

THE DEVELOPMENT AND EVOLUTION OF THE COURT OF ARBITRATION FOR SPORT AND THE CODE OF SPORTS-RELATED ARBITRATION

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Abstract: *The Court of Arbitration for Sport is the authoritative institution for the settlement of international sports disputes. After nearly 40 years of development, it has become a veritable "Sports Supreme Court". Its procedural rules have been revised for many times and have become increasingly mature and perfect. This paper will analyze its general development and the development of the Code of Sports-related Arbitration, and explore the general principles of CAS development.*

Keywords: *Court , Arbitration , Sport jurisdiction, development, protection*

Introduction

The court of arbitration for sport (CAS), founded in 1984 and headquartered in Lausanne, Switzerland, is an authoritative institution for the settlement of international sports disputes, known as the "Supreme Court of sports". From dealing with the first case in 1986 to the end of 2020, CAS has accepted a total of 7869 cases¹, gradually forming a valuable "Lex Sportiva" through arbitration cases, which provides predictability and consistency for the settlement of international sports disputes. How can this institute achieve these objectives step by step, and what principles does it have? This paper will discuss this from the perspective of the development of CAS and the Code of Sports-related Arbitration (Code), and put forward its development principles.

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1. CAS statistics [EB/OL][2021-7-2]

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

2. Despina Mavromati, Matthieu Reeb. The Code of the Arbitration for Sport Commentary, Cases and Materials [M] Wolters Kluwer Law & Business,2015.1-2.

3. CAS 92/63 G. v/ FEI[EB/OL][2019-10-10] <http://jurisprudence.tas-cas.org/Shared%20Documents/63.pdf>

1. The General development of the Court of Arbitration for Sport

1.1. Brief introduction of CAS origin and development history

In the early 1980s, with the development of professional sports, international sports disputes were increasing, while the lack of independent institution to solve sports disputes and make binding decisions was a direct problem faced by international sports organizations at that time. After Antonio Samaranch was elected president of the IOC in 1981, he intended to create a specific sports judiciary. At the International Olympic Committee meeting held in Rome in 1982, the International Olympic Committee authorized Keba Mbaye, who was a judge of the International Court of justice in the Hague, the Netherlands and a member of the International Olympic Committee, to be responsible for drafting the statutes of the Court of Arbitration for Sport, and began to create a specialized forum dedicated to the arbitration jurisdiction of sports direct or indirect disputes, providing flexible, fast and cheap procedures to solve international sports disputes.²In 1983, the IOC officially approved the CAS constitution, which came into force on June 30, 1984.

On February 1992, American equestrian Elmar Gundel appealed to CAS for dissatisfaction with the ruling of the International Equestrian Federation. CAS ruled on the appeal on October 15, 1992, partly supported the athlete's claims, and reduced his ban from three months to one month.³Gundel was dissatisfied with the decision of CAS and continued to appeal to the Swiss Federal Tribunal(SFT), and pointed out that CAS did not meet the requirements of impartiality and independence. In its award issued on March 15, 1993, the Swiss Federal Tribunal recognized CAS as a true Arbitral Tribunal, and pointed out that CAS is not an internal organ of the International Equestrian Federation, is not subject to the instructions of the Federation, and retains sufficient independent autonomy. However, the Swiss Federal Court also pointed out the close relationship between CAS and the IOC, including its funding by the IOC, the amendment of its constitution and rules by the IOC, and the great power of the president of the IOC to appoint CAS members. The Swiss Federal Tribunal held that in view of the close relationship between the two, if the IOC becomes a party to the application procedure, the independence of CAS may be questioned. The Swiss federal Tribunal clearly stated that CAS must be more independent of the IOC in terms of organization and finance. Therefore, CAS carried out a major reform in 1994. CAS reformed its institutional composition to enhance the effectiveness of the organization, established the International Council of arbitration for sport (ICAS) to replace the IOC's support for its operation and funds, and established two divisions, the ordinary arbitration branch and the appeal arbitration branch, to distinguish between independent disputes and disputes arising from decisions made by sports institutions.

