ARBITRATION AND SPORT

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Abstract

Disputes in sport and modes of their solution and harmonization with legislation have imposed more problems than may have been expected at the first glance. Throughout history, as well as today, there have been various inconcilliable differences in opinions in the relation between sport and law. Only recently a completely new and young branch of law has started to develop: Sport Law. Sport law has a long and difficult way ahead of it on its way to further improvement, both in the sphere of legal theory and in the organization of its bodies and in the implementation of their decisions. In harmonizing decisions in its international sphere and in implementing the largely distraught laws, CAS is a pioneer in organizing sport law and finding solutions in this new and specific branch of law. This paper deals with the connection of for a long time irreconcilable concepts of sport and law through arbitration as a bridge bringing together the differences but also the needs of modern sports; the paper also brings a review of the institution that has emerged from this connection.

JEL classification: K12, K20

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1. INTRODUCTION

Arbitrations, as non-governmental institutions resolving disputes between the parties, have existed since the earliest days and are, in fact, forerunners of state judiciary and state courts that we know today.[1] This form of resolving problems is already found in the Greek and Roman laws. It has been described in numerous legal writings of that period, which indicates itself that arbitration was highly esteemed.[2] With the emerging of state courts and their organization, arbitrations do not disappear but coexist with the courts. They have been less used in certain periods, but they have never completely disappeared – they only gave precedence to the newly emerged institutes, and this, in fact, only proves that arbitrations are actually the beginning, the source from which the judiciary, as we know it today, has developed. Arbitrations had their renaissance after the

[1] Bordaš-Varadi-Knežević:Međunarodno Privatno Pravo, Novi Sad, str.581

[2] «When parties are sure in they rights they reither go in front of the judge than arbitrator....»Lucius Annaeus Seneca: Dialogue; W. Heineman, Harvard University Press, 1972. p.120

World War II[3] because of the fast development of international relations of commercial nature and because arbitration is, for its many advantages, suitable for resolving disputes that may arise in these relations.
If we view sport as a whole, it is today a very important form of social behavior, a process that has imbued all modern societies in all their segments. Sport as an activity is inconceivable without a market, which places it into the sphere of market and economic relations. Sport has penetrated all pores of life, from culture to health care, to politics and economy, and thus also to law.[4] Sport is nowadays characterized by specific phenomena: mass sports that recognize no borders, and a real symbyosis between economy and sport.[5] It is precisely this synthesis where the omnipresent struggle for domination takes place between economy and sports. Sport crosses state borders and is inevitably connected with large amounts of money, and because of that the participants that are in any way involved in it become demanding parties with their particular interests in solving disputes.

2. NEED FOR SPORT LAW

From the very beginning there was the question of why sport needs its own law at all, i.e. why can sport not resolve its problems within the state judiciary system? There are no impediments for sport disputes to be brought before the state judiciary; however, very few sport organizations and athletes are ready to do so. The reason for that is their fear that if they bring their disputes before state courts, one or the other sport principle or decisions arising from the rules of a particular sport would be violated in passing the court judgment. Throughout their development, sports have developed their own independent rules of conduct that, although unlawful or contrary to the rules in the world outside sports, are not unlawful in sport; in fact, they are parts of particular sport branches.[6]
In the history of the Dutch Royal Football Association there is an example of viewers interfering with the sport event, which actually marked a turning point in the realization that special sport jurisdiction is really necessary. In January of 1927, at a common football match, one of the defense players was pushing an offensive player of the opposite team from his back. This would not have been anything unusual had the whole incident not been observed by a police sergeant

[3] Today in world is phenomena of creating a whole new number of institutional arbitation courts so on this day we have around 100 abitrage courts in over the 50 States in the world....ITC; HGK: Arbitraža i alternativno rješavanje sporova, 2003. p.55.
[4] M. Bartoluci: Ekonomika i manegment sporta, HAZU, FFK, 1997.,p.5.
[5] K.Džerba-M.Serdarušić: Sport i novac,1995., p.1.
[6] If one hockie player hit another during the game it is not crime act but hiting on the street by two ordinary people represent a crime act wich need to be sanctioned by the law...Remarks Remarks of PhD. H.T.Staveren,Professor on Vrie Law University in Amsterdam, the Hague's 750th Anniversary International Law Conference, 3.July 1998, loc. cit. n.1,at p.231.

