

Arbitration at the Court of Arbitration for Sport

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Arbitration has become the most popular method for resolving international sports disputes. The Court of Arbitration for Sport (CAS) has emerged as the pre-eminent institution for sports arbitrations. This note provides an overview of the Ordinary Arbitration Procedure, the Appeals Arbitration Procedure before the CAS and the procedure before the CAS Anti-Doping Division (CAS ADD). It includes the rules on appointing and removing arbitrators, commencing and conducting an arbitration, challenging awards and the costs of the arbitration. It also refers to the Code of Sports-related Arbitration (CAS Code), including amendments to the CAS Code that entered into force on 1 November 2022 and 1 February 2023, respectively.

Scope of this note

The Court of Arbitration for Sport (CAS), also known by its French name, *Tribunal Arbitral du Sport* (TAS), was established at the initiative of the International Olympic Committee (IOC) when an increasing number of sports-related disputes required a specialised method of adjudication by arbitration and mediation. The CAS' statutes came into force on 30 June 1984.

Arbitration is now the main method for resolving sports disputes and the CAS has emerged as the pre-eminent institution for sports arbitrations. This note provides an overview of the Ordinary Arbitration Procedure, the Appeals Arbitration Procedure before the CAS and the procedure before the CAS Anti-Doping Division. It includes the rules on appointing and removing arbitrators, commencing and conducting an arbitration, challenging awards and the costs of the arbitration. It also refers to the Code of Sports-related Arbitration (CAS Code), including amendments to the CAS Code that entered into force on 1 November 2022 and 1 February 2023.

Background and organisation of the CAS

The CAS has its headquarters in Lausanne, Switzerland.

The CAS also has two permanent decentralised offices in Sydney and New York, which are competent to receive and notify all procedural acts.

Since 1986, when the first case was submitted to it, the CAS has steadily gained importance in the resolution of sports-related disputes. According to the most recent available statistical data, by the end of 2022, a total of 9,695 requests for arbitration and appeals (including before the CAS Ad Hoc Divisions) had been filed.

As a rule, the CAS has jurisdiction over sports-related disputes that are subject to an arbitration clause or agreement providing for recourse to the CAS. The disputes may either be of a commercial nature (for example, sponsorship contracts, sale of television rights, staging of sports events, player transfers and agency contracts) or relate to decisions rendered by sports organisations, in particular to decisions of a disciplinary nature. Most of these disciplinary cases concern doping-related matters, although there have also been disputes over other disciplinary matters, such as violations of sports organisations' codes of ethics, match-fixing, violence on the playing field or abuse of a referee.

In 1993, the Swiss Supreme Court held that the CAS is an independent judicial body rendering arbitral awards, provided that the IOC is not party to the proceedings. As a result of this decision, the following major reforms were undertaken to strengthen the CAS' independence:

- The establishment of the International Council for Arbitration for Sport (ICAS) as the supervisory authority of the CAS. With the amendments to the CAS Code effective from 1 November 2022, the ICAS was expanded from 20 to 22 members, adding two additional members appointed by the International Sports Federations (*Article S4, CAS Statutes*).
- The drawing of a clear distinction between cases where the CAS acts as sole instance and cases where it hears appeals against decisions of a sports organisation or federation.
- The establishment within the CAS of the Ordinary Arbitration Division and the Appeals Arbitration Division.

Following these reforms, the Swiss Supreme Court acknowledged in the leading *Lazutina* case of 2003 (see *BGE 129 III 445 of 27 May 2003*) that the CAS is sufficiently independent from the IOC and that its decisions are awards that have the same authority within Switzerland as court decisions. This has most recently been confirmed in the Swiss Supreme Court's *Decision 4A_644/2020* (see [Legal update, CAS independence and impartiality confirmed](#)).

In *Mutu and Pechstein v Switzerland* (*Applications no. 40575/10 and no. 67474/10*) (*ECHR 324 (2018)*), the European Court of Human Rights (ECtHR) confirmed that the procedures of the CAS are generally compatible with the right to a fair trial under Article 6(1) of the European Convention on Human Rights (ECHR). However, in one of the claims, it did find a violation of the right to be heard regarding a denial of public proceedings before the CAS. The ECtHR also ruled that CAS arbitration in disciplinary matters qualifies as “mandatory arbitration” even if not provided by law, to which the safeguards of Article 6(1) ECHR apply directly. The judgment reinforces the legitimacy of CAS tribunals and clarifies that states have a responsibility to ensure compliance with human rights, even as regards private adjudication bodies. For further details see [Legal update: case report, CAS procedures compatible with right to a fair trial except for refusal of public hearing \(European Court of Human Rights\)](#) and [Blog post, Blade runner: new developments in Pechstein's judicial marathon](#). The German Constitutional Court also upheld Pechstein's complaint that a decision of the German Federal Court of Justice (FCJ), upholding an arbitration agreement requiring her to submit a dispute about the doping ban to CAS, violated Pechstein's right of access to justice. In particular, the ECtHR found that the FCJ had not sufficiently taken into account that CAS statutes did not provide for a public hearing, and that the publicity of oral hearings is an essential part of the principles of the rule of law and of publicity in democracy (*Docket No. 1 BvR 2103/16*, discussed in [Legal update, German Federal Constitutional Court upholds Pechstein's constitutional complaint regarding a violation of rights of access to justice](#)). In the meantime, CAS changed its rules to include the right to a public hearing if the parties agree. Based on that amendment to the CAS Code that entered into force on 1 January 2019, a first public hearing was held on 15 November 2019 (*Appeal of WADA against a decision issued by the Fédération Internationale de Natation [FINA] in the matter of Sun Yang*).

The ICAS and the CAS operate under the Statutes of the Bodies Working for the Settlement of Sports-Related Disputes (CAS Statutes). The CAS Statutes are supplemented by procedural rules (CAS Rules). Together, the CAS Statutes and the CAS Rules are referred to as the Code of Sports-related Arbitration (CAS Code). The current edition of the CAS Code entered into force on 1 February 2023.

The CAS Code is drafted in French, English and Spanish. In the event of any discrepancy, the French text prevails (*Article S24, CAS Statutes*).

The CAS list of arbitrators

The CAS maintains a closed list of close to 400 arbitrators and only individuals on that list may be appointed as arbitrators in CAS arbitration proceedings. There are special lists of arbitrators for football-related disputes (currently 169 arbitrators), Anti-Doping Division disputes (currently 20 arbitrators eligible for party nomination and 22 eligible as panel presidents or sole arbitrators) and disputes related to compliance with the World Anti-Doping Code (WADC) (currently only seven arbitrators). Arbitrators who appear on the CAS general list may serve on panels constituted by either of the CAS divisions. However, arbitrators appearing on the special list of the CAS Anti-Doping Division are not allowed to sit as arbitrator in any procedure conducted by the CAS Appeals Division.

In 2012 and 2016, amendments to Article S14 of the Statutes of the ICAS and CAS, further enhanced the independence of

CAS arbitrators. Under the old regime, the arbitrators on the CAS list were drawn in equal numbers from individuals proposed by various bodies, including the IOC, the International Federations for the Summer and Winter Olympics (IFs) and the National Olympic Committees (NOCs).

Since 2012, the ICAS has been able to call on any individual whose name and qualifications are brought to the attention of the ICAS, including by the IOC, the IFs and the NOCs. Since 2016, proposals can also be submitted by the athletes' commissions of the IOC, IFs and NOCs. The persons appointed should have:

- Appropriate legal training.
- Recognised competence in the field of sports law and/or international arbitration.
- Good knowledge of sport in general.
- Good command of at least one CAS working language (French, Spanish or English).

Pursuant to an amendment to Article S14 of the CAS Code in 2013, "ICAS may identify the arbitrators with a special expertise to deal with certain types of disputes".

Since 2017, CAS arbitrators and mediators may no longer act as counsel for a party in proceedings before the CAS and as from 1 January 2021, CAS arbitrators and mediators cannot act as party-appointed experts before the CAS either (*Article S18, CAS Statutes*).

Since 2019, a newly formed CAS Membership Commission is responsible for proposing the nomination of new CAS arbitrators to the ICAS. It may also suggest the removal of arbitrators from the CAS list.

For further information, see [Independence and qualifications of arbitrators](#) below.

Divisions and types of CAS arbitration

Effective from 1 January 2019, the CAS has three permanent divisions (*Article S20, CAS Statutes*):

- The Ordinary Arbitration Division.
- The Anti-Doping Division (CAS ADD).
- The Appeals Arbitration Division.

In addition to these three permanent divisions, since 1996, the CAS has been establishing Ad Hoc Divisions for major sporting events (see [Ad Hoc Procedure](#)).

Accordingly, there are four different types of CAS arbitration:

- The Ordinary Arbitration Procedure.
- The Appeals Arbitration Procedure.
- The Anti-Doping Arbitration Procedure.
- The Ad Hoc Procedure.

Ordinary Arbitration Procedure

The Ordinary Arbitration Procedure applies to sports-related first instance disputes, which are often of a commercial nature

and relate, for example, to sponsorship agreements or broadcasting rights. Proceedings subject to the Ordinary Arbitration Procedure are handled by the Ordinary Arbitration Division of the CAS. The Ordinary Division is also competent to rule on disputes regarding the compliance by signatories with the WADC (Article 23.5, WADC). The cases handled by the Ordinary Arbitration Division accounted for about 16% of the CAS' caseload in recent years (147 out of 996 cases in 2021, 151 out of 830 in 2022).

Appeals Arbitration Procedure

The Appeals Arbitration Procedure is handled by the Appeals Arbitration Division and applies to cases in which the CAS is called on to resolve disputes arising from decisions rendered by the disciplinary tribunals or similar bodies of sports federations or sports organisations. These cases are managed by the CAS Appeals Arbitration Division and account for approximately 79% of the CAS' caseload (796 cases out of 996 in 2021, 644 out of 830 in 2022).

The Appeals Arbitration Division may also intervene if an award has been rendered by the CAS acting as a first instance tribunal if an appeal has been expressly provided by the rules of the federation or sports-body concerned.

In addition, the Appeals Arbitration Division intervenes as a second instance in relation to decisions rendered by the CAS Anti-Doping Division if the decision was rendered by a sole arbitrator.