1.2. Foundation of CAS development²

1.2.1. Swiss Law provide the basis for CAS

CAS is an association established based on Swiss law, which gives the association greater freedom. According to Swiss law, regardless of geographical location, the arbitration place of CAS is always Lausanne, Switzerland. This ensures uniform procedural rules for all CAS arbitrations, which provides a stable legal framework and facilitates efficient dispute resolution in locations convenient for the parties.⁴ Besides CAS, Numerous and prominent sport federations are domiciled in Switzerland. Federations domiciled in Switzerland are constituted as associations according to Articles 60 et seqq. Swiss Civil Code. The said autonomies assigned by Swiss laws to sport federations, sport courts or parties to sports-related disputes redound to Switzerland's advantage as a place for international sport arbitration.

2.2.2. International sports autonomy system

In the long-term development, modern sports has formed an autonomous management system with hierarchical contract relationship led by the Olympic movement. The governance of Olympic sports is based on the European model of sports, a hierarchical, inverted pyramid model in which each sport is governed vertically on a global basis by an international body with corresponding transnational, national, regional, and local federations.⁵ In the sports autonomy system, in addition to the IOC, the Olympic Movement includes IFs, the international governing bodies for each Olympic sport; National Olympic Committees (NOCs); National Federations (NFs) for each Olympic sport recognized by each NOC; thousands of individual athletes, judges, and coaches who are members of the NFs for their respective Olympic sports; and others. According to the Olympic Charter, any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the CAS. Athletes are required to submit any disputes in connection therewith to the CAS for final resolution, as a prerequisite for participating in the Olympic games. Since 2002, all Olympic international federations and several non-Olympic federations have recognized the jurisdiction of CAS. CAS has gradually become the core of sports autonomy.

2. 4. MITTEN, MATTHEW, J. The Court of Arbitration for Sport and its Global Jurisprudence: International Legal Pluralism in a World Without National Boundaries.[J]. *Ohio State Journal on Dispute Resolution*, 2015, 30(1):1-44.

5. James A.R. Nafziger, A Comparison of the European and North American Models of Sports Organisation[J]. *The International Sports Law Journal*, 2008, 11(1):1-19.

1.3. Driving force of CAS development

1.3.1. Demand for international sport dispute resolution 3

As the authoritative institute of international sports dispute resolution, CAS is established to meet the needs of sports development. In the process of development, CAS constantly adjusts its organization, service content and rules according to the development needs of sports, so as to make it widely recognized and gradually expand its influence.

In terms of organizational composition, before 1994, CAS was composed of 60 members appointed by the IOC, IFs, NOCs and the president of the IOC. Among them, the 15 members designated by the president of the IOC must be elected outside the above three groups.⁶ In addition, except for disputes involving financial nature, which require the parties to pay part of the expenses, all operating expenses of CAS shall be borne by the IOC, and CAS procedures are free in principle. Due to the demand for independence and impartiality in sports disputes, after the reform in 1994, CAS includes CAS and ICAS. The composition of ICAS is as follows: (i) four members are appointed by the international sports federations, of which three are elected by the international sports federations of the summer Olympic Games and one by the international sports federations of the Winter Olympic Games from within or outside their members; (ii) Four members are elected by the NOC from within or outside its members; (iii) Four members are elected by the IOC from within or outside its members; (iv) Four members are appointed by the above 12 ICAS members after negotiation from the perspective of safeguarding the interests of athletes; (v) Four members are appointed by the above 16 ICAS members and elected from persons independent of the above bodies.

In terms of service and rules, the consultation procedures initially provided by CAS played an important role in preventing disputes and interpreting professional legal issues. To a certain extent, it avoids the disputes between the parties, curbs the intensification of contradictions between the parties, has a certain preventive effect, and is a service in line with the actual needs at that time. However, due to the non-binding advisory opinions, the limitations of the scope of consultation and the gradual reduction of consultation cases, the consultation procedures were deleted from the 2012 implementation version of the Code. With the mediation procedure playing a more and more important role in the alternative dispute resolution mechanism, CAS established mediation rules in 1999, so that the parties who have reached an agreement in the field of sports can choose to negotiate and negotiate with the help of mediators to resolve disputes, and standardized mediation procedures in the Code implemented in 2013, so

3. 6. Despina Mavromati, Matthieu Reeb. The Code of the Arbitration for Sport Commentary, Cases and Materials [M] Wolters Kluwer Law & Business, 2015.3-4.

as to further develop sports mediation. The establishment of CAS Anti-Doping arbitration Division in 2019 stems from the needs of global Anti-Doping and the establishment of unified Anti-Doping rules, as well as the successful operation of CAS Anti-Doping Division. During the 2016 Rio Olympic Games, CAS was entrusted by the IOC to accept the first instance case of Anti-Doping during the Olympic Games for the first time and achieved success. In the 2018 Pyeongchang Winter Olympic Games, CAS Anti-Doping Division continued to accept Anti-Doping cases of first instance and achieved success. As recommended by the IOC summit in 2017 and 2018, CAS finally decided to establish a permanent Anti-Doping Division.