who was watching the match and who misunderstood this pushing between two rivals for an assault, and thus for a criminal offense. He interfered and pulled the player who was pushing his opponent out of the game to write a report against him. Of course, after this incident, the match could not be continued.[7] The incident became such a big issue that a letter was even sent to the Minister of the Interior. Much more important, however, is the fact that the incident lead to the realization that any interference into a sport event from the outside presents an aggravating circumstance that harms the game itself and sport as a whole.

Through the process of globalization states and societies enter ever greater business and social interactions, and they reach their final goals by joining international associations or unions. For modern societies such transactions and relations that cross the borders of individual states are especially important. In keeping up with time, sport is also becoming ever more present, and its role becomes more and more important throughout the world, and one has the full right to say that sport is becoming supranational with a constantly growing number of people involved in it. It is therefore inevitable that in sport, too, especially having in mind its internationality, there will be disputes that may become complicated to resolve and that, once resolved, may even be seen as a special kind of precedents.[8] This is where sports and law meet. Sport has its own "law", but if, or rather when it comes to a dispute, it must be submitted to state law for resolution. At this point problems arise because it was impossible for a long time to put the symbol of equation between sport and law in the sense of resolving sport disputes, without at the same time violating one or the other principle of either law of sport because of potential discrepancies between the rules of law and those of sport.

3. COURT OF ARBITRATRATION FOR SPORT

3.1. HISTORY

At the beginning of the 1980s, there was a huge number of international sports-related disputes and the absence of any independent authority specialising in sports problems and authorised to pronounce binding decisions led the top sports organisations to reflect on the question of sports dispute resolution.

In 1981, soon after his election as IOC President, H.E. Juan Antonio Samaranch had the idea of creating a specific sport jurisdiction. That same year at the IOC Session held in Rome, IOC member H.E. Judge Kéba Mbaye, who was then a judge at the International Court of Justice in The Hague, chaired a working

[7]A. Wassing: « De wachtmeester van Zwolle», Het tuchtrecht van het publiekvoetbal, 1978. ; str. 81-84

[8] See Bosman case or «Bosman rules» at EC Court 12 December 1974, NJ(1975)p.148

group tasked with preparing the statutes of what would quickly become the "Court of Arbitration for Sport". [9]

The idea of creating an arbitral jurisdiction devoted to resolving disputes directly or indirectly related to sport had thus firmly been launched. Reasons for setting up such an arbitral institution was the need to create a specialised authority capable of settling international disputes and offering a flexible, quick and inexpensive procedure. In 1983, the IOC officially ratified the statutes of the CAS, which came into force on 30 June 1984. The Court of Arbitration for Sport became operational as of that time, under the leadership of President Mbaye and the Secretary General, Mr Gilbert Schwaar.[10]

The CAS Statute of 1984 was accompanied by a set of procedural Regulations. Both were modified slightly in 1990. Under these rules, the CAS was composed of 60 members appointed by the IOC, the International Federations (IF), the National Olympic Committees (NOC) and the IOC President (15 members each). The IOC President had to choose those 15 members from outside the other three groups. The CAS Statute could be modified only by the IOC Session, at the proposal of the IOC Executive Board. In 1991, the CAS published a Guide to arbitration which included several model arbitration clauses. Among these was one for inclusion in the statutes or regulations of sports federations or clubs.[11] This clause prefigured the subsequent creation of special rules to settle disputes related to decisions taken by sports federations or associations (appeals procedure).[12] This was the starting point for several "appeals" procedures even if, in formal terms, such a procedure did not yet exist.[13]

In February 1992, a horse rider named Elmar Gundel lodged an appeal for arbitration with the CAS on the basis of the arbitration clause in the FEI statutes, challenging a decision pronounced by the federation. This decision, which followed a horse doping case, disqualified the rider, and imposed a suspension and fine upon him. The award rendered by the CAS on 15 October 1992 found partly in favour of the rider, the suspension was reduced from three

[9] www.TAS-CAS.com last visit at 23.3.2009.

