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INTERNATIONAL SPORTS JUSTICE

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ABBREVIATIONS

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ADAMS	WADA Anti-Doping Administration and Management System
CAS	Court of Arbitration for Sport
CAS ADD	CAS Anti-Doping Division
CFCB	UEFA Club Financial Control Body
DRC	Dispute Resolution Chamber of the FIFA Football Tribunal
ECHR	European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950)
EFAA	European Football Agents Association
EHF	European Handball Federation
EHF-ECA	European Handball Federation – European Court of Arbitration
EU	European Union
FFP	Financial Fair Play (UEFA)
FIA	Fédération Internationale de l'Automobile
FIBA	Fédération Internationale de Basketball – International Basketball Federation
FIDE	Fédération Internationale des Échecs
FIFA	Fédération Internationale de Football Association
FIFPRO	Fédération Internationale des Associations de Footballeurs Professionnels
FIG	Fédération Internationale de Gymnastique
FIH	Fédération Internationale de Hockey
FIM	Fédération Internationale de Motocyclisme
FINA	Fédération Internationale de Natation
FIVB	Fédération Internationale de Volleyball
FOA	Formula One Administration Ltd
F1	Formula One
FT	FIFA Football Tribunal
IAAF	International Association of Athletics Federation
IBA	International Boxing Association
IBU	International Boxing Union
IHF	International Handball Federation
IOC	International Olympic Committee
ISL	International Swimming League
ISU	International Skating Union
ITF	International Tennis Federation

NBA	National Basketball Association
PFSC	Professional Football Strategy Council (UEFA)
PSC	Players' Status Chamber of the FIFA Football Tribunal
RSTP	FIFA Regulations on the Status and Transfer of Players
RWWI	FIFA Regulations on Working With Intermediaries
SFT	Swiss Federal Tribunal
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
TPI	Third Party Investment
TPO	Third Party Ownership
UCI	Union Cycliste International
UEFA	Union of the European Football Associations
WADA	World Anti-Doping Agency

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**INTERNATIONAL SPORTS JUSTICE:
INTRODUCTORY REMARKS**

by *Massimo Coccia* and *Michele Colucci**

Modern organized sport historically traces its roots to clubs and associations which, during the nineteenth century, set out their own private rules to engage in sporting competitions. Since the very beginning those sporting clubs and associations attempted to minimize the role and influence of State governments, legislators and judges, by establishing a self-contained private legal system (and most of the times States let that happen without any opposition). The whole sports system is indeed based on contractual autonomy and associational freedom, as the participation of athletes and teams in organized sport is based on their consent to register with sports institutions and compete in sports events organized by the latter. Athletes and clubs (as well as any other individual or entity registered with a sports institution) are thus contractually bound to comply with the rules of the game and to abide by all decisions imposed on or off the field by individuals acting on behalf of those institutions. The widespread acceptance by the sporting community of rules and decisions issued by such private regulators and authorities derives from the fact that, at the end of the day, the institutional setting within which those regulators and authorities act has been chosen and designed by the sporting community itself. Of course, this does not exclude the existence of disputes within or outside such community.

In particular, the members of the sporting community have elected since the inception of organized sport to have disputes within that community settled through legal frameworks and mechanisms of their own choice and design. This occurred because of the wish to minimize the impact of disputes on the underlying shared values of that community. Essentially, the sporting community has always

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wanted maximum autonomy and control over the resolution of disputes related to sports with a view to guaranteeing a “justice system” which would not disrupt or damage their own private set of rules and the underlying relationships and ideals.

Sports justice is thus of paramount importance for any club, athlete, and any other person registered with a sports association. They all have rights and obligations that often are unique in the sense that they come under the context of sport, and therefore are most appropriately granted or supervised by adjudicators that are selected by the sporting community and are knowledgeable of sports, in other words by “sports judges”.

In the name of their autonomy and the specificity of sport, the international sports associations have gradually shaped their institutional structure along the years on the basis of Montesquieu’s ideals about separation of powers, thus developing their own justice bodies to settle internal disputes. Some of them seem to be more effective than others but all share the same goal: to settle disputes, to mediate or conciliate, and to guarantee the correct interpretation of sporting regulations.

This is not an easy task since sports justice, and what might seem to fit under that umbrella definition, is not always clear. Ordinary State justice maintains its place for granting and supervising certain rights and obligations that are not so different from those protected by sports justice except that they occur outside of the arena of sport.

The lines of distinction become even more blurred when issues of individual or fundamental rights come into play. Indeed, international sports associations have sometimes used their enormous power as private sector regulators to exploit their monopolistic position to the detriment of other actors of the sporting community. For this reason, the State judiciaries, as well as the judicial bodies created by States at international level, play a very important role in ensuring through “ordinary justice” that the sports institutions, and in particular the justice mechanisms they have created, stay on course and abide by mandatory rules and public policy principles devoted to guaranteeing individual or fundamental rights, both of national and supranational character.

This book is unique in that it looks closely at a multitude of international sports associations to consider the development of sports justice, and its relationship with ordinary justice.

The Authors are all eminent scholars, independent practitioners, in-house lawyers and arbitrators, who provide in-depth review and incredible insight into the complexities of the topic.

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The book is divided into three parts. The first covers the functioning, procedures and case law of the Court of Arbitration for Sport and of Sport Resolutions.

The second part focuses on the internal justice mechanisms of major sports associations and organisations in several sports. Particular attention is given to the structure and rules of sports internal judicial bodies, the relevant proceedings, the eligibility, employment, economic and technical disputes, by also taking into due account the relevant case law.

The third part deals with international sports leagues and their peculiarities.

Finally, the conclusions offer a brief comparative analysis of the examined sports justice systems in order to identify the critical issues, but also the best practices, hopefully paving the way for achieving the best possible international sports justice.

Rome – Brussels, 1 October 2023

Massimo Coccia

Michele Colucci

**THE “SUPREME COURT” OF INTERNATIONAL SPORTS LAW:
THE COURT OF ARBITRATION FOR SPORT**

by *Massimo Coccia**

*ABSTRACT: This chapter of the book on international sports justice examines the Court of Arbitration for Sport (CAS). It deals with the history and organization of the CAS and, in this connection, with the debated issue of its structural independence, also suggesting some reasonable reforms. It also explores some of the features characterizing the various CAS arbitral procedures: the ordinary, appeals and Olympic arbitration procedures. The most relevant procedural issues that often occur in CAS arbitration proceedings, such as jurisdictional and admissibility issues, the appointment and challenge of arbitrators, the participation of third parties in CAS proceedings and the granting of interim measures are analysed in depth, with extensive reference to the relevant jurisprudence. Evidentiary issues are also examined in detail, with particular reference to burden of proof, discovery, factual and expert testimony, and admissibility of illegally obtained evidence. It also addresses the issue of applicable law in CAS proceedings, clarifying in this context the true nature of *lex sportiva*. Finally, the essay examines the right to challenge CAS awards before the Swiss Federal Tribunal, describing the various grounds for annulment provided by Swiss law. It concludes by underlining the fundamental nomophylactic function performed by the CAS in the international sports legal system, similarly to what any supreme court does within its national legal system.*

SUMMARY: 1. Introduction – 2. The History of the CAS – 2.1 The Origins – 2.2 The Federal Tribunal’s Gundel Judgment – 2.3 The Creation, Composition and Functions of the ICAS – 2.3.1 The Paris Agreement and the Adoption of the CAS Code – 2.3.2 Composition and Functions of the ICAS – 2.3.3 Financing

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SPORTS DISPUTE SETTLEMENT INSTITUTIONS

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8.4 Factual Witnesses – 8.5 Expert Evidence – 8.6 Illegally Obtained Evidence – 9. Provisional and Conservatory Measures – 9.1 Application To Obtain an Interim Measure – 9.2 Conditions To Obtain an Interim Measure – 10. Appeals Against CAS Awards – 10.1 Irregular Constitution of the CAS Panel – 10.2 Jurisdiction Wrongly Retained or Declined – 10.3 Award Ultra, Extra or Infra Petita – 10.4 Violation of Right To Be Heard – 10.5 Violation of Public Policy – 10.6 Concluding Remarks on Appeals Against CAS Awards – 11. Concluding Remarks: *Stare Decisis* and the Nomophylactic Function of the CAS

I. INTRODUCTION

The sports sector intensively resorts to arbitral mechanisms to resolve disputes.¹ This should not come as a surprise, given the widespread opinion among the sports sector’s stakeholders that settling disputes through private adjudication systems is preferable over ordinary litigation before State courts. This mainly occurs because speed and finality are fundamental needs of sporting competitions and, thus, of related disputes; in fact, arbitration tends to cater to those needs more efficiently than ordinary litigation. In addition, the sporting community has always had a sense that the sports sector presents many peculiarities that can be better understood by specialized adjudicating bodies than by ordinary judges.

Two caveats are necessary, though.

The first caveat is that the resort to specialized adjudication bodies should not be pursued by sports organizations as an expedient to try and avoid an independent and impartial legal scrutiny of their conduct. International sports governing bodies must remain accountable to athletes, clubs, national federations, leagues and, more in general, anybody who is subject to their authority and, thus, sports justice mechanisms must not be or become instruments to unduly protect those organizations’ institutional and regulatory role or market power.

The second caveat, connected to the first one, regards the use of the term “arbitration” in the sports sector. Indeed, it sometimes occurs that sports organizations confer (not always in good faith) an arbitration label to sports justice bodies which, however, do not actually possess the necessary institutional and procedural characters and guarantees to be qualified as true arbitral tribunals. An occurrence of this kind was highlighted by the European Court of Human Rights (the “ECtHR”) in a judgment concerning the so-called Arbitration Committee of

[...]

¹ See the various examples of sports arbitration systems mentioned in M. COCCIA, *Sports Arbitration: Which Features Can Be “Exported” to Other Fields of Arbitration?*, in E. GEISINGER, E. TRABALDO-DE MESTRAL (eds.), *Sports Arbitration: A Coach for Other Players?*, ASA Special Series No. 41, 1-16.

CAS ANTI-DOPING DIVISION

by Mario Vigna*

ABSTRACT: *The (permanent) Anti-Doping Division (CAS ADD) is the third division of the Court of Arbitration for Sport (CAS/TAS), together with the “ordinary” and “appeals” divisions. Conceived during the 2017 and 2018 Olympic Summit, it has been operational since January 2019 to hear and decide whether or not there has been a violation of the anti-doping rules as a first instance authority pursuant to a written delegation of powers from the International Olympic Committee (IOC), the International sports bodies and any other signatories to the World Anti-Doping Code (WADC). The CAS ADD was initially conceived to issue decisions on doping-related matters within very short deadlines during major sporting events, including the Olympic Games, pursuant to the Olympic Charter rule 59.2.4. Subsequently, taking into account all the circumstances and peculiarities of the disciplinary cases related to the anti-doping disputes, as well as the CAS ADD specialisation, it was considered useful for the CAS ADD to issue decisions both during and before major sporting events, so now having a permanent CAS Division (i.e., CAS ADD) and a temporary office established for the Olympic Games (i.e., CAS Ad Hoc ADD) with a different set of rules.*

SUMMARY: 1. Introductory Notes and Genesis of the CAS ADD – 2. Structure and Procedural Rules of the (Permanent) CAS ADD – 3. Jurisdiction and Applicable Law – 4. Request for Arbitration, Written Submissions, Production of Documents and Expert Appointments – 5. Formation of the Hearing Body, Hearing, and Duration of the Proceedings – 6. The Decision/Award – 7. Multifaceted Nature of the CAS ADD Proceedings and Appeals – 8. The CAS ADD Legal Aid and *Pro Bono* Attorney Program – 9. Conclusive Remarks

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I. INTRODUCTORY NOTES AND GENESIS OF THE CAS ADD

In this chapter, it will be provided an overview of the CAS Anti-Doping Division (CAS ADD), its structures, and procedures, and what it means for sports governing bodies and athletes.

To understand the genesis of the CAS ADD, there is the need to date back to just prior to the Rio Olympic Games when there was a program being rolled out by the IOC Agenda 2020.¹ In particular, the Agenda 2020 had a whole laundry list of initiatives and best practices that the IOC was instilling in its members and the sports community as a whole to create the betterment of sports at every level. One of the points in the Agenda 2020 was a call for the independence of anti-doping activities such as the collection and testing of samples and result management. Prior to this time, with respect to anti-doping cases arising at the Olympic Games, the initial decision as to disqualification of results would have been made by the IOC Disciplinary Commission,² with a right to a near-immediate appeal to the CAS Ad Hoc Division, which was actually seated at the Olympic Games.

Furthermore, outside the Olympic period, it was virtually the norm that either the International Federations (IFs) themselves or through third parties connected with the IFs would collect the samples, test the samples, report the samples, and then they would internally adjudicate the sample.

As a consequence of the above call, there was a request that the CAS act as an independent adjudicatory body for the IOC as it concerned testing of samples or positive samples resulting during the Rio Games. So, the CAS ADD came into existence right around the Brazilian Olympics on an ad hoc basis and separate from the CAS Ad Hoc Division. At that time, the CAS ADD was established solely to replace the role of the above-mentioned IOC Commission that previously had adjudicated the positive samples arising out of the Games. In essence, the IOC essentially put its money where its mouth was saying, supporting the idea of independent adjudication in anti-doping matters and requesting the CAS to set up this anti-doping unit to take these independent decisions for game samples. In so doing, IOC discontinued a system that was in place, with minimal change, for 20 years. For the first time, in Brazil the CAS ADD acted as a first instance tribunal for potential anti-doping rule violation cases that arose within ten days of the Opening Ceremony and during the Olympic Games, but left the

¹ B. NOWICKI, *Head of the CAS Anti-Doping Division*, E92 LawInSport Podcast, <https://www.lawinsport.com/podcast/item/brent-nowicki-head-of-the-cas-anti-doping-division-e92>.

² Medical Science and Games Group of the IOC.

essence, the athletes got an opportunity to decide how they wanted their cases to be heard, all the while keeping the process as straightforward as possible.

After Pyeongchang, there were further discussions between CAS and some IFs where the latter noted that the new process actually worked since it alleviated something that the Federations did not necessarily need to be in the business of, which is adjudication. On the other hand, CAS had the infrastructure, the qualified arbitrators and the personnel to efficiently do this. This led to the idea to have CAS dealing with the adjudication aspects on a permanent basis for all periods outside of the Games. Moreover, at that time the new draft of the WADC 2021 was already circulating and there were certain big changes concerning the results management requirements for the signatories to the WADC, e.g., a requirement that an independent body not associated with the IFs should be assembled to adjudicate anti-doping violations. In essence, these new requirements set out in WADC 2021 came full circle since the importance of independent adjudication and results management was a significant part of the IOC Agenda 2020.

It is possible that the establishment of the CAS ADD also stemmed from the experience of the CAS Appeals Division since a lot of the appeals that WADA brought over the years were because first instance tribunals just made errors in law, very often since they were not specialists in the area of anti-doping or did not stay up to date or current on the trends, the jurisprudence, the law, the issues. In a number of CAS appeals related to doping cases, the appeal was upheld since the first instance hearing bodies misapplied the rules or judged in equity, which is not a legal basis to decide a doping case under the WADC. This led to some uncertainties also for athletes, perhaps thinking they can compete after a first instance and then found themselves back in litigation, provisionally suspended, and losing results they have earned and trained for just because sometimes the first instance tribunal got it legally wrong.

Lastly, the creation of the CAS ADD also appears to be linked to the parallel creation of the International Testing Agency (ITA). Indeed, around the same time as the above discussions were going on regarding the independence of the adjudication process, the stakeholders were talking about the transparency and independence of testing and result management. This led to the establishment of ITA and the following delegation to it of activities from IFs, i.e., collection of samples, testing of samples, reporting of samples, liaising with experts, figuring out if there are discrepancies, engaging with athletes and discussing agreements, and all other aspects of result management. At present, ITA is now a key resource for sports federations and efficiently deals with the first phases of result management. Still, when the result management gets to the point where ITA cannot resolve a case, there is the need to shift to the adjudication phase to a body that

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ALTERNATIVE DISPUTE RESOLUTION IN INTERNATIONAL SPORT: SPORT RESOLUTIONS

by Catherine Pitre*

ABSTRACT: *The Author contextualises Sport Resolutions' role in the international sport system, analysing its unique features, alternative dispute resolution processes and operations from a practical standpoint. Providing first instance and appeal arbitration and adjudication services to the international sport sector, in addition to mediation, investigations, and investigation-adjacent services in a wide range of subject matters, Sport Resolutions addresses the evolving needs of the sector for expert, efficient and accessible remedy. This paper will explore those ADR mechanisms and the principles that underpin them with particular focus on adjudication.*

SUMMARY: 1. Introduction – 1.1 History – 1.2 ADR Mechanisms – 1.3 Subject Matters and Panel Composition – 2. Jurisdiction – 2.1 Costs of Proceedings – 2.2 *Pro Bono* Legal Advice & Representation Service – 3. Applicable Rules – 3.1 Procedure – 3.2 *Ad Hoc* Panels – 3.3 Other ADR Mechanisms – 3.3.1 Mediation – 3.3.2 Independent Investigations – 3.4 Referrals in Action – 4. Conclusion

1. INTRODUCTION

Sport Resolutions (SR) is a not-for-profit dispute resolution service for sport operating globally and based in London. Unless otherwise agreed by parties or directed by the arbitral tribunal, proceedings under its auspices are determined in accordance with the laws of England and Wales, governed by the

* Lawyer; Head of Case Management at Sport Resolutions.

Arbitration Act 1996, with the seat of arbitration being London. Decisions rendered pursuant to its Arbitration Rules are final and binding on parties.