1.3.2. Typical sports cases⁴

Typical cases have played an important role in promoting the revision of CAS Code and the development of sports arbitration. The Gundel case in 1992 was an important inducement to the CAS reform in 1994. This case led to the major changes of C In 2000, Romanian gymnast athlete appealed to the Swiss Federal Court against the CAS ruling, which was rejected. The Swiss Federal Court did not assess the independence of CAS at that time. Until May 27, 2003, two Russian athletes appealed to the Swiss Federal Court against CAS's ruling denying their qualification to participate in the Winter Olympics in Salt Lake City. The federal court assessed the independence of CAS in detail. In the ruling, the federal court analyzed the organization and structure of CAS and ICAS at that time, and pointed out that CAS is not a subsidiary organ of the IOC and is completely independent of the IOC. As required by all other parties, CAS can make a real ruling on cases involving the IOC. The Swiss Federation further pointed out that CAS has been widely recognized by the international sports community, which shows that CAS can meet people's real needs. The Swiss Federal Court also pointed out: "there is no alternative institution that can solve international sports disputes in a fast and cheap way... CAS can undoubtedly be improved on the basis of its current structure... CAS has become one of the main pillars of organizing sports in the upcoming 20th anniversary." The ruling of the Swiss Federal Court confirmed the independence of CAS and pointed out that CAS has room for improvement, which also directly contributed to the introduction of the amendment to the 2004 implementation version of the Code.

In 2009, German speed skater Claudia Pechstein was suspended for two years due to positive doping test, and decided to appeal to CAS. After hearing, CAS rejected his appeal and upheld the punishment decision of the International Skating Federation. Pechstein continued to apply to the Swiss Federal Court for revo-

4. 7. CAS bulletin 2019/2 [EB/OL][2020-12-21] <https://www.tas-cas.org/en/general-information/news-detail/article/cas-bulletin.html>.

cation of the ruling, which was rejected. Subsequently, she appealed the case to the European Court of human rights, claiming that the decision of the Swiss court violated the due process provisions of Article 6 of the European Convention for human rights.⁷ In 2015, Pechstein filed a lawsuit with the court of Munich, Germany, on the ground that the International Skating Federation abused its dominant market position. The Munich court ruled in favour of Pechstein. The International Skating Federation appealed the case to the German Federal High Court. Finally, the decisions of the European Court of human rights and the German Federal High Court confirmed that CAS is a truly independent arbitration institution, and its jurisdiction is necessary for the consistency of sports. The European Court of human rights pointed out that the CAS compulsory list of arbitrators did not violate the provisions of Art. 6§1 of the European Convention on Human Rights (ECHR), but the principle of the right to public hearing in judicial proceedings should also apply to non-state arbitration institutions that make decisions on disciplinary or moral issues, and proposed that as long as the athletes made a request and had no special reasons to reject it, CAS shall allow public hearings. This case has had a great impact on the sports arbitration system, and also led to the latest reform of CAS and the amendment to the Code implemented in 2019.

2. Development and evolution of Code of Sports-related Arbitration

Since the establishment of the Code in 1994, as the organizational and procedural rules of CAS, it has played an important role in establishing long-term case law principles for CAS and ensuring the continuity of arbitrators and CAS in practice. It has also undergone many modifications in its continuous development. So far, ICAS has issued the CAS Code for 2004, 2010, 2012, 2013, 2016, 2017, 2019, 2020 and 2021 edition, and the latest version of the Code has officially entered into force on January 1, 2021. These rule changes also reflect the general principles of CAS development. The main changes of Code in each version will be discussed below.

