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

2 NOVEMBER 2017, PRAGUE, CZECH REPUBLIC

1. CAS activities

Between 1 January and 30 September 2017, 421 procedures were registered with the CAS. These are broken down as follows:

82 ordinary procedures
328 appeal procedures
11 mediation procedures

It is likely that the final figure for the year will be around 550. This will be less than the record 609 procedures in 2016, remembering that 41 of them comprised cases heard by the Anti-Doping and ad hoc Divisions at the Rio Games.

Pleasingly, there will be a new record in the number of mediations.

2. Applications for legal aid

Between 1 January and 31 September 2017, the ICAS Board has considered 38 applications for legal aid, granting 16 and partially granting assistance in 13.

3. Challenges to CAS Arbitrators

Between 1 January and 31 September 2017, the ICAS Board has considered 4 challenges to arbitrators, of which none were successful.
4. **Swiss Federal Tribunal (SFT) and other Tribunals**

In 2017, to date, there have been 24 appeals against CAS awards filed with the SFT, of which 8 have been dismissed, 1 withdrawn and 15 are pending.

In total, since the creation of CAS, 181 appeals have been filed at the SFT; 9 of them have been upheld; and, 2 partially upheld (5.5%).

The Cour de Cassation, France’s highest court, recently ruled that the arbitration clause in favour of CAS in the International Ski Federation (FIS) athletes’ declaration was valid and must be respected by the state courts in France. This follows Germany’s highest court having ruled in favour of CAS jurisdiction in the Pechstein case, repeated recognition by the highest courts in Switzerland and recognition in the United States and Australia.

5. **Seminars and Representation activities**

2017

17 May: Internal seminar in Denver USA for CAS Arbitrators based in North America, co-organised with the U.S. Sports Lawyers Association (SLA);

19 May: Public CAS session organised by the SLA and CAS, SLA Annual Conference in Denver, USA;

9 June: Presentation of the CAS Procedures and Jurisprudence at the Council of Europe in Strasbourg, France (M Reeb, W Sternheimer);

6 July: Meeting at the European Court of Human Rights (ECHR) of ICAS delegation (J Coates, T Andrée-Prosec, W Thomassen, C Malinvaud and M Reeb) with ECHR President, G Raimondi, 2 Vice Presidents, 3 Section Presidents and others;

18 July: Presentation of the CAS Procedures and Jurisprudence at the Arbitration Academy in Paris, France (W Sternheimer);

7 September: Participation at the Edinburgh Sports Conference, UK (A de Quesada);

12 September: Public Workshop in Lima, Peru organised by the Lima Chamber of Commerce and CAS;

15 September: Report to the IOC Session, Lima, Peru (J Coates);

19 September: Participation at the Conference on Minors in Football, organised by the International Association of Football Lawyers (AIAF) in Kiev, Ukraine (P Pellaux);

20 September: Report to the Olympic Council of Asia General Assembly, Ashgabat, Turkmenistan (J Coates);

22 October: Keynote speech on the duties of the arbitrators at the inauguration of the Arbitration Centre of Saudi Arabia in Riyadh (M Reeb);

28 October: Presentation of the CAS’ latest developments at the Nordic Conference on Sports Law in Helsinki, Finland (M Reeb).
2018

18 April: Conference LawAccord, Bangkok, Thailand in collaboration with LawAccord;

16 May: Internal seminar in National Harbour, USA for CAS Arbitrators based in North America (open to all CAS members) co-organised with the SLA;

18 May: Public CAS session co-organised with the SLA and included in the official program of the SLA Annual Conference, National Harbour, USA;

21-22 September: Public seminar in Lausanne, Switzerland organised jointly by CAS, the Swiss Bar Association and the Swiss Arbitration Association;

6. CAS ad hoc Divisions

In 2017, CAS ad hoc Divisions were established on the occasion of the Asian Winter Games in Sapporo, Japan and Asian Indoor and Martial Arts Games in Ashgabat, Turkmenistan.

In 2018, 4 CAS ad hoc Divisions will be established for the:

- Olympic Winter Games in PyeongChang, Korea, 9-25 February;
- Commonwealth Games, Gold Coast, Australia, 4-15 April comprising 1 President (working at a distance), 1 Arbitrator (present on Gold Coast), 3-4 Arbitrators (on standby), Secretary General, 1 Counsel, 1 Administrative Assistant;
- FIFA World Cup in Russia June-July (remotely) comprising a group of around 25 Arbitrators (on standby); and
- Asian Games in Jakarta, Indonesia, 18 August-2 September comprising 1 President, Secretary General, 6 Arbitrators, 1 Counsel, 1 Administrative Assistant.

