A court for sport

by Marcus Hoy

Matthieu Reeb, Secretary General of the Court of Arbitration for Sport (CAS) provided Play the Game with a brief history of his organisation from its humble beginnings in the early 1980s when then-IOC President Juan Antonio Samaranch decided there was a need for a body to deal with disputes during the Olympic games.

A number of key legal decisions in the 1990s boosted the court’s legitimacy and helped it develop into a body, which today boasts homes in New York City and Sydney as well as Switzerland, and no less than 285 arbitrators.

While the majority of its cases concern professional football disputes and doping allegations, it also hears a wide variety of other cases, which remain generally affordable to plaintiffs as there is no requirement that parties must be represented by a lawyer.

When cases are heard, each party has the right to select a specialist arbitrator from a list of CAS members.

One major question mark is that two thirds of CAS’s budget comes from the Olympic movement which could lead to conflicts of interest. Reeb admitted that such a model was not ideal, but pointed out that without such support, access to justice would be restricted.

He explained that only 22 percent of the CAS’s budget comes directly from the IOC, while other contributions are received from bodies such as national Olympic associations. He added that the running and financing of CAS is controlled by an independent body, the “International Council of Arbitration for Sport” (ICAS).

Despite its rapid development, the jurisdiction of the court is ultimately restricted to parties willing to accept its decisions. While these include organizations such as the IOC and the IAAF, they do not include such powerful bodies as England’s Premier League, which has its own system of arbitration.

Matthieu Reeb, Secretary General of the Court of Arbitration for Sport (CAS)

The sports world prefers not to go to court

by Michael Herborn

Arbitration is becoming an increasingly common method of settling cases in the sporting world, London lawyer, Jonathan Ellis, told Play the Game delegates. In fact, arbitration, rather than litigation, is now becoming the norm bringing with it both benefits and dangers.

Ellis, who counts amongst his clients the English Football Association and the Horseracing Regulatory Authority, outlined one of the major gaps in the current Court of Arbitration for Sport system. The Court of Arbitration for Sport can only intervene when it has jurisdiction, and to have jurisdiction, parties must be signatories to the Court or agree to its involvement.

For instance, The Court of Arbitration for Sport was unable to intervene in the challenge by WADA against the Pakistani Cricket Board’s decision not to ban bowlers Shoaib Akhtar and Mohammed Sami for doping offences. While the International Cricket Council was a signatory to the Court of Arbitration of Sport, the Pakistani Cricket Board was not, meaning there was no jurisdiction to intervene.

Arbitration is fast

The finality of outcome is seen as one of the major advantages of arbitration, Ellis explained. The decision made is final, legal and binding. National courts of law will defer to decisions made by arbitration, and will only prevent the confirmation of an arbitration judgement if there have been procedural irregularities in the course of the arbitration.

As such, it is a much faster way of having cases settled than by going to a court of law. Additionally, being able to select a mutually acceptable expert in the field to arbitrate, both parties to the arbitration can have confidence in the expertise of the person adjudicating, whereas in a court of law, parties are unable to decide who will be the judge.

Cloak of privacy

What arbitration also offers above all is privacy. There is no obligation to publicise the details of an arbitration judgement, making arbitration chambers less open alternatives to a courts of law. This means that parties can keep sensitive information quiet, preventing it from falling into the hands of competitors or other interested parties.

This brings with it dangers though, especially with regards to transparency, as Ellis explained. “One significant issue from arbitration is that anyone can attend court cases, but the cloak of privacy exists with arbitration. This has potential press freedom implications.”

It is often argued by sports organisations, that they are losing their autonomy because of the increasing interference of courts. However, with the increasing use of arbitration and gaps in the jurisdiction of the Court of Arbitration for Sport, arbitration may become a method by which their autonomy is preserved.