



Le Président
The President

**REPORT OF THE INTERNATIONAL COUNCIL OF ARBITRATION FOR SPORT
TO THE
ASSOCIATION OF NATIONAL OLYMPIC COMMITTEES**

28-29 NOVEMBER 2018, TOKYO, JAPAN

1. CAS activities

Between 1 January and 30 October 2018, 484 procedures were registered with the CAS. These are broken down as follows:

108	ordinary procedures
370	appeal procedures
6	mediation procedures

31 of the reasoned awards related to the 39 Russian athletes challenging the IOC decisions following Sochi 2014 have been issued. The operative part of each decision had issued on 1 February 2018.

Among CAS cases generating interest in the media, the matter Caster Semenya v IAAF (rules on hyperandrogenism) will be heard in February 2019, with the final decision at the end of March 2019 at the latest.

2. Swiss Federal Tribunal and other Tribunals and Courts

In 2018, to date, there have been 18 appeals against CAS awards filed with the Swiss Federal Tribunal (SFT) of which 6 were dismissed and 12 cases still pending.

In total, since the creation of CAS, 207 appeals have been filed at the SFT; 9 of them have been upheld; and, 2 partially upheld (5.3 %).

Most importantly, on 2 October 2018, the European Court of Human Rights (ECHR) eventually issued its decision in relation to the cases between Claudia Pechstein (Speed Skating/Germany) and Adrian Mutu (Football/Romania) and Switzerland. Both athletes filed appeals at the ECHR in 2010 against judgements of the SFT which confirmed the decisions rendered by CAS in these matters. The ECHR dismissed all claims, excepting one concerning the right to a public hearing. The ECHR judgement recognised that a non-State dispute resolution mechanism of first and or second instance, with a possible appeal, even limited, before a State court, as a last instance, is appropriate in the area of international sport. As far as the funding of CAS by sports entities is concerned, the ECHR emphasised that State courts were always financed by governments and considers that this aspect was not sufficient to establish a lack of



independence or impartiality of these jurisdictions in disputes between citizens and the State. By analogy, it is not possible to establish a lack of independence or impartiality of the CAS based on its funding system.

Furthermore, the ECHR said that, the public nature of the judicial procedures being a fundamental principle of Article 6:1 of the European Convention on Human Rights, such principle was also applicable to non-State courts ruling on disciplinary and/or ethics matters. In the case of Claudia Pechstein, the CAS should have allowed a public hearing considering that the athlete had requested one and there was no particular reason to deny it.

The ECHR judgement is another confirmation, this time at European level, that CAS is a genuine arbitration tribunal. The SFT already came to the same conclusion in 1993 and 2003; the German Federal Tribunal as well in 2016.

On 21 November 2018, a court in Moscow upheld an appeal filed by Alexandr Zubkov against the IOC in relation to the CAS award confirming the disqualification of Zubkov from the Olympic Winter Games in Sochi. The Moscow Court considered the CAS award as “not applicable in Russia”, although such award has never been challenged before the Swiss Federal Tribunal and should be recognized and enforced in Russia in accordance with the New York Convention on the recognition and enforcement of arbitral awards.

The decision issued by the Moscow Court does not affect in any way the CAS award rendered on 1 February 2018 in the same matter, which remains final and binding worldwide. In particular, Mr Zubkov's teams in the 2-Man and in the 4-Man Bobsleigh events remain disqualified from the Olympic Winter Games Sochi 2014.

The decision rendered by the Moscow Court may still be challenged in appeal.

3. CAS ad hoc Divisions

In 2018, CAS ad hoc Divisions were established on the occasion of the:

- Olympic Winter Games in PyeongChang (9-25 February 2018)
- Commonwealth Games in Gold Coast (4-15 April 2018)
- FIFA World Cup in Russia (June/July) (remotely)
- Asian Games in Jakarta, Indonesia (18 August - 2 September)

In 2019, CAS ad hoc Divisions will be established for the:

- AFC Asian Cup in the United Arab Emirates (January) (remotely)
- World Beach Games in San Diego, USA (October 2019)

4. ICAS Members 2019-2022

The following 12 ICAS members were appointed for the next four-year term commencing 1 January 2019.



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By the IOC (all chosen from outside the IOC membership):

Justice Yvonne Mokgoro (South Africa), former judge of the Constitutional Court of South Africa

Judge Patrick Robinson (Jamaica), new, judge at the International Court of Justice in The Hague

Dr Elisabeth Steiner (Austria), new, attorney at law, former judge at the European Court of Human Rights

Judge Hanqin Xue (China), judge at the International Court of Justice in The Hague

By ANOC:

Dr Abdullah Al Hayyan (Kuwait), professor of law (chosen from outside the ANOC membership)

Mr Scott Blackmun (USA), lawyer, former CEO United States Olympic Committee (USOC) (chosen from outside the ANOC membership)

Mr John Coates (Australia), lawyer, President Australian Olympic Committee (AOC) (chosen from within the ANOC membership)

Mr Giulio Napolitano (Italy), new, attorney at law (chosen from outside the ANOC membership)

By ASOIF:

Mr Antonio Arimany (Spain), new, lawyer, Secretary General International Triathlon Union (ITU) (chosen from within the ASOIF membership)

Professor Dr Enrique Arnaldo Alcubilla (Spain), new, professor of law (chosen from within the ASOIF membership).