Anti-Doping Arbitration Procedure

Effective 1 January 2019, the CAS established its third permanent division, the Anti-Doping Division (CAS ADD), including a dedicated court office (CAS ADD Office). The CAS ADD hears and decides on anti-doping cases as a first instance or as the sole instance pursuant to the delegation of powers from the IOC, the IFs, the International Testing Agency and any other signatories to the World Anti-Doping Code. The CAS ADD operates under a separate set of rules (the Arbitration Rules of the CAS Anti-Doping Division (ADD Rules)), although the CAS Code may apply subsidiarily and remains applicable to some issues that the ADD Rules do not address, such as the requirements that each arbitrator must meet (*Article R33, CAS Code*) and the advance of costs (*Article 64.2, CAS Code*). The parties to CAS ADD proceedings must choose arbitrators from a dedicated list of candidates specialised in anti-doping matters (see [Arbitrators CAS ADD lists](#)).

A 2020 decision by the Swiss Supreme Court left open the question of whether decisions of the CAS ADD are arbitral awards pursuant to Swiss arbitration law, or whether instead they qualify as decisions taken on behalf of the respective sports federation that delegated its powers to the CAS ADD (see [Legal update, Legal nature of CAS ADD left undecided while obligation to exhaust arbitral remedies before motion to set aside confirmed](#)). More recently, the Swiss Supreme Court decided that the legal status of CAS ADD decisions must be assessed on a case-by-case basis. In the case at hand, the Swiss Supreme Court held the CAS ADD acted, not as an arbitral tribunal, but as a disciplinary body. Accordingly, the CAS ADD decision did not qualify as an arbitral award (see [Legal update, Legal status of CAS anti-doping division decisions must be assessed case-by-case](#)).

Ad Hoc Procedure

Since the 1996 Olympic Games in Atlanta, Ad Hoc Divisions of the CAS have been established for each of the subsequent editions of the Olympic Summer and Winter Games. Ad Hoc Divisions of the CAS have also been set up for the:

- Commonwealth Games (since 1998).
- UEFA European Football Championships (since 2000).
- FIFA World Cup (since 2006).
- Asian Games (since 2014).
- AFC Asian Cup (since 2015).

The Ad Hoc Divisions provide the respective participants of these sports events with a dispute resolution body capable of resolving, in a final manner, disputes that occur immediately leading up to and during the event, within time limits that respect the time schedules of each particular competition. Only ten ad hoc cases were registered by the CAS in 2014, none in 2015. A larger number of cases were decided by the Ad Hoc Divisions established for the 2016 Summer Olympic Games in Rio de Janeiro and the 2018 Winter Olympic Games in PyeongChang, mainly (but not only) related to sanctions imposed by the IOC on Russian athletes.

For the 2016 Summer Olympic Games in Rio de Janeiro, the CAS established for the first time an Anti-Doping Division, which was tasked with addressing anti-doping rule violations during the period of the Olympic Games. Such a division was also set up for the 2018 Winter Olympic Games in PyeongChang, the 2020 Summer Olympic Games in Tokyo and the 2022 Winter Games in Beijing. The Ad Hoc Anti-Doping Division applies a specific set of arbitration rules (in Beijing, the Arbitration Rules applicable to the CAS Anti-Doping Division Olympic Games Beijing 2022).

The last set of rules to be published were the Arbitration Rules for the FIFA World Cup Qatar Final Round (see [Arbitration Rules for the 2022 FIFA World Cup Qatar final round](#)).

This practice note focuses on the Ordinary Arbitration Procedure, the Appeals Arbitration Procedure and the CAS ADD procedure. Further information on the Ad Hoc Procedure, including the Ad Hoc Rules, may be found on the [CAS website](#).

Standard arbitration clauses

Ordinary Arbitration Procedure clause

The standard contractual arbitration clause for arbitration under the CAS' Ordinary Arbitration Procedure reads as follows:

"Any dispute arising from or related to the present contract will be submitted exclusively to the Court of Arbitration for Sport in Lausanne, Switzerland, and resolved definitively in accordance with the Code of sports-related arbitration."

The parties may also provide for the constitution of the panel and the language of the arbitration. For example:

"The Panel will consist of one [or three] arbitrator(s)."

"The language of the arbitration will be ..."

If an arbitration agreement is entered into after the dispute has arisen, the standard agreement is as follows:

"1. [Brief description of the dispute]

2. The dispute will be submitted exclusively to the Court of Arbitration for Sport in Lausanne, Switzerland, and settled definitively in accordance with the Code of sports-related arbitration.

3. Alternative 1:

The Panel set in operation by the Court of Arbitration for Sport will consist of a sole arbitrator designated by the President of the CAS Division concerned.

Alternative 2:

The Panel set in operation by the Court of Arbitration for Sport will consist of three arbitrators. Each party designates the following arbitrator:

•Claimant: Mr/Mrs ... [insert the name of a person included on the list of CAS arbitrators (see Annex I)];

•Defendant: Mr/Mrs ... [insert the name of a person included on the list of CAS arbitrators (see Annex I)];

These two arbitrators will designate the President of the Panel within 30 days following the signature of this agreement. If no agreement is reached within this time limit, the President of the Division concerned will designate the President of the Panel.”

Appeals Arbitration Procedure clause

The standard arbitration clause for arbitration under the Appeals Arbitration Procedure with CAS is to be inserted within the statutes of a sports federation, association or other sports body as follows:

”Any decision made by ... [insert the name of the disciplinary tribunal or similar court of the sports federation, association or sports body which constitutes the highest internal tribunal] may be submitted exclusively by way of appeal to the Court of Arbitration for Sport in Lausanne, Switzerland, which will resolve the dispute definitively in accordance with the Code of sports-related arbitration. The time limit for appeal is twenty-one days after the reception of the decision concerning the appeal.”

According to the [CAS website](#), Athletes must expressly accept this arbitration clause by a general written declaration applicable to all future disputes between them and the sports federation, or with respect to a specific sports event:

”I the undersigned [name of athlete] accept the statutes of [name of the federation], in particular the

provision which foresees the exclusive competence of the Court of Arbitration for Sport.”

”Within the framework of my participation in [name of the event], I the undersigned [name of athlete] accept that any decision made by the highest internal tribunal in relation to this event may be the object of appeal arbitration proceedings pursuant to the Code of sports-related arbitration of the Court of Arbitration for Sport in Lausanne, Switzerland. I accept the competence of the CAS, excluding all recourse to ordinary courts.”

Not all national legal systems will accept a clause excluding all recourse before an ordinary court, for example, employment disputes, which in some jurisdictions are considered to be non-arbitrable. It is yet to be decided by the Swiss Supreme Court whether the CAS Code’s exclusion of a party’s right to seek interim relief before state courts is valid. The case law of lower Swiss courts is divided.

Anti-Doping Arbitration Procedure

While there is no standard arbitration clause for CAS ADD, pursuant to Article A1 ADD Rules there must be a provision in the statutes/regulations of the international sports entities delegating their powers to CAS ADD.

Provisions common to Ordinary and Appeals Arbitration Procedures (CAS Rules) and provisions common to Anti-Doping Arbitration Procedures (ADD Rules)

The general provisions found in Articles R27 to R37 of the CAS Rules apply to both the Ordinary Arbitration Procedure and the Appeals Arbitration Procedure. They cover the following aspects of the arbitration:

- Application of the CAS Rules and seat of arbitration.
- Language of the arbitration.
- Representation and assistance.
- Notifications, communications and time limits.
- Independence and qualifications of arbitrators.
- Challenge of an arbitrator.
- Removal of an arbitrator.
- Replacement of an arbitrator.
- Provisional and conservatory measures.

The CAS Rules apply whenever the parties have agreed to refer a sports-related dispute to the CAS (*Article R27, CAS Rules*). The arbitration may be provided for by a specific agreement or by reference to an arbitration clause included in the articles of association of a sports organisation. According to the Swiss Supreme Court, the mere reference to a CAS arbitration clause in the statutes of a sports association is sufficient to establish the jurisdiction of the CAS (the so-called “arbitration clauses by reference”) (see [Legal updates, Swiss Supreme Court dismisses appeal to set aside CAS award for lack of jurisdiction](#) and [CAS decision declining jurisdiction over Algerian football dispute upheld \(Swiss Supreme Court\)](#)). Outside of Switzerland, this approach has also been endorsed by the German Federal Tribunal (see [Legal update, German Federal Court of Justice speaks out in favour of CAS arbitration](#)). The ECtHR’s decision in [Mutu and Pechstein v Switzerland \(Applications no. 40575/10 and no. 67474/10\) \(ECHR 324 \(2018\)\)](#) endorsed the validity of such arbitration clauses by reference but ruled that

CAS procedures in disciplinary matters qualify as a mandatory arbitration, despite not being provided by law, because the athlete has no choice but to “accept” the arbitration clause. In the same vein, the Swiss Supreme Court has confirmed the validity of compulsory arbitration clauses in sports arbitration (see [Legal update, CAS jurisdiction confirmed despite compulsory arbitration clause](#)).

Anti-Doping Arbitration Procedures are primarily governed by the ADD Rules and by the CAS Code. In order to establish the jurisdiction of the CAS ADD, a delegation of power from the IOC, the IFs and any other signatories to the World Anti-Doping Code is required (*Article A1, ADD Rules*). Consequently, if such delegation of powers is foreseen in the statutes or regulations of these international sports entities, CAS ADD is competent to sanction an Anti-Doping Rule Violation (ADRV) as a first or sole instance, respectively. Some ADD Rules explicitly refer to the CAS Rules (for example, *Article A14, Article A17, Article A21 and Article A25, ADD Rules*). The following aspects of the arbitration are covered by ADD Rules:

- Jurisdiction of the CAS ADD.
- Seat and language of the arbitration.
- Representation and assistance.
- Notifications, communications and time limits.
- Independence and qualification of arbitrators.
- List of panel presidents/sole arbitrators.
- Challenge, removal and replacement of an arbitrator.
- Provisions applicable to the ADD proceedings (for example, regarding initiation of the arbitration by the CAS ADD or regarding procedure before the panel).