For the Olympic Winter Games in PyeongChang in 2018, the Divisions will comprise:

**CAS ad hoc Division**

<table>
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<tr>
<th>Name</th>
<th>Position</th>
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<tr>
<td>Michael Lenard, USA</td>
<td>President</td>
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<tr>
<td>Corinne Schmidhauser, SUI</td>
<td>Co-President</td>
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<td>Mohamed Abdul Raouf, EGY</td>
<td>Arbitrator</td>
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<td>Laurence Boisson de Chazournes, FRA</td>
<td>Arbitrator</td>
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<td>John Faylor, USA/GER</td>
<td>Arbitrator</td>
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<td>Thi My Dung Nguyen, VIE</td>
<td>Arbitrator</td>
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<td>Jinwon Park, KOR</td>
<td>Arbitrator</td>
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<tr>
<td>Carol Roberts, CAN</td>
<td>Arbitrator</td>
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<tr>
<td>Martin Schimke, GER</td>
<td>Arbitrator</td>
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<tr>
<td>Zali Steggall, AUS</td>
<td>Arbitrator</td>
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<tr>
<td>Bernard Welten, SUI</td>
<td>Arbitrator</td>
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Both Divisions will operate from 30 January-25 February 2018. The CAS offices will be located in Yong Pyong, the venue for some alpine skiing events. The office will be open every day from 08:30 to 18:00 and until 19:30 during Games time. The procedural rules for the CAS ADD will be available on the CAS website. The rules for the CAS ad hoc Division are contained in the CAS Code, also on the CAS website. A selection of pro bono lawyers will be available for athletes.

The Olympic Games in Rio was the first time in the history of the Olympic Games that the CAS had jurisdiction in first instance doping-related matters arising on the occasion of the Games which were previously determined by IOC Disciplinary Commissions appointed by the IOC President. The new independent structure handled 13 doping cases in accordance with the IOC Anti-Doping Rules.

For PyeongChang 2018 the CAS ADD will also include participation of the International Federations concerned, all 7 having delegated jurisdiction to impose potential sanctions applicable at the Games (disqualification, exclusion) and outside the Games’ time (suspension). Such unified procedure will be conducted by the same panel of arbitrators. An appeal will remain possible to the CAS ad hoc Division at the Games, and following the Games to the CAS Appeal Division, Lausanne, in both cases involving different arbitrators.

For the Tokyo 2020 Olympic Games, we are anticipating that all of the International Federations concerned will be invited to delegate jurisdiction for consequential sanctions to the CAS ADD in the same way.

7. ICAS Board and ICAS meetings

The ICAS Board met on 11 May and the ICAS on 12 May in Lausanne, Switzerland.

The ICAS Board also met last week on 25 October and the ICAS on 26 October 2017. The ICAS is most grateful to the NOC of Oman and its President and IOC Member, H.E. Sheikh Khalid Bin Mohammed Al Zubair for hosting these meetings. We also acknowledge and thank ANOC and OCA President, H.E. Sheikh Ahmad Al-Fahad Al-Sabah for his attendance at the receptions and other formal occasions around these meetings in Oman.

Among the agenda items for the ICAS Meeting in Oman was consideration of the creation of a permanent anti-doping division of CAS and the appointment of a group of CAS arbitrators who are specialists in anti-doping related matters.
Similar to the operation of the new Independent Testing Authority outside of Games’ time, the recognition of the jurisdiction and utilisation of the services of the permanent CAS Anti-Doping Division by International Federations would be made on a voluntary basis (with the exception of the CAS ADD jurisdiction during the Olympic Games). Consideration is being given and researched as to whether a single arbitrator would be available in the first instance, with the usual right of appeal under the World Anti-Doping Code (WAD Code) being free of arbitrator and court costs, to the CAS Appeal Division or whether a panel of 3 arbitrators could hear alleged ADRVs possibly on a first and final instance or at first instance with judicial review only (not a de novo hearing) by the CAS Appeal Division and given that in both cases limited appeal rights to the SFT (fair hearing, etc) will be available.

The permanent CAS ADD will be available to hear alleged ADRVs involving international level athletes free of arbitrator and court costs. It would also be available to national anti-doping organisations and national federations to hear alleged ADRVs involving national level athletes, as is currently the case under the WAD Code, but on a user-pay basis and given that in many countries (e.g. UK, Canada, New Zealand, Malaysia and Oman) there exist national tribunals which provide this service.

The ICAS acknowledges that for International Federations to cede jurisdiction in this way, the procedure will have to be free of arbitrator and court costs for them and assured of expeditious resolution. And for the athletes, the existing access to pro bono lawyers and legal aid provided by CAS must and will continue to be available.

I will chair a working party with ICAS members, Richard Pound QC and Swiss Judge Ivo Eusebio, Secretary General Matthieu Reeb and CAS Counsel Brent Nowicki to progress this work on behalf of the wider ICAS who, of course, must finally approve and adopt.

These are complex legal considerations and the creation and commencement of such a permanent CAS Anti-Doping Division is unlikely before 1 January 2019 or even 2020.

1 November 2017

John Coates AC
President