1.1 History

Sport Resolutions was founded in 1997 in the aftermath of the Diane Modahl case.¹ Modahl is an English middle-distance runner and Commonwealth Champion in the 800m. In 1994, further to a urine sample collection, she returned an adverse analytical finding further and was sanctioned to a four-year period of ineligibility. On appeal, she was successful in demonstrating that the sample had undergone bacterial degradation due to the manner in which it was handled by the laboratory, resulting in it being unable to be relied upon with a sufficient level of accuracy/certainty.

Modahl brought legal action against the British Athletics Federation for damages in the civil courts and in the process of doing so, was left almost bankrupt. Similarly, the British Athletics Federation went into administration. As a result of this prominent case and its financial fallout, the stakeholders of sport in the UK came together to create the Sports Dispute Resolution Panel (“SDRP”), later renamed Sport Resolutions. The SDRP’s purpose was to provide independent and expert services to the sport sector, in a cost-efficient and timely manner – i.e. addressing the issues exemplified by the Modahl case. There have since been a number of changes in the manner anti-doping rule violations are managed and asserted around the world, which include rules, standards and procedures.

Stemming from its roots, Sport Resolutions is governed by a Board of Directors limited to twelve directors, made up of seven independent non-executive directors, four representative directors and the Chief Executive in an ex-officio capacity. The representative directors are nominated by their organisations and represent the nine founding members of the organisation. The independent non-executive directors bring diverse skill sets, experience and perspectives relevant to the Board’s functions. A number of sub-committees with specific terms of reference report into the Board. Summary minutes of Board meetings are published on SR’s website. Similarly, SR publishes comprehensive reports on its activities every year, also available on its website.

To this day, Sport Resolutions provides dispute resolution services to the sport sector and is accessible to small organisations and large federations alike. Although established to service the United Kingdom, there has been

¹ For more information on this matter, see Diane Modahl MBE and Vicente Modahl heartened by legacy but pain is still real, available at <https://www.sportresolutions.com/news/view/diane-modahl-mbe-and-vicente-modahl-heartened-by-legacy-but-pain-is-still-real> (last consulted on 5 April 2023).

significant expansion within the last few years such that SR has to date supported more than twenty different international sport federations (IFs), a number which continues to grow as more organisations opt to designate Sport Resolutions as their dispute resolutions service provider of choice.

1.2 ADR Mechanisms

Alternative dispute resolution processes available at Sport Resolutions include arbitration, mediation, and investigation. In the safeguarding context, reviews and risk assessments are also available. Matters are administered by the Sport Resolutions Secretariat. Where historically arbitration has been the mechanism most utilised by parties, recent years have seen a significant increase in the number of investigations being commissioned.

In the last financial year, Sport Resolutions received more than 300 requests for dispute resolution guidance and support, leading to approximately 150 case referrals. The nature of the cases administered by SR, and underlying themes, varied significantly. In almost equal proportions were referrals relating to safeguarding, selection and eligibility, anti-doping, integrity and discipline, and other matters. These were followed (in descending order) by regulation and governance matters, employment and discrimination, and commercial matters. Throughout the 2021-2022 year alone, Sport Resolutions was called upon to assist in disputes involving more than ten different IFs, and parties in six continents.

Over the last six years, Sport Resolutions has seen a growing number of international referrals. To date, it has assisted more than 20 IFs with their dispute resolution processes, including independent tribunal services, *ad hoc* panels for Major Events, investigations, arbitrations and mediations. The services provided to IFs are bespoke and tailored to the needs of each IF, providing significant flexibility and seamless integration within existing frameworks. This chapter will focus on the adjudication processes SR provides to international sport, either through arbitration or disciplinary processes akin to arbitration, herein referred to generally as tribunal services.

1.3 Subject Matters and Panel Composition

Sport Resolutions operates a number of independent tribunals with specialised skill sets and defined remits, particularly in the anti-doping, integrity and safeguarding sectors. Three hundred panel members make up SR’s Panel of Arbitrators and Mediators. The Panel’s composition is constituted of almost equal shares of Legal Members, those who chair tribunals and Specialist Members, those who sit as side members of the tribunal and provide a wide range of

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THE JUDICIAL SYSTEM OF WORLD AQUATICS

by Justin Lessard*

ABSTRACT: *This Chapter seeks to provide an overview of the judicial system of World Aquatics. It focuses on the different regulations, mechanisms and bodies put in place by World Aquatics in order to settle internal disputes. In particular, this chapter provides an in-depth analysis of the Aquatics Integrity Unit, an operationally independent unit of World Aquatics, tasked with settling integrity-related disputes.*

SUMMARY: 1. Overview of World Aquatics – 2. World Aquatics Regulations – 3. Rights and Obligations of World Aquatics Stakeholders with Regards to Internal Disputes – 3.1 Obligations – 3.2 Rights – 4. Judicial Bodies of World Aquatics – 4.1 The World Aquatics Bureau – 4.1.1 Composition and Appointment of the World Aquatics Bureau – 4.1.2 Jurisdiction of the World Aquatics Bureau – 4.1.3 Proceedings of the World Aquatics Bureau – 4.2 The Aquatics Integrity Unit – 4.2.1 Composition and Appointment of the Aquatics Integrity Unit – 4.2.1.1 Supervisory Council of the AQIU – 4.2.1.2 Chief Ethics and Compliance Officer of the Aquatics Integrity Unit – 4.2.1.3 Investigatory Body of the AQIU – 4.2.1.4 Adjudicatory Body of the AQIU – 4.2.1.5 Anti-Doping Advisory Body of the AQIU – 4.2.2 Jurisdiction of the Aquatics Integrity Unit – 4.2.3 Proceedings of Integrity Code Violations – 4.2.4 Proceedings for Anti-Doping Rule Violations

* Justin Lessard is the manager of the Aquatics Integrity Unit. He is a lawyer with more than 8 years of experience in the Olympic Movement, specializing in ethics, integrity and disciplinary matters. He joined World Aquatics in 2020, before moving to the Aquatics Integrity Unit on 1 January 2023. He has also previously worked as Legal Counsel to the Union Cycliste Internationale, having trained as a lawyer at the International Olympic Committee. He is also a member of the Legal Consultative Group within the Association of Summer Olympic International Federations, the Integrity Unit of the International Hockey Federation, and the Anti-Doping Committee of Virtus Sport.

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– 4.2.5 Proceedings for Eligibility To Run for Election – 5. Sport Offenses and Sanctions – 5.1 Water Polo Offenses – 5.2 Artistic Swimming Offenses – 5.3 Swimming Offenses – 5.4 Open Water Swimming Offenses – 5.5 Diving and High-Diving Offenses – 5.6 Protests and Appeals of Sporting Offenses in Aquatics – 6. Relationship Between World Aquatics and Ordinary Courts – 7. Relationship with CAS – 8. Implementation of Awards/Decisions – 9. Conciliation – 10. Conclusions

1. OVERVIEW OF WORLD AQUATICS

World Aquatics, formerly known as the Fédération Internationale de Natation (FINA) is an association governed by Art. 60 et seq. of the Swiss Civil Code. It was founded in London on July 19, 1908 and it has its headquarters in Lausanne, Switzerland.¹ World Aquatics comprises 209 National Member Federations in the five continents, and it is the sole and exclusive world governing body for all Aquatic sports, namely Swimming, Open Water Swimming, Diving, High-Diving, Water Polo and Artistic Swimming.

Swimming is part of the Olympic programme since 1896, Water Polo became the first team sport in the Games in 1900, and Diving made its appearance in 1904. Eighty years later, in 1984, Artistic Swimming joined the Olympic Games, while Open Water Swimming (10km race for men and women) is included in the Olympic programme since 2008.

World Aquatics' primary objective is to ensure that all Aquatics sports are governed, organised, developed and managed in accordance with the principles of democracy, right to equality, and no discrimination between any race, skin colour, gender, religion, sexual orientation, language, political or other opinion, national or social origin, property, birth, disability or any other reason, neutrality, transparency, accountability, fairplay, inclusion, sportsmanship and clean sport.²

2. WORLD AQUATICS REGULATIONS

Following the election of Mr. Husain Al-Musallam as president, World Aquatics, established a reform committee to identify potential changes to World Aquatics and provide strategic recommendations on a number of areas including governance, communication, marketing, gender equity, events, athlete safeguarding, sports medicine and sport development.

¹ World Aquatics Constitution, Art. 2.

² *Idem*, Art. 3.

This process culminated with almost all World Aquatics regulations being amended as of 1 January 2023. In particular, an entirely new Constitution and Integrity Code were adopted by the World Aquatics General Congress.

The regulatory framework of World Aquatics can thus be summarized as follows:

- (i) Constitution
- (ii) By-Laws
- (iii) Competitions Regulations
- (iv) Integrity Code
- (v) Rules on the Protection from Harassment and Abuse
- (vi) Doping Control Rules.

All these regulations are published on the World Aquatics website.³

3. RIGHTS AND OBLIGATIONS OF WORLD AQUATICS STAKEHOLDERS WITH REGARDS TO INTERNAL DISPUTES

3.1 Obligations

Member Federations and all World Aquatics stakeholders must fully comply at all times with the Constitution and the World Aquatics Rules, the decisions and directives of the World Aquatics Bodies, as well as the decisions of CAS.⁴ They are solely responsible for knowing what their obligations are under the World Aquatics Rules.⁵

When involved in internal disputes, athletes, Member Federations and other Aquatics stakeholders have the obligation to fully collaborate with the judicial bodies and to fully comply with their decisions as well as with the CAS awards.⁶

In 2022, a coach of the Mexican Swimming Federation was sanctioned for failure to abide by a decision of the World Aquatics Bureau which implemented a stabilization committee in Mexico. More precisely, the coach had sent communications on behalf of the Mexican Swimming Federation, without the prior consent of the stabilization committee. A fine of EUR 500 was imposed on him as a result.⁷

[...]

³ Available at <https://www.fina.org/rules/general-rules>.

⁴ World Aquatics Constitution, Art.7 and World Aquatics Competition Regulations, Art. 2.3.

⁵ World Aquatics Competition Regulations, Art. 2.7.

⁶ World Aquatics Constitution, Art. 31.4.

⁷ World Aquatics Disciplinary Panel decision of 12 September 2022, unpublished.

THE JUSTICE SYSTEM OF WORLD ATHLETICS

by *Francisco A. Larios, Esq.**

ABSTRACT: *This chapter provides an overview of the World Athletics structure and dispute resolution system. It focuses mainly on the Disciplinary Tribunal, an operationally independent body created in 2017 to hear and decide, as a first-instance body, alleged breaches of the World Athletics Integrity Code of Conduct and of the Anti-Doping Rules. This chapter also outlines how eligibility matters are dealt with at World Athletics and, more specifically, the process undertaken to gain authorization to compete as a transgender athlete or as an athlete with DSD (differences of sexual development) or with a mechanical aid. Finally, this chapter discusses how technical and competition-related decisions are taken and challenged at World Athletics.*

SUMMARY: 1. Introduction – 1.1 World Athletics Members and Their Obligations – 1.2 The World Athletics Bodies – 1.2.1 Congress – 1.2.2 The Vetting Panel – 1.2.3 Council and Executive Board – 1.2.4 The Athletics Integrity Unit – 2. World Athletics Adjudicating Bodies – 2.1 Disputes Between the Bodies of World Athletics – 2.2 The Disciplinary Tribunal – 2.2.1 Introduction and General Provisions on the Disciplinary Tribunal – 2.2.2 Disciplinary Tribunal Acting as a First-Instance Panel for Anti-Doping Disputes – 2.2.3 Disciplinary Tribunal Acting as a First-Instance Panel for Non-Anti-Doping Disputes – 2.2.4 Disciplinary Tribunal Acting as a First-Instance Panel for Removal of Council or Executive Board Members – 2.2.5 Typical Cases Decided by the Disciplinary Tribunal – 3. Eligibility Disputes – 3.1 Eligibility To Represent a Member Federation – 3.2 Eligibility To Compete Under a Specific Gender Category in Competitions – 3.2.1 The Eligibility Regulations for Transgender Athletes – 3.2.2 The Eligibility

* U.S. attorney-at-law at Coccia De Angelis & Associati, CAS *ad hoc* clerk, Member of the World Athletics Disciplinary Tribunal, Member of the International Panel at Sport Resolutions, Lecturer for the SSBM Master in International Sports Law.

Regulations for Female Classification (Athletes with Differences of Sex Development) – 3.3 Eligibility To Participate in a Competition with a Mechanical Aid – 4. Internal Bodies To Deal with Technical and Competition-Related Decisions – 5. Conclusion

I. INTRODUCTION

World Athletics, formerly known as the International Association of Athletics Federation (IAAF), is the world governing body of track and field athletics.¹ It was formed in 1912 and since 1993 has been registered and headquartered in Monaco. World Athletics is tasked, among other things, with encouraging participation in athletics at all levels throughout the world, regulating the sport through the development of rules and regulations and a judicial system, protecting the integrity of athletics by enforcing standards of conduct and ethical behavior and implementing good governance, protecting clean athletes by applying and enforcing the WADA Code, and preserving the right of every individual to participate in athletics without unlawful discrimination.²

1.1 World Athletics Members and Their Obligations

World Athletics is composed of the national member federations – one from each country or territory.³ Each is entitled to attend, speak and vote at meetings of Congress and enter athletes in international competitions.⁴ The member federations are, among other things, obliged to administer, promote and develop athletics in their respective countries, adopt constitutions consistent with that of World Athletics, and democratically elect/appoint its representatives.⁵ World Athletics has the right to intervene in the governance or management of a member federation under certain circumstances, including, for example, if the member federation is having significant governance difficulties.⁶ A member federation may be suspended or expelled from World Athletics, provided it is notified and given the opportunity to present its position before Congress on the proposed

¹ World Athletics Constitution, Art. 1.

² *Idem*, Art. 4.

³ *Idem*, Art. 7. Note that according to Art. 7.1 a territory is not eligible to be a member federation; however, this does not affect the status of existing member federations of territories admitted to World Athletics prior to 21 December 2005.

⁴ *Idem*, Art. 8.

⁵ *Idem*, Art. 9.

⁶ *Idem*, Art. 12.

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suspension/expulsion.⁷ Congress may reinstate an expelled member federation by special majority.⁸

World Athletics is divided into six geographical registrations called “Areas”, whose purpose is to promote, develop and coordinate athletics therein.⁹ Area Associations have the power to make decision in their area and elect Area Presidents who are *ex officio* members of the World Athletics Council.¹⁰

1.2 The World Athletics Bodies

1.2.1 Congress

World Athletics is governed by Congress, which is composed of the member federations and meets every two calendar years.¹¹ Each member federation is entitled to one vote on each resolution before Congress.¹² Congress has the powers normally delegated to such a body in sports, including, for example, admitting/suspending/expelling members, amending the Constitution, electing and removing its officers.¹³ It also has the power to approve the members of the Disciplinary Tribunal, upon the recommendation of the Council.¹⁴

1.2.2 The Vetting Panel

The Council is comprised of a total of 26 members who may hold office for a maximum number of three terms of four years.¹⁵ Among the long list of powers that the Council holds, it can adopt, amend and repeal the rules and regulations of World Athletics, make recommendations to Congress for amending the Constitution, make and amend rules and regulations for the establishment and authority of the Athletics Integrity Unit (AIU) and the Disciplinary Tribunal and to

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⁷ *Idem*, Art. 13.

⁸ *Idem*, Art. 16.

⁹ Africa, Asia, Europe, North America (including Central America and the Caribbean), Oceania and South America – see Art. 18.1 of the World Athletics Constitution.

¹⁰ *Idem*, Art. 18.2.

¹¹ *Idem*, Art. 26. Note a Special Congress may be convened by the Council or with 1/3rd or more of the member federations and Congress can also make urgent decision by written resolution electronically on extraordinary matters.

¹² *Idem*, Art. 28.

¹³ *Idem*, Art. 27.

¹⁴ *Idem*.

¹⁵ *Idem*, Art. 41.1 and 41.3. Council is composed of a President, 4 vice-presidents, 6 Area presidents, 1 chairperson of the Athletes’ Commission and 1 other member of the Athletes’ Commission elected by its members, and 13 individual Council members.

THE JUSTICE SYSTEM OF THE FÉDÉRATION INTERNATIONALE DE L'AUTOMOBILE

by Rui Botica Santos*¹

ABSTRACT: *This article considers the history and organisation of the Fédération Internationale de l'Automobile (FIA), the regulations governing the FIA, and the rights and obligations of its members. An overview of the judicial structures and mechanisms of the FIA dispute resolution bodies is also provided. The article particularly describes the dispute resolution structures and mechanisms of the FIA: (i) at first instance, as administered by stewards at track/race level, by the FIA judges of the national sports associations, and by the International Tribunal, according to their respective jurisdictions; and (ii) at second instance, by the International Court of Appeal (ICA). The article also provides a synopsis of the new FI/FE Financial Regulations and the interaction between the FIA judicial system and the French judicial system. The relationship between the FIA judicial system and the Court of Arbitration for Sport (CAS) is also discussed, and recommendations are made regarding the further development of the FIA's relationship, for the good of sport in general.*

SUMMARY: 1. General Overview – 1.1 The FIA Members – 1.2 Sporting Power – 2. Statutes and Relevant Regulations – 2.1 The FIA Statutes – 2.2 The International Sporting Code – 2.3 The FIA Judicial and Disciplinary Rules – 2.4 The FIA Courts

* Judge at the FIA International Tribunal (President 2020-23) and Judge at the International Court of Appeal (ICA), Arbitrator and Mediator at the Court of Arbitration for Sport, Partner at Coelho Ribeiro Associados, founder and Partner of CRA Timor-Leste and International Partner of Nuno Simões e Associados. Rui Botica Santos is a qualified lawyer in Portugal, Brazil, Timor-Leste, and Macau.