Applicable law and seat of the arbitration

All arbitrations governed by the CAS Rules have their seat in Lausanne, Switzerland, even if the presiding arbitrator or, if the panel has not yet been appointed, the president of the relevant division should decide to hold the hearing at another venue (*Article R28, CAS Rules and Article A3, ADD Rules*). Therefore, the *lex arbitri* (the law governing the arbitration proceedings) applicable to all CAS arbitrations is Swiss arbitration law. By contrast, the Swiss Supreme Court held that the ECHR is not directly applicable to arbitration proceedings (see [Legal update, Swiss Supreme Court reverses prior ruling in Semenya case on suspension of IAAF regulations for female classification](#)). Further decisions of the Swiss Supreme Court confirmed its refusal to directly apply the ECHR in set-aside proceedings against CAS awards (see [Legal updates, CAS award in Blake Leer case upheld](#), and [CAS award in Caster Semenya case not contrary to substantive public policy](#)). See also [Legal update, Compliance with time-limits is an admissibility requirement and alleged breaches of ECHR only considered from ordre public perspective](#). This case law has recently been questioned by the ECtHR in its absoluteness in the matter of *Caster Semenya v Switzerland*, where the court found that the Swiss Supreme Court should, in that particular case, have undertaken a more in-depth review of the underlying CAS decision in light of the ECtHR’s case law on the ECHR (see [Legal Update, Caster Semenya successful before European Court of Human Rights](#)). Switzerland has in the meantime requested, and the ECtHR has accepted, that the case be referred to the ECtHR’s Grand Chamber, which will hear the case and deliver a final judgment.

Chapter 12 of the Swiss Private International Law Act (PILA), which governs international arbitration in Switzerland, will apply if at least one of the parties has its domicile, habitual residence or seat outside Switzerland (international arbitration) when the arbitration agreement is concluded. If none of the parties has its domicile, habitual residence or seat outside Switzerland (domestic arbitration), the Swiss Code of Civil Code Procedure will apply, unless the parties have opted for the application of Chapter 12 of the PILA (see [Legal update, Swiss Supreme Court sets out requirements to validly opt out of rules governing domestic arbitration in favour of those governing international arbitration](#)). As such, an award rendered by a CAS arbitration panel in an international arbitration can only be challenged before the Swiss Supreme Court. In a domestic

arbitration pursuant to the Swiss Code of Civil Procedure, the award rendered by the CAS arbitration panel may be challenged before the Swiss Supreme Court or, if the parties so agree, before the cantonal courts at the seat of the arbitration, for example, in Lausanne.

For detailed discussion about arbitration in Switzerland, see [Practice note, Arbitration in Switzerland](#).

Language of the arbitration

The parties are free to choose one of the three working languages of the CAS (that is, French, Spanish or English) as the language of the arbitration (*Article R29, CAS Rules and Article A4, ADD Rules*). If the parties cannot agree, the president of the panel or (if not yet appointed) the president of the relevant division determines one of the three working languages as the language of the proceedings.

The parties may request the use of another language if the panel and the CAS Court Office agree. For Anti-doping Arbitration Procedures, a decision of the CAS ADD President is required. This may, however, lead to costs being incurred for translations or interpretation for the parties.

The panel may request that all documents submitted in a language other than the chosen language of the proceedings be filed together with a certified translation.

For hearings, the panel may allow a party to use a language other than that chosen for the arbitration, provided that the costs for the interpretation are borne by the party.

Representation and assistance

The parties may choose representatives to assist them in the proceedings (*Article R30, CAS Rules and Article A5, ADD Rules*). However, individuals who are on the CAS list of arbitrators may not act as counsel for a party before the CAS (*Article S18, CAS Statutes*).

This rule does not apply to members of an arbitrator's law firm, but only to the arbitrators themselves.

Communications and time limits

Communications

All notifications and communications from the CAS or from an arbitration panel to the parties are made through the CAS Court Office and the CAS ADD Office, respectively (*Article R31, CAS Rules and Article A6, ADD Rules*). Awards, orders or other decisions are notified by means that allow for proof of receipt.

The contact details for the CAS Court Office and CAS ADD Office are:

CAS Court Office

Château de Béthusy

Avenue de Beaumont 2

CH-1012 Lausanne, Switzerland

Tel: (41 21) 613 50 00

Fax: (41 21) 613 50 01

E-mail: info@tas-cas.org

CAS ADD Office

Avenue de Rhodanie, 60

CH-1012 Lausanne, Switzerland

E-mail: antidoping@tas-cas.org

In the past, as a rule, the parties' written submissions (such as requests for arbitration or statements of appeal) had to be filed by courier with enough copies for all the other parties and the arbitrators, with an extra copy for the CAS, while Exhibits to the written submissions could be sent to the CAS Court Office/CAS ADD Office by e-mail. The CAS Court Office/CAS ADD Office could then forward them by e-mail. Filing by advance transmission by facsimile or by electronic mail was valid provided the written submission and its copies were also filed by courier within the first business day following the relevant time limit. The Swiss Supreme Court has rejected an application to set aside a CAS Termination Order made on account of the fact that the appellant's appeal brief had not been filed by courier (see [Legal update, Swiss Supreme Court upholds CAS Termination Order despite excessive formalism allegations](#)).

However, due to the COVID-19 pandemic, in March 2020, the CAS issued [Emergency Guidelines](#) allowing the parties to file their submissions electronically only. The Emergency Guidelines remained in force until 30 June 2020 and were then implemented into the CAS Rules as from 1 July 2020. As a result, the parties' submissions can be filed electronically only by using the CAS e-filing platform without the need to also file them by courier (*Article R31, CAS Rules*).

Filing of submissions via the CAS e-filing platform is subject to the CAS guidelines on electronic filing.

All other communications from the parties to the CAS Court Office/CAS ADD Office or to the panel are to be sent by facsimile, courier or e-mail. As a general rule, the communications that are addressed to the panel are sent to the CAS Court Office/CAS ADD Office, which then forwards them to the tribunal.

Time limits

The time limits provided for in the CAS Rules start running on the day following receipt of notification from the CAS (*Article R32, CAS Rules and Article A7, ADD Rules*). Time limits are observed if the submission in question is sent out on the last day of the time limit before midnight in the location of their own domicile or, if represented, of the domicile of their main legal representative.

Official holidays and non-business days are included in the calculation of time limits. However, if the last day of the deadline falls on an official holiday or a non-business day in the country where the document is to be sent, the time limit expires on the next business day.

As a rule, the presiding arbitrator or, if not appointed yet, the division president may extend time limits if a party is able to advance justified grounds for an extension and if the request for extension is submitted before the original time limit has expired. An initial extension of time of a maximum of ten days may be granted by the CAS Director General or up to five days by the Managing Counsel of the CAS ADD.

No extension may be granted for statements of appeal.

Upon justified request, a pending arbitration may also be suspended for a limited time.

Independence and qualifications of arbitrators

Arbitrators can only be chosen from the CAS list (*Article R33, CAS Rules*). This list is compiled by the ICAS and contains, as of 1 November 2022, a minimum of 300 arbitrators (*Article S13, CAS Statutes*). For information on their qualifications, see [CAS' list of arbitrators](#).

The list is available on the CAS website and currently holds close to 423 names from over 100 countries. Each arbitrator is appointed for a renewable term of four years.

With 44 arbitrators, Switzerland is the best-represented country on the list, followed by the US and the UK with 31 arbitrators each, France with 25 and Spain with 22 arbitrators. The list is closed. Although there is recurring criticism of this “closed” list, the system has, so far, been approved by the Swiss Supreme Court, which acknowledges that a closed list fosters the development of a large group of arbitrators specialising in sports matters, which in turn results in quicker and more consistent decisions. In *Mutu and Pechstein v Switzerland (Applications no. 40575/10 and no. 67474/10) (ECHR 324 (2018))*, the ECtHR ruled, although by majority only, that the CAS in principle is a sufficiently independent and impartial arbitral institution.

As mentioned above, CAS ADD operates under its own lists of arbitrators who may be appointed as arbitrators in Anti-Doping Procedures (*Article A9, ADD Rules*). Further, there is a special list of arbitrators who may only be appointed as panel president and sole arbitrator. The arbitrators on this special list are not eligible to be appointed by a party, except by mutual agreement of the parties. Both lists are available on the [CAS website](#). In total, there are currently 42 arbitrators available on both lists.

Arbitrators must be and remain independent from the parties. Any circumstances that might affect this independence must be disclosed immediately by the arbitrator. In order to ensure the expeditious completion of the arbitration, the arbitrators must also be available and fluent in the language of the proceedings.

Challenge of an arbitrator

If circumstances give rise to legitimate doubts as to the impartiality and independence of an arbitrator, the parties may challenge the arbitrator within seven days after the ground for the challenge has become known (*Article R34, CAS Rules and Article A10, ADD Rules*). The challenge has to be lodged as a petition explaining the facts giving rise to the challenge.

The same degree of independence and impartiality applies to the party-appointed arbitrators and to the president of the panel (see [Legal update, Swiss Supreme Court clarifies standard of impartiality required of party-appointed arbitrators](#)).

Since the entry into force of the revised 2019 CAS Rules, arbitrator challenges are decided by a newly formed Challenge Commission, which is composed of an unaffiliated ICAS member acting as commission chair and the three division presidents (minus the president of the division concerned by the challenge). Before a reasoned decision is rendered, the other party, the challenged arbitrator and the other arbitrators will be invited to file written comments on the issues raised by the challenging party.

Articles R34 of the CAS Rules and A10 of the ADD Rules expressly provide that the decision on the challenge may be published.

The Swiss Supreme Court has confirmed that it does not have jurisdiction to hear challenges against ICAS decisions rendered on a challenge of an arbitrator. Challenge decisions may only be reviewed in the context of a petition to set aside an award for improper constitution of the tribunal under Article 190(2)(a) of the PILA (see [Legal update, Three decisions of the Swiss Federal Tribunal on sports arbitration matters](#)) or as a petition for revision of an award (for the meaning of revision of an award under Swiss law, see [Practice note, Arbitration in Switzerland](#)). In a landmark decision of 22 December 2020, the Swiss Supreme Court admitted an application for revision and annulled a CAS award on the grounds of bias of the presiding arbitrator. It ruled that the athlete had sufficiently met his duty to investigate the arbitrator’s background and was therefore not precluded from relying on problematic social media posts that were discovered after the awards were rendered and where the deadline to file a motion to set the award aside had lapsed. The Swiss Supreme Court decided that in view of all the relevant circumstances, the doubts as to the impartiality of the arbitrator were objectively warranted (see [Legal update, CAS award in Sun Yang case annulled for arbitrator bias](#)). In a recent decision, the Swiss Supreme Court set aside a CAS award for having wrongly admitted a time-barred request for disqualification of an arbitrator based on article 190(2)(a) of the PILA (see [Legal update, CAS award set aside for admitting a time-barred request for disqualification of an arbitrator](#)).