[10] ibid

[11] This clause read as follows: ***"Any dispute arising from the present Statutes and Regulations of the ... Federation which cannot be settled amicably shall be settled finally by a tribunal composed in accordance with the Statute and Regulations of the Court of Arbitration for Sport to the exclusion of any recourse to the ordinary courts. The parties undertake to comply with the said Statute and Regulations, and to accept in good faith the award rendered and in no way hinder its execution."***

[12] The International Equestrian Federation (FEI) was the first sports body to adopt this clause. source at www.tas-cas.com last visit at 23.3.2009.

[13] Up to 1991-1992, a wide variety of cases were submitted to the CAS involving issues such as the nationality of athletes and contracts concerning employment, television rights, sponsorship and licensing... source at www.tas-cas.com last visit at 23.3.2009.

months to one month.[14] Unsatisfated with the CAS decision, Elmar Gundel filed a public law appeal with the Swiss Federal Tribunal. The appellant primarily disputed the validity of the award, which he claimed was rendered by a court which did not meet the conditions of impartiality and independence needed to be considered as a proper arbitration court.
In its judgement of 15 March 1993[15] the Federal Tribunal (FT) recognised the CAS as a true court of arbitration. The supreme court noted, inter alia, that the CAS was not an organ of the FEI, that it did not receive instructions from this federation and retained sufficient personal autonomy with regard to it. However, in its judgement the FT drew attention to the numerous links which existed between the CAS and the IOC: the fact that the CAS was financed almost exclusively by the IOC; the fact that the IOC was competent to modify the CAS Statute; and the considerable power given to the IOC and its President to appoint the members of the CAS. In the view of the FT, such links would have been sufficient seriously to call into question the independence of the CAS in the event of the IOC's being a party to proceedings before it. The FT's message was thus perfectly clear: the CAS had to be made more independent of the IOC both organisationally and financially.
These decision made an idea or need for restructuration of CAS. And so there CAS was rectructurataed on two separate bodies: Court of arbitration for sport (hereinafter: CAS) and Inernational Councilof Arbitration for Sport (hereinafter: ICAS).
Other major changes included the creation of two arbitration divisions (Ordinary Arbitration Division and Appeals Arbitration Division) in order to make a clear distinction between disputes of sole instance and those arising from a decision taken by a sports body. Finally, the CAS reforms were definitively enshrined in a "Code of Sports-related Arbitration"(hereinafter:Code), which came into force on 22 November 1994.[16]

3.2. ORGANIZATION AND STRUCTURE OF THE COURT

The creation of the ICAS and the new structure of the CAS were approved in Paris, on 22 June 1994, with the signing of the "Agreement concerning the constitution of the International Council of Arbitration for Sport", known as the "Paris Agreement". This was signed by the highest authorities representing the sports world, viz. the presidents of the IOC, the Association of Summer Olympic International Federations (ASOIF), the Association of International Winter Sports Federations (AIWF) and the The Association of National

[14] See arbitration CAS 92/63 G. v/ FEI in Digest of CAS Awards 1986-1998.
[15] Published in the Recueil Officiel des Arrêts du Tribunal Fédéral [Official Digest of Federal Tribunal Judgements] 119 II 271
[16] was revised on 1 January 2004.