¹ The Author is profoundly grateful to Jean-Christopher Breillat, the Secretary-General of the FIA Courts and to Antonio Maria Borello an Italian sports lawyer based in Turin, Italy for the assistance in the revision and update of this chapter.

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Practice Directions – 2.5 The FIA Anti-Doping Regulations – 2.6 The Formula One and Formula E Financial Regulations – 2.7 The General Prescriptions Applicable to All FIA Championships, Challenges, Trophies and Cups and to Their Qualifying Events Run on Circuits – 3. Formula One & Formula E Financial Regulations – 3.1 General Aspect – 3.2 Categories of Breaches – 3.3 The Designated Bodies in the F1 Financial Regulations – 3.4 The CCA – 3.5 The CCAP – 3.6 CCAP Hearings – 3.7 The International Court of Appeal – 3.8 The Formula E Financial Regulations – 4. Rights and Obligations of FIA Members – 4.1 General Obligations – 4.2 The Individual Rights and Obligations of FIA Stakeholders – 5. Sanctions – 6. Judicial Bodies and Legal Committees – 6.1 Judicial Supremacy of the FIA – 6.2 Limited Prohibition Against Reference to Ordinary State Courts – 6.3 The Jurisdiction of the State Courts in Relation to Decisions of FIA Courts – 6.4 The Nature of Disputes Heard by the FIA Courts – 7. Judicial Procedure – 7.1 Stewards Meetings. Jurisdiction and Types of Disputes – 7.2 The National Court of Appeal – 7.3 The International Tribunal – 7.4 The FIA Anti-Doping Disciplinary Committee – 7.5 The International Court of Appeal – 8. Enforcement of FIA Decisions – 9. Mediation /Conciliation – 10. Relationship with the Court of Arbitration for Sport – 10.1 Doping Cases – 10.2 Disciplinary Matters – 10.3 Non-Disciplinary Matters – 11. Conclusion

1. GENERAL OVERVIEW

The Fédération Internationale de l'Automobile (FIA) is a worldwide non-profit organisation and international association of national automobile clubs, automobile associations, touring clubs and national motoring and motorsport federations.

The FIA was founded in Paris, in 1904, with the initial aim of bringing coherent governance and safety to motorsport. Since then, the FIA has grown into a worldwide organisation that promotes not only motorsport, but also safe, sustainable, and accessible mobility for all road users.²

The FIA is an international private association based in France and, as such, it is subject to French law but not to the French Sport Code, which only applies to French national federations.

Art. 2 of the FIA Statutes identifies the core pillars and goals of the FIA, as:

² An overview of FIA's organization and activities is available at <https://www.fia.com/organisation>.

- i. Maintaining a worldwide organisation upholding the interests of its members in all international matters concerning automobile mobility and tourism and motor sport;
- ii. Promoting affordable, safe, and clean mobility, and defending the rights and safety of all road users regardless of their means of travel;
- iii. Promoting the development of motor sport, improving safety in motor sport, enacting, interpreting, and enforcing common rules applicable to the organisation and the fair and equitable running of motor sport competitions;
- iv. Developing, regulating, controlling, and enforcing discipline across all virtual/electronic motor sport activities and competitions under all forms and organising championships in virtual/electronic motor sport;
- v. Promoting the development of the facilities and services of the member clubs, associations and federations of the FIA and the coordination of reciprocal services between member clubs for the benefit of their individual members when travelling abroad;
- vi. Exercising jurisdiction regarding sporting disputes and any disputes which might arise between its members or in relation to any of its members having contravened the obligations laid down by the Statutes, the International Sporting Code (ISC) and the Regulations;
- vii. Preserving and conserving all documents and artefacts concerning world motoring in order to retrace its history;
- viii. Encouraging and supporting a responsible concern for environmental issues and promoting sustainable development in its activities; and
- ix. Promoting the following values: member-orientation, collaboration, trust, excellence, and innovation.

The FIA administers the rules and regulations governing all international four-wheel motorsports including the following world championships in the 2023 season: FIA Formula One World Championship, the FIA World Rally Championship, the FIA World Rally-Raid Championship, the FIA World Rallycross Championship, the ABB FIA Formula E World Championship, and the World Endurance Championships. The FIA also regulates many other international series in karting, GT, historic cars, hill climbs, e-sport, etc.

The FIA participates in motorsport at every level, via its National Automobile Associations (ACN) and the National Sporting Authorities (ASN). The responsibilities of the FIA extend to the millions of amateurs and professionals, who are involved in the various types of four-wheel motorsport.

The official languages of the FIA are French and English, but French prevails where differences exist.

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FIBA JUSTICE: FOUR PILLARS OF AN EFFECTIVE AND EFFICIENT DISPUTE RESOLUTION SYSTEM

by Jaime Lamboy*

ABSTRACT: The Fédération Internationale de Basketball (“FIBA”) bases its dispute resolution system on four pillars: fairness, time efficiency, cost-effectiveness, and tailor-made procedures. The author describes the types of disputes that arise worldwide in the sport of basketball and the judicial bodies called to solve them, highlighted by the Basketball Arbitration Tribunal (“BAT”), which after 15 years, sets the standard for solving financial disputes amongst players, coaches, agents and clubs.

SUMMARY: 1. Introduction – 2. Types of Disputes – 2.1 International Transfers (Request for Letters of Clearance) – 2.1.1 CAS 2016/A/4484, OKK Spars Sarajevo v. FIBA – 2.2 Eligibility and National Status of Players – 2.3 Disciplinary – 2.4 Disciplinary (Anti-Doping) – 2.5 Ethics and Integrity – 2.6 Technical – 2.7 Financial – 2.7.1 CAS 2017/A/5050, Basketball Club Ticha v. FIBA & Aleksandar Andrejevic – 2.8 Electoral – 3. Judicial Bodies – 3.1 FIBA Congress and Central Board – 3.2 Secretary General – 3.3 FIBA Disciplinary Panel – 3.4 Disciplinary Panel (Anti-Doping Division) – 3.4.1 Results Management – 3.4.2 The Hearing Process – 3.4.3 Operational Independence – 3.4.4 Procedural Guarantees – 3.4.5 Burdens and Standards of Proof – 3.4.6 Conclusions – 3.5 Appeals Panel – 3.6 FIBA Ethics Panel – 3.7 Technical Committee / Jury of Appeal – 3.7.1 Technical Committee – 3.7.2 Jury of Appeal – 3.8 Basketball Arbitral Tribunal – 3.8.1 General Description – 3.8.2 Composition – 3.8.3 Procedure – 3.8.4 Awards – 3.8.5 Conclusions – 3.9 Nominations Panel – 4. Conclusions

* Attorney at Law (Puerto Rico), LLM; FIBA Head of Legal Affairs; former FIVB Legal Commission President (2012-2020).

I. INTRODUCTION

Disputes are inherent to human nature. And sports, being exclusively a human activity, is not a stranger to conflict.

The complexities surrounding modern sports, its increased commercial value, the addition of interested stakeholders, and the heightened public scrutiny all provoke an exponential risk of controversies and disputes. Moreover, the accelerated development of sports law and more well-versed legal professionals in the field provide a fertile ground for conflict to emerge in sport. Consequently, dispute resolution has become an essential aspect of good governance in sports, particularly in the international context, requiring governing bodies to have clear and sound procedures to address different controversies and reach suitable solutions when conflicts arise.

While the Court of Arbitration for Sport (CAS), after almost forty years of existence,¹ has undoubtedly established itself as the court of last instance for many sports disputes, sport governing bodies are where most sports conflicts arise and are solved. Thus, having a sound and efficient system to address all the controversies within a specific sport has become an essential requirement of good governance.²

In the case of FIBA and benefitting from the autonomy that sport governing bodies enjoy under Swiss law, its dispute resolution system is founded on four main pillars: fairness, time efficiency, cost-effectiveness, and tailor-made procedures.³

Fairness is one of those terms that sometimes can become somewhat difficult to define. However, in law, there are several basic concepts which amount to what should be a “fair” procedure or result.⁴ To this extent, FIBA’s dispute resolution mechanism has always ensured that all parties have their right to be heard respected, which mainly implies that they are offered an adequate opportunity to explain their position and present their evidence.⁵ Even if the Code of Sports-related Arbitration (“CAS Code”) provides in Art. R57 for a *de novo*

¹ CAS’ statutes, and thus the court itself, became operational on 30 June 1984. See: <https://www.tas-cas.org/en/general-information/history-of-the-cas.html> (last consulted 30 October 2022).

² E. RYALL, J. COOPER, L. ELLIS, ‘Dispute resolution, legal reasoning and good governance: learning lessons from appeals on selection in sport’, *ESMQ*, vol. 5, 2020 560-576.

³ Some legal scholars even label this autonomy as “extraordinary”. See: M. BADDELEY, ‘The extraordinary autonomy of sports bodies under Swiss law: lessons to be drawn’, in *IntSportsLawJ* 20, 2020, 3-17.

⁴ C.R. SUNSTEIN, ‘Two Conceptions of Procedural Fairness’, *Social Research*, vol. 73, no. 2, 2006, 619.

⁵ See FIBA IR, Art. 1-217.

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hearing, which heals any possible procedural defects of the previous instances, it is of vital importance that national federations, clubs, and players feel that they have had “their day in court when pleading before the FIBA bodies”.⁶

One of Seneca’s most famous quotes best describes the second pillar of FIBA’s dispute resolution system: “Nothing resembles injustice so much as delayed justice”. In that sense, FIBA’s processes aim to be as quick as possible. In sports, “time” is always of the essence. Timeliness is always a concern whether the controversy is related to a potential international transfer, a protested game, or a disciplinary offence. Legal certainty is of utmost importance when confectioning a club roster, in determining the strategy for the next game or knowing if the National Team will be able or not to field a player during a competition. Thus, in the process of having smooth-running events, time efficiency is critical.

Affordability of legal procedures, the third pillar, is an essential element for adequate “access to justice”. Accordingly, dispute resolution procedures in FIBA must be cost-effective. Within basketball, there is a vast difference in the capacity of players, coaches, clubs, and National Member Federations (NMFs) to afford legal procedures, be it to claim a right or to defend themselves from potential disciplinary sanctions. Therefore, proceedings at FIBA level must remain cost-effective and thus accessible to all parties. To this extent, proceedings before FIBA in the first instance are free of charge, except for cases heard by the Anti-Doping Division of the Disciplinary Panel (DPADD).⁷

The cost-effectiveness pillar benefits not only FIBA’s stakeholders but also FIBA itself. Most FIBA decisions are appealable to the CAS⁸ as a last instance, but the costs of such procedures may not be negligible in some cases. Thus, an appeal to CAS also implies high costs to the institution since FIBA would have to appear in the proceedings as a respondent. If disputes are solved fairly, with time efficiency, and affordably, considering the particularities of each conflict, the costs and expenses of all parties are reduced, particularly when a CAS appeal is not lodged.

The fourth pillar of the FIBA dispute resolution system is more of an operational nature and is deeply intertwined with the first three. In this sense, [...]

⁶ A. ZAGKLIS, ‘Fast Break: An overview of how the Fédération Internationale de Basketball handles disputes fairly, quickly and cost-efficiently’, *ESLPB*, vol. 1, 2013, 113. Regarding the *de novo* hearing authority of CAS, see: CAS 94/129 *USA Shooting & Q. v Union Internationale de Tir*, at para. 59; CAS 2006/A/1177 *Aston Villa FC v. B93 Copenhagen*, at para. 19; CAS 2009/A/1920 *FK Pobeda, Aleksandar Zabrcanec, Nikolce Zdraveski v. UEFA*, at para. 87. For a narrow exception to this “curing effect” of CAS’ R57, see: CAS 2010/A/2275 *Croatian Golf Federation v European Golf Association*, at para. 38 et seq.

⁷ See Section 3.4.4 below.

⁸ See FIBA GS, Art. 40 and FIBA IR, Artt. 1-260 and 4-13.1.

**THE BOXING INDEPENDENT INTEGRITY UNIT –
A NEW REGIME FOR DISPUTE-RESOLUTION IN IBA**

by *François Strydom**

ABSTRACT: *This contribution seeks to introduce the reader to the newly established Boxing Independent Integrity Unit (BIIU) within the sport of Boxing. By way of background, reference is first made to the IBA Constitution and other Regulations relevant to decision-taking and dispute resolution within IBA, the rights and obligations of Boxing family members and the Organs of Governance within the Organisation. Thereafter, a detailed exposition is given of the Managing Board and various operating units of the BIIU, with focus on their composition, jurisdiction, powers and procedures. The discussion concludes by considering the relationship with CAS and the ordinary courts and the issue of the enforcement of IBA, BIIU and CAS decisions.*

SUMMARY: 1. Short Overview of the Organisation – 2. Constitution and Relevant Regulations – 3. Rights and Obligations of IBA Members – 4. Organs of Governance – 5. The Boxing Independent Integrity Unit (BIIU) – 5.1 Compliance Unit: Tribunal – 5.2 Compliance Unit: Dispute Resolution Chamber – 5.3 Nomination Unit – 5.4 Anti-Doping Rule Violations – 6. Relationship with CAS – 7. Relationship with Ordinary Courts – 8. Enforcement of Decisions – 9. Concluding Remarks

* Chairman of the FIDE Ethics and Disciplinary Commission (2014 – 2022); Chairman of IBA Disciplinary Committee (2020 – 2022).

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I. *SHORT OVERVIEW OF THE ORGANISATION*

The *International Boxing Association* (IBA) is the international sports federation for amateur (Olympic style) boxing. The IBA Head office is in Lausanne, Switzerland.

The predecessor organisation, *Fédération Internationale de Boxe Amateur* (FIBA) was founded during the 1920 Summer Olympics in Antwerp, Belgium. In November 1946 FIBA was dissolved and the *Association Internationale de Boxe Amateur* (AIBA) was established. In November 2007 the French name was changed to the current one, *International Boxing Association* but the abbreviated name remained as AIBA. In December 2021, the abbreviated name was changed to IBA, and a new logo and brand were launched.¹

IBA is a non-governmental and non-profit association incorporated in and subject to the laws of Switzerland.² IBA is structured as a Swiss Verein, an association of a corporate group of persons with separate legal personality as recognised by Art. 60(ff) of the Swiss Civil Code. The objects of the Association, its resources and its organisation are stated in its Articles of Association, now styled the IBA Constitution (previously AIBA Statutes).

Since 1920 IBA (and its predecessor) has been responsible for the control and direction of the sport of amateur boxing at the Olympic Games. However, by a decision of the International Olympic Committee (IOC) Executive Board in May 2019, and confirmed by the IOC Session in June 2019, the IOC suspended its recognition of IBA (AIBA at that time) as the International Governing Body for the sport with the right to organise the sport at the Olympic Games in view of serious concerns at that time about the organisation's governance, finances, as well as the proper refereeing and judging of boxing matches.

Since then, IBA has undertaken comprehensive reforms of its governance, sports integrity and financial affairs *inter alia* by adopting a new Constitution in December 2020, followed by further improvements to the Constitution in December 2021 and December 2022, passing several new Regulations, settling all debts and electing a new President and Board of Directors. The Governance Reform Group (GRG) and the McLaren Global Sport Solutions (MGSS) were engaged as independent experts assisting IBA in making recommendations to shape the transition to a better managed and more ethical organisation. The recommendations of Prof. Ulrich Haas and GRG on governance

¹ Available at <https://www.iba.sport/about-iba/our-history/>; https://en.wikipedia.org/wiki/International_Boxing_Association.

² Constitution, Art. 2.1.

reform measures were requested, received and implemented. The previous problems of biased refereeing and judging were assigned to a separate review by Prof. Richard McLaren and MGSS. This investigation resulted in three separate reports and their recommendations are currently being implemented by IBA.

One of the recommendations of the GRG was the creation of a new Independent Integrity Unit to replace the previous Ethics Committee, Disciplinary Committee and Integrity Officers. This recommendation has been accepted and expanded upon by IBA and has resulted in the establishment of the Boxing Independent Integrity Unit (BIIU) which body is discussed in detail below.

The mission of IBA is to promote, support and govern the sport of boxing worldwide in accordance with the requirements and spirit of the Olympic Charter.³ IBA shall fulfil its mission by achieving a number of critical objectives, *inter alia* to promote the highest standards with respect to organisation, judging, refereeing, coaching, training, education and medical and anti-doping controls in the sport of boxing and to combat doping and integrity issues that might damage the sport and reputation of boxing.⁴

IBA is composed of the following associated bodies:

- (a) National Federations⁵ – these are Boxing Associations which are, or can become, responsible for governing the sport of Boxing within their respective countries and which have been accepted as IBA members. There may only be one National Federation from any one country.⁶ There are currently 204 National Federation members of IBA as of 12 December 2022.
- (b) Continental Confederations⁷ – these are bodies composed of IBA Member Federations of the countries included in its respective continent and responsible to promote the sport of boxing throughout the Confederation. There are five Continental Confederations, namely: the African Boxing Confederation (AFBC), the American Boxing Confederation (AMBC), the Asian Boxing Confederation (ASBC), the European Boxing Confederation (EUBC) and the Oceania Boxing Confederation (OCBC).

2. CONSTITUTION AND RELEVANT REGULATIONS

As mentioned, since 2020 IBA has embarked on aggressive governance and integrity-focussed reforms. For present purposes, concerning the resolution of internal disputes, the following are relevant:

[...]

³ Constitution, Art. 3.1.