Mr Mikael Rentsch (Switzerland/Sweden), new, legal director Fédération Equestre Internationale (FEI) (chosen from within the ASOIF membership)

By AIOWF:

Ms Corinne Schmidhauser (Switzerland), lawyer, former World Cup winner and Olympian in alpine skiing (chosen from outside the AIOWF membership)

Athlete representatives:

The above 12 ICAS members then appointed the following four ICAS members representing the interest of athletes following consultation with the IOC Athletes' Commission:

Ms Tjasa Andree Prosenc (Slovenia), attorney at law, former national champion (former Yugoslavia) in figure skating and roller skating

Ms Moya Dodd (Australia), attorney at law, former Vice Captain of the Australian Women's Football Team

Mr Michael Lenard (USA), attorney at law, member of the U.S. 1984 Olympic Handball team

Ms Tricia Smith (Canada), attorney at law, Olympian in rowing 1976, 1980 (boycott), 1984 (Silver medal) and 1988, President Canadian Olympic Committee, Vice President International Rowing Federation (FISA)

Independent members:

The above 16 ICAS members then appointed the following four ICAS members as independents:

Judge Ivo Eusebio (Switzerland), Judge at the Swiss Federal Tribunal (retiring at end 2018)

Judge Ellen Gracie Northfleet (Brazil), former Chief Justice of the Federal Supreme Court of Brazil



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Ms Carole Malinvaud (France), attorney at law, arbitrator

Judge Yves Rüedi (Switzerland), new, Judge at the Swiss Federal Tribunal (Criminal Division)

Of this ICAS, 9 members are female and 11 male, and 15 are chosen from outside the IOC, ANOC, ASOIF and AIOWF or otherwise independent.

The President, two Vice Presidents and Presidents and Deputy Presidents of the Ordinary, Anti-Doping (new) and Appeal Division will be elected at the May 2019 ICAS meeting. Given their role in appointing Presidents of arbitration Panels, the Division Presidents and Deputy Presidents will be elected from outside IOC, ANOC, ASOIF and AIOWF memberships. This enforces the fact that these bodies have no role or influence in appointing Presidents of arbitration Panels.

The ICAS Board (five members) will comprise the President, two Vice Presidents and the Presidents of the Ordinary and Appeal Divisions.

A new Challenge Commission (five members) has been established comprising Judge Ellen Gracie Northfleet, Independent, Chair, and the Presidents and Deputy Presidents of the three divisions, less the Presidents and Deputy Presidents of the Division concerned by the specific procedure for challenge.

A Membership Commission (five members) with new composition has been established with Judge Yves Rüedi, Independent, Chair, Ms Tricia Smith, athlete representative, and the three Division Presidents.

5. Challenges to CAS Arbitrators

Between 1 January and 31 October 2018, the ICAS Board has considered 11 challenges to arbitrators, of which none were successful.

6. ICAS Board and ICAS meetings

The ICAS Board met on 1 May and the ICAS on 2 May in Colorado Springs, USA.

The ICAS Board also met last on 7 October and the members of ICAS in office until 31 December 2018 met on 8 October and the ICAS for 2019-2023 met on 9 October 2018 in Lausanne.

7. Round Table Conference

An ICAS Round Table Conference with senior members of the IOC, ANOC, ASOIF, AIOWF, GAISF, WADA and the ITA was held on 31 October in Lausanne to consider and provide input to draft rules for a new CAS Anti-Doping Division (CAS ADD). The CAS ADD was first proposed by the Olympic Summit and, like the services offered by the ITA, will be voluntary for those Olympic International Federations wishing to delegate their disciplinary procedures including sanctions in respect of ADRVs by international level athletes to this body. As a guide, we know that 10 of the 40 Olympic International Federations are using the ITA at this stage.



8. Cas Anti-Doping Division (CAS ADD)

Following the Round Table Conference, the ICAS adopted the rules for the CAS ADD in principle and they are now being finalised with the input from those at the Round Table Conference, to commence 1 January 2019.

Around 25-30 arbitrators experienced in doping matters have, and are, being appointed to the CAS ADD. They will not be allowed to sit in the CAS Appeal Division in any cases.

The CAS ADD will offer the opportunity for a hearing by a single arbitrator chosen from the list of 25-30 with right to appeal to the CAS Appeal Division or a three person panel the President of which will be selected from a shorter list of CAS ADD arbitrators and the parties each appointing an arbitrator from the wider CAS ADD list of 25-30 arbitrators if they agree to a first and final hearing with no right of appeal other than by WADA or the ITA under the WAD Code or the SFT which is available in all cases.

An office fee of CHF1'000 is payable in every case and hearings by the three person panel will be free of charge other than the parties paying for their own representation and for which athletes may apply for legal aid. It is envisaged that for ADRVs in sports in which the Olympic IFs delegate their testing to the ITA, the ITA will be the prosecutor.

In cases where a single arbitrator is agreed by the parties, Olympic IFs which delegate to the CAS ADD may have up to four cases per annum free of charge with the cost of a fifth and any more cases capped at CHF8'000 each to be paid by the Olympic IF and the CAS ADD to bear any costs over and above this amount.

As soon as the CAS ADD rules are finalised, they will be placed on the CAS website along with the names of the 25-30 CAS ADD arbitrators.

Just as the 25-30 CAS ADD arbitrators may not sit on the CAS Appeal Division in any cases, the ICAS has determined that any CAS arbitrators who sit on national or other anti-doping tribunals in first instance will no longer be able to sit on the CAS Appeal Division. They can continue to sit on the CAS Ordinary Division in non-doping cases.

John Coates AC
President

26 November 2018