3.1. CAS Code of 2004 edition⁵

There are 69 provisions in the CAS Code of the 2004 edition. In terms of constitution, the Code stipulate the composition of ICAS, as mentioned above. This provision enhances the independence of CAS on the premise of balancing the interests of international sports organizations.⁸

In terms of procedural rules, the 2004 version of the Code provides for consultation procedures, in which article R60 stipulates: "the International Olympic

5. 8. Code of Sports-related Arbitration (2004) [EB/OL] [2020-10-10] <https://www.tas-cas.org/en/arbitration/code-procedural-rules.html>.

Committee, the international if Sports Federation, the National Olympic Committee, the World Anti-Doping Agency and the associations recognized by the International Olympic Committee may seek advice from CAS on any legal issues related to sports practice or development or any activities related to sports. The request for comments shall be submitted to CAS with documents that may help the entrusted expert group to make comments. " Article R61 stipulates: "when a consultation request is made, the president of CAS shall examine whether the application can become the subject of opinions. If so agreed, he shall proceed to select one or three arbitrators from the list of arbitrators to form a panel and appoint the chairman. He shall prepare his own questions for submission to the group of experts and refer them to the group of experts. " Article R62 provides that "before giving an advisory opinion, the expert group may request additional information. With the consent of the party making the opinion, the expert group may express its opinion, but the advisory opinion shall not constitute a binding arbitral award. "

3.2. CAS Code of 2010 edition⁶

On October 29, 2009, the ICAS meeting adopted the amendment to the Code, which was officially implemented on January 1, 2010. This amendment defines 70 articles of the Code, which are divided into two parts: the first part is from article S1 to Article S22, which stipulates the statue of CAS. The second part is from article R23 to article R70, which stipulates the rules of arbitration procedure.⁹The main contents of this revision include: firstly, the election of the chairman and vice chairman of ICAS. Compared with paragraph 2 of article S6 of the 2004 implementing Code, which stipulates that "the president of ICAS shall be nominated by the IOC, one of the two vice presidents shall be nominated by the international sports federations and the other by the National Olympic Committees", the 2010 Implementing Code stipulates that these elections shall be "negotiated" by the IOC, the international sports federations and the National Olympic committees. Secondly, arbitrators are prohibited from acting as advisers to the parties in the case. Paragraph 3 of article S18 of the Code of the 2010 implementation edition stipulates that "an arbitrator shall not act as an adviser to a party in the case". Thirdly, add provisions on Interim Measures. Paragraph 3 of article R37 adds a new provision: "if the president of the branch decides that CAS obviously has no jurisdiction, the president may terminate the arbitration proceedings." In addition, the Code implemented in 2010 have also been revised in terms of notification and exchange, prepayment of fees, expert witnesses and prohibition of counterclaim.

6.9. Antonio Rigozzi. The recent revision of the Code of sports-related arbitration (CAS Code) [J] Jusletter, 2010 (9):1-10.

3.3. CAS Code of 2012 edition

The amendments to the Code of 2012 edition mainly include: first, adjust the election of ICAS members. It clearly stipulates that ICAS shall hold an election meeting every four years and complete the election of members in the last year. If an ICAS member intends to run for the chairman of ICAS, the member shall register and submit it to the Secretary General four months before the election meeting, which is two months less than before, and it is clearly stipulated that the election of the chairman of ICAS shall be held at the ICAS meeting after the appointment of new ICAS members. Secondly, the advisory opinion procedure has been abolished. Third, it strengthens the jurisdiction of arbitration. There are clear provisions on jurisdictional objections. Fourth, further clarify the selection of arbitrators. Fifth, the arbitration fee system has been adjusted. In addition, the 2012 implementation version of the Code added provisions on hearing in the form of video.