⁴ Constitution, Art. 3.2.

⁵ Constitution, Artt. 7-13.

⁶ Constitution, Art. 7.2.

⁷ Constitution, Art. 14.

DECISION-TAKING AND DISPUTE-RESOLUTION WITHIN THE INTERNATIONAL CHESS FEDERATION

by François Strydom*

ABSTRACT: The aim of this chapter is to analyse the various decision-taking responsibilities and dispute-resolution mechanisms within the Fédération Internationale des Échecs (FIDE). This task is approached by first illuminating the rules structure within FIDE as well as the rights and duties of FIDE Family members regarding internal disputes. Thereafter, the decision-taking persons and bodies within FIDE are identified against the background of an understanding of the concepts of a “FIDE organ” and a “FIDE decision”. The types of disputes which may arise are examined with reference to the jurisdiction, the relevant regulations and the prescribed procedures to be followed. Where possible, the points are illustrated with a reference to case law. The discussion concludes with a look at FIDE’s relationship with CAS and the issue of enforcement of FIDE decisions.

SUMMARY: 1. Introduction – 2. The FIDE Charter and Scheme of Rules – 3. Rights and Obligations of FIDE members – 4. FIDE Organs and Other Internal Bodies – 4.1 The Concepts of a “FIDE Organ” and a “FIDE Decision” – 4.2 Legislative and Executive Bodies – 4.2.1 The General Assembly – 4.2.2 The President – 4.2.3 The Council – 4.2.4 The Management Board – 4.3 Judicial Bodies and Legal Committees – 4.3.1 The Ethics and Disciplinary Commission – 4.3.2 The Electoral Commission – 4.3.3 The FPL Judicial Body – 4.3.4 The Arbiters’ Disciplinary Committee – 4.3.5 FIDE Doping Hearing Panels – 4.3.6 Fact-Finding Committees – 4.4 Advisory and Administrative Bodies – 4.4.1 Advisory Bodies – 4.4.2 Administrative Bodies – 5. Jurisdiction and Types of Disputes – 5.1 Constitutional and Legal Disputes – 5.2 Ethics and Disciplinary Disputes

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– 5.3 Cheating and Doping Disputes – 5.3.1 Cheating Disputes – 5.3.2 Doping Disputes – 5.4 Electoral Disputes – 5.5 Eligibility and Transfer Disputes – 5.6 Internal Management Disputes – 5.7 Employment and Commercial Disputes – 5.8 Continental and National Federation Disputes – 5.9 Competition-Related Disputes – 6. Relationship with CAS – 7. Enforcement of FIDE Decisions – 8. Concluding Remarks and Appendix

1. INTRODUCTION

The *Fédération Internationale des Échecs* (hereinafter “FIDE”) is the international sports federation for chess. Its English name is the International Chess Federation (formerly World Chess Federation). The seat and the headquarters of FIDE are in Lausanne, Switzerland.

FIDE was founded in Paris, France on 20 July 1924. It was one of the very first international sports federations, alongside the governing bodies of the sports of football, cricket, swimming and auto racing.¹ It is now one of the largest encompassing 200 member federations² as of May 2022. The FIDE motto is “*Gens Una Sumus*” (“We are one family”).

FIDE is a non-governmental and non-profit organisation, registered in the commercial register in Switzerland, and acts as the supreme body responsible for the sport of chess, its championships and events. In 1999, FIDE was recognized by the International Olympic Committee (IOC) as the organisation administering the sport of chess at world level.³ FIDE observes the “Basic Universal Principles of Good Governance of the Olympic and Sports Movement” adopted by the IOC.⁴

The mission and role of FIDE⁵ includes *inter alia* the promotion of chess activities in all their forms, the diffusion and development of chess among all nations of the world, as well as the raising of the level of chess culture and knowledge on a sporting, scientific, creative, educational and cultural basis.

FIDE is structured as a Swiss Verein, an association of a corporate group of persons with separate legal personality as recognized by the Swiss Civil Code. The objects of the Association, its resources and its organisation are stated in its Articles of Association, now styled the FIDE Charter (previously FIDE Statutes).

¹ <https://fide.com/fide/about-fide>; <https://en.wikipedia.org/wiki/FIDE>.

² <https://fide.com/directory/member-federations>.

³ <https://olympics.com/ioc/recognised-international-federations/world-chess-federation>.

⁴ Charter, Art. 2.13.

⁵ Charter, Artt. 2.1 – 2.12.

FIDE is composed by the following associated bodies:

- (a) Member Federations⁶ – these are national chess associations or corresponding organisations, one for each country, which have principal authority over chess activities in their own countries or territories and which have been admitted⁷ to FIDE. Member Federations have the right to take part and to vote in the General Assembly, with one vote each.⁸
- (b) Affiliated Organisations⁹ – these are associations or organisations which represent a grouping of either member federations, some regions or transnational territories or people with a common ground or the same interests in some specific chess activities.¹⁰ Affiliated Organisations have the right to take part in FIDE congresses and in the General Assembly, but without voting.¹¹
- (c) FIDE Continents¹² – these are bodies comprising all FIDE Member Federations of the countries included in its respective Continent and responsible for Continental chess governance and development. There are four FIDE Continents, namely: the African Chess Confederation (for Africa), the Asian Chess Federation (for Asia and Oceania), the Confederation of Chess for Americas (for North, Central and South America) and the European Chess Union (for Europe).¹³ FIDE Continents are autonomous entities. They can freely decide about their organs and functioning and are responsible for the organisation of Continental championships under the auspices of FIDE. Continental Presidents sit in the FIDE Council and may participate in the General Assembly, without voting rights.¹⁴
- (d) FIDE Zones¹⁵ – the chess world is divided in geographical zones considering proximity, common historical, linguistic and cultural trades, level of chess activities. etc. The management of each zone is assigned to a Zonal President, who has the responsibility to coordinate the activities of the member federations in the zone. All the Zonal Presidents, together with the Presidents of the FIDE Continents form a Zonal Council which acts mainly in an advisory and coordinating function.

[...]

⁶ Charter, Art. 9, and Definitions: ‘Member Federation’.

⁷ Charter, Art. 12.

⁸ Charter, Art. 10.1(a)

⁹ Charter, Art. 14, and Definitions: ‘Affiliated Organisation’.

¹⁰ Charter, Art. 14.1.

¹¹ Charter, Art. 14.2.

¹² Charter, Artt. 31 and 32, and Definitions: ‘FIDE Continent’.

¹³ Charter, Art. 31.1.

¹⁴ Charter, Artt. 32.3 and 32.4.

¹⁵ Charter, Artt. 31, 33 and 34, and Definitions: ‘Zone’.

THE JUSTICE SYSTEM OF THE INTERNATIONAL CYCLING FEDERATION

by Maria Laura Guardamagna*

ABSTRACT: *The Author examines the Union Cycliste Internationale (UCI) governance with particular attention to the judicial bodies. The UCI has a judicial structure that is responsible for handling disciplinary matters related to violations of UCI rules and regulations, ethical principles and anti-doping rules.*

The Commissaires' Panel oversees and enforces the rules and regulations of cycling competitions while the Disciplinary Commission is responsible for handling disciplinary matters related to the UCI's rules and regulations.

The Arbitral Board is responsible for resolving disputes between parties within the cycling community, including riders, teams, organizers, and national federations. The UCI License Commission is responsible for the management and allocation of licenses to professional cycling teams.

Finally, the Ethics Commission investigates allegations of ethical violations by individuals or organizations affiliated with the UCI, while the Anti-Doping Tribunal is responsible for adjudicating anti-doping rule violations in cycling. Overall, the UCI's judicial structure is designed to ensure that the sport of cycling is conducted in a fair and ethical manner, and that all athletes are held to the highest standards of sportsmanship and integrity.

SUMMARY: 1. Introduction – 1.2 The UCI Members and Their Obligations – 1.3 Governance – 1.3.1 The Congress - 1.3.2 The Management Committee – 1.3.3 The President – 1.3.4 The Adjudicating Bodies – 2. Jurisdiction of the Commissaires' Panel, the Disciplinary Commission and the Arbitral Board – 2.1 The Commissaires' Panel – 2.2 The Disciplinary Commission – 2.2.1 General Provision – 2.2.2 Disciplinary Measures – 2.2.3 Procedure – 2.3 Arbitral Board – 2.3.1 General Provision – 2.3.2 Procedure – 2.4 Mediation – 3. The UCI Licence

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Commission – 4. UCI Anti-Doping Tribunal (ADT) – 4.1 General Provision – 4.2 Organisation of the ADT – 4.3 Proceeding – 4.4 The Applicable Laws and the Judgement – 5. UCI Medical Director – 6. The UCI Ethics Commission – 7. Conclusion

1. INTRODUCTION

The Union Cycliste Internationale (hereafter “UCI”) is the worldwide governing body for cycling. It was founded in Paris (France) in 1900 its headquarters were moved to Switzerland in 1969, first to Geneva, then, in 1992, to Lausanne and, finally, since 2002, to Aigle. The UCI is a non-governmental international association, with a non-profit-making purpose of international interest and pursuant to Articles 60 ff. of the Swiss Civil Code, it has legal personality.¹

The UCI objectives are the diffusion, organization and regulation of cycling worldwide (including virtual/electronic cycling).²

In its objectives, the UCI promotes gender-parity, diversity and equity in all aspects of cycling as well as Para-cycling; it cooperates with the

¹ Swiss Civil Code, Art. 60: “Associations with a political, religious, scientific, cultural, charitable, social or other non-commercial purpose acquire legal personality as soon as their intention to exist as a corporate body is apparent from their articles of association. The articles of association must be done in writing and indicate the objects of the association, its resources and its organisation”.

² UCI Constitution, art. 2: “The objectives of the UCI are:

- to direct, develop, regulate, control and discipline cycling under all forms worldwide;
- to promote cycling in all the countries of the world and at all levels;
- to organize, for all cycling sport disciplines, world championships of which it is the sole holder and owner;
- to draw up regulations and provisions and ensure their enforcement;
- to encourage friendship between all members of the cycling world;
- to promote sportsmanship, integrity, ethics and fair play with a view to preventing all methods or practices such as corruption or doping, which might jeopardize the integrity of competitions, riders, officials and members or give rise to abuse of cycling;
- to promote gender-parity and equity in all aspects of cycling;
- to promote Para-cycling;
- to advocate for the safety and rights of cyclists;
- to represent the sport of cycling and defend its interests before the International Olympic Committee, the International Paralympic Committee and all national and international authorities;
- to cooperate with the International Olympic Committee, the International Paralympic Committee in particular as regards the participation of cyclists in the Olympic Games.
- to direct, develop, regulate, control and discipline any and all virtual/electronic cycling activities and competitions under all forms worldwide and to organise world championships of which it is the sole holder and owner”.

International Olympic and Paralympic Committee representing the sport of cycling itself and advocates for the safety and rights of cyclists in general. In 2019, the UCI was the first International Sport Federation to obtain the Economic Dividends for Gender Equality certification (EDGE) for gender equity in the workplace.³ In 2019, the UCI supported more than 120 projects implemented by National Federations and Continental Confederations that do not yet have the resources, facilities, or expertise to permit them to reach the highest levels.

The UCI governs the following disciplines: road, track, mountain bike, cyclo-cross, BMX Racing, BMX Freestyle, trials, indoor cycling, cycling cross, gravel, e-sport and para-cycling.

1.2 The UCI Members and Their Obligations

The UCI members are the national federations of the States recognised as independent and admitted by Congress, which also determines the annual membership contribution due on 31 of March of each year.⁴ The National federations from the same continent are grouped together in a continental confederation that promotes the development of cycling in its respective continent.⁵ The National Federation must comply with the UCI Constitution and Regulations, as well as with all the decisions taken in accordance therewith.

Each National Federation manages its internal affairs independently in order to ensure that no third party, including the UCI, interferes in their operations. Indeed, they must remain autonomous and resist all political, religious and financial pressure which may infringe their commitment to abide by the Constitution of the UCI.⁶

Finally, the UCI issues licenses to riders. A licence is an identity document confirming that its holder undertakes to respect the constitution and regulations and authorises him/her to participate in cycling events as riders.⁷

[...]

³ The EDGE certification measures the performance of organizations in terms of gender and pay equity, the existence of a framework guaranteeing equal career opportunities, and the promotion of an inclusive work culture for all employees.

⁴ UCI Constitution, Art. 15: “Each national federation shall pay an annual membership contribution, the amount of which shall be fixed by the Congress on a proposal of the Management Committee”.

⁵ The Continental Confederation are Africa, Asia, Europe, Oceania, PanAmerica.

⁶ UCI Constitution, Art. 7: “The national federations must manage their internal affairs with total independence and ensure that no third party interferes in their operations. They must remain autonomous and resist all political, religious and financial pressure which may infringe their commitment to abide by the Constitution of the UCI. Any external form of interference or attempt to interfere must be reported to the UCI”.

⁷ UCI Cycling Regulations, Part 1 General Organisation of cycling as a sport, para. 1.1.001 “Definition” of licences.

THE JUSTICE SYSTEM OF THE INTERNATIONAL EQUESTRIAN FEDERATION

by Mikael Rentsch*

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ABSTRACT: *The Fédération Equestre Internationale (International Equestrian Federation – FEI) is the world governing body for horse sport recognised by the International Olympic Committee (IOC) and was founded in 1921. The FEI’s mission is to drive and develop equestrian sport globally in a modern, sustainable and structured manner with guaranteed integrity, athlete welfare, equal opportunity and a fair and ethical partnership with the horse. This chapter provides an overview of the FEI’s organisation and legal system, including the different processes whether on-site or off-site legal matters. In addition, key FEI Rules and provisions are highlighted either due to their importance in the FEI regulatory framework or given their challenge in front of the Court of Arbitration for Sport (CAS) or other courts.*

SUMMARY: 1. The International Equestrian Federation (FEI) – 1.1 Introduction – 1.2. FEI’s Membership – 1.2.1 FEI Full Members – 1.2.2 FEI Associate Members – 1.3 FEI’s Organisation – 1.3.1 FEI General Assembly – 1.3.2 FEI Board and FEI Executive Board – 2. FEI Judicial Body, Ethics, and Court of Arbitration for Sport (CAS) – 2.1 FEI Tribunal – 2.2 Ethics Panel – 2.3 Court of Arbitration for Sport (CAS) – 3. The Equestrian Community Integrity Unit (ECIU) – 4. The FEI Legal System – 4.1 Review of the FEI Legal System – 4.1.1 On-site Legal Process – 4.1.1.1 The Use of Video Evidence – 4.1.1.2 No Appeal Committee – 4.1.1.3 Time of Implementation of a Suspension – 4.1.2 Off-site Legal Process – 4.1.2.1 Appeals – 4.1.2.2 Disciplinary Proceedings – 4.1.2.2.1 FEI’s Discretionary Power To Open Disciplinary Proceedings – 4.1.2.2.2 FEI Administrative Disciplinary Procedure – 5. FEI Rules and Regulations – 5.1 FEI Anti-Doping Rules – 5.1.1 FEI Anti-Doping Rules for Human Athletes –

* Legal Director of the Fédération Equestre Internationale (FEI).

5.1.2 FEI Equine Anti-Doping and Controlled Medication Regulations – 5.1.2.1 Provisional Suspension of the Horse – 5.2. Unsanctioned Event Provisions – 5.2.1 Unsanctioned Event – Definition, Rationale, Consequences – 5.2.2 Unsanctioned Event’s Provisions Imposed Against FEI Officials – 5.2.3 The Belgian Competition Authority – 5.3 FEI Safeguarding Policy Against Harassment and Abuse – 5.4 FEI Code of Conduct for the Welfare of the Horse – 6. Russian Invasion in Ukraine – 6.1 Removal of all FEI Events in Russia and Belarus – 6.2 Prohibition of all Russian and Belarussian Athletes, Horses, and Officials To Participate in FEI Events – 6.2.1 FEI Board Emergency Resolution and FEI Tribunal Decision – 6.2.2 Vaud Cantonal Civil Court Decision on Request for Provisional Measures – 7. Conclusion

1. THE INTERNATIONAL EQUESTRIAN FEDERATION (FEI)

1.1 Introduction

Founded in 1921, the International Equestrian Federation (“Fédération Equestre Internationale” or “FEI”) is the world governing body for the disciplines of Jumping, Dressage & Para Dressage, Eventing, Driving & Para Driving, Endurance, and Vaulting. The FEI is a not-for-profit association established and organised in accordance with Articles 60 et seq. of the Swiss civil code.¹ The FEI Headquarters are located in Lausanne, Switzerland.² The FEI’s mission is to drive and develop equestrian sport globally in a modern, sustainable, and structured manner with guaranteed integrity, athletes’ and horses’ welfare, equal opportunity, and a fair and ethical partnership with the horse.

1.2 FEI’s Membership

Membership in the FEI is open to the one national governing body from any country which is effectively in control of or is in a position to effectively control at least the Olympic Equestrian Disciplines and supported by its National Olympic Committee.³

Further to an initial proposal from the European Equestrian Federation to revise the FEI’s membership structure, the FEI Board established an FEI Membership Working Group on 16 March 2021 to study such a proposal and make its suggestions and recommendations to the FEI Board. The FEI Board

¹ FEI Statutes, Art. 4.

² *Ibidem.*

³ FEI Statutes, Art. 5.1.

accepted the recommendations of the FEI Membership Working Group and the proposed changes to the FEI Statutes were ultimately adopted at the FEI Extraordinary General Assembly in Antwerp, Belgium and effective as of 17 November 2021. Therefore, the FEI membership is now divided into two categories of members: Full Members and Associate Members.