Olympic Committees (ANOC).[17] Agreement also determined the appointment of the initial members of the ICAS and the funding of the CAS.[18]
But the major and most important change was since the Paris Agreement was signed, all Olympic International Federations and many National Olympic Committees have recognised the jurisdiction of the Court of Arbitration for Sport and included in their statutes an arbitration clause referring disputes to the CAS. Also, since the World Conference on Doping in Sport, held in March 2003, the Olympic Movement and numerous governments have promulgated the World Anti-Doping Code, Article 13 of which states that the CAS is the appeals body for all international doping-related disputes.
Since 22 November 1994, the Code of Sports-related Arbitration (hereinafter: the Code) has governed the organisation and arbitration procedures of the CAS. The Code was revised in 2003 in order to incorporate certain long-established principles of CAS case-law or practices consistently followed by the arbitrators and the Court Office. The 69-article Code is divided into two parts: the Statutes of bodies working for the settlement of sports-related disputes (articles S1 to S26), and the Procedural Rules (articles R27 to R69).[19] Since 1999, the Code has also contained a set of mediation rules instituting a non-binding, informal procedure which offers parties the option of negotiating, with the help of a mediator, an agreement to settle their dispute.
The Code thus establishes rules for four distinct procedures:

- the ordinary arbitration procedure;
- the appeals arbitration procedure;
- the advisory procedure, which is non-contentious and allows certain sports bodies to seek advisory opinions from the CAS;
- the mediation procedure.

The ICAS is the supreme organ of the CAS. The main task of the ICAS is to safeguard the independence of the CAS and the rights of the parties. To this end, it looks after the administration and financing of the CAS. The ICAS is composed of 20 members who must all be high-level jurists well-acquainted with the issues of arbitration and sports law.
Upon their appointment, the ICAS members must sign a declaration undertaking to exercise their function in a personal capacity, with total

[17] The preamble of the Agreement states that *:"**with the aim of facilitating the resolution of disputes in the field of sport, an arbitration institution entitled the "Court of Arbitration for Sport" (hereinafter the CAS) has been created, and that, with the aim of ensuring the protection of the rights of the parties before the CAS and the absolute independence of this institution, the parties have decided by mutual agreement to create a Foundation for international sports-related arbitration, called the "International Council of Arbitration for Sport" (hereinafter the ICAS), under the aegis of which the CAS will henceforth be placed."***
[18] In 2003, the ICAS/CAS budget totalled CHF 7,3 million..source at www. TAS-CAS.com last visit at 2.4.2009.
[19] See Code at www.TAS-CAS-arbitration-code.mht

objectivity and independence. The ICAS exercises several functions.[20] It does so either itself, or through the intermediary of its Board, made up of the ICAS President and two vice-presidents, plus the two presidents of the CAS Divisions. Any changes to the Code of Sports-related Arbitration can be decided only by a full meeting of the ICAS and, more specifically, a majority of two-thirds of its members. The ICAS elects its own President, who is also the CAS President, plus its two Vice-presidents, the President of the Ordinary Arbitration Division, the President of the Appeals Arbitration Division and the deputies of these divisions. It also appoints the CAS arbitrators and approves the budget and accounts of the CAS.

The CAS performs its functions through the intermediary of arbitrators, of whom there are at least 150, with the aid of its court office, which is headed by the Secretary General. One of the major new features following the reform of the CAS was the creation of two divisions: an "Ordinary Arbitration Division", for sole-instance disputes submitted to the CAS, and an "Appeals Arbitration Division", for disputes resulting from final-instance decisions taken by sports organisations. Each division is headed by a president. CAS is corporated of 275 arbitrators elected from 87 states world wide.[21] The Code stipulates that the ICAS must call upon "personalities with a legal training and who possess recognised competence with regard to sport". The appointment of arbitrators follows more-or-less the same pattern as for the ICAS members: the CAS arbitrators are appointed at the proposal of the IOC, the IFs and the NOCs. The ICAS also appoints arbitrators "with a view to safeguarding the interests of the athletes", as well as arbitrators chosen from among personalities independent of sports organisations.[22] Even when the CAS arbitrators are proposed by sports organisations, the fact remains that they must carry out their functions with total objectivity and independence.