3.4. CAS Code of 2013 edition

The amendments to the Code of 2013 edition mainly involve: (i) the standardization of the mediator system. In the 2013 edition of the Code, the fairness reform of the mediator system was carried out according to the allocation of places by different interest factions of ICAS candidates. (ii) the time limit, mode, issuance and effectiveness of arbitration documents are more clearly stipulated. For example, article R31 distinguishes between awards, orders and other decisions made by CAS or the relevant arbitral tribunal, as well as arbitration applications, pleadings of appeal and any other written requests sent by the parties to the CAS office or the arbitral tribunal. (iii) expand the jurisdiction of the arbitral tribunal. The Code implemented in 2013 specifies that the CAS chamber or arbitration tribunal has the right to make decisions on its own on objections to its jurisdiction. (iv) improve the efficiency of the composition of the arbitration tribunal. Article R40 adds that when the applicant requests the president of the branch to select a single arbitrator and the respondent fails to pay the arbitration fee payable within the time specified by CAS, the president of the branch may appoint a single arbitrator. (v) interim measures and preservation measures. The Code implemented in 2013 further determined that the parties' application for CAS arbitration or appeal procedures means that they give up the right to seek interim measures from domestic courts, and added the provision that the parties can apply for interim relief measures. Sixth, increase legal aid policy and arbitration fee exemption system. Paragraph 9 of article S6 of the Code implemented in 2013 stipulates that ICAS can provide legal aid fund for those individuals with insufficient funds and formulate legal aid guidelines for the operation of the fund. Paragraph 2 of article R65 provides that the appeal against a punitive decision made by the if is free of charge and the cost shall be borne by the CAS

body. Seventh, restrictions on the parties' right to evidence. Article R57 adds "the arbitral tribunal has the discretion to exclude the evidence provided by the parties if such evidence is available or can be reasonably found by the parties before the decision to be sued is made."¹⁰

3.5. CAS Code of 2016 edition 7

The amendments to the Code implemented in 2016 mainly include: ¹¹(i) expand the selection scope of arbitrators. According to Article S14, the organization for proposing the selection and qualification of arbitrators has added "IOC, if and NOC Athletes Committee";(ii) the choice of hearing language is added. Article R29 adds "if a hearing is to be held, the arbitral tribunal may allow a party to use a language other than the official language of the arbitration, provided that the parties provide an official translation for the arbitral tribunal at their own expense";(iii) the initiation and termination of arbitration proceedings are closely related to the replacement of arbitrators. Article R36 adds "if the applicant / appellant fails to appoint an arbitrator to replace its originally appointed arbitrator within the time limit designated by the arbitration tribunal, the arbitration shall not be started, or if it has been started, it shall be terminated."; (iv) emphasize the exhaustion of internal relief mechanism. In article R52, "exhaustion of internal relief mechanism" is added to the exclusion conditions for the commencement of arbitration proceedings; (v) emphasize the original award. Both R46 and R59 stipulate that the decision notified by CAS office shall be final and binding on both parties within 30 days after receiving the notice of "original" decision in accordance with Swiss law; (vi) pay attention to the equality between men and women of arbitrators. For the first time, "she" is added to the personal pronoun of arbitrators in CAS rules, highlighting the protection of equality between men and women of arbitrators by CAS.

3.6. CAS Code of 2017 edition 8

The amendments to the Code of the 2017 implementation edition mainly involve the following contents :¹² (i) in terms of the geographical nature of the time limit, article R31 provides for the addition of "the time of their location, or the time of the legal location of the representative";(ii)The second is the disclosure

7. 10. Code of Sports-related Arbitration (in force as from 1 March 2013) [EB/OL] [2020-10-10] https://www.tas-cas.org/filedmin/user_upload/CAS_Code_2013.en.pdf.

11. Amendments to the Code of Sports-related Arbitration (2016 edition).[EB/OL] [2020-10-10] <https://www.tas-cas.org/en/arbitration/code-procedural-rules.html>.

8. 12. Amendments to the Code of Sports-related Arbitration (2017 edition).[EB/OL] [2020-10-10] <https://www.tas-cas.org/en/arbitration/code-procedural-rules.html>.

13. Amendments to the Code of Sports-related Arbitration (in force as from 1 January 2019). [EB/OL] [2020-10-10] <https://www.tas-cas.org/en/arbitration/code-procedural-rules.html>.

of the appeal procedure. Article R52 stipulates that CAS starts the arbitration procedure by adding "unless otherwise agreed by both parties, the arbitration tribunal office may publicly announce any appeal arbitration procedure started, and announce the composition and opening date of the arbitration tribunal later (if applicable)." (iii) in terms of service of the award, article R59 adds that "the executive part (if any) of the award and the copies of all the awards shall be sent to the management institution or sports institution that made the challenged decision, although the institution is not a party to the lawsuit." (iv) further clarify the arbitration fees and payment. Article r64.4 states that "the final settlement of arbitration fees may be included in the award, or the parties may be notified separately." Added "CAS will not compensate the expenses already advanced by the parties, except for the part exceeding the total amount of arbitration expenses." In article r64.3 and article r64.5, the arbitration tribunal added the provision of "no special consultation with the parties" to the decision of arbitration fee. In addition, the corresponding fees related to the subject matter of arbitration in the annex are modified.