1.2.1 FEI Full Members

The FEI Full Members are those members who were existing members on 17 November 2021⁴ (i.e. on the date of the FEI Extraordinary General Assembly when the changes to the FEI Statutes were adopted) as there was a clear mandate and decision from the FEI Board that there should not be any retroactive effect of the new provisions in the FEI Statutes on FEI membership. In addition, Associate Members who fulfil the development goals as established by the FEI Board shall be granted full Membership status. One restriction applies as to the voting right on the FEI Olympic and Paralympic Regulations for those Full Members who acquire this status having formerly been an Associate Member as they will only be entitled to cast such a vote once they have participated in a World and/or Continental Championship for Seniors in any Olympic Discipline and in the Paralympic Discipline respectively.⁵

1.2.2 FEI Associate Members

The FEI Associate Members are those prospective National Federations that have met all the requirements to become a Member of the FEI and that are approved by the FEI General Assembly.⁶ Associate Members have limited rights but can host and participate in international equestrian events, and attend the FEI General Assembly and any other FEI official meetings. However, a National Federation that is an Associate Member is not entitled to vote at the FEI General Assembly and is not entitled to propose or nominate candidates for appointed or elected FEI positions.

[...]

⁴ FEI Statutes, Art. 5.2.

⁵ *Ibidem.*

⁶ *Ibidem.*

**DISPUTE RESOLUTION AT THE FÉDÉRATION
INTERNATIONALE DE FOOTBALL ASSOCIATION
AND ITS JUDICIAL BODIES**

by Omar Ongaro* and Marc Cavaliero**

ABSTRACT: FIFA defends the principle according to which, as a general rule, disputes between the members of the football movement should be dealt with and settled within the structures of organised football, i.e. by sporting decision-making bodies. Bearing this principle in mind, in the field of players' status FIFA has created and implemented a successful dispute resolution system that it puts at disposal of the various stakeholders, i.e. member associations, clubs, players, coaches as well as licensed match and football agents, in order to deal with the various litigations that might arise amongst them, mainly of a contractual nature.

In the first part of this chapter the relevant decision-making bodies within the pertinent dispute resolution system shall be briefly introduced, as well as their respective competences. Furthermore, the presentation aims at describing FIFA's competence/jurisdiction to hear a series of specific disputes and at touching on the delimitations with regard to ordinary courts of law and possibly existing national decision-making bodies established within the framework of a member association.

FIFA has put in place judicial bodies which may impose a wide range of sanctions in case of breach of its regulations. The scope of action of these judicial bodies is immense and covers a number of different situations. Their

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role and competences are fundamental to guarantee the proper functioning of FIFA, its member associations and officials as well as the correct and uniform application of the diverse regulations by stakeholders.

The second part of this chapter shall focus on the three FIFA judicial bodies, namely: the FIFA Disciplinary Committee, the FIFA Appeal Committee and the FIFA Ethics Committee taking into due account the latest regulatory amendments. Particular attention shall be given to the FIFA Disciplinary Committee and the enforcement procedure that has been implemented at FIFA level as well as the extension procedure of sanctions taken at national level to have worldwide effect.

SUMMARY: Part I The FIFA Football Tribunal: the Dispute Resolution Chamber, the Players' Status Chamber and the Agents Chamber – 1. Introduction – 1.1 General Remarks – 1.2 Statutory Provisions – 2. The Various Decision-Making Bodies – 2.1 Overview – 2.2 The Members of the Chambers – 2.3 The Players' Status Chamber – 2.4 The Dispute Resolution Chamber – 2.5 The Agents Chamber – 3. FIFA's Jurisdiction on Disputes – 3.1 Employment-Related Disputes Between a Club and a Player of an International Dimension – 3.2 Disputes Between Clubs and Players in Relation to the Maintenance of Contractual Stability – 3.3 Employment-Related Disputes Between a Club or an Association and a Coach of an International Dimension – 3.4 Summary of the Principles for Employment-Related Disputes of an International Dimension – 3.5 Disputes Relating To Training Compensation and the Solidarity Mechanism – 3.6 Disputes in Relation to the FIFA Clearing House Regulations and the EPP – 3.7 Other Disputes Between Clubs Belonging to Different Associations – 3.8 Disputes Concerning the Activity of Licensed Football Agents – 3.9 Summary of FIFA's Jurisdiction on Disputes in Table Form – 4. Proposals from the FIFA General Secretariat – 5. Mediation – 6. FIFA's Jurisdiction on Regulatory Applications – 7. Appeals – 8. Some Selected Procedural Aspects – 8.1. Independence and Conflict of Interest – 8.2 Applicable Material Law – 8.3 Statute of Limitations / Prescription – 8.4 Procedural Form and Languages of the Proceedings – 8.5 Sequence of the Procedure – 8.6 Preliminary Procedural Matters – 8.7 Notifications of Decisions – 8.8 Costs – 8.9 Enforcement / Execution – 9. Conclusions – Part II The Judicial Bodies of FIFA – 1. Introduction – 1.1 General Remarks – 1.2 Statutory Provisions – 2. The Judicial Bodies – 2.1 The FIFA Disciplinary Committee – 2.1.1 General Remarks – 2.1.2 Offences – 2.1.3 Some Procedural and Organisational Aspects – 2.1.4 Two Examples of the FIFA Disciplinary Committee's Competencies: Failure to Respect Decisions and Extension of Sanctions To Have Worldwide Effect – 2.1.4.1 The Procedure of Enforcement within the Frame of the FIFA Dispute Resolution System – 2.1.4.2 Extension of Sanctions To Have Worldwide Effect – 3. The FIFA Ethics Committee – 4. The FIFA Appeal Committee – 5. Conclusion

PART I THE FIFA FOOTBALL TRIBUNAL: THE DISPUTE RESOLUTION CHAMBER, THE PLAYERS' STATUS CHAMBER AND THE AGENTS CHAMBER

I. INTRODUCTION

1.1 General Remarks

For those involved in sports law and in particular, in football matters, there is most certainly no need to recall that the current dispute resolution system established within the structures of the Fédération Internationale de Football Association (FIFA) is one of the most important outcomes of the complete revision of the various rules pertaining to the international transfer of players carried out back in the year 2000, respectively early 2001. Like most of the principles currently contained in the Regulations on the Status and Transfer of Players (hereinafter: *the Regulations*),¹ the basis of the relevant system is to be found in the agreement reached between FIFA, Union des associations européennes de football (UEFA) and the European Commission in March 2001. Besides addressing topics of substantive nature, namely the contractual stability,² the protection of minors,³ the training of young players⁴ as well as the solidarity in the football world,⁵ said agreement also explicitly referred to the creation of a dispute resolution system. It is within the scope of this background that with the coming into force of the 2001 edition of the Regulations on 1 September 2001, FIFA laid the fundament for the implementation of a dispute resolution and arbitration system⁶ that has rapidly become more and more popular and today enjoys a high grade of recognition, credibility and acceptance.

The pertinent dispute resolution system provides the various stakeholders with efficient means suitable to settle their mainly contractual litigations within the football structures without the need to seek redress before civil courts. The ever-growing popularity of the system, particularly in relation to employment-related disputes of an international dimension between clubs and [...]

¹ Available at <https://digitalhub.fifa.com/m/d31f8046f6c6311/original/Regulations-on-the-Status-and-Transfer-of-Players-May-2023-edition.pdf>. Without further specification, reference is made to the current May 2023 edition of the Regulations.

² Cf. Regulations, Chapter IV, Art. 13 ff: *Maintenance of contractual stability between professionals and clubs*.

³ Cf. *Idem*, Chapter VII, Art. 19 ff: *International transfers involving minors*.

⁴ Cf. *Idem*, Art. 20 in conjunction with Annexe 4: *Training compensation*.

⁵ Cf. *Idem*, Art. 21 in conjunction with Annexe 5: *Solidarity mechanism*.

⁶ Cf. Regulations, 2001 editions, Art. 42.

UEFA'S ORGANS FOR THE ADMINISTRATION OF JUSTICE

by William McAuliffe*

ABSTRACT: *The Author explains the functioning of UEFA's organs for the administration of justice with a particular focus on the Control Ethics and Disciplinary Body and the Appeals Body which play the central adjudicatory role for disciplinary incidents arising in UEFA competition matches.*

Given the amount of UEFA competitions at club and national level, and with the planned restructuring of the UEFA's club competitions from 2024, the workload of these bodies has been expanding and will continue to grow.

With matches played in quick succession, ensuring that stakeholders' cases are considered and decided without unnecessary delays in a thorough and fair manner requires a robust disciplinary framework built on efficiency predictability and flexibility.

The chapter also provides an overview of the workings of the UEFA Club Financial Control Body which deals with financial fair play and financial sustainability matters.

SUMMARY: 1. Introduction – 1.1 Statutes & Regulatory Framework – 2. Organs for the Administration of Justice – 2.1 Control, Ethics and Disciplinary Body (CEDB) – 2.2 Appeals Body (AB) – 2.3 Ethics and Disciplinary Inspectors (EDIs) – 2.4 Club Financial Control Body (CFCB) – 3. Jurisdiction & Applicable Law – 3.1 Material Application – 3.2 Personal Application – 3.3 Temporal Application – 3.4 Applicable Law – 4. Types of Proceedings – 4.1 Misconduct of Players and Officials – 4.2 Order and Security at Matches – 4.2.1 Invasions of the Field of Play – 4.2.2 Throwing of Objects – 4.2.3 Lighting of Fireworks – 4.2.4 Use of Laser Pointers – 4.2.5 Transmission of Provocative or Offensive Messages – 4.2.6 Acts of Damage to Physical Property – 4.2.7 Crowd Disturbances – 4.2.8 Blocking of Public Passageways – 4.3 Match Fixing – 4.4 Doping –

*UEFA Head of Disciplinary.

4.5 Racism and Discriminatory Conduct – 5. Disciplinary Proceedings – 5.1 Proceedings Before the CEDB – 5.2 Proceedings Before the AB – 5.3 Disciplinary Measures – 5.4 Statute of Limitations – 6. Selected Features – 6.1 *Pro Bono* Counsel – 6.2 Communication and Transparency – 6.3 Enforcement of Decisions – 7. The Club Financial Control Body (CFCB) – 7.1 Key Concepts – 7.1.1 Overdue Payables – 7.1.2 Break-Even & Settlement Agreements – 7.2 Financial Fair Play 2.0 – 7.2.1 UEFA Club Licensing and Financial Sustainability Regulations 2022 – 7.2.2 Double Instance CFCB Proceedings – 8. Relationship with CAS – 8.1 Expedited Proceedings Before CAS – 9. Conclusion

1. INTRODUCTION

Founded in 1954, the Union des Associations Européennes de Football (UEFA) is the governing body of European football. One of six confederations recognised by FIFA, it is an association of associations, and is the umbrella organisation for 55 national member associations across Europe. UEFA is a society entered in the register of companies under the Swiss Civil Code (SCC), and is neutral, politically and religiously with headquarters located in Nyon, Switzerland.

This chapter focuses on the workings of UEFA's Organs for the Administration of Justice with a particular focus on the disciplinary bodies. In an average season, these bodies issue approximately 900 disciplinary decisions. Perhaps the best accolade attesting to the proper functioning of this disciplinary framework and the quality of the justice dispensed is the fact that only a limited number of decisions are ultimately appealed to the Court of Arbitration for Sport (CAS).

1.1 Statutes & Regulatory Framework

The supreme controlling organ of UEFA is the Congress which is ordinarily held annually and its regulatory power is principally exercised in the adoption of the UEFA Statutes. Swiss law does not include a specific set of regulations on the governance of sports organisations. Autonomy is granted to clubs, federations and associations, which means sports bodies are responsible for their own governance. As such, Swiss associations are free to set their own rules as to their structure and the functioning of the internal bodies, the rights and obligations of their members and the settlement of internal disputes.¹

¹ M. BADDELEY, *The extraordinary autonomy of sports bodies under Swiss law: lessons to be drawn*. The International Sports Law Journal, 2020, vol. 20, no. 1-2, 4.

In this respect, the UEFA Executive Committee is empowered to issue disciplinary regulations setting out the procedures for the administration of justice and disciplinary rules.²

Disciplinary measures may be imposed for unsportsmanlike conduct, violations of the Laws of the Game, and contravention of UEFA's Statutes, rules and regulations, decisions and directives.³

Indeed, a clearly defined list of disciplinary measures imposable against member associations, clubs and individuals is to be found in the UEFA Statutes⁴ and in the Disciplinary Regulations ("DR").⁵

2. ORGANS FOR THE ADMINISTRATION OF JUSTICE

The organs through which UEFA may act are (i) the Congress; (ii) the Executive Committee; (iii) the President; and (iv) the Organs for the Administration of Justice.⁶

UEFA's Organs for the Administration of Justice are made up of the Control, Ethics and Disciplinary Body ("CEDB"), the Appeals Body ("AB"), Ethics and Disciplinary Inspectors ("EDIs") and the Club Financial Control Body ("CFCB").

In our consideration and analysis of UEFA's disciplinary bodies, our focus is predominantly on the CEDB and AB which deal with the application of the DR and have the power to impose disciplinary measures.⁷ Whereas EDIs also have a very prominent role before the CEDB and AB and in the application of the DR, they cannot impose disciplinary measures. By contrast, the CFCB can impose disciplinary measures but is concerned with the assessment of compliance with regulations in the fields of club licencing and financial sustainability. The delineation of competencies of the CEDB and AB on one side and the CFCB on the other are relatively straightforward and express provisions exist to deal with occasions where they could potentially overlap.⁸

A common thread across the Organs for the Administration of Justice is that the members are independent and may not belong to any other organ or committee of UEFA. They are elected by the Executive Committee for a term of four years and are presented to the Congress for ratification.

[...]

² UEFA Statutes, Art. 56.

³ UEFA Statutes, Art. 52.

⁴ UEFA Statutes, Artt. 53 and 54.

⁵ DR, Art. 6.

⁶ UEFA Statutes, Art. 11.

⁷ UEFA Statutes, Art. 57.

⁸ Procedural Rules governing the UEFA Club Financial Control Body, Art. 2(3) DR and Art. 5.03.

**STRUCTURE AND DISPUTE RESOLUTION SYSTEM OF THE
FÉDÉRATION INTERNATIONALE DE GYMNASTIQUE (FIG):
AN INSIDE LEGAL PERSPECTIVE**

by Vincent Jäggi and Riccardo Coppa*

ABSTRACT: The present chapter gives an inside legal perspective into the structure of the Fédération Internationale de Gymnastique (FIG). In particular, this paper aims to present the Gymnastics Ethics Foundation (GEF), an independent legal entity founded by the FIG in 2018 which strives to uphold safety and fairness in the sport of gymnastics and is notably in charge of the dispute resolution system in international gymnastics.

SUMMARY: 1. Introduction – 2. General Structure of the FIG – 2.1 FIG Membership – 2.2 FIG Governing Bodies – 2.2.1 Congress – 2.2.2 Executive Bodies – 2.2.3 Other Internal Bodies – 3. Gymnastics Ethics Foundation (GEF) – 3.1 Swiss Legal Framework for Foundations (Overview) – 3.2 Objectives – 3.3 Governance – 3.4 Organisation – 3.4.1 Safeguarding Section – 3.4.2 Disciplinary Section – 3.4.3 Compliance Section – 4. Disciplinary Proceedings – 4.1 Rules – 4.2 Infringements – 4.3 Proceedings – 4.4 Sanctions and Enforcement – 5. Access to the CAS – 5.1 CAS Jurisdiction on Appeals Against “Decisions” Rendered by the GEF – 5.2 CAS Jurisdiction on “Disputes” Within the FIG – 6. Conclusive Remarks

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1. INTRODUCTION

The *Fédération Internationale de Gymnastique* (hereinafter the “FIG”) was founded in 1881¹ and is incorporated as an association governed by Art. 60 *et seq.* of the Swiss Civil Code (hereinafter the “SCC”), with its registered seat in Lausanne, Switzerland.

It is the governing body of gymnastics worldwide. In particular, the FIG governs the following disciplines: Men’s and Women’s Artistic Gymnastics, Rhythmic Gymnastics, Aerobic Gymnastics, Acrobatic Gymnastics, Trampoline Gymnastics and *Gymnastics for All* (which also includes *Gymnaestrada*, i.e. general gymnastics without competitions).² Since 2017, a new discipline, i.e. *Parkour*, has also been recognised within the FIG.³

As a threshold remark, it should be noted that the 84th FIG Congress, held in Istanbul (Turkey) on 11-12 November 2022, approved a revised version of the FIG statutes which entered into force on 1st January 2023 (hereinafter the “FIG Statutes”).⁴ The present contribution, therefore, makes reference to this newly adopted version of the FIG Statutes.⁵

After this short introduction (*Section 1*), the present chapter will be structured as follows: *Section 2* will give a general overview of the internal structure of the FIG, in particular its members and internal bodies; *Section 3* will introduce the Gymnastics Ethics Foundation (hereinafter the “GEF”), an independent legal entity founded by the FIG to safeguard athletes and participants in gymnastics from harassment and abuse, to promote and supervise ethical principles in gymnastics, and to deal with disciplinary and ethics procedures; *Section 4* will examine the disciplinary proceedings within the FIG and *Section 5* will analyse the access to the CAS contained in the FIG Statutes and its internal regulations; finally, *Section 6* will contain some conclusive remarks.

¹ On 23 July 1881, the “Fédération Européenne de Gymnastique” was founded in Liège (Belgium) and originally comprised three member federations (i.e. Belgium, France and the Netherlands). This organisation became the FIG in 1921.

² Among the gymnastics disciplines governed by the FIG, currently three of them (i.e. Artistic, Rhythmics and Trampoline Gymnastics) are admitted within the official programme for Paris 2024 Olympic Games.