Removal of an arbitrator

Articles R35 of the CAS Rules and A11 of the ADD Rules provide that the ICAS can remove an arbitrator from a panel, if the arbitrator fails to fulfil their duties under the applicable rules (CAS Code or ADD Rules) within a reasonable time, whether because he or she refuses to do so or because he or she is prevented from doing so.

The ICAS exercises this authority through the Challenge Commission. The parties, the arbitrator(s) to be removed, and the other members of the panel may file written comments regarding the removal, following which the Challenge Commission renders a reasoned decision on the matter.

A party cannot request the removal of an arbitrator.

Replacement of an arbitrator

An arbitrator who resigns, dies, or is challenged or removed must be replaced. The same applies to a sole arbitrator who is replaced by a three-member Panel (*Article R36, CAS Rules and Article A12, ADD Rules*). The replacement process follows the rules applicable to the appointment of an arbitrator, which are discussed below (see [Ordinary procedure: Constitution of the panel](#) and [Appeals procedure: constitution of the panel](#)). It follows that the replacement arbitrator must also be chosen from the applicable CAS list of arbitrators and must also fulfil the requirements of Article R33 of the CAS Rules and Article A8 of the ADD Rules, respectively (see [Independence and qualifications of arbitrators](#)).

If, within the time limit fixed by the CAS Court Office, the claimant/appellant does not appoint a new arbitrator, the arbitration shall not be initiated or, if already started, shall be terminated.

If the arbitration proceedings are already in progress at that point, they shall be continued from where they stand, unless the parties agree otherwise.

Provisional and conservatory measures

By agreeing to submit a dispute to the Ordinary Arbitration Procedure, the Ad Hoc/Anti-Doping Arbitration Procedure or to the Appeals Arbitration Procedure pursuant to the CAS Rules, according to the CAS Code the parties waive their right to apply to state courts for provisional or conservatory measures. To what extent such a waiver of access to a state court for interim relief is valid under Swiss law has yet to be decided by the Swiss Supreme Court. The case law of the lower Swiss courts is divided.

A party may only apply for interim measures under the CAS Rules once all internal legal remedies provided for in the rules of the federation or sports organisation concerned have been exhausted. The application may, however, be filed before the request for arbitration or the statement of appeal. Upon filing the request for interim measures, the applicant must pay a non-refundable Court Office fee of CHF 1,000. This fee shall not be paid again upon filing the request of arbitration or the statement of appeal (see [Advance on costs](#) below).

The president of the relevant division or, after transfer of the file to the panel, the presiding arbitrator is responsible for ordering interim measures (*Article R37, CAS Rules and Article A18, ADD Rules*) and shall first rule on the CAS' *prima facie* jurisdiction. A request can be dismissed and the arbitration will not proceed if the division president or the panel rules that the CAS clearly has no jurisdiction. In urgent cases, the president of the relevant division or the presiding arbitrator may order interim measures on an *ex parte* basis (without prior notice to the non-requesting party), provided that the non-requesting party is subsequently heard. Interim measures can be granted subject to the requesting party providing security for costs.

The respondent to an application for interim measures is usually granted a maximum of ten days to comment on the request for interim measures.

When deciding whether to grant the requested interim measures, the CAS will generally have to consider whether:

- The CAS has jurisdiction.

- The relief is necessary to protect the applicant from an imminent risk of irreparable harm or injury.
- There is a likelihood of success on the merits of the claim.
- The interests of the applicant for the interim measure outweigh the harm likely to be done to the party, against whom the measure is directed.

Provisional measures proceedings or provisional measures already granted are automatically dismissed or set aside, respectively, if the requesting party does not file a request for arbitration within ten days of filing the request for interim measures (Ordinary Arbitration Procedure) or a statement of appeal within the time limit provided by Article R49 of the CAS Rules (Appeals Arbitration Procedure). These time limits cannot be extended.

State courts' intervention may be required for the enforcement of interim measures (*Article 183(2), PILA*).

Ordinary Arbitration Procedure

The Ordinary Arbitration Procedure governs sports-related first instance disputes. As these disputes are often of a commercial nature, the applicable provisions provide for classic arbitration proceedings and should be familiar to practitioners who are accustomed to working with the rules of commercial arbitration institutions. The rules relating to the Ordinary Arbitration Procedure are set out in Articles R38 to R46 of the CAS Rules, as well as the general provisions in Articles R27 to R37.

Ordinary procedure: Commencing the arbitration

Request for arbitration

The claimant initiates the arbitration proceedings by filing a request for arbitration with the CAS. Article R38 of the CAS Rules provides that the request for arbitration must state the following:

- Name and full address of the respondent.
- A short statement of facts, legal argument and a summary of the issue to be decided.
- The prayers for relief.
- A copy of the document containing the arbitration agreement or providing for arbitration pursuant to the relevant CAS Rules.
- Any information regarding the number of arbitrators, in particular if the arbitration agreement provides for it, and the name and address of the arbitrator chosen from the CAS list.

If these requirements are not met, the CAS Court Office grants a short extension of time. If the claimant fails to improve its submission within the extended time limit, the request for arbitration is deemed withdrawn.

Upon submission of the request for arbitration, the claimant has to pay the CAS Court Office a fee of CHF 1,000. The CAS will not proceed before payment of this fee (see also *Article R64.1, CAS Rules*).

Ordinary procedure: Initiation of the arbitration by the CAS

The CAS Court Office sets the arbitral proceedings in motion, unless it is clear that there is no arbitration agreement referring to the CAS (*Article R39, CAS Rules*). The CAS Court Office communicates the request for arbitration to the respondent and invites both parties to file legal briefs addressing the facts of their dispute. It also sets a deadline for the respondent to provide

information regarding its choice of arbitrator, although the respondent may request a deadline not to be set until after the claimant has paid the advance on costs.

Respondents answer to the request for arbitration

Pursuant to Article R39 of the CAS Rules, the respondents answer to the request for arbitration shall include:

- A brief statement of defence.
- Any challenge to jurisdiction.
- Any counterclaim.

Ordinary procedure: The panel's kompetenz-kompetenz

Article R39 of the CAS Rules expressly provides for the [kompetenz-kompetenz](#) of CAS panels. Accordingly, a panel has the authority to decide on its own jurisdiction, irrespective of whether legal action between the same parties and relating to the same subject-matter is already pending before a state court or another arbitral tribunal, unless substantial grounds require the suspension of the proceedings.

If the CAS' jurisdiction is disputed, the parties will be asked to address the issue of jurisdiction in written submissions. The panel's subsequent decision on jurisdiction can be rendered in an interim award or in the award on the merits. If the panel renders an interim award on jurisdiction, that award may be challenged pursuant to Article 190(3) of the PILA.

Ordinary procedure: Consolidation of proceedings

Pursuant to Article R39 of the CAS Rules, a consolidation of proceedings before the CAS is possible. If a request for arbitration refers to an arbitration agreement and to facts that are already the subject of a pending Ordinary Arbitration Procedure, the two proceedings can be consolidated after consultation with the parties.

Ordinary procedure: Constitution of the panel

The CAS Rules allow for panels of one or three arbitrators. Where the number of arbitrators is not provided for in the arbitration agreement and the parties have not agreed to a panel composed of a sole arbitrator at the outset of the procedure, the president of the division determines it on the basis of the amount in dispute and the complexity of the case. A sole arbitrator may be appointed by the division president upon the claimant's request should the respondent fail to timely pay its share of the advance on costs (*Article R40.1, CAS Rules*).

In *Decision 44_282/2013*, the Swiss Supreme Court clarified that a CAS award can be challenged on the ground of improper appointment or constitution of the arbitral tribunal if a sole arbitrator was appointed in violation of the parties' agreement to submit their dispute to a CAS panel of three arbitrators (see [Legal update, Violation of parties' agreement on constitution of arbitral tribunal can be ground for challenge](#)).

Unless the parties have agreed on a different method of appointment, the arbitral tribunal is appointed pursuant to Article R40.2 of the CAS Rules.

If a sole arbitrator is to be appointed, he or she must be selected by the parties within the 15-day time limit set by the CAS Court Office upon receipt of the request for arbitration. If the parties fail to reach an agreement, the president of the division appoints the sole arbitrator.

If three arbitrators are to be appointed, one is nominated by the claimant and another by the respondent (*Article R40.1, CAS Rules*). If the claimant fails to nominate its arbitrator in the request for arbitration or within the time limit provided for in the decision on the number of arbitrators, the request for arbitration is deemed withdrawn. If the respondent fails to nominate an

arbitrator within the applicable time limit set by the CAS Court Office, the president of the division does so instead. The two nominated arbitrators then appoint the chairman of the panel. If the two party-appointed arbitrators fail to nominate the presiding arbitrator within the time limit set by the CAS Court Office, the president of the division appoints one. In order to guarantee that the party-nominated arbitrators meet the requirements of Article R33 of the CAS Rules, they must be confirmed by the president of the division.

As soon as the members of the panel have been confirmed and the advance on costs under Article R64.2 of the CAS Rules has been paid, the panel receives the case file from the CAS Court Office.

If necessary, an independent ad hoc clerk may be appointed to assist the panel.

Ordinary procedure: Multi-party arbitration

The rules relating to multi-party arbitrations are set forth in Article R41 of the CAS Rules.

Constitution of the arbitration panel

Irrespective of the number of claimants and respondents named in the request for arbitration, the constitution of the panel follows, in principle, the rules provided for in Article R40 of the CAS Rules (see [Ordinary procedure: Constitution of the panel](#)), unless the parties have agreed otherwise.

If the case is to be submitted to a panel of three arbitrators, the multiple claimants or multiple respondents (as the case may be) jointly nominate one arbitrator. If they fail to agree, the president of the division appoints the arbitrator in their place. The two appointed arbitrators then agree on the presiding arbitrator. If there are multiple parties with differing interests, the co-arbitrators are appointed in accordance with the agreement between the parties or, in the absence of an agreement, by the president of the division (*Article R41.1, CAS Rules*).

