimed at achieving gender equality, emphasizing the importance of promoting women's involvement across all facets of society, including sports (*The United Nations*, 1995).

Moreover, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) mandates the eradication of gender-based discrimination in various domains, including sports participation, underscoring the imperative of providing equal opportunities for all genders (*United Nations*, 1979). There is also a need to integrate child human rights principles into sports governance frameworks as it is essential for fostering safe, supportive and inclusive environments for young athletes. They are the vulnerable group which faces human rights violations in the sports arena as they start playing from a young age. Measures such as promoting equitable access to sports programs, preventing discrimination and exploitation and prioritizing the child's best interests in sports decision-making processes are integral to upholding child rights in sports (*UNICEF*, 2013).

CONCLUSION

In conclusion, the Court of Arbitration for Sport (CAS) plays a vital role in the world of international sports governance by serving as a key platform for resolving disputes and upholding the integrity of sporting events globally. While CAS is renowned for its expertise in adjudicating doping-related conflicts and ensuring adherence to sports regulations, its capacity to directly address broader human rights issues within the sporting realm is circumscribed. Despite criticisms regarding its autonomy and impartiality, CAS remains an indispensable institution for athletes, sports federations and other stakeholders seeking redress for sports-related grievances.

However, to enhance its efficacy as a guardian of human rights, CAS must adopt measures to bolster transparency, diversify arbitrator representation and forge closer collaborations with human rights organizations. The CAS should include human rights experts in their panel of arbitrators to effectively deal with human rights issues in sports. Moreover, the CAS needs to transition from a reactive stance to a proactive one by providing advice and guidance on restrictions that violate human rights laws and regulations. In addition, the CAS should provide financial assistance to athletes and sportspeople seeking justice in a court of law. This support is particularly critical for women athletes, many of whom come from disadvantaged backgrounds. By addressing these issues, the CAS can reinforce its commitment to fairness, equity and ethical conduct within the international sports community.

Furthermore, the integration of human rights principles into sports governance frameworks is imperative for fostering inclusivity, dignity and respect among athletes and stakeholders. International legal instruments such as the Universal Declaration of Human Rights, the Yogyakarta Principles, the Beijing Platform for Action and the Convention on the Elimination of All Forms of Discrimination Against Women underscore the paramount importance of safeguarding human rights in sports. By aligning with these foundational documents, sports organizations can cultivate a culture of fairness, equality and social responsibility, thereby promoting a more ethical and equitable future in international sports governance.

In essence, while CAS's jurisdiction may be limited in addressing human rights concerns directly, its decisions and actions have far-reaching implications for the promotion and protection of human rights within the sporting arena. By navigating the complex interplay between sports law, human rights principles and ethical considerations, CAS can contribute meaningfully to the advancement of a more just, inclusive and equitable global sports community.

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