³ The FIG Statutes define Parkour as a “competitive sport (outdoors and indoors) consisting of using urban equipment for a timed run or a run with style”. The first FIG Parkour World Championships took place in Tokyo on 14-16 October 2022.

⁴ The FIG Statutes are publicly available on the FIG official website: <https://www.gymnastics.sport/site/rules/>.

⁵ For the sake of transparency, the undersigned authors contributed as external legal advisors to the drafting of this new edition of the FIG Statutes.

2. GENERAL STRUCTURE OF THE FIG

2.1 FIG Membership

The FIG consists of national federations that govern the sport of gymnastics within their countries (hereinafter “Member Federations”). Art. 3 of the FIG Statutes defines two specific categories of membership: “*affiliated*” Member Federations and “*associated*” Member Federations.

According to the well-known *Ein-platz-prinzip*, which is enshrined in Art. 4.2 of the FIG Statutes, only one Member Federation can be “*recognised*” per country.⁶ In order to be admitted to the FIG as an “*affiliated*” member representing a country,⁷ the concerned federation must “*control [g]ymnastics*” in that country and must also be recognised by both the “*national governmental authority responsible for Physical Education and/or Sport*” and by the relevant National Olympic Committee (NOC). In addition, each Member Federation must satisfy other requirements established at Art. 4.2 of the FIG Statutes, such as having “*a minimum of three (3) gymnastics clubs and twenty (20) gymnasts / athletes*”.

“*Affiliated*” Member Federations are members “*with a full membership*”. Their rights are listed in Art. 5.1 of the FIG Statutes and include, in particular, the right to vote and submit proposals to the FIG Congress, make nominations for the elected positions and participate in FIG events and competitions. They also have obligations provided in Art. 5.2 of the FIG Statutes, which include the requirement to pay an “*Annual Membership Fee*”⁸ and, more generally, to fulfil all financial obligations owed to the FIG; Member Federations must also fully comply with the FIG rules as well as any decision issued by the FIG or the GEF. In addition, “*affiliated*” Member Federations are required to remain independent, in particular from any political interference and must actively safeguard athletes, gymnasts, and all other participants in gymnastics from any kind of harassment and abuse.

By contrast, “*associated*” Member Federations have “*restrictive*” rights and obligations; in particular, they are not allowed to vote or submit proposals [...]

⁶ Cf. FIG Statutes, Art. 23.1.

⁷ The revised version of the FIG Statutes clarifies that the term “country” refers “to an independent state recognised by the international community and having its National Olympic Committee (NOC) recognised by the International Olympic Committee (IOC)”. This definition is based on the notion contained in the Rule 30 (1) of the Olympic Charter (in force as from 8 August 2021).

⁸ FIG Statutes, Art. 21. Such article provides that “[a]ffiliated Member Federations shall pay an Annual Membership Fee, comprising a base affiliation fee which includes Gymnastics for All activities, plus increments charged for any additional discipline”.

THE IHF AND EHF JUSTICE SYSTEMS

by Michele Colucci* and Monika Flixeder**

ABSTRACT: *The Authors analyse the legal system of both the International and European Handball Federations highlighting their main peculiarities in terms of jurisdiction, sanctions and enforcement of legal decisions. Particular attention is given to the judicial system that the European Handball Federation put in place in order to adapt to the needs of handball stakeholders and ensure an efficient and fast way of dispute resolution. The system consists of two stages of appeal and an external Handball Court of Arbitration. Having been in existence for thirty years, the EHF used best efforts to implement and establish a legal system adopted to the handball stakeholders’ needs in order to resolve disputes efficiently.*

SUMMARY: I. The International Handball Federation – 1. Introduction – 1.1 The IHF Members and Their Obligations – 1.2 The IHF Bodies – 1.3 The IHF Adjudicating Bodies and CAS – 2. Jurisdiction – 2.1 The IHF Appeal Authorities on Disciplinary Matters – 2.1.1 The IHF Disciplinary Commission – 2.1.2 The Jury – 3. The Arbitration Commission and the Arbitration Tribunal for Disputes About “Business Activities” – 4. The Proceedings and Execution of Judgements – 5. The IHF Ethics Commission and the Ethics Code – 6. “Sport Public Order” and Principle of Zero Tolerance – II. The European Handball Federation – 1. Introduction – 2. Judicial Bodies – 2.1 The EHF Legal Bodies – 2.1.1 Common Provisions – 2.1.2 Provisions Relating to the EHF Court of Handball – 2.1.3 Provisions Relating to the EHF Court of Appeal – 2.2 Administrative Bodies – 2.3 On Site-Bodies – 3. Categories of Decisions – 3.1 Classic Disputes in the Field of Sports – 3.1.1 Disciplinary Proceedings – 3.1.2 Transfer Disputes –

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3.1.3 Education Compensation – 3.1.3.1 Competitions-Related Disputes – 3.1.3.2 Withdrawal of Clubs in Relation to Covid-19 – 3.1.4 Marketing Related Disputes in Handball – 4. Political Crisis Following the Russian Invasion in Ukraine – 5. The European Handball Court of Arbitration – 6. Conclusions

I. THE INTERNATIONAL HANDBALL FEDERATION

I. INTRODUCTION

The International Handball Federation (IHF) is a non-profit sports association as described in art. 60 ff of the Swiss Civil Code (ZGB).¹ The IHF has its headquarters in Basel which is also the place of jurisdiction and it is subject to Swiss law.² Its Statutes and Regulations as well as the IHF decisions are binding on its members.³

1.1 The IHF Members and Their Obligations

The IHF is composed of the national handball federations on which it has bestowed recognition and which “control handball in their country”.⁴

The National Federations (hereafter also referred as “Member Federations”) also form Continental Confederations, based on geographical location.

The National Federations’ statutes, in conformity with the IHF standard statutes, need to contain some mandatory provisions which reflect also the Member Federations’ obligations.

As such, Member Federations need to ensure: (i) permanent compliance with the Statutes, Regulations and decisions of the IHF and of the Continental Confederation concerned; (ii) compliance with the Rules of the Game applicable; (iii) recognition of the IHF adjudicating bodies and Court of Arbitration for Sport in Lausanne; (iv) Independent management of their missions and guarantee that their own affairs are not influenced by any third parties;⁵ full compliance with all other duties arising from these Statutes and other Regulations.⁶

¹ IHF Statutes, Art. 1.

² *Ibidem*.

³ IHF Statutes, Art. 2.

⁴ *Idem*, Art. 8.

⁵ *Idem*, Art. 8.2.

⁶ *Idem*, Art. 8.3.

Violation of the above-mentioned obligations by any Member Federation shall be subject to sanction.⁷

1.2 The IHF Bodies

Pursuant to Art. 12 of the IHF Statutes the highest IHF body is the Congress while the Council and the Executive Committee are the IHF executive bodies.

The IHF has its Head Office and some permanent Commissions and working groups constitute Executive Committee’s technical bodies.

A supervisory body and the internal IHF auditors shall check financial matters. They audit financial reports and assure the compliance of these reports with Swiss Law and international accounting standards.

1.3 The IHF Adjudicating Bodies and CAS

The IHF adjudicating bodies are the Disciplinary Commission, the Jury, the Arbitration Commission, the Arbitration Tribunal, the Ethics Commission and they have legal authority.⁸

The Arbitration Commission and the Arbitration Tribunal are the two main adjudicating bodies while the Disciplinary Commission and the Jury are active only during sports events.

In the case of disputes concerning the IHF Statutes, the regulations and the resolutions of IHF bodies, officials and players, as well as the Member Federations to which they belong, are subject exclusively to the sports jurisdiction of the IHF’s statutory adjudicating bodies.

Pursuant to the Statutes, the Continental Confederations and National Federations agree to fully comply with any decisions passed by the relevant IHF adjudicating bodies.

Moreover, they have the obligation to take every precaution necessary to ensure that their own members, players and officials comply with these decisions.

According to Art. 23 IHF Statutes all disputes arising from the Regulations are handled by the IHF legal (*rectius* adjudicating) bodies.

[...]

⁷ *Ibidem*. The Council shall be entitled to suspend any stakeholders that seriously and repeatedly violate their obligations as members with immediate effect until the next Congress. The Council shall give the opportunity to the members concerned to present their arguments and give them the benefit of the doubt until the members present their defense to the Council, after which the Council may revoke the decision and lift the suspension.

⁸ IHF Statutes, Art. 22.

AN OVERVIEW OF THE DISPUTE RESOLUTION SYSTEM WITHIN THE FIM

by Vincent Jäggi and Riccardo Coppa*

ABSTRACT: *The present contribution wishes to give a general overview of the dispute resolution system within the Fédération Internationale de Motocyclisme (FIM). The contribution is principally focused on the disciplinary proceedings in relation with offences or misconducts occurring during the competitions organised under the FIM authority.*

SUMMARY: 1. Introduction – 2. Rules – 3. Bodies – 3.1 “On-Field” Bodies – 3.1.1 FIM Regulations – 3.1.2 MotoGP Regulations – 3.2 “Off-Field” Bodies – 3.2.1 FIM Regulations – 3.2.2 MotoGP Regulations – 4. Proceedings – 4.1 Right to Protest – 4.2 Right to Appeal – 4.3 Procedural Guarantees – 5. Penalties – 6. The Court of Arbitration for Sport (CAS) – 7. Conclusive Remarks

1. INTRODUCTION

The *Fédération Internationale de Motocyclisme* (hereinafter the “FIM”) is an association under Article 60 *et seq.* of the Swiss Civil Code (hereinafter the “SCC”) incorporated in Switzerland, with its registered headquarters in

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Riccardo Coppa is a Swiss qualified attorney-at-law, senior associate at *Kellerhals Carrard*, Lausanne (Switzerland).

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Mies (Canton of Vaud). The FIM is the governing body for “*motorcycle sports*” and has the authority to govern “*all matters connected with motorcycling activities*” throughout the world.

According to the FIM Statutes and By-Laws (hereinafter the “FIM Statutes”),¹ the FIM is “*the supreme and sole international authority empowered to control international motorcycling events organised under its jurisdiction throughout the world*” and acts as internal “*supreme court for the settlement of disputes*” which may arise from the organisation of such motorcycling activities, subject to the cases that, according to its own regulations, may ultimately be submitted to the Court of Arbitration for Sport (CAS).

Like most of the other international sports federations, the FIM has established its own internal dispute resolution mechanism which mainly concerns (vertical) disciplinary disputes as opposed to (horizontal) contractual disputes which are not governed by FIM regulations. Therefore, in the present contribution, the analysis will be focused on the applicable disciplinary rules (*Section 2, below*), the bodies which have jurisdiction to hear disciplinary cases (*Section 3, below*), the disciplinary proceedings (*Section 4, below*) and the penalties provided by the regulations and their enforcement (*Section 5, below*). As is “*typical*” in the dispute resolution systems in sports,² the FIM regulations also contain arbitration clauses in favour of CAS which will be addressed in a specific section of the present contribution (*Section 6, below*). The chapter will end with some conclusive remarks (*Section 7, below*).

2. RULES

The disciplinary rules of the FIM are mainly included in the FIM Disciplinary and Arbitration Code (hereinafter the “FIM Disciplinary Code”),³ *i.e.* a set of rules approved by the FIM Board of Directors defining the FIM disciplinary bodies, the punishable acts, the disciplinary procedures and the sanctions which may be imposed.⁴ According to the FIM Disciplinary Code, the FIM has the power to impose “*penalties*” in case of infringements of FIM regulations committed by any holders of a FIM licence.⁵ In addition, the FIM licence also contains the firm

¹ The FIM Statutes and By-Laws (version 2022), as modified on 3 December 2021.

² In a judgment involving precisely the FIM, the Swiss Federal Tribunal qualified as “*branchentypisch*” the arbitration clause in favour of the CAS in the sports industry; cf. judgement of the Swiss Federal Tribunal 4A_314/2017 of 28 May 2018, *FIM v. Kuwait Motor Sports Club*, para. 2.3.1.

³ The FIM Disciplinary and Arbitration Code (edition 2022).

⁴ FIM Statutes, Art. 16.

⁵ The FIM Sporting Code (edition 2022), Art. 70. In particular, Art. 70 (2) states that “[t]he FIM Licence is the document necessary for any individual or corporate entity wishing to

(contractual) commitment by any licence holders “to submit to and be bound by all the rules and regulations of the FIM”, including disciplinary rules and “not to take part in any capacity whatsoever, in any motorcycle competition not authorised by such rules and regulations”.

Moreover, the FIM has enacted rules that specifically govern disciplines, competitions and sporting events (referred as “meetings” in the FIM regulations)⁶ organised under its jurisdiction. These rules may also contain, *inter alia*, disciplinary provisions applying to specific disciplines or events, such as the FIM World Championships, and thus deviate from the general provisions contained in the FIM Disciplinary Code. The interaction between the FIM Disciplinary Code and these specific rules is not always self-evident; however, as a matter of principle, specific provisions governing a defined discipline or event shall prevail over the general provisions contained in the FIM Disciplinary Code.⁷ As a result, the FIM Disciplinary Code generally applies if special regulations do not provide otherwise or if, for some disciplines or events, the FIM has not adopted specific disciplinary rules.⁸

Among the specific rules for motorcycling disciplines or events, it should be mentioned the FIM Grand Prix World Championship Regulations (hereinafter the “MotoGP Regulations”)⁹ or the FIM Superbike, Supersport & SuperSport 300 World Championships (hereinafter the “Superbike Regulations”).¹⁰ The peculiarity of these regulations is that they are the result of a close cooperation between the FIM and *Dorna Sports S.L.* (hereinafter “Dorna”), a limited company based in Spain organizing and exploiting the commercial rights of the MotoGP and Superbike Championships.

In particular, the MotoGP Regulations establish a “Permanent Bureau” composed by two representatives appointed by both FIM and Dorna, and a “Grand Prix Commission” which includes, in addition to members from FIM and [...]

participate in any capacity in the meetings organised under the authority of the FIM and/or the CONUs [i.e. Continental Unions recognised by the FIM].”

⁶ FIM Sporting Code, Art. 10.

⁷ Cf. Decision of the International Disciplinary Court of 9 September 2022, concerning the Spanish trial racer *Adam Raga*.

⁸ At the beginning of the FIM Disciplinary Code it is expressly stated that “[f]or all disciplinary provisions relative to the Circuit Racing World Championship Grand Prix, Superbike, Supersport World Championships and Superstock FIM Cup as well as the Motocross and Supercross World Championships, please refer to the respective Regulations”.

⁹ The FIM Grand Prix World Championship Regulations (2023 edition), as amended on 17 January 2023.

¹⁰ The FIM Superbike, SuperSport & SuperSport 300 World Championships Regulations (edition 2022), as updated on 23 March 2022.

INTERNATIONAL RUGBY JUSTICE: THE WORLD RUGBY JUDICIAL SYSTEM

by Susan Ahern FCI Arb* and Yvonne Nolan**

ABSTRACT: *World Rugby is the governing body of Rugby Union, established in 1886. This chapter provides an overview of the current system of judicial and disciplinary laws and regulations (the Rugby Regulations) that apply within the sport. It draws together the universality of the Rugby Regulations and provides an insight into how those Regulations are applied by the independent judiciary in a global context.*

SUMMARY: 1. Introduction – 2. The Judicial Structure – 2.1 World Rugby Judicial and Disciplinary Panel – 2.2 Initiation of Proceedings – 3. On-Field discipline – 3.1 A Rugby Specific Regime – 3.2 Sanctions for Foul Play – 3.3 Core Sanctioning Process – 4. Misconduct and Code of Conduct – 5. Anti-Corruption and Betting – 6. Anti-Doping – 7. Eligibility – 8. General – Disputes and Mediation – 9. Conclusion

1. INTRODUCTION

The origins of the Game of Rugby Union (“Rugby/Game”) emerged from an act of spirited defiance when, at Rugby School in 1823, William Webb Ellis picked up the ball during a game of soccer and ran with it.¹ Today, his name and legend

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¹ See *World Rugby Charter, Principles of the Game*, available on line at <https://www.world.rugby/the-game/laws/charter/introduction>.

live on as the Webb Ellis Cup is presented to the champions of the sport at the quadrennial Rugby World Cup tournament, the pinnacle event for the traditional form of the Game. Variations of the Game have also developed over time, including Rugby Sevens, an Olympic sport since 2016. Wheelchair Rugby has also emerged as an important Paralympic discipline for the sport under the auspices of the World Wheelchair Rugby international federation.

World Rugby is the international federation that governs the Game of Rugby Union but is also a global movement comprising more than 500 million fans and 10 million players within more than 120 national member federations. World Rugby has a clear mission to grow the Game, in the context of its Values: integrity, passion, solidarity, discipline and respect.² “Discipline” is specifically important in a physical contact sport and this chapter explores the judicial system that underpins and governs the application of discipline across the Game and delves into some key areas which are fundamental to upholding World Rugby’s Bye-Laws and Regulations Relating to the Game (“World Rugby Regulations”).³

The World Rugby Regulations cover all matters relating to the proper governance and administration of the sport including, *inter alia*, eligibility and sporting nationality, advertising around the playing pitch, technical equipment specifications, betting and anti-corruption, agents, anti-doping, player release and conduct: both on-field and off-field. The World Rugby Bye-Laws deal with the governance structure of the organisation, the establishment of committees, their roles, powers and responsibilities, while the Laws of the Game deal entirely with on-field matters including the rules of the sport and prohibitions on foul play. The Bye-Laws and Laws of the Game are not considered within the scope of this paper save to deal with the off-field consequences of foul play as addressed in Section 3 and where appropriate to provide context.