Joinder

If a respondent wants to join a third party to the proceedings, the third party must be mentioned in the answer to the request for arbitration (*Article R41.2, CAS Rules*). The respondent must also submit an additional copy of its answer to the CAS Court Office, which will be communicated to that third party.

The Court Office sets the third party a deadline to state its position regarding its participation in the proceedings and to submit a response in accordance with Article R39 of the CAS Rules. The Court Office will also set a deadline to provide the claimant with an opportunity to respond to the requested joinder.

Intervention

If a third party wishes to intervene in the arbitration proceedings of its own accord, it must submit a reasoned request for permission to the CAS (*Article R41.3, CAS Rules*). The request must be filed within ten days of having knowledge of the arbitration proceedings and before the hearing or, if no hearing takes place, before the evidentiary proceedings are closed.

A copy of the third party's application is then communicated to the parties, together with a deadline for commenting on the intervenor's participation and to file, as far as applicable, an answer complying with Article R39 of the CAS Rules.

Joint provisions regarding joinder and intervention

A third party can only be joined to or intervene in arbitration proceedings if it is either bound by the arbitration agreement or if there is a subsequent written agreement between the third party and the original parties (*Article R41.4, CAS Rules*).

Once the time limit set under Articles R41.2 or R41.3 of the CAS Rules has lapsed, the president of the division or the panel, if already appointed, issues its decision regarding the participation of the third party, considering in particular whether there is, *prima facie*, an arbitration agreement. If it is the president of the division who makes the decision, their decision is without prejudice for the panel.

Once the participation of the third party is accepted by the president of the division, the panel is constituted.

If a sole arbitrator is to be appointed, the appointment is subject to Article R40.2 of the CAS Rules (see [Ordinary procedure: Constitution of the panel](#)). If there is a three-member panel, the two co-arbitrators are appointed by the president of the division and not by the parties. Once appointed, the two co-arbitrators nominate the presiding arbitrator.

As soon as the panel has been appointed, it determines, after consultation with the parties, the status of the third party and its rights in the proceedings. The panel may also permit *amicus curiae* briefs, if the parties agree thereto.

Irrespective of the panel's decision on the participation of the third party, the formation of the panel cannot be challenged.

Ordinary procedure: Conciliation and confidentiality

The president of the division or the presiding arbitrator can always opt for resolution of the dispute through conciliation (*Article R42, CAS Rules*). If the parties reach a settlement, it may be embodied in an award.

All CAS arbitrators, as well as the parties and the CAS itself, are subject to a general duty of confidentiality. No facts or other information from the proceedings may be divulged, unless the CAS gives permission. Awards resulting from an Ordinary Arbitration Procedure are only made public if the parties so agree or if the president of the Ordinary Arbitration Division decides that they should be published (*Article R43, CAS Rules*). The publication of a particular award may be desirable if such an award could serve to develop a specific aspect of *lex sportiva* (the conceptual body of transnational rules governing the realm of sports) or because there is a justified public interest in knowing about the case.

Ordinary procedure: Procedure before the panel

The procedure for the arbitration is set out in Articles R44 and R45 of the CAS Rules.

With the consent of the parties, the panel may expedite the proceedings (*Article R44.4, CAS Rules*). As the CAS Rules do not contain special rules for expedited proceedings, it is up to the president of the division or the panel to make the appropriate orders.

Provisional and conservatory measures

For the availability of interim measures in ordinary arbitration proceedings, see [Provisional and conservatory measures](#), above.

Written submissions

The rules relating to written submissions are set out in Article 44.1 of the CAS Rules, and are as follows:

- The president of the panel issues directions regarding the parties' written submissions once the case file has been communicated to the panel. In ordinary arbitration proceedings, the parties usually file a statement of claim and a statement of defence. These may be supplemented, where necessary, with a reply and a rejoinder. Once the hearing has closed, the parties may not submit further written pleadings, unless the tribunal allows them to do so (*Article R44.2, CAS Rules*).
- The parties may include in their statement of claim or defence claims that have not been addressed in the request for arbitration or in the answer to the request. Thereafter, new claims may only be raised with the consent of the other party.
- If the respondent makes a counterclaim or jurisdictional objection, the CAS Court Office will fix a time limit for the claimant to reply.

- All documentary evidence on which a party intends to rely must be filed at the same time as the submissions, as the parties are not permitted to produce further documentary evidence after the exchange of written submissions, unless they so agree or the panel grants leave to do so.
- Submissions must include the names of witnesses and experts whom the parties intend to call, short summaries of their evidence, and the experts' (if any) area of expertise. Witness statements must, as a rule, also be submitted with the parties' written briefs.

If the claimant fails to submit a statement of claim, the panel will consider the request for arbitration to be withdrawn. If, on the other hand, the respondent fails to submit a statement of defence, the panel may continue the proceedings and issue an award (*Article R44.5, CAS Rules*).

Hearing

The panel, in principle, orders an oral hearing. Article R44.2 of the CAS Rules governs the procedure at the oral hearing. Generally, it is up to the panel to decide the specific procedural rules to apply.

After consultation with the parties, the presiding arbitrator sets the hearing date and gives directions regarding the hearing. There normally is only one hearing at which the parties, the witnesses, and the experts are heard. At the end of the witness and expert evidence, the panel hears the parties' oral closing statements, the last of which is the respondent's closing argument.

Hearings are held in private, unless the parties agree that they should be public. Whether or not the hearing is public, the parties may take notes of the hearing.

Only witnesses who have been identified in the parties' written submissions can be called to testify at the hearing. If necessary, the hearing of a witness or expert can be conducted via video-conference or by telephone. If the parties agree and a written witness statement has been filed, witnesses can be exempted from attending the hearing. The panel may also limit or disallow the appearance or testimony of a witness or expert if it considers their evidence irrelevant.

It is the parties' responsibility to guarantee their witnesses' availability and to cover the costs of their appearance. Any person appearing before the panel may, at the cost of the party calling them, be assisted by an interpreter.

The chairman will caution all witnesses, experts, and interpreters to tell the truth. Further, the president of the panel must ensure that all statements are within the limits of the parties' previous written submissions.

If a party or witness does not appear at the oral hearing after having been duly summoned, the hearing may continue (*Article R44.5, CAS Rules*).

Evidentiary proceedings ordered by the arbitration panel

Under Article R44.3 of the CAS Rules, the panel may order the following:

- Document production. At the request of a party, the panel can order the other party to produce documents that are under its control. To obtain an order, the party requesting the production of documents must show that the documents are both likely to exist and relevant to the proceedings. The panel may, at any time, order the production of additional documents if it deems it necessary.
- Experts and witnesses. If necessary, the panel can also decide to appoint additional experts or witnesses. If it appoints additional experts, their appointment and the terms of their engagement must be discussed with the parties.

Ordinary procedure: Law applicable to the merits

The law applicable to the merits is chosen by the parties (*Article R45, CAS Rules*). Absent an agreement between the parties,

Swiss law applies. If so authorised by the parties, the panel can decide *ex aequo et bono* (that is, according to general equitable principles, rather than strict legal rules).

Ordinary procedure: Award

The award is to be made by a majority decision of the panel or, if there is no majority, by the presiding arbitrator alone (*Article R46, CAS Rules*). The award must be in writing, dated and signed. Unless the parties agree otherwise, it must also be reasoned. The presiding arbitrator's signature or the signature of the two co-arbitrators is sufficient. As the CAS does not recognise dissenting opinions, these opinions are not notified to the parties.

The panel may decide to communicate the operative part of the award to the parties, prior to providing the reasons.

The award shall be final and binding upon the parties, subject to recourse available in certain circumstances pursuant to Swiss law within 30 days from the notification of the reasoned award by mail or courier.

Review by the CAS Director General

Before the award is signed, it is submitted to the CAS Director General for review. The CAS Director General may make corrections of form and may also notify the panel of fundamental issues of principle, for instance if an award shows discrepancies from existing CAS precedents. Notably, Article 46 of the CAS Rules does not give the Director General the authority to request the amendment of an award.

Once signed, the award is notified to the parties by the CAS Court Office.

Ordinary procedure: Challenge of an award

Unless the parties have validly waived their right to challenge the award (see [Waiver of right to challenge an award](#)), a CAS award can be challenged before the Swiss Supreme Court. Under Swiss law, the grounds for setting aside an international arbitration award are limited and are applied restrictively. Under the PILA, the only grounds for setting aside an award are:

- Improper appointment of an arbitrator (*Article 190(2)(a)*).
- Wrongful acceptance or denial of jurisdiction by the arbitral tribunal (*Article 190(2)(b)*).
- *Infra* and *ultra petita* decisions (decisions where the tribunal has either failed to deal with all the issues or exceeded its competence) (*Article 190(2)(c)*).
- Violation of the right to equal treatment or the right to be heard (*Article 190(2)(d)*).
- Breach of public policy (*Article 190(2)(e)*).

The number of sports-related setting aside proceedings before the Swiss Supreme Court has increased over the last years. However, the statistics show that setting aside proceedings directed against CAS awards have no higher success rate than those against awards rendered in commercial arbitration (for example, see *Decision 4A 494/2018* where the Swiss Supreme Court dismissed an application to set aside an award concluding that the CAS had not violated the appellant's right to be heard or public policy, see [Legal update, Challenge of CAS award related to football corruption scandal dismissed \(Swiss Supreme Court\)](#)). See also *Decision 4A 318/2018*, discussed in [Legal update, CAS award confirmed despite allegations of a violation of substantive public policy \(Swiss Supreme Court\)](#)). See also *Decision 4A 300/2021*, discussed in [Legal update, Doctrine of "surprise effect" and scope of ultra petita as ground for annulment confirmed \(Swiss Supreme Court\)](#). For a recent decision of the Swiss Supreme Court annulling a CAS award, see *Decision 4A 564/2020* (see [Legal update, CAS award annulled for lack of jurisdiction](#)).

For detailed discussion on challenging awards under Article 190(2) of the PILA, see [Practice note, Arbitration in Switzerland: Challenges to awards](#).

