Publish or perish! The need for transparency at the Court of Arbitration for Sport

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• International Sports Law Journal

• International Sports Law Book Series
Why the CAS matters for sports governance

• **Centrality of the CAS in the functioning of the *lex sportiva***
  - CAS = Firewall against national courts
  - Inflation of number of CAS cases submitted and awards
    - 2000 = 76 cases – 2016 = 599 cases (2015 = 498)
  - CAS jurisprudence key to determine the practical operation of the *lex sportiva*
    (for example: WADC & RSTP)

• **Weak alternative remedies**
  - Bosman/Pechstein syndrome
    - Unspoken boycotts
    - Lengthy delays
    - Inflated costs
  - International/national asymmetry
  - Political power of the SGBs

• **Potential for the CAS to exercise a true constitutional control over SGBs**
  - CAS could/should play the role of counter-power
  - Subjecting the SGBs’ regulations to human rights and proportionality checks
Why sports arbitration is not the same as commercial arbitration

• **Sports arbitration ≠ Commercial arbitration**
  • Centrality of the appeal procedure = 76% of CAS cases in 2016
  • Appeal procedure = Forced arbitration = Post-consensual legitimacy
  • SGBs = Repeat players
  • SGBs = Influence on the CAS through ICAS

• **Therefore, the CAS must be more:**
  • Independent
  • Accessible
  • **Transparent**
    • Commercial arbitration = confidentiality
    • Sports arbitration should = publicity
Transparency matters

• For the public
  • Who guards the guardians?
  • Journalists need to be able to access hearings/decisions to better inform the public and hold the CAS/SGBs accountable

• For the parties
  • Equality of arms vs. unfair advantage of repeat players (the SGBs)

• For the CAS
  • Trust and legitimacy
  • *Justice must not only be done; it must also be seen to be done*
CAS’ Transparency deficit (I)

• **CAS administration**
  - No public minutes of ICAS meetings
  - No annual report
    • CAS budget?
  - Limited CAS statistics
  - No CAS arbitrators record

• **CAS appeal process**
  - Lack of publicity of hearings
  - R44.2 CAS Code (also applicable to appeal procedure)
    • Unless the parties agree otherwise, **the hearings are not public**. Minutes of the hearing may be taken.
CAS’ Transparency deficit (II)

- Publication of CAS awards
  - Limited
  - Discretionary
  - Delayed

<table>
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<th>YEAR</th>
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