2. THE JUDICIAL STRUCTURE

Independence, neutrality and expertise are core requirements for appointees who carry out judicial responsibilities on behalf of the World Rugby. By extension World Rugby member Unions are mandated to emulate this fundamental tenet in all appropriate areas of their domestic processes. The core World Rugby Regulations dealing with disciplinary and judicial matters set out the foundation structure supporting the appointment of independent judicial personnel. The functions and powers of the independent judiciary and the general principles which they should apply in the course of their appointment and the exercise of

² Together referred to the “Values”.

³ The World Rugby Regulations Relating to the Game support the Laws of the Game and can be found at <https://www.world.rugby/organisation/governance/regulations/reg-1>.

their duties are also delineated. Notwithstanding this, they retain a high degree of discretion in the exercise of those powers.⁴ While long a feature of World Rugby Regulations, the present structure was put in place in 1995 as the Game turned professional.

2.1 World Rugby Judicial and Disciplinary Panel

The World Rugby Council, which is the supreme decision-making body of World Rugby, appoints individuals to a panel – the Judicial and Disciplinary Panel – whose members are drawn from nominations from the individual national member Unions and Regional Associations. The World Rugby Council considers all such nominees for appointment against specified Appointment Criteria⁵ before making relevant appointments to the Panel which sits in various compositions. Appointed Disciplinary Committees/Judicial Officers deal with foul play issues only, while Judicial Committees/Judicial Officers deal with all other judicial matters including breaches of the World Rugby Regulations and Bye-Laws.

The Judicial and Disciplinary Panel members are eligible to sit in a variety of set roles, depending on their specific appointment, as Judicial Officers, Appeal Officers⁶ or Panel Members⁷ on Disciplinary and/or Judicial Committees and appointments are for a period of up to four years.⁸

The World Rugby Council appoints a Judicial Panel Chair⁹ who acts as the chairperson of the Judicial and Disciplinary Panel (the “Panel”). The Judicial Panel Chair position is independent of the executive and governing arms of World Rugby. Where the Regulations are breached / activated such that appointments to Disciplinary or Judicial Committees are required, the Judicial Panel Chair makes appointments from the Panel.¹⁰ The Judicial Panel Chair also has the power to co-opt additional persons with specialist skills and experience to sit on individual Judicial Committees to deal with cases that require such specialist skills and experience.¹¹

[...]

⁴ See World Rugby Regulation 20: <https://www.world.rugby/organisation/governance/regulations/reg-20>.

⁵ Set out in Appendix 1 to Regulation 20.

⁶ Appeal Officers/Committees hear and decide appeals from decisions of Judicial Officers/Committees and Disciplinary Committees.

⁷ Panel Members are non-lawyers with rugby-specific knowledge and experience appointed to Judicial Tribunals.

⁸ See Regulation 20.2.

⁹ The Judicial Panel Chair is selected using criteria set out in Regulation 20, Appendix 1.

¹⁰ The Judicial Panel Chair may be assisted by the Judicial and Disciplinary Panel Appointments Committee, see Regulation 20.2.3.

¹¹ See Regulation 20.2.6.

THE JUSTICE SYSTEM OF THE INTERNATIONAL TENNIS FEDERATION

by Despina Mavromati*

ABSTRACT: *The Author analyses the dispute resolution system of the International Tennis Federation (ITF) through its various decision-making bodies and examines issues related to jurisdiction, applicable law, composition of its members, sanctions and enforcement of its decisions. Unlike other major international Olympic federations that are based in Switzerland, the ITF is seated in London (UK) and its major decision-making body, namely the ITF Independent Tribunal, is administered by Sport Resolutions, an independent case management organization based in London (UK). The ITF has also delegated its doping-control and education responsibilities and its monitoring and prosecution of anti-corruption offences to an independent organization (International Tennis Integrity Agency). To the extent that the ITF is an Olympic International Federation, it has adopted the mandatory provisions of the World Anti-Doping Code and therefore its doping-related decisions can be appealed exclusively to the Court of Arbitration for Sport (CAS).*

SUMMARY: 1. Introduction – 1.1 The ITF Members and Their Obligations – 1.2 The ITF Bodies – 2. Jurisdiction and ITF Adjudicating Bodies – 2.1 ITF-Related Disputes, Applicable Law, Language and Place of the Hearing – 2.2 ITF Adjudicating Bodies – 2.3 The ITF Internal Adjudication Panel – 2.3.1 Introduction – 2.3.2 ITF Adjudication Panel Acting as a First-instance Panel – 2.3.3 ITF Adjudication Panel Acting as an Appeals or Supervisory Panel –

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2.3.4 Appeals Against Decisions of the ITF Adjudication Panel Acting as a First-Instance Panel – 2.3.5 Types of Disputes Falling Under the Jurisdiction of the ITF Adjudication Panel – 2.4 The ITF Independent Tribunal – 2.4.1 Introduction and General Provisions on the Independent Tribunal – 2.4.2 ITF Independent Tribunal Acting as a First-Instance Panel – 2.4.3 ITF Independent Tribunal Acting as an Appeals Tribunal – 2.4.4 ITF Independent Tribunal Acting as a Supervisory Jurisdiction – 2.4.5 Appeals Against Decisions of the ITF Independent Tribunal – 2.4.6 Types of Cases Decided by the ITF Independent Tribunal – 3. The International Tennis Integrity Agency (ITIA) – 3.1 Introduction – 3.2 The Tennis Anti-Doping Program (TADP) – 3.2.1 Introduction and Purpose of the TADP – 3.2.2 Investigations, Referral and Hearing Before the Independent Tribunal – 3.2.3 Single Hearing Before the CAS and Appeals Against the Independent Tribunal Decisions to the CAS – 3.3 The Tennis Anti-Corruption Program – 3.3.1 Introduction and Goals of the TACP – 3.3.2 Investigations, Referral and Hearing Before the Anti-Corruption Hearing Officer (AHO) – 3.3.3 Types of Cases Decided Under the TACP jurisdiction – 3.3.4 Appeals Against AHO Decisions to the CAS – 3.4 The ITF Code of Ethics and the Ethics Commission – 3.4.1 The ITF Ethics Commission – 3.4.2 The Procedure Before the ITF Ethics Commission – 3.4.3 Appeals Against the ITF Ethics Commission Decisions to the ITF Independent Tribunal and then to the CAS – 4. Conclusions

1. INTRODUCTION

The International Tennis Federation is the governing body of world tennis, wheelchair tennis and beach tennis and has its headquarters in London, UK. It consists of the ITF Limited (which is registered in the Bahamas and is referred herein as the “ITF”) and the ITF Licensing UK Limited (registered in England and Wales). The ITF is the world governing body for the sport of tennis and is tasked, among others, with fostering the growth and development of the sport of tennis at the global level, and it may draft or amend rules related to tennis.¹

According to Article IV (m) and (o) of the ITF Constitution, the ITF must also preserve the integrity and independence of tennis and pursue its goals without unfair discrimination. Unlike the majority of international sports federations that are structured as “associations (pursuant to Art. 60 ff. of the Swiss Civil Code), the “ITF Limited” is structured as a company registered in the Bahamas while the ITF is merely an unincorporated body.²

¹ ITF Constitution 2022, Art. IV, which lists all the objectives and purposes of the ITF.

² *Idem*, Art. 1.

1.1 The ITF Members and Their Obligations

The ITF is composed of the national tennis associations (“National Federations”) as “Class B Members”: they are entitled to attend, speak and vote at the ITF General Meeting.³ National Federations must be properly constituted sports bodies under the law applicable in their country of seat,⁴ which must also be recognized by the International Olympic Committee (IOC).⁵ Additionally, the usual one-member-per-country rule applies to the ITF.⁶

The ITF Constitution has detailed provisions not only on the suspension or expulsion of National Federations, but also on their readmittance.⁷ The same provisions indirectly delineate the obligations of such National Federations, which include, but are not limited to, the protection of the sport of tennis in their country, the adequate representation of the game in their country / territory and the payment of their membership fees.

1.2 The ITF Bodies

Pursuant to Art. 12 of the ITF Constitution the ITF is governed by the ITF Council, which is composed of the delegates of the Members assembled in the General Meeting. The annual General Meeting must approve the minutes, receive the annual report of the Board of Directors, receive the statement of accounts for the past financial year, and deal with other membership issues (including the election of the president and the board of directors).⁸

As to the Board of Directors, it consists of the President, fourteen other persons and two Athlete Representative Board members.⁹ The Board of Directors is entrusted with the management of the ITF¹⁰ and may also delegate its power to some Committees or Commissions, for a two-year term, and to which the President is always a member without voting rights.¹¹ The duties of the ITF Committees and Commissions are enshrined in the Bye-Laws to [...]

³ *Idem*, Art. 2 (B) (a) and (d).

⁴ *Idem*, Art. 3 (a).

⁵ *Idem*, Art. 3 (e).

⁶ *Idem*, Art. 3 (l). The rule is subject to exceptions (and needs a decision of the 2/3 of majority resolution of the ITF council).

⁷ *Idem*, Art. 4 and Art. 5, respectively. See also Bye-Law to the ITF Constitution (2022), Art. 7.

⁸ *Idem*, Art. 14.

⁹ *Idem*, Art. 19.

¹⁰ *Idem*, Art. 22.

¹¹ *Idem*, Art. 25 (b).

THE FÉDÉRATION INTERNATIONALE DE VOLLEYBALL'S DISPUTE RESOLUTION SYSTEM

by *Stephen Bock**

ABSTRACT: *This chapter examines the evolution of dispute resolution systems within the FIVB over time. It provides an overview of the FIVB bodies, the categories of disputes (“horizontal” and “vertical”) highlights how different types of disputes (employment, financial, doping) are treated as well as the relevant jurisprudence related to offences and applicable sanctions since these bodies were developed.*

The most substantial evolution since 2013 has occurred in the area of ethics violations which now are decided by an independent decision-making body rather than merely an advisory body.

Through the examination of the relevant case law, the Author concludes that the relevant procedures before the FIVB disputes bodies have become more accessible, transparent and efficient, while still maintaining its volleyball-specificity.

SUMMARY: 1. Resolution of Disputes in International Volleyball Until 2012 – 2. A New System, a New Era – 2.1 Main Principles – 2.1.1 CAS as the Ultimate Appeals Body – 2.1.2 Categorisation of Disputes – 2.1.3 Principles of Natural Justice – 2.2 “Horizontal” Disputes – 2.3 “Vertical” Disputes – 2.3.1 Disciplinary – 2.3.2 Doping – 2.3.3 Ethics – 2.3.4 Administrative – 2.3.4.1 Eligibility – 2.3.4.2 Transfers – 2.4 Financial Disputes – 3. Conclusion

*L.L.M., Head of Legal and General Counsel, International Volleyball Federation, Lausanne, Switzerland. This is an updated version of the article authored for the previous edition of this book by Dr. Achilleas Mavromatis, at the time, PhD in Sports Law, Attorney at Law. Mavromatis Lawyers, Thessaloniki, Greece; President, Hellenic Volleyball Federation; Board Member, European Volleyball Confederation (CEV); Secretary, FIVB Legal Commission (2006-2012); Member, FIVB Finance Commission (2012-) and Mr. Andreas Zagklis, LL.M., at the time, Attorney at Law (Greece) at Martens Rechtsanwälte with the support of Ms Diana Tesic, Barrister and Solicitor in Toronto, Canada. Therefore, most of the credit for this contribution is due to them. The opinions expressed herein are those of the author and do not necessarily reflect those of the FIVB.

I. RESOLUTION OF DISPUTES IN INTERNATIONAL VOLLEYBALL UNTIL 2012

Historically, the Fédération Internationale de Volleyball (“FIVB”) managed its own internal dispute resolution process aiming at preserving the sanctity of the sport by having only those truly knowledgeable in volleyball resolve disputes arising within the FIVB family. While the majority of international sporting federations embraced the formation and the jurisdiction of the Court of Arbitration for Sport (“CAS”) as the ultimate judicial body for international sports disputes, the FIVB originally resisted fully recognising its authority.

Although the FIVB signed the 1994 Paris Agreement establishing the International Council of Arbitration for Sport (“ICAS”), the independent foundation created to manage the finances and administration of CAS,¹ it did so under an express reservation.² Therefore, unlike the majority of International Federations, the FIVB rejected the idea of being bound by CAS jurisdiction in every respect. Instead of yielding to the authority of CAS, the FIVB created its

¹ “Agreement relating to the constitution of the International Council of Arbitration for Sport (ICAS)”, 22 June 1994, Paris, France. See <http://www.tas-cas.org/en/arbitrage.asp/4-3-294-1023-4-1-1/5-0-1023-3-0-0/>.

² FIFA and FIVB were the only two IFs that signed the Paris Agreement with a reservation. FIVB’s reservation signed by its then President Dr. Rubén Acosta, reads as follows: “*En aucune façon, la seule signature de la Convention relative à la Constitution du CIAS ne peut avoir pour effet de créer l’acceptation par la FIVB, de la juridiction obligatoire du Tribunal Arbitral du Sport (TAS), conformément aux Artt. S1, S12, S20, R27, R38, R39, R47, R48 et R52 du Code de l’arbitrage en matière de sport. Pour tout litige concernant la FIVB, la juridiction compétente exclusive reste celle des organes de la FIVB, et notamment du Tribunal International du Volleyball, selon les termes de la Constitution de la FIVB approuvée par le Conseil d’Administration au mois d’avril 1994 pour présentation au Congrès Mondial de la FIVB. Enfin, la FIVB ne se considère et ne sera pas liée par quelque décision en la matière qui pourrait être prise par le CIAS ou les organisation membres de celui-ci y compris celles dont la FIVB serait elle-même membre, en l’absence d’une décision précise du Congrès Mondial de la FIVB à cet effet*”. (Free Translation)

“*In no way, the mere signature of the Agreement relating to the constitution of the ICAS can have the effect of creating the acceptance by the FIVB of the compulsory jurisdiction of the Court of Arbitration for Sport (CAS), in accordance with Artt. S1, S12, S20, R27, R38, R39, R47, R48 and R52 of the Code of Sports-related Arbitration. For any dispute concerning the FIVB, the exclusive jurisdiction remains that of the FIVB bodies, and in particular the International Volleyball Tribunal, according to the terms of the FIVB Constitution approved by the Board of Directors in April 1994 for presentation to the FIVB World Congress. Finally, the FIVB does not consider itself and will not be bound by any decision in this matter which could be taken by the ICAS or its member organisations including those of which the FIVB itself is a member, in the absence of a specific decision of the FIVB World Congress to this effect*”.

own dispute resolution body, the International Volleyball Tribunal (“IVT”)³ in 1994. As of 2004, given that the FIVB is an international federation recognised by the International Olympic Committee (“IOC”), the FIVB had a duty under the Olympic Charter⁴ to adopt and implement the World Anti-Doping Code (“WADC”). The WADC stipulated CAS as the ultimate appeals body for doping cases.⁵ As such, during that time, and up until 2012, CAS could hear only one type of dispute in volleyball: doping cases. Refusing to abandon its own internal dispute resolution mechanisms, all other disputes within the FIVB were heard internally by the IVT.

The IVT was established to function as a neutral body, independent from the governing and supporting institutions of the FIVB. In 2006, the former FIVB President Dr. Rubén Acosta stated publicly his reservations with respect to CAS and presented IVT:

“On the matter of arbitration, the FIVB has been reluctant to use the IOC-funded Court of Arbitration in Sport, except for anti-doping appeals, preferring instead to refer all other cases to the International Volleyball Tribunal (IVT). This is likely to continue for the time being. The FIVB appreciates the importance of independent arbitration, but believes that key improvements in the IVT may be a better way of guaranteeing independent arbitration while maintaining confidence that arbitrators fully understand Volleyball and Beach Volleyball, two of the most successful team sports in the world. The International Volleyball Tribunal is currently entirely financed by the FIVB and we are looking at bringing in another, independent source of finance. To guarantee independence, we may also need to change the system of election of judges or arbitrators”.⁶

Interestingly, the IVT was structured in a way similar to CAS, undertaking the role of impartial tribunal which could “arbitrate” disputes between two or more parties under the jurisdiction of the FIVB (the Arbitration Chamber), and also as a court of appeal deciding cases against FIVB decisions, other than decisions from the IVT itself (the Appeal Chamber).⁷ The IVT Members were individuals with a legal background proposed by the FIVB Board of

[...]

³ See FIVB Constitution (as applicable between 1994 and 2012); and see the Statutes of the International Volleyball Tribunal, which set out its jurisdiction and authority, structure, arbitration procedures and appeal procedures.

⁴ See Olympic Charter, Rule 25.

⁵ See WADC, Art. 13.

⁶ A. NAPIER, ‘*A confident future for Volleyball and Beach Volleyball*’, FIVB Volley World, September 2006, available at <http://www.aanapier.com/confident.html>.

⁷ See FIVB Constitution (2006), Art. 2.7.1.2.