Furthermore, Swiss law allows revision of an arbitral award. Before 1 January 2021, revision of an arbitral award was possible based on case law of the Swiss Supreme Court and Article 123 of the Swiss Supreme Court Act (see [Legal update, Swiss Supreme Court refuses to revise arbitral award for lack of new conclusive evidence](#)). As from 1 January 2021, revision of an arbitral award is expressly set forth in Article 190a PILA. For a decision of the Swiss Supreme Court upholding an application for revision and annulling a CAS award under the old law, see *Decision 4A 318/2020* (discussed in [Legal update, CAS award in Sun Yang case annulled for arbitrator bias](#)).

Waiver of right to challenge an award

If none of the parties have their domicile, habitual residence or business establishment in Switzerland, they may, by express statement in the arbitration agreement or in a subsequent written agreement (*Article R46, CAS Rules*), waive the right to challenge the award or limit the challenge to one or more of the grounds listed in Article 190(2) of the PILA. This provision corresponds to Article 192(1) of the PILA. However, and as already set out above, an advance waiver of all recourse options is unenforceable in sports arbitration: if an athlete is effectively forced to arbitrate, they cannot at the same time validly waive the right to challenge the panel's decision (see *BGE 133 III 235 of 22 March 2007*).

For a decision of the Swiss Supreme Court in a sports-unrelated case where a waiver was deemed to be valid, see *Decision 4A 382/2021* (see [Legal update, Challenge inadmissible due to valid waiver of right to challenge the award](#)).

Appeals Arbitration Procedure

The rules regarding the Appeals Arbitration Procedure are set forth in Articles R47 to R59 of the CAS Rules and the general provisions in Articles R27 to R37. These rules generally apply where the CAS is called on to resolve disputes arising from decisions rendered by the disciplinary tribunals or similar bodies of federations and other sports organisations (see *CAS 2018/A/5746 Trabzonspor Sportif Yatirim et al v Fenerbahçe Futbol A.S.* outlining the criteria with respect to the standing to sue or to appeal. See also the Swiss Supreme Court's *Decision 4A 548/2019* (discussed in [Legal update, Appeal against sports federation's decision to reinstate third party in lieu of disqualified team must be directed against federation and third party \(Swiss Supreme Court\)](#)).

Appeals procedure: commencement of appeal

An appeal may be lodged with the CAS Appeals Division if the statutes or regulations of the sports-related organisation that rendered the decision subject to appeal or if a specific submission agreement provides for it, and if all legal remedies available to the appellant under those statutes or the specific submission agreement have already been exhausted (*Article R47, CAS Rules*).

An appeal may also be filed against a CAS award rendered by a CAS panel acting as first instance tribunal if an appeal is provided for by the rules applicable to the first instance proceedings.

Appeals procedure: statement of appeal

The statement of appeal must be filed within 21 days from the notification of the decision under appeal, unless the statutes or regulations of the sports-related organisation or federation concerned or a previous agreement provide for a specific deadline (*Article R49, CAS Rules*).

The statement of appeal must contain the following details:

- Name and full address of respondent.
- A copy of the decision under appeal.

- The appellant's prayers for relief.
- The nomination of the arbitrator chosen by the appellant from the relevant CAS list (except where the parties have agreed to a sole arbitrator).
- Any application to stay the enforcement of the decision under appeal, together with the reasons for such stay.
- A copy of the applicable provision or agreement providing for appeal to the CAS.

(Article R48, CAS Rules.)

If the appeal statement is incomplete, the appellant is given a short extension of time to correct or complete it.

Upon filing the statement of appeal, the appellant must pay a fee of CHF1,000 to the CAS Court Office, without which the CAS will not proceed (*Articles R64.1 and R65.2, CAS Rules*).

Appeals procedure: appeal brief

Once the statement of appeal has been filed, the appellant has ten days to file an appeal brief, addressing the facts and legal arguments giving rise to the appeal, and to produce the exhibits on which it relies (*Article R51, CAS Rules*). Alternatively, the appellant may inform the CAS Court Office that it intends to rely on its statement of appeal as its appeal brief.

In particular, the appeal brief must contain the names of witnesses or experts, a summary of their expected testimony, and, where applicable, the expert(s)' area(s) of expertise. The appeal brief should also specify any other evidentiary requests the appellant has. Witness statements must be filed together with the appeal brief, unless the presiding arbitrator decides otherwise. In accordance with *CAS 2018/A/5868 Pan-American Team Handball Federation (PATHF) v International Handball Federation (IHF)*, after the filing of the appeal brief, an appellant cannot, in principle, supplement or change its requests for relief.

It is noteworthy that in *Decision 4A 287/2019*, the Swiss Supreme Court ruled that a CAS panel's decision to declare an appeal brief inadmissible because it was not filed in a timely manner is a decision on admissibility and not jurisdiction. Therefore, it held that it cannot be challenged before the Swiss Supreme Court (see [Legal update, CAS decision on timely filing of submission not open to challenge before Swiss Supreme Court](#)).

Appeals procedure: commencement of the proceedings

Unless there evidently is no arbitration agreement referring the dispute to the CAS or if the internal legal remedies available to the appellant have clearly not been exhausted, the CAS Court Office communicates the statement of appeal to the respondent and the president of the division proceeds with the constitution of the panel, thereby effectively initiating the procedure (*Article R52, CAS Rules*). Subject to the agreement of the parties, the president of the Appeals Arbitration Division or, if already appointed, the panel can expedite the proceedings and determine the rules for an expedited procedure. The CAS Court Office may publicly announce the initiation of any appeals arbitration procedure and, at a later stage and where applicable, the composition of the arbitral panel and the hearing date, unless the parties agree otherwise (*Article R52.3, CAS Rules*).

Appeals procedure: stay of enforcement

In cases where the statement of appeal contains an application to stay the enforcement of the decision under appeal, the president of the Appeals Arbitration Division or, after the file has been transmitted to the panel, the presiding arbitrator rules on the requested stay of enforcement (*Article R52, CAS Rules*). When deciding a request to stay the enforcement, the CAS generally considers whether:

- The measure is useful to protect the applicant from an imminent risk of irreparable harm or injury.

- There is a likelihood of success on the merits of the appeal.
- The interests of the applicant outweigh those of the counterparty and of third parties.

Appeals procedure: interim measures

Parties may apply to the CAS for interim measures (*Article R37, CAS Rules*). By agreeing to submit a dispute to the CAS Appeals Arbitration Procedure, the parties expressly waive their right to request interim measures from a state court (see *Provisional and conservatory measures*). To what extent such a waiver is valid under Swiss law has yet to be decided by the Swiss Supreme Court.

Appeals procedure: consolidation

The president of the panel or the president of the division has the discretion to consolidate proceedings when a party files a statement of appeal in connection with a decision that is the subject of a pending appeal before the CAS (*Article R52, CAS Rules*).

Appeals procedure: constitution of the panel

If the appellant fails to establish in the statement of appeal that the parties have agreed to submit the appeal to a sole arbitrator, appeals are submitted to a panel of three arbitrators. In specific circumstances, a sole arbitrator may be appointed (*Article R50, CAS Rules*).

If the president of the division decides to submit the appeal to a 3-member panel, the appellant shall appoint an arbitrator within the time limit set by the president of the division, failing which the appeal shall be deemed withdrawn (*Article R50, CAS Rules*).

The appointment of the arbitrators then differs from the one applicable in the Ordinary procedure (see *Constitution of the panel*, above) in that in appeal proceedings, the respondent has to nominate its arbitrator within ten days after receipt of the statement of appeal and the presiding arbitrator is always chosen by the president of the Appeals Arbitration Division (*Article R54, CAS Rules*).

If the president of the division is called to select the sole arbitrator or the president of the panel, they shall consider the criteria of expertise, availability, diversity, equality and turnover of arbitrators (*Article R54, CAS Rules*).

In addition, in case a special list of arbitrators exists in relation to a particular sport or event, the sole arbitrator or the president of the panel shall be appointed from such list, unless the parties agree otherwise or the president of the division decides otherwise due to exceptional circumstances (*Article R54, CAS Rules*).

Where two or more cases clearly involve the same issues, the president of the division can invite the parties to agree to refer the case to the same panel. If the parties cannot agree, the president of the division decides.

Where there are multiple appellants or respondents, Article R41 of the CAS Rules applies also to appeal proceedings (see *Multiparty arbitration*, above).

An ad hoc clerk may be appointed to assist the panel.

Once the panel has been constituted and at least one of the parties has paid the advance on costs, the CAS Court Office transfers the file to the panel.

Appeals procedure: respondent's answer

The respondent is required to submit its answer to the appeal within 20 days from receipt of the grounds for appeal. However,

it may request that the deadline for its answer only be fixed after the appellant has paid the advance on costs.

The answer must contain the following:

- A statement of defence.
- Any challenges to jurisdiction.
- Any evidence on which the respondent wishes to rely.
- The names of any witnesses and experts, a summary of their expected testimony and, in the case of experts, their area of expertise.
- Any other evidentiary requests.
- Any witness statements.

The panel may proceed with the arbitration and render an award even if the respondent fails to file an answer within the time limit.

After the exchange of the appeal brief and the respondent's answer, the parties may not supplement or amend their requests or arguments nor submit new evidence, unless they agree otherwise or the president of the panel decides to allow additional submissions. The panel shall further inquire whether the parties wish to hold a case management conference. If so, the panel will discuss procedural issues, including those pertaining to the hearing (if any) and the taking of evidence. An "order of procedure" shall be issued by the panel thereafter; that is, prior to the hearing (if any) or the termination of the evidentiary proceedings (*Article R56, CAS Rules*).

The panel may decide at any time to resolve the dispute by conciliation. A subsequent settlement can become part of an arbitral award.

Appeals procedure: the panel's *kompetenz-kompetenz*

Article R55 of the CAS Rules provides that the panel may rule on its own jurisdiction. This provision corresponds to Article R39 of the CAS Rules, which is applicable to the Ordinary Arbitration Procedure (see [Ordinary procedure: The panel's kompetenz-kompetenz](#)).

Appeals procedure: procedure before the panel

The president of the panel gives directions for the examination of the parties, witnesses and experts, as well as for oral arguments. He or she may also request the file of the sports organisation the decision of which is being appealed.