The arbitrators are not attached to a particular CAS division, and can sit on CAS panels which are composed either of a single arbitrator or of three. All arbitrators are bound by the duty of confidentiality and may not reveal any information connected with the parties, the dispute or the proceedings themselves. As of 1998. the CAS had decided over 200 cases, resulting in more than 50 arbitral awards, 10 advisory opinions and «many amicable settlements».[23]

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[20] which are listed under article S6 of the Code

[21] 2007 figure and they are appointed by the ICAS for a renewable mandatory of four years...source at www. TAS-CAS.com last visit at 3.4. 2009.

[22] See article S14 of the Code

[23] Remarks of M. Reeb, the Hague's 750th Anniversary International Law Conference, 3.July 1998, loc. cit. n.1,at p.203.
Also at www. stats2007.pdf- last visit at 24.3.2009.

STATISTIQUES / STATISTICS

TABLE 1

Tableau répertoriant les affaires soumises au TAS depuis sa création. L'année se rapporte à la date d'enregistrement des demandes uniquement et non à celle de la publication des sentences ou avis consultatifs.

This table lists the cases submitted to the CAS since its creation. The year refers only to the date when the requests were filed, not when the awards or advisory opinions were published.

Année / Year	Demandes d'arbitrage enregistrées / Requests for arbitration filed	Demandes d'avis consultatif enregistrées / Requests for advisory opinions filed	Total	Demandes d'arbitrage ayant abouti à une sentence / Requests for arbitration leading to an award	Demandes d'avis consultatif ayant abouti à un avis / Requests for advisory opinions leading to an opinion	Total
1986	1	1	2	1	1	2
1987	5	3	8	2	1	3
1988	3	9	12	0	1	1
1989	5	4	9	1	0	1
1990	7	6	13	1	0	1
1991	13	5	18	4	1	5
1992	19	6	25	12	0	12
1993	13	14	27	6	1	7
1994	10	7	17	5	1	6
1995	10	3	13	6	2	8
1996	20	1	21	16	0	16
1997	18	2	20	10	0	10
1998	42	3	45	33	2	35
1999	32	1	33	21	1	22
2000	75	1	76	60	1	61
2001	42	0	42	28	0	28
2002	83	3	86	70	3	73
2003	107	2	109	82	1	83
2004	271	0	271	178	0	178
2005	194	4	198	132	3	135
2006	204	0	204	119	0	119
2007	252	0	252	62	0	62
Total	**1426**	**75**	**1501**	**849**	**19**	**868**

Remarques:
1) le nombre de demandes d'avis consultatif a fortement baissé à partir de 1995 en raison de l'entrée en vigueur du Code de l'arbitrage en matière de sport qui pose des critères plus stricts quant à l'accès à la procédure consultative
2) le tableau englobe les affaires soumises aux chambres ad hoc du TAS.

Comments:
1) The number of advisory opinion requests dropped sharply as of 1995, when the Code of sports-related arbitration came into force setting stricter criteria for to access to the advisory proceduce.
2) The table includes the cases submitted to the CAS ad hoc divisions.

In 1996, the ICAS created two permanent decentralised offices, the first in Sydney in Australia, and the second in Denver, in the United States of America. In December 1999, the Denver office was transferred to New York. Creating them was just to easier the access, for parties domiciled in Oceania and North America, to the CAS.

Later in 1996, the ICAS created a CAS ad hoc division with the task of settling finally and within a 24-hour time-limit any disputes arising during the Olympic Games in Atlanta. This ad hoc division was composed of two co-presidents and 12 arbitrators who were in the Olympic city throughout the Games and a special procedure was created for the occasion, which was simple, flexible and free of charge. A total of six cases were solved by CAS ad hoc division in Atlanta! Since 1996, ad hoc divisions have been created for each edition of the Olympic Summer and Winter Games. Ad hoc divisions were also set up for the Commonwealth Games since 1998, for the UEFA European Championship since 2000 and for the FIFA World Cup in 2006. The success of these ad hoc divisions has played a large part in making the Court of Arbitration for Sport known among athletes, sports organisations and the media all over the world.