3.7. CAS Code of 2019 edition

The revised version of the Code in 2019 edition mainly involves the addition of an Anti-Doping Arbitration Division, a permanent committee, a public hearing, etc.¹³

For the establishment of Anti-Doping Division, according to paragraph B of article S12 of the Code implemented in 2019, the function of the Anti-Doping Division is to act as the first instance or the only institution to solve Anti-Doping related issues Paragraph 2 of article S20 of the Code stipulates: "the Anti-Doping Diviosn shall establish an arbitration tribunal as the first instance or the only dispute settlement institution for Anti-Doping affairs, perform its functions through the president or vice president, and operate quickly and efficiently and perform other functions in accordance with the procedural rules (A1 and the following articles)."

For the establishment of a permanent committee, the Code of 2019 edition, three permanent committees were added as members of the board. First, the CAS membership Commission is composed of two ICAS members appointed in accordance with Article S4 D. E. of the Code, and its chairman is elected from three Division presidents. The role of CAS member committee is to nominate new arbitrators and mediators to ICAS, and may also recommend the deletion of arbitrators and mediators from the CAS list. The establishment of the member committee has strengthened CAS's supervision of arbitrators and further guaranteed the independence and impartiality of arbitrators. The second is the Legal Aid Commission, which is composed of the chairman of ICAS as the chairman of the Commission and four ICAS members appointed in accordance with Article S4 D. of the Ordinance. The Legal Aid Committee performs its functions

according to the legal aid guidelines, mainly to provide protection for the relief rights of vulnerable athletes. The third is the challenge Commission, which is composed of one ICAS member other than the designated representatives of the International Olympic Committee, the international sports federations and the National Olympic Committee as the chairman of the Commission and three Division presidents. The president of the Division involved in the specific challenge shall withdraw in the case, so he shall be disqualified automatically. The challenge Committee shall exercise its functions in accordance with articles R34 and R35 of the Code.

Article R57 of the Code adds "at the request of the natural person participating in the arbitration proceedings, if the matter is of a disciplinary nature, a public hearing shall be held. However, if it is necessary to protect the rights and interests of minors or the privacy of the parties, or if the court believes that Publicity under certain special circumstances will be detrimental to the interests of fairness, it may refuse such a request in the interests of morality, public order or national security in a democratic society. The public hearing is limited to legal issues or the situation that the original first instance has been made public." This provision mainly incorporates the content of Art. 6§1 of the European Convention on Human Rights (ECHR). This provision also laid the foundation for the public hearing of the Chinese swimmer Sun Yang case.

3.8. CAS Code of 2020 edition⁹

The main changes in the 2020 version of the Code include: first, the addition of Spanish as the official language; Second, the provisions on the use of video conference, video hearing and network communication have been added; Third, the arbitrators who limit the list of Anti-Doping arbitrators can only participate in the arbitration of doping disputes.¹⁴

4. Principles for the development and evolution of CAS and its Code

Generally, the development and evolution of CAS and its rules reflect the following principles.

4.1. Enhance independence and impartiality

Independence and impartiality are the basic characteristics of arbitration. Since its establishment, the independence and impartiality of CAS have been constantly questioned and challenged. Gundel case, Mutu case and Pechistein case have challenged the independence and impartiality of CAS. Therefore, CAS has carried out a series of reforms, which is also reflected in the amendments to

9. 14. Amendments to the Code of Sports-related Arbitration (in force as from 1 July 2020) [EB/OL][2021-9-5]https://www.tas-cas.org/fileadmin/user_upload/CAS_Code_2020__EN_-_modifications_visible.pdf.

CAS Code. The independence of CAS can be reflected in the independence of institutions, arbitrators and arbitration acts.

