

Olympic-related Sports Dispute Resolution



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1. Overview

This past summer, the Tokyo Olympic Games were finally held without spectators at the stadiums after a year-long postponement. News coverage of the games did not only focus on the impressive performances and highlights of the Olympic athletes, but also the disputes that arose in connection with their eligibility, the disciplinary measures levied against them, and the decisions made by referees during the games. As such, it bears discussing what kind of remedy was made available to those athletes who were dissatisfied with the penalties, sanctions or decisions imposed on them, including for example, being declared ineligible immediately before the games.

In actuality, 15 cases of Olympic-related disputes were accepted by the ad hoc division of the Court of Arbitration for Sport (“CAS Ad Hoc Division”) in Tokyo.

This article will explain the unique procedural rules of the Court of Arbitration for Sport (“CAS”), specifically, those of the CAS Ad Hoc Division, to resolve the Olympic-related disputes at the Tokyo Olympic Games under special circumstances due to the widespread infection of Covid-19.¹

2. General Information about CAS

CAS is an institution independent of any sports organization, and is headquartered in Lausanne, Switzerland. It provides services to facilitate the settlement of sports-related disputes through arbitration or mediation by means of procedural rules adapted to the specific needs of the sports world.

CAS has accepted several hundred cases every year between 2001 and 2020, and, in recent years, the number of cases has soared. In fact, the number of cases in 2020 was 957, the highest since its establishment.²

CAS appoints one or more arbitrators to arbitrate disputes arising among international athletes and sports organizations. A list of candidates for arbitrators, including lawyers and professors from around the world, is disclosed on its website.

During the course of an Olympic season, CAS establishes an ad hoc division in the host country to promptly resolve disputes arising immediately before and during the games. This division, known as the CAS Ad Hoc Division, has been established for both the Summer and Winter Olympic Games since the Atlanta Olympic Games in 1996. Recently, the CAS Ad Hoc

1. The Paralympic Games are governed separately by the International Paralympic Committee.

2. https://www.tas-cas.org/fileadmin/user_upload/CAS_statistics_2020.pdf.



Division has also been established for regional international competitions such as the Asian Games.

3. What is the CAS Ad Hoc Division?

The CAS Ad Hoc Division adjudicates cases pertaining to various Olympic-related disputes, including athlete eligibility, field of play decisions, doping violations, disciplinary measures levied against athletes, and other issues.

The CAS arbitrates challenges to field of play decisions only in exceptional cases, such as when a petitioner can demonstrate circumstances that a field of play decision was made arbitrarily or in bad faith.

As further described below, the CAS Ad Hoc Division applies speedy and flexible procedures to resolve disputes arising immediately before and during the Olympic Games in a timely manner. Its jurisdiction is limited to such disputes, and specifically, such disputes must meet the following conditions:

- a. they must be covered by Rule 61 of the Olympic Charter; and
- b. they must have arisen during the Olympic Games, or within ten days prior to the opening ceremony of the Olympic Games.³

Disputes between athletes, national Olympic committees and sports organizations can usually meet the first condition listed above. It is practically important, however, to meet the second condition to file for arbitration with the CAS Ad Hoc Division, otherwise, the dispute will be deemed out of its jurisdiction and subsequently dismissed or rejected.

4. Speedy Arbitration Process of the CAS Ad Hoc Division

Some disputes filed with the CAS Ad Hoc Division, for instance, eligibility disputes, should be resolved by the competition day the applicant was originally scheduled to attend, otherwise, the applicant will not have an effective remedy to protect his or her interest or right. To this end, a speedy arbitration process is crucial for the CAS Ad Hoc Division. For this reason, it applies special procedural rules that differ from the normal procedures of CAS.

The following are some unique characteristics of the procedures of the CAS Ad Hoc Division:

a. Appointment of arbitrators

In sports arbitration proceedings at the CAS, a panel usually consists of three arbitrators. In the absence of an agreement, first, both the applicant and the respondent have a right to nominate their respective arbitrators. Thereafter, the two arbitrators must select the president of the panel by mutual agreement within the time limit set by the CAS office.⁴

However, at the CAS Ad Hoc Division, its president both constitutes the panel composed of three arbitrators based on a special list, and appoints the president of the panel.⁵ The parties do not have a right to nominate an arbitrator.

b. Language of arbitration

The arbitration must be conducted in English, French or Spanish, as determined by the president of the CAS Ad Hoc Division.⁶ Spanish was added as an official language in July 2021.