The new structure of the ICAS, and CAS generaly speaking, have been put to the test in 2000, when a Romanian gymnast, Andreea Raducan, who had been stripped of one of the gold medals she had won at the Sydney Olympic Games a few weeks earlier, appealed to the Swiss Federal Tribunal against a CAS award. However, the Federal Tribunal decided to dismiss the appeal without tackling

the question of the independence of the restructured CAS. It was not done until 27 May 2003 that the Federal Tribunal assessed the Court's independence in detail, having heard an appeal by two Russian cross-country skiers, Larissa Lazutina and Olga Danilova, against a CAS award disqualifying them from an event at the Olympic Winter Games in Salt Lake City. In a remarkably detailed and exhaustive judgement, the Federal Tribunal dissected the current organisation and structure of the ICAS and CAS, concluding that the CAS was not "the vassal of the IOC" and was sufficiently independent of it, as it was of all other parties that called upon its services, for decisions it made in cases involving the IOC to be considered as true awards, comparable to the judgements of a State tribunal. The Federal Tribunal also noted the widespread recognition of the CAS amongst the international sporting community, showing that the CAS was meeting a real need.[24]

3.3. CAS PROCEDURES

Code determinate arbitrability ratione materie or it is clearly said; disputes which can be submitted to CAS are any disputes directly or indirectly linked to sport. [25] Article R27 of the Code stipulates that the CAS has jurisdiction solely to rule on disputes connected with sport. Since its creation, the CAS has never declared itself to lack jurisdiction on the grounds of a dispute's not being related to sport.[26] If we talk about ratione personae or who can refer a case to the CAS opinion is, that it could be any individual or legal entity with with capacity to act may have recourse to the services of the CAS.[27]

For a dispute to be submitted to arbitration by the CAS, the parties must agree to this in writing. Such agreement may be on a one-off basis or appear in a contract or the statutes or regulations of a sports organization.

Parties may agree in advance to submit any future dispute to arbitration by the CAS, or they can agree to have recourse to the CAS after a dispute has arisen. Generally speaking, a dispute may be submitted to the Court of Arbitration for Sport only if there is an arbitration agreement between the parties which specifies recourse to the CAS.[28]

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[24] On this subject, the Federal Tribunal added: ***"There appears to be no viable alternative to this institution, which can resolve international sports-related disputes quickly and inexpensively. (…) The CAS, with its current structure, can undoubtedly be improved. (…) Having gradually built up the trust of the sporting world, this institution which is now widely recognised and which will soon celebrate its twentieth birthday, remains one of the principal mainstays of organised sport".***

[25] See article R27: «.....generally speaking, any activity related or connected to sport...»op.cit

[26] See in this regard the award delivered in the arbitration TAS 92/81 in the ***«Digest of CAS Awards 1986-1998.»***

[27] These include athletes, clubs, sports federations, organisers of sports events, sponsors or television companies.

[28] * Example of Arbitration clause to be inserted in a contract:

In principle, two types of dispute may be submitted to the CAS: those of a commercial nature, and those of a disciplinary nature.
The first category essentially involves disputes relating to the execution of contracts, such as those relating to sponsorship, the sale of television rights, the staging of sports events, player transfers and relations between players or coaches and clubs and/or agents (employment contracts and agency contracts). Disputes relating to civil liability issues also come under this category (e.g. an accident to an athlete during a sports competition). These so-called commercial disputes are handled by the CAS acting as a court of sole instance.
Disciplinary cases represent the second group of disputes submitted to the CAS, of which a large number are doping-related. In addition to doping cases, the CAS is called upon to rule on various disciplinary cases (violence on the field of play, abuse of a referee).
The major function of CAS is resolving legal disputes in the field of sport through arbitration. It does this pronouncing arbitral awards that have the same enforceability as judgements of ordinary courts. CAS procedures are to solve such disciplinary cases are generally dealt with in the first instance by the competent sports authorities, and subsequently become the subject of an appeal to the CAS, which then acts as a court of last instance. There is also a consultation procedure which allows certain organisations to request an advisory opinion from the CAS, in the absence of any dispute, on any legal

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"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."