Firstly, institutional independence. Although CAS is an organization initiated and established by the IOC, CAS is gradually independent of the IOC in its continuous reform and development. From the initial direct supervision and formulation of rules by the Olympic Committee to the supervision and formulation of rules by ICAS after the reform in 1994. The composition of ICAS members is also dominated by the International Olympic Committee stipulated in the 1994 implementing Code, and turned to the representatives of various interests stipulated in the 2004 implementing Code. The composition of ICAS members continues to improve. In 2019, the new ICAS members reduced the proportion of officials of the International Olympic Committee, the National Olympic Committee and the international sports federations, increased the proportion of judges, lawyers and arbitrators, achieved a balanced composition of men and women, and gradually showed their independence and impartiality.

Secondly, the independence of arbitrators. Arbitrators are the core of the arbitration system and an important factor to ensure the fair and just settlement of disputes. The independence of arbitrators has been continuously strengthened in the revision of the Code. In the rulings of 4p.267-270/2002 and 4p.105/2006, the Swiss Federal Court pointed out that the closed list of arbitrators in CAS may lead to injustice. Therefore, the Code of the 2010 implementation version established the avoidance system of arbitrators. The 2012 and 2016 implementation versions of the Code also clearly stipulate the selection of arbitrators. The 2019 implementation version of the Code established a member committee to further strengthen the review of arbitrators, so as to continuously strengthen the independence of arbitrators.

Finally, the independence of arbitration. After accepting the arbitration application of the parties, CAS shall, within the specified time limit, appoint an arbitrator by the parties, or if the parties have not selected, the president of the branch shall appoint an arbitrator to form an arbitration tribunal. The arbitration tribunal shall not be disturbed by the arbitration institution in the process of arbitration, and the arbitration procedure shall be independent. The process of amending the Code is also constantly strengthening the independence of arbitration proceedings. The withdrawal system established in the 2010 implementation Code, the expert witness system in the 2013 implementation Code, and the provisions related to the procedure initiation and the replacement of arbitrators in the 2016 implementation Code all reflect the increasing independence of CAS arbitration.

4.2. Improve arbitration efficiency

One of the core advantages of arbitration is efficiency. A series of amendments have been made to the CAS Code to enhance the efficiency of arbitration.

For example, the 2012 implementation version of the Code improves the efficiency of arbitration through merger arbitration, the 2013 implementation version of the Code improves the efficiency of arbitration by limiting the parties' right to evidence, and the 2016 implementation version of the Code improves the efficiency of arbitration by clarifying the provisions of "exhaustion of internal relief mechanism". Other revised versions improve the efficiency of arbitration by clarifying the arbitration provisions. In terms of technical means, the Code implemented in 2012 increased video hearing to improve arbitration efficiency, and also improved arbitration efficiency through electronic transmission of applications, awards and other measures. Based on the experience of sports arbitration practice, the revision of the Code fully reflects the pursuit of efficiency value of CAS arbitration.

4.3. Increase transparency¹⁰

The fairness of arbitration requires increased transparency. The timeliness, truth-seeking, non-privacy of the theme, public welfare of the award, the unification of sports legal system and the legalization of sports also need to enhance transparency. Firstly, the transparency of sports arbitration is conducive to the parties to safeguard their legitimate rights and interests; Secondly, the transparency of sports arbitration helps to improve the arbitration system and improve the credibility of arbitration institutions; Thirdly, the transparency of sports arbitration promotes the good governance of international sports organizations. At the 127th plenary session of the IOC in December 2014, the Olympic 2020 agenda was voted and adopted, which officially opened the prelude to the reform of good governance of international sports organizations and promoted the transparent development of CAS. The transparency of CAS is strengthened in many aspects, such as the intervention of expert witnesses, the third-party arbitration and merger arbitration, the disclosure of appeal arbitration procedures, the disclosure of arbitration awards and so on.

In terms of the intervention of expert witnesses, paragraph 3 of article R44 of the Code clearly stipulates the intervention of expert witnesses in the arbitration procedure, which is a breakthrough in the privacy of the arbitration procedure.¹⁵ Article S14 of the Code implemented in 2013 added the provision that "specialized experts handle certain types of disputes as arbitrators", which further strengthened the transparency of arbitration procedures.