If the panel considers that it has sufficient information, it may dispense with an oral hearing (*Article R57, CAS Rules*). If it decides to hold a hearing but a summoned party fails to appear, the panel may decide to nevertheless proceed with the hearing.

Hearings are held in private, unless the parties agree otherwise. Following the decision of the European Court of Human Rights in *Mutu and Pechstein v Switzerland* (*Applications no. 40575/10 and no. 67474/10*) (*ECHR 324 (2018)*), athletes have the right to request a public hearing in disciplinary cases heard by the CAS (see revised Article R57(2) of the CAS Rules) (discussed in [Legal update, CAS procedures compatible with right to a fair trial except for refusal of public hearing \(European Court of Human Rights\)](#)). A public hearing was, for example, held in the matter of *Caster Semenya & Athletics South Africa (ASA) v International Association of Athletics Federation (IAAF)* in February 2019. However, there is no right to a public hearing if only legal and highly technical issues are discussed at the hearing (see [Legal update, Swiss Supreme Court confirms that Article 6\(1\) ECHR not directly applicable in setting aside proceedings](#)).

Article R57 of the CAS Rules grants the panel power to carry out a full review of the facts and the law. Therefore, the

appeals procedure is a *de novo* procedure that allows the panel to render a new decision to replace, annul, or even remand the previous one. Paragraph 3 of Article R57 of the CAS Rules grants the panel the discretion to exclude evidence presented by the parties if it was available to them or could have reasonably been discovered by them before the challenged decision was rendered. The Swiss Supreme Court has clarified that this restriction of the panel's full power of review does not violate Swiss procedural public policy (see *Decision 4A_246/2014*, discussed in [Legal update, Swiss Supreme Court partially grants petition to set aside CAS award](#)).

Appeals procedure: law applicable to the merits

As a rule, the panel must rely on the applicable regulations and the law chosen by the parties (*Article R58, CAS Rules*). Where there is no choice of law, the panel applies the law of the country where the sports-related organisation the decision of which is being appealed has its registered seat. Alternatively, the panel may choose to apply the law it deems appropriate, in which case the panel has to provide reasons for its choice.

As many sports federations and organisations have their seat in Switzerland, Swiss law is often applicable to the merits.

Appeals procedure: award

Awards shall be rendered by majority decision or, if no majority decision can be reached, by the presiding arbitrator alone (*Article R59, CAS Rules*). The award must be in writing, reasoned, dated and signed. The presiding arbitrator's signature or the signature of the two co-arbitrators is sufficient. Dissenting opinions are neither recognised by the CAS nor notified to the parties. A copy of the operative part of the award, if any, and of the full award shall be communicated to the authority or sports body that has rendered the challenged decision, if that body is not a party to the proceedings.

The panel may decide to communicate the operative part of the award to the parties, prior to providing the reasons.

The award is final and binding on the parties, subject to any recourse available under Swiss law in certain circumstances within 30 days from the notification of the reasoned award by mail or courier (see [Legal Update, Swiss Supreme Court clarifies deadline for set-aside applications](#)) (see [Challenge of awards](#), below). If the parties have their domicile, habitual residence, or business establishment in Switzerland, they may, by express statement in the arbitration agreement or in a subsequent written agreement, waive their right to challenge the award or limit the challenge to one of the grounds listed in Article 190(2) of the PILA (*Article R59, CAS Rules*). Like Article R46 of the CAS Rules, this provision corresponds to Article 192(1) of the PILA (see [Waiver of right to challenge an award](#)).

Time limit for awards

Notably, the operative part of the award must be rendered within three months of the transfer of the file to the panel. This deadline may only be extended by the president of the Appeals Arbitration Division up to four months after the closing of the evidentiary proceedings and only if the president of the panel submits a reasoned request for such an extension (*Article R59, CAS Rules*). In case of non-compliance with the time limit, the panel may be removed and the arbitrators' fees may be reduced by the ICAS Board in accordance with Article R35 and R59 of the CAS Rules. Any particular measure, including any ultimate extension, shall be determined by the president of the division (*Article R59, CAS Rules*).

Review by the CAS Director General

In the same manner as awards resulting from ordinary arbitration proceedings, awards issued under the rules of the Appeals Arbitration Procedure are subject to review by the CAS Director General, who may notify the panel of corrections of form and point out fundamental issues of principle, such as a departure from established CAS case law, but may not request amendments to the substance of the award (see [Ordinary Arbitration Procedure: Review by the CAS Secretary General](#)).

Appeals procedure: publication of awards

Unlike awards rendered under the Ordinary Arbitration Procedure, the original CAS award resulting from an Appeals Arbitration Procedure is made public, unless the parties agree otherwise (*Article R59, CAS Rules*). Consequently, a

significant number of awards can be accessed on the CAS website on the *Recent Decisions* and *Jurisprudence Archives* pages.

Appeals procedure: challenge of awards

In *Decision 4A_6/2014* (published as *BGE 140 III 520* in September 2014), the Swiss Supreme Court analysed the nature of arbitral awards rendered by the CAS as an appellate body, including the consequences this may have on the annulment grounds that can be invoked before the Supreme Court. According to the court, an award rendered by the CAS as an appellate body does not qualify as a final award if the CAS annuls a decision of a lower instance and remands the case to that instance for a new decision. Since such an award does not put an end to the arbitration and the dispute between the parties submitted to the lower instance, it must be deemed a preliminary (or interim) award that can only be challenged on the grounds of improper appointment or constitution of the arbitral tribunal (see [Legal update, CAS arbitral award partially annulled for lack of jurisdiction](#)).

Apart from the foregoing situation, the challenge of an award of the Appeals Arbitration Division follows the rules applicable to the challenge of an award rendered under the Ordinary Arbitration Procedure (see [Ordinary procedure: Challenge of an award](#)).

For a recent decision of the Swiss Supreme Court setting aside a CAS award see *Decision 4A 564/2020* (see [Legal update, CAS award annulled for lack of jurisdiction](#)).

Interpretation

Within 45 days following the notification of the award, a party may apply to the CAS for the interpretation of an award issued in an Ordinary Arbitration Procedure or Appeals Arbitration Procedure if the operative part of the award is unclear, incomplete, self-contradictory, contrary to reason, or if the award contains clerical or mathematical errors (*Article R63, CAS Rules*).

Costs

The rules on costs are set out in Articles R64 to R66 of the CAS Rules. These rules apply to both the Ordinary Arbitration Procedure and the Appeals Arbitration Procedure.

Advance on costs

The non-refundable filing fee of the CAS Court Office is CHF 1,000 for all requests for arbitration or statements of appeal.

Article R64.2 of the CAS Rules provides that the CAS Court Office fixes the amount and method of payment of the advance on costs by estimating the costs of arbitration for the parties upon formation of the panel, and that the advance of costs is an administrative issue which is dealt with by the CAS Court Office, with separate accounts for each procedure. The amount of the advance can be subject to later changes.

The advance is to be paid in equal shares by the parties. If a party fails to pay its share, the other party can choose to pay it instead. If the parties fail to pay the advance of costs in full, the request for arbitration or appeal is deemed withdrawn and the CAS terminates the arbitration (see [Legal Update, Termination of proceedings for failure to pay advance, not excessively formalistic](#)).

In addition, each party must advance the costs of its own witnesses, experts, and interpreters (*Article R64.3, CAS Rules*). They may also have to advance the costs of a panel-appointed expert or of additional witnesses requested by the panel.

At the end of the proceedings, the CAS Court Office will determine the final amount of the cost of arbitration, including notably the CAS Court Office fee, the fees and expenses of the arbitrators and the costs of witnesses, experts and interpreters.

The final account will include a detailed breakdown and will be notified to the parties within a reasonable period of time. The advance of costs already paid by the parties are not reimbursed by the CAS except for the portion that exceeds the total amount of the arbitration costs (*Article R64.4, CAS Rules*).

Appeal proceedings against decisions that are exclusively of a disciplinary nature and that are rendered by an international federation or sports organisation are free of charge. This rule is not applicable to appeals against decisions related to sanctions imposed as a consequence of a dispute of an economic nature. The costs of the arbitrators and the CAS are borne by the CAS (*Article R65, CAS Rules*).

Parties with insufficient financial means may apply for legal aid. Applications are administered by the Legal Aid Commission of the ICAS Board which exercises its functions pursuant to the Guidelines on Legal Aid before the Court of Arbitration for Sport (as amended on 1 November 2020). A separate, new legal aid fund specific to football disputes was created with the latest amendments to the CAS Code which entered into force on 1 November 2022 (*Article S6.9, CAS Statutes*).

In a recent decision of the Swiss Supreme Court dealing with the legal aid available before CAS and the validity of a CAS arbitration clause in the event of insufficient financial means, the Swiss Supreme Court explained that if an arbitral institution, such as CAS, provides legal aid to indigent parties, this precludes a dissolution of the arbitration agreement due to lack of financial means based on Article 6(1) of the ECHR or Article 29a of the Swiss Constitution (see *Decision 4A 166/2021* discussed in [Legal update, Validity of CAS arbitration clause upheld despite party's alleged lack of financial means](#)).

Allocation of costs

The panel has discretion with regard to the allocation of the costs incurred, including the CAS Court Office fee, the administrative costs, the costs and fees of arbitrators (calculated according to the [CAS fee scale](#)). As a general rule and without any specific request from the parties, the panel also has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings, in particular the costs of witnesses and interpreters (*Article R64.5, CAS Rules*). The final amount of the costs may be included in the award or communicated separately to the parties.

When granting the successful party a contribution towards its legal fees, the panel considers the outcome of the proceedings, as well as the financial resources of the parties in an effort to balance out financial inequalities between parties.

Anti-Doping Arbitration Procedure

The establishment of a permanent CAS ADD as of 1 January 2019 brought with it two main changes. First, the IOC, the IFs, the International Testing Agency (ITA), and any other signatories to the World Anti-Doping Code, may delegate their competence for sanctioning ADRVs to the CAS ADD. This relieves disciplinary bodies of international sports entities from the responsibility of dealing with doping cases; in such cases, the CAS ADD will replace the disciplinary body of the international sport entity and will directly decide whether or not an ADRV has incurred. The delegation of disciplinary procedures, including sanctions, in respect of ADRVs to the CAS ADD is voluntary for IFs. However, it can be assumed that a considerable number of IFs will make use of this possibility and delegate their sanctioning powers to the CAS ADD. This may eventually lead to a more uniform sanctioning of ADRVs given that an independent judicial, and not an administrative, body will decide whether an ADRV occurred. Second, the establishment of the CAS ADD results in a fundamental restructuring of the system of competences as regards disciplinary matters. CAS ADD may now act as a sole or first instance as regards the adjudication of anti-doping matters.