3. Arbitration Rules applicable to the CAS Ad Hoc Division for the Olympic Games (the "Arbitration Rules"), art. 1.

4. Code of Sports-related Arbitration, rule 40.2.

5. Arbitration Rules, art. 11.

6. *Id.*, art. 6.



c. The opportunity to make claims and present evidence

Parties are summoned to a hearing on short notice. Due to the Covid-19 pandemic and the state of emergency declaration in Japan, the ordinary procedure was amended for the Tokyo Olympic Games. In particular, unless the panel decides otherwise in compliance with the sanitary measures then in force, the hearing must be held by video or telephone conference. In actuality, many hearings were held by the CAS Ad Hoc Division in a mixed format of video-conference and in-person attendance. There were several cases where the arbitrator attended the hearing by video or telephone conference.

In some cases, a party who was summoned on short notice may not be able to attend. Even in such cases, the arbitrators may nevertheless proceed.

At the hearing, the parties may be questioned, and, depending on the matter, witnesses may be examined. The panel decides on how exactly the hearing will proceed.

Furthermore, any defense of lack of jurisdiction must be raised, at the latest, by the start of the CAS Ad Hoc Division hearing.⁷

d. Decision rendered within 24 hours from the application (basic principle)

A decision must be rendered within 24 hours from the lodging of the application.⁸ However, there are cases where the decision is not delivered within this timeframe. In some cases, it may take several days before a decision is given.

For matters that require a speedy resolution (e.g., an eligibility dispute that arises two or three days before the scheduled competition), a decision may be made within 24 hours, or, when such is impractical, an attempt at a speedy arbitration would be made.

e. Enforceability

The decision is enforceable immediately upon being communicated to the parties (by email or any other means). Arbitrators may decide to communicate the operative portion of the decision to the parties prior to the reasons therefor⁹ since this arbitration process prioritizes promptness.

An appeal against the decision of the panel may be made to the Federal Supreme Court of Switzerland within 30 days from notice thereof.¹⁰ However, since it may take several months for the Supreme Court to make a decision, and considering that the grounds for appeal are limited, the decisions of the CAS Ad Hoc Division have great significance—they are often considered to be final.¹¹

7. *Id.*, art. 15.

8. *Id.*, art. 18.

9. *Id.*, art. 19.

10. *Id.*, art. 21.

11. Sun Yang, a world record holder in swimming, and a multiple gold medalist in consecutive Olympic Games, was subject to an eight-year ineligibility by the CAS in February 2020. He requested the arbitral award to be set aside on the ground of evidence of bias of the arbitrator. In December 2020, his petition was accepted and the award was consequently annulled by the Federal Supreme Court of Switzerland. In June 2021, he was subject to ineligibility for four years and three months by the second CAS panel (CAS 2019/A/6148 *World Anti-Doping Agency v. Mr. Sun Yang & Fédération Internationale de Natation (FINA)*). Although his sanction was lower than the first one, he was ineligible to attend the Tokyo Olympic Games as a result of the decision of the second CAS panel.



f. Costs

In general, in sports arbitration proceedings at the CAS, parties must pay for several costs, including the application fee.¹² On the contrary, the facilities and services of the CAS Ad Hoc Division are free of charge, except for the parties' own costs of legal representation, experts, witnesses and interpreters.¹³ In particular, an applicant does not need to pay any application fee for arbitration before the said division.

5. Conclusion

The CAS Ad Hoc Division provides speedy dispute resolution customized for the Olympic Games, one that offers athletes and sports organizations an effective remedy for the settlement of their Olympic-related disputes. Since the Olympic Games are a once-in-a-lifetime event for many athletes, hopefully this article will enlighten both athletes and sports organizations alike on the unique procedures of the CAS Ad Hoc Division, and serve as a practical guide for the speedy and effective resolution of their disputes in future international or regional games.

12. Code of Sports-related Arbitration, rule 64.1.

13. Arbitration Rules, art. 22.

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