DISPUTE RESOLUTION IN UNITED STATES PROFESSIONAL SPORTS LEAGUES

by Jeffrey A. Mishkin* and Danielle S. Menitove**

ABSTRACT: *This chapter provides an overview of the dispute resolution systems employed by the four major professional sports leagues in the United States – the National Football League (NFL), the National Basketball Association (NBA), the National Hockey League (NHL), and Major League Baseball (MLB). The U.S. professional sports leagues do not recognize the jurisdiction of the Court of Arbitration for Sport (CAS) to resolve their disputes. Instead, disputes are resolved using internal dispute resolution mechanisms set forth in the leagues’ collective bargaining agreements (CBAs) and Constitutions and Bylaws. The primary types of dispute resolution procedures used by the leagues are arbitration before the Commissioner, grievance arbitration, system arbitration, and, in the NHL and MLB, salary arbitration. Parties occasionally seek to challenge the decisions arising from these internal procedures in federal and state courts, but judicial review of arbitration awards is limited and deferential.*

SUMMARY: 1. Introduction – 2. Federal Labour Law and Collective Bargaining – 3. Commissioner Discipline and Arbitration – 3.1 Disciplinary Authority over Players – 3.1.1 Discipline for On-the-Field/Court/Ice Conduct – 3.1.2 Discipline for Off-the-Field/Court/Ice Conduct – 3.2 Disciplinary Authority over Owners, Managers, and Coaches – 4. Grievance Arbitration – 4.1 Non-Injury Grievances – 4.1.1 The “Lockout Pay” Case – 4.1.2 Appeals of Discipline for Out-of-Game and Off-Court Conduct – 4.1.3 Anti-Doping Disputes – 4.2 Injury Grievances – 5. System Arbitration – 6. Salary Arbitration – 7. Judicial Review – 8. Conclusion

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** Arbitrator/Mediator; former attorney-at-law in the sports and antitrust practice groups at Skadden, Arps, Slate, Meagher & Flom LLP.

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I. INTRODUCTION

In the United States, there are four major professional sports leagues – the National Football League (“NFL”), the National Basketball Association (“NBA”), the National Hockey League (“NHL”), and Major League Baseball (“MLB”).¹ The leagues are private associations that do not accept the jurisdiction of the Court of Arbitration for Sport (“CAS”) to resolve their disputes. Instead, the leagues and their respective constituents have entered into agreements governing all aspects of their relationships, including the procedures for resolving their disputes.

As discussed in detail below, each league has entered into a collective bargaining agreement with the union representing players in the league setting forth the disciplinary authority of the Commissioner, as well as the procedures for challenging disciplinary decisions and resolving other disputes. Although the precise contours of each league’s dispute resolution systems differ, the myriad disputes that arise in U.S. professional sports leagues generally are resolved through one of four types of arbitration: (i) arbitration before the Commissioner, (ii) grievance arbitration, (iii) system arbitration, and (iv) in the NHL and MLB, salary arbitration.

2. FEDERAL LABOUR LAW AND COLLECTIVE BARGAINING

In the United States, employees have the right to organize and be represented by a union under a federal law called the National Labor Relations Act (“NLRA”).² Employees may form a union, or join an existing one, when the majority of employees of a particular employer desire to be represented by a union. In such cases, the employer can voluntarily recognize a union as the exclusive bargaining representative based on evidence that a majority of employees wish to have the union represent them. Alternatively, if the employer chooses not to voluntarily recognize the union, the union can be certified as the exclusive bargaining representative through a process and election overseen and administered by the National Labor Relations Board (“NLRB”).

Like other employees, professional athletes playing in the major professional sports leagues in the United States have the right, and have chosen, to be represented by unions for purposes of bargaining collectively with their respective leagues. Once the players choose to be represented by a union, the

¹ Major League Soccer (“MLS”) also has gained significant popularity as a professional sports league in the United States since its founding in 1996. Given its more limited history, however, MLS has produced fewer notable disputes and thus is not a focus of this chapter.

² 29 U.S.C. § 157.

league, acting as a multi-employer bargaining unit for the member teams, is required to bargain with the union representing the players in that league over “wages, hours, and other terms and conditions of employment”.³ Those topics – wages, hours and other terms and conditions of employment – are known as “mandatory subjects” of bargaining.

Although the labour laws require the parties to negotiate over the mandatory subjects of bargaining, there is no obligation to reach an agreement or make any concessions.⁴ If the parties fail to reach an agreement on a new collective bargaining agreement (“CBA”) before the prior CBA expires, the league and players union may resort to their respective labour remedies of imposing a lockout or strike to exert economic pressure on the other side to reach an agreement.

Over the last twenty years, each of the leagues has had work stoppages because of labour disputes. In 2004-2005, a labour lockout in the NHL cancelled the entire regular season and postseason, the first (and so far only) time a major U.S. professional sports league has lost a full season due to a labour dispute.⁵ In 2011, NBA owners imposed a lockout that cancelled hundreds of games.⁶ The same year, NFL owners locked out the players for 136 days.⁷ In 2012, a 113-day lockout in the NHL resulted in the cancellation of 628 games.⁸ And in 2022, failed negotiations between MLB and MLB Players Association resulted in a 99-day lockout and the delay of the opening game of the season.⁹

Eventually, the leagues and the unions always reach agreement on the terms of a new CBA. The CBAs each span several hundred pages and address all aspects of the employment of players.¹⁰ The CBAs include terms regarding
[...]

³ 29 U.S.C. § 158(d).

⁴ *Idem*.

⁵ See *Lockout Over Salary Cap Shuts Down NHL*, ESPN.com (16 February 2005), <https://www.espn.com/nhl/news/story?id=1992793>.

⁶ See *Season Review: 2011-12*, NBA.com (13 September 2021), <https://www.nba.com/news/history-season-review-2011-12>.

⁷ See *NFL Lockout Watch, Day 136: Sides Agree to Terms Early Monday Morning*, Sports Business Journal (25 July 2011), <https://www.sportsbusinessjournal.com/Daily/Issues/2011/07/25/Leagues-and-Governing-Bodies/NFL-Lockout-Main.aspx>.

⁸ See T. HUGHES, *NHL Lockout Timeline: Let's Remember the Whole Nightmare*, SBNation (6 January 2013), <https://www.sbnation.com/nhl/2013/1/6/3728892/nhl-lockout-timeline-2012-2013>.

⁹ See J. WAGNER, *Play Ball! Lockout End as M.L.B. and Union Strike a Deal*, N.Y. Times (10 March 2022), <https://www.nytimes.com/2022/03/10/sports/baseball/mlb-lockout-ends.html>.

¹⁰ See NFL Collective Bargaining Agreement (2020), available at https://nflpaweb.blob.core.windows.net/media/Default/NFLPA/CBA2020/NFL-NFLPA_CBA_March_5_2020.pdf; NBA Collective Bargaining Agreement (2017), available at <https://nbpa.com/cba>; NHL Collective Bargaining Agreement (2012 and 2020),

THE JUDICIAL SYSTEM OF EUROLEAGUE BASKETBALL

by *Andrea Fioravanti**

ABSTRACT: *The Author analyses the judicial system that has been put in place by the stakeholders of the professional basketball competitions organized and managed by a group of private companies under the brand Euroleague Basketball. Focus is, in particular on the different procedures set out in the Euroleague Basketball Disciplinary Code which contains the set of rules governing the disputes arising in connection with the provisions of the Euroleague Bylaws.*

SUMMARY: 1. Introduction – 2. Euroleague Basketball – Structure and Organization – 2.1 Euroleague Commercial Assets S.A. – 2.2 Euroleague Properties S.A. and Euroleague Ventures S.A. – 2.3 Euroleague Entertainment & Services S.L.U. – 2.4 Conditions for Participation in the Euroleague Basketball Competitions – 3. The Euroleague Basketball Judicial System – 3.1 The Euroleague Basketball Disciplinary Code – 3.2 The Euroleague Basketball Hearing Bodies – 3.3 General Principles of the Code – 3.4 Types of Infringements and Applicable Procedure – 3.4.1 Infringements of the Regulations Regarding the Management and Administration of the Competition – 3.4.2 Infringements of the Rules Occurring During the Course of a Game or the Euroleague Basketball Competitions – 3.4.3 Infringements of the Financial Stability and Fair Play Regulations – 3.4.4 Infringements Related to the Failure to Comply with the Terms of Awards of the EBDRC – 3.5 Sanctions and General Principles Applicable for the Setting of Sanctions – 4. Internal Appeal System – 5. Appeal to the Court of Arbitration for Sport – 6. Doping Infringements – 7. Other Disputes within the Euroleague Basketball Not Governed by the Code – 7.1 Disputes in Connection with the Contract Entered into by the Clubs To Participate in the Euroleague Basketball

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Competitions – 7.2 Disputes Between Clubs in Connection with the Hiring and Transfer of a Player or Coach – 7.3 Disputes Relating to the EuroLeague Framework Agreement (EFA) – 7.4 Disputes Arising in Connection with the EuroLeague Standard Player Contract – 8. Conclusion

1. INTRODUCTION

Euroleague Basketball is the brand under which a corporate group (Euroleague Commercial Assets S.A., a limited liability company with seat in Luxemburg, and its controlled companies Euroleague Properties S.A. and Euroleague Entertainment & Services S.L.U.) organizes and manages two top-level pan-European professional basketball competitions, namely the “EuroLeague” and “EuroCup”.

The EuroLeague and EuroCup (hereinafter also referred to jointly as the “Euroleague Basketball Competitions”) are thus transnational club competitions organized and managed by a private corporation, whose shareholders are clubs and domestic leagues and not, as is commonly the case for team sports within the European sports world, by an international sporting federation, generally organized as a non-profit association, whose members are national federations. Said competitions do not, therefore, fall within the federative sphere and when participating in competitions organized under the Euroleague Basketball brand, the relevant actors (teams, athletes, coaches etc.) do not fall under the direct jurisdiction of the respective national federations to which they belong.

Euroleague Basketball and its competitions represent an interesting and particular case where a European club competition is, in some ways, inspired by the American professional sports model.

2. EUROLEAGUE BASKETBALL – STRUCTURE AND ORGANIZATION

As mentioned, Euroleague Basketball is only the brand under which the EuroLeague and the EuroCup basketball club competitions are organized.

2.1 Euroleague Commercial Assets S.A.

Euroleague Commercial Assets S.A. (ECA) is the controlling company of the group of companies which organizes and manages the Euroleague Basketball Competitions.

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The shareholders of ECA are the clubs possessing long-term licenses and known as “Licensed Clubs” (controlling approx. 75% of the shares)¹ and nine domestic leagues,² together with their representative association Union of European Basketball Leagues or “ULEB” (controlling approx. 25% of the shares).

ECA is responsible for the overall supervision of all matters regarding the EuroLeague and the EuroCup as well as for approval of the relevant bylaws.

The supreme sporting body of ECA is the General Assembly composed by said ECA shareholders and by the so called “Associated Clubs”, i.e. the clubs participating in the EuroLeague on an annual basis with, however, no voting rights. The General Assembly also ensures the coordination of the clubs and has the authority to take decisions and confer functions on the Shareholders Executive Board.³

The General Assembly appoints the Shareholders Executive Board, which has the duty to submit proposals and recommendations to the General Assembly, to monitor and control the observance of the resolutions taken by the General Assembly, to take urgent measures when there is no time to convene a meeting of the General Assembly, and to exercise any further functions conferred on it by the General Assembly.⁴

ECA’s Shareholders Executive Board consists of 13 representatives of the Licensed Clubs that participate in the EuroLeague, and the Chief Executive Officer, who will act as chairman of the Shareholders Executive Board. All members of the Shareholders Executive Board are elected by the General Assembly for a three-year term of office.

2.2 Euroleague Properties S.A. and Euroleague Ventures S.A.

Euroleague Properties S.A. (EP) is the limited company, controlled by ECA, that is responsible for managing and organizing the EuroLeague and the EuroCup and for commercializing the assets of the Euroleague Basketball Competitions.⁵

EP has assigned its responsibilities to Euroleague Ventures SA (EV), a joint venture company incorporated by EP and the American company [...]

¹ Anadolu Efes, CSKA Moscow, FC Barcelona, Fenerbahce, Maccabi Tel Aviv, Olimpia Milano, Olympiacos, Panathinaikos, Real Madrid, Saski Baskonia, and Zalgiris Kaunas.

² ACB (Spain), Lega (Italy), ABA (with clubs from countries of former Yugoslavia), LNB (France), BBL (Germany), HEBA (Greece) BSL (Israel), PLK (Poland) VTB (with clubs from the Russian Federation and some adjacent countries).

³ EuroLeague Regulations, Art. 1.1.

⁴ *Idem*, Art. 1.1.2.

⁵ *Idem*, Art. 1.2.

INTERNATIONAL SPORTS JUSTICE: CONCLUDING REMARKS

by Massimo Coccia and Michele Colucci

TEASER

International sports justice varies very much and evolves constantly as it emerges from the comparative analysis of the international sports organizations' rules and case law. All of them defend the domestic justice principle according to which disputes between their members should be dealt with and settled within their own structures of decision-making and adjudicating bodies.

In view of enhancing their autonomy, international sports organizations developed their own judicial bodies. Some of them seem to be more effective than others but all share the same goal: to settle disputes quickly and fairly, to provide the correct interpretation and implementation of their own sports regulations, and to grant compliance with their ethical standards.

Interestingly, international sports organizations tend to continuously amend their statutes and regulations to increase the efficiency and fairness of their sports justice systems. This is certainly to be appreciated as, of course, improvements are always welcome; however, with specific regard to procedural rules, it is probably desirable to also have some stability and predictability. Therefore, it is submitted that an effort should be made by sports legislators to amend their sports justice mechanisms only at intervals of no less of, say, four years. For example, the CAS Code of Sports-related Arbitration has seen in recent years the following sequence of dates of entry into force of amendments: 1 January 2020; 1 July 2020; 1 November 2022; 1 February 2023. Comparable sequences of amendments can be found in the justice rules of several international federations. This is not ideal for the users of international sports justice, especially because often the amendments from one year to the other are *de minimis* and might definitely be bundled together and adopted at longer intervals.

This said, in this conclusive chapter we highlight some general principles, important similarities and key distinctions that have been addressed in more detail throughout this book, by comparing them, to focus on common trends and gain substantial insight into what the future holds for international sports justice.

The legal, economic and social consequences of highly commercial and mediatic sport disputes can be dramatic for the parties involved. They can have a worldwide echo in the media and the public opinion may question the purported values and the credibility of the sports system. Therefore, sports organizations have every interest in developing judicial systems' fairness, efficiency and sound rapidity while fully abiding by the universally recognised, fundamental principles of law and procedure.

In this perspective, disputes must be settled fairly and quickly by taking into account the so-called specificity of sport, i.e. its specific characteristics linked to the competitions, which require the presence of sports judges and arbitrators that have the professional qualifications and capacity to take quick and reasoned decisions on technical matters but also on the huge variety of issues at stake (employment, commercial, eligibility, disciplinary, etc.).

Because of the sport's specificity, the professional background and legal expertise of judges and arbitrators of course is of paramount importance.

More and more, sports organizations require that sports judges have a professional legal background. Nevertheless, in order to be able to deal with specific issues, such as doping, or pure technical matters related to the peculiarities of any given sport, some judicial bodies are composed of people having a mix of backgrounds (not only legal but also medical or scientific) and can offer adequate guarantees to their member as foreseen for instance by the FIA or by Sport Resolutions.

In this connection, it is submitted that any and all sports justice institutions of whatever status and tradition – from the CAS to every single justice body of any sports organization – should organize and implement, on (at the very least) a biennial basis, education and training programs (even on-line) for the individuals sitting in those justice bodies. Constant education and training on procedural and substantive legal issues are necessary to ensure the proper respect of due process principles and the quality of the decisions taken. Such education and training programs should address not only issues of sports law *stricto sensu* but also those sectors of the law that are most likely to have a bearing on sports matters, such as – for example – antitrust law and human rights law, with the related jurisprudence of national and international courts.

In order to guarantee a fair process in every sports organization, independent and impartial tribunals that are fully knowledgeable of all aspects of the law are essential. Indeed, sports law horizontally interacts with many other areas of the law.

Equally important is the role of the General Secretariats or Offices of the international sports organizations. They must have expertise and skills to ease

a smooth start of the proceedings and, above all, ensure the successful communication management between judges and parties along the entire duration of the proceedings.

As a matter of fact, not all international sports organizations have the same weight: some are more important than others in terms of registered (professional and amateur) athletes; some are older than others and rely on a robust legal tradition that allowed them to design and develop a functional, complex justice system, upgraded along the years.

Whatever the history of each of the sports organizations, their dispute resolution mechanisms need to comply with the basic principles of due process: the interested parties must be given notice of the opening of a procedure, they also should be granted the right to access the file and to be heard, and the opportunity to adequately present their case as well as all supporting evidence.

Of course, sports proceedings should also be accessible to every stakeholder, whatever their level of income, meaning that those proceedings should be cost-efficient, because not all athletes, coaches or clubs can afford the sometimes very high costs of an international sports justice procedure. In this regard, the introduction of lists of *pro-bono* counsels by CAS and recently by some major sports organizations (such as FIFA and UEFA) is surely helpful.

A fair sport dispute resolution mechanism should be fast and efficient. Therefore, procedures should be streamlined based on the nature and value of each dispute, allowing the relevant judges within the various sports organizations to pass decisions in a span of a few weeks.

Following this approach, FIFA, FIBA and FIPV reformed their respective justice systems to better match the disputes' content with the competent judges' professional skills, so they can review the matters easily and deliver their decisions very quickly.

Some federations, such as FIFA, prefer to have written procedures instead of oral hearings, given that the parties to a dispute can still lodge an appeal before the CAS where they can be heard, call for witnesses, and cross-examine the other side's witnesses.

FIFA has established the Football Tribunal, which is composed of three specific chambers: the Dispute Resolution Chamber, the Players' Status Chamber and the Agents Chamber. Each chamber has jurisdiction on a certain number of matters. In principle, at least for the less complex cases, there is only one round of submissions and decisions can be taken by single judges, and procedures are costs-free if at least one of the parties is a natural person (e.g. a player or coach)

To make the system even more effective, FIFA has also put in place other judicial bodies that can impose a wide range of sanctions in case of breach of its rules.

[...]

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