In terms of third-party arbitration and merger arbitration, paragraph 3 of article R31 of the Code clearly stipulates the terms of third party arbitration. Article R39 of the Code implemented in 2012 adds "if the parties conduct arbitration

10. 15. ZHANG Chunliang. Openness of international sports arbitration ----CAS Arbitration Code and Olympic Games Arbitration Rules as evidences[J] Journal of Wuhan Institute of Physical Education. 2011, 45(2) : 5-10.

according to the arbitration agreement and the facts are the same as the cause of action of the previous CAS pending cases, the presiding arbitrator or when the presiding arbitrator has not been appointed, the president of the branch may decide to merge the arbitration after consultation with the parties."

In terms of the disclosure of appeal arbitration proceedings, the Michelle Smith case in 1999 was the first public hearing of CAS. Due to the case of German speed skater Pechstein and Romanian football player Mutu, CAS added provisions on public hearing in the Code implemented in 2019, which not only reflects CAS's enhanced transparency, but also reflects its strengthened protection of human rights.

In terms of publication of awards, article R59 of the Code stipulates that the general results of awards or procedures shall be made public by CAS. Article R52 of the 2017 implementation version of the Code added a new paragraph 3. According to this provision, CAS can publish the commencement of any appeal proceedings, the composition of the arbitration tribunal and the date of hearing, and added "in the case of not constituting a party to the procedure, The key part of the decision and the copy of the whole decision shall inform the sports institution or organization that made the appealed decision of the content of "CAS decision", so as to further clarify the disclosure of CAS decision.

4.4. Enhancing equal protection

"Although there are objective differences in race, gender, birth, talent and ability, everyone has human dignity. In terms of personality formation, everyone enjoys equal rights, including equality of opportunity and form ", which is the essence of equality before the law. In the process of development, CAS has gradually strengthened equal protection by amending the Code. The Code implemented in 2013 added legal aid policy and arbitration fee exemption system to protect the rights and interests of vulnerable athletes. The newly established legal aid committee under the Code implemented in 2019 has further improved the protection of the rights and interests of vulnerable movements. In the society dominated by men, the law of male supremacy, aiming at the relationship between life and law, determines to evaluate the nature of law by male standards, which also penetrated into the original CAS Code. "She" was first stipulated in the Code implemented in 2016, which shows that CAS began to pay attention to the principle of gender equality in the appointment of arbitrators, and achieved the same proportion of men and women in the new ICAS members in 2019 for the first time, which also reflects that CAS has enhanced the protection of gender equality.

4.5. Strengthening jurisdiction

The rules of CAS's original Code highlighted the respect for party autonomy and stipulated that jurisdiction should not be imposed on athletes or sports fed-

erations. CAS's arbitration jurisdiction is mainly based on the Olympic Charter, the agreements of the IFS, special arbitration agreements or arbitration clauses, and the discretionary jurisdiction stipulated in its Code. Among them, article R35 of the Code implemented in 2012 added "the arbitration tribunal shall conduct arbitration within the jurisdiction of arbitration" to the provisions on ordinary arbitration procedures. No matter whether there are pending proceedings in national courts or other arbitral tribunals on the same dispute between the same parties, the arbitral tribunal still has jurisdiction over them, unless there are sufficient reasons to suspend the proceedings ", and a similar provision on pending proceedings is added to the appeal procedure in article R55 to strengthen its own jurisdiction. Article R55 of the 2013 edition of the Code also adds "if there is an objection to the jurisdiction of CAS, the CAS office or the established arbitration tribunal may require the parties to submit a written opinion on the objection to the jurisdiction of CAS. Generally, the appellate arbitral tribunal can further strengthen its jurisdiction by making a preliminary ruling or ruling on its jurisdiction.

Conclusion and recommendation

After nearly 40 years of development and evolution, CAS and its rules reflect its continuous exploration through practice and even its continuous development of its own mechanisms and rules ,in doubt, gradually establish the authoritative image of international sports dispute resolution, and show the characteristics of "self reproduction, self generation and self maintenance" of the international sports law system. With the development of sports and the improvement of social requirements for sports arbitration, the mechanism and rules of CAS are constantly improved and improved. The number of cases received by CAS has also been increasing, from accepting several cases every year at the beginning of its establishment to accepting more than 600 cases every year since 2017. CAS has become the world's "Supreme Court of sports". It is expected that CAS and CAS rules will encounter various tests and challenges in the future. However, as long as CAS continues to accumulate experience through arbitration practice and continuously improve its own mechanism and rules according to the needs of practice, the authority and influence of CAS will gradually expand and further promote the development of international sports legalization.

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