Optional explanatory phrases:

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

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

* Example of Arbitration agreement concluded after the dispute has arisen

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."

Source at www. TAS-CAS.com last visited at 16.4.2009.

issue concerning the practice or development of sport or any activity relating to sport. The advisory opinion does not constitute an award and is not binding. Lastly, It can also help parties solve their disputes on an amicable basis through mediation, when this procedure is allowed.[29]

The advantages of CAS arbitral procedure have been described as « confidentiality, specialization of the arbitrators, flexibility, and simplicity of the procedures, speed, reduces costs and international effectiveness of the arbitration award».[30]

CAS like institucional arbitrage for sport related disputes in it's Code regulate application law on the merits of dispute. In the context of ordinary arbitration, the parties are free to agree on the law applicable to the merits of the dispute. Failing such agreement, Swiss law applies. In the context of the appeals procedure, the arbitrators rule on the basis of the regulations of the body concerned by the appeal and, subsidiarily, the law of the country in which the body is domiciled.

An award pronounced by the CAS is final and binding on the parties from the moment it is communicated. It may be enforced in accordance with the New York Convention on the recognition and enforcement of arbitral awards, which more than 125 countries have signed.[31]

Judicial recourse to the Swiss Federal Tribunal is allowed on a very limited number of grounds, such as lack of jurisdiction, violation of elementary procedural rules (e.g. violation of the right to a fair hearing) or incompatibility with public policy.[32]

As it existing just for 17 years CAS take very important place in international sport also as in world arbitrage law. In time when number of sport disputes is in constantly progress CAS need to continue it's mission resolving sport related disputes and contribute prosperity of sport and law.

4. CONCLUSION

Since the first Olympics of ancient times to the present day sport, as a human activity, has undergone great changes both regarding the kinds of sports and the rules of competition in particular sport disciplines. Such changes in sport competitions have been conditioned by various circumstances, but the greatest change was the professionalization of sports with enormous amounts of money flowing into all branches of sport today. Most simply said, sport today is big business with many interested parties and with a lot of money involved.

[29] www.TAS-CAS.com last visit at 7.4.2009.
[30] Remarks of M. Reeb, the Hague's 750th Anniversary International Law Conference, 3. July 1998.,loc.cit. n.1.at p.200.
[31] Croatia also has signed this convention; see at «NN MU» 4-94
[32] See Art. 190 of Switzerland's Federal Code on Private International Law

Law as the human need for the protection of all human values and of the society as a whole has also developed from very simple solutions to the present day legal standards. To some extent, one could even say that law resembles sport, especially regarding their common desire to achieve the best possible results. This comparison inevitably implies that both law and sport must have rules set in advance for the satisfaction of their needs and goals. Participants at various sport events and individuals submitted to a certain rule or law face the same problem: how and to what extent do they obey these rules? Problems arise when rules of law or sport are being violated or when disputes resulting from these violations are being resolved.

Sport and law have different rules for the same or similar events, and thus they resolve the same situations differently. Such dual legislation and dual jurisdiction of various organs, including the consequences of dual solutions of the same case largely contribute to legal insecurity. Great numbers of athletes, large amounts of money, great interest in sports and at the same time insecurity and uncertainty in resolving disputes that inevitably arise in them have made it necessary to find a solution for these problems.

Since the beginnings of both law and sport, arbitration has always been present in the shaddow, as a form of help for the law and for the state courts as executive bodies. Arbitration has come up as salvation in resolving both disputes in sports and disputes in law because it has brought together and reconciled two different views of the same situation. It can be concluded without any doubt that today arbitration is recognized as the best choice for resolving sports disputes.

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