The Swiss Supreme Court has left open the question of whether a decision rendered by a CAS ADD panel qualifies as an arbitral award pursuant to Swiss arbitration law or rather if it is merely a decision taken on behalf of a sports federation (see [Legal update, Legal nature of CAS ADD left undecided while obligation to exhaust arbitral remedies before motion to set aside confirmed](#)).

ADD procedure: Commencing the arbitration

Request for arbitration

Proceedings before CAS ADD are in principle initiated by the IOC, an IF or the ITA, which alleges the occurrence of an ADRV. In order to commence an arbitration procedure, they have to submit a request for arbitration in writing to the CAS ADD Office (*Article A13, ADD Rules*). The request for arbitration must include the following information:

- Name and full address of the respondent(s) and of any third parties (including any parties that should be made aware of the proceedings).
- A complete statement of facts, legal argument and a summary of the issue to be decided.
- The prayers for relief.
- A copy of the document containing the arbitration agreement or providing for arbitration pursuant to the CAS Rules.
- A copy of the applicable anti-doping regulations.
- A reasoned request that a three-member panel should act instead of a sole arbitrator.
- The supporting documents such as witness statements and/or expert reports have to be submitted together with the request for arbitration unless the president of the panel or the sole arbitrator decides otherwise (*Article A19.1, ADD Rules*).

If the Request for Arbitration does not meet these requirements, CAS ADD will grant a short extension of time. If the claimant fails to improve its submission within the extended time limit, the request for arbitration is deemed withdrawn.

Upon submission of the Request for Arbitration, the claimant must pay the CAS ADD office a fee in the amount of CHF1,000, failing which CAS ADD will not proceed with the arbitration procedure (*Article 13 in conjunction with Article 23, ADD Rules*).

ADD procedure: Initiation of the arbitration by the CAS

The CAS ADD Office sets the arbitral proceedings in motion, unless it is obvious that no arbitration agreement referring the case to the CAS exists (*Article A14, ADD Rules*). The CAS ADD Office communicates the request for arbitration to the respondent. If the claimant requested the appointment of a three-member panel, the respondent has seven days to submit its response as to whether it accepts such request. In addition, the respondent is invited to file an answer to the request for arbitration within twenty days following receipt of the request for arbitration.

Respondent's Answer to the Request for arbitration

Pursuant to Article A14 of the ADD Rules, the respondent's answer to the Request for Arbitration shall include:

- Any challenge to jurisdiction.
- A complete statement of defence.
- A list of the supporting documents such as witnesses and their witness statements (including a summary of their expected testimony) and/or expert reports unless the president of the panel or the sole arbitrators decides otherwise (*Article A19.1, ADD Rules*).

The panel's competence to decide on its own jurisdiction

Article A14 of the ADD Rules expressly provides for the power of CAS panels to decide on their own jurisdiction. A panel has the authority to decide on its own jurisdiction irrespective of whether legal action between the same parties and relating to the same subject-matter is already pending before a state court or another arbitral tribunal, unless substantial grounds require the suspension of the proceedings.

If the CAS' jurisdiction is disputed, the parties will be requested to address the issue of jurisdiction in written submissions. The panel's subsequent decision on jurisdiction may be rendered in the form of an interim award or in the form of an award on the merits. If the panel renders an interim award on jurisdiction, such award may be challenged pursuant to Article 190(3) of the PILA.

ADD procedure: Consolidation of proceedings

Pursuant to Article A14 of the ADD Rules, a consolidation of proceedings before the CAS is possible. If a request for arbitration refers to a procedure of similar nature which is already subject of a pending procedure before CAS ADD, the two proceedings may be consolidated by the panel following consultation with the parties.

ADD procedure: Constitution of the panel

The ADD Rules allow for panels of one or three arbitrators. This decision is important in regards to the length and appeal possibilities of the procedure before CAS.

As a general rule, cases submitted to CAS ADD are decided by a sole arbitrator unless the parties agree on a three-member panel. The sole arbitrator must be selected by the parties within seven days from their invitation to appoint the sole arbitrator from a designated list for arbitrators eligible to act as sole arbitrator or president of the panel. If the parties fail to jointly nominate a sole arbitrator, the president of CAS ADD appoints the sole arbitrator (*Article A16, ADD Rules*).

If, by contrast, the respondent agrees to the claimant's request to submit the case to a three-member panel, the claimant is given three days to nominate an arbitrator. The arbitrator is to be selected from the special list of ADD arbitrators who are eligible to be appointed by a party. Following the appointment of claimant's arbitrator, the respondent is given the same time to appoint its arbitrator. If one of the parties fails to make the appointment within the applicable time limit, the president of CAS ADD shall either appoint the arbitrator or decide that the matter should be heard by a sole arbitrator. The presiding arbitrator will be appointed either by the parties' joint nomination within seven days or, if the parties fail to reach an agreement, by the president of CAS ADD. The president of the panel may only be selected from the special list specifically dedicated for the appointment of presiding or sole arbitrators. (*Article A15, ADD Rules*). It should also be pointed out that arbitrators on both lists may not simultaneously serve on another CAS list, that is, they cannot be involved in cases administered by the CAS Appeals Arbitration Division (*Article A8, ADD Rules*).

ADD procedure: Procedure before the panel

The arbitral procedure is set out in Articles A19 and A20 of the ADD Rules. The procedure before the panel is comprised of a written phase and, if so agreed or ordered, an oral hearing. A second round of written submission may only be filed if allowed by the sole or presiding arbitrator. This is in contrast to the CAS Ordinary Arbitration Procedure, there is generally no "split" between request for arbitration and statement of claim on the one hand and between answer to the request for arbitration and statement of defence on the other hand.

Importantly, the parties may not raise any new claims or arguments in the second round of the written submissions if those claims were not already included in the Request for Arbitration or in the Answer to the Request, except if mutually agreed by the parties or ordered by the presiding arbitrator (*Article 19.2, ADD Rules*). As in the Ordinary Arbitration Procedure, the panel may expedite the proceedings provided that the parties agree (*Article A19.5, ADD Rules*). For further information regarding the expedited procedure see the explanations set forth with respect to the Ordinary Arbitration Procedure.

ADD procedure: Law applicable to the merits

The panel will apply the applicable anti-doping rules or the rules chosen by the parties (*Article A20, ADD Rules*) to the merits

of the dispute. Absent an agreement between the parties, Swiss law applies.

ADD procedure: Award

The award is to be rendered by a majority decision of the panel or, if no majority decision can be reached, by the presiding arbitrator alone (*Article A21, ADD Rules*). The award must be in writing, briefly reasoned, dated and signed. The presiding arbitrator's signature or the signature of the two co-arbitrators is sufficient. As the CAS does not recognise dissenting opinions, such opinions are not notified to the parties. A copy of the operative part of the award, if any, and of the full award shall be communicated to the World Anti-Doping Agency (WADA), if it is not already a party to the proceedings. In the same manner as awards in Ordinary Arbitration proceedings, awards issued under the Anti-Doping Arbitration Procedure are not subject to any time limit.

CAS ADD as first instance

In the event that a sole arbitrator is hearing the case, the panel acts as a first instance. The decision rendered by the sole arbitrator may be appealed to the CAS Appeals Arbitration Division within twenty-one days upon receipt of the reasoned final award pursuant to Articles R47 *et seqq.* of the CAS Rules. Only decisions rendered by the CAS Appeals Arbitration Division will be final and binding upon the parties, subject to recourse available in certain circumstances pursuant to Swiss law within 30 days from the notification of the reasoned award by mail or courier.

Review by the Managing Counsel of the CAS ADD

Awards issued in the ADD Arbitration proceedings are reviewed by the Managing Counsel of the CAS ADD prior to signing. The Managing Counsel of the CAS ADD, as the CAS Director General, is allowed to make only corrections with regard to the form and to point out fundamental issues of principle. By contrast, the Managing Counsel is not allowed to amend the content of the award and the findings of the arbitrator(s).

Appeals procedure: publication of awards

Awards rendered in ADD Arbitration Procedure are made public if sanctions have been imposed upon the respondent (*Article A21, ADD Rules*). In addition, upon request by a party, and even if the award is not yet final, some elements of the case file may be disclosed in order to enable a better understanding of the reviewing court or tribunal.

ADD procedure: challenge of awards

Final awards rendered under the ADD Arbitration Procedure (that is, awards rendered by a three-member panel) may be appealed to the Swiss Supreme Court in the same manner as awards rendered in the Appeals Arbitration Procedure.

However, in *Decision 4A 612/2020*, the Swiss Supreme Court ruled that decisions of the CAS ADD acting as first instance have to first be challenged before the CAS Appeals Division and cannot be directly challenged before the Swiss Supreme Court (see [Legal update, Legal nature of CAS ADD left undecided while obligation to exhaust arbitral remedies before motion to set aside confirmed](#)).

ADD procedure: costs

The rules on costs are set out in Articles A23 to A25 of the ADD Rules. As under the CAS Rules (*Articles R64 to R66 of the CAS Rules*), the claimant is obligated to pay a non-refundable filing fee of the CAS ADD Office in the amount of CHF 1,000 upon filing of its request for arbitration.

With regard to further costs of the arbitration, such costs differ depending on whether the case was heard by a sole arbitrator or a three-member panel. If the parties opted for a three-member panel, the ADD Arbitration Procedure is free of charge unless WADA or one of its Signatories is the claimant (*Article A24, ADD Rules*). The purpose of this provision is to encourage the parties to choose a three-member panel instead of a sole arbitrator in order to directly obtain a final and binding award. If, by contrast, the dispute is heard by a sole arbitrator, the following applies: four proceedings per year are

free of charge for each IF, ITA and IOC. As from the fifth proceeding, the costs are to be borne by those international sports entities.

At the end of the proceedings, the CAS ADD Office will determine the final amount of the cost of arbitration either in the final awards itself or in a separate communication to the parties (*Article A24, ADD Rules*).

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