The Court of Arbitration for Sport for the XXII Olympic Games

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Reference

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With seventeen days of competition, 102 sporting events, 2925 athletes, and 92 nations represented, the XXIII Winter Olympic Games (OG) in PyeongChang, South Korea, were likely to involve disputes. The Court of Arbitration for Sport (CAS) established two special divisions designed to address Olympic competitions, following the practice of previous editions of the OG. The “Ad Hoc Division” addresses sport-related disputes while the “Anti-doping Division” (CAS ADD) adjudicates doping claims. This Insight analyzes the creation and functioning of these Divisions and offers an overview of the decisions issued at the PyeongChang Games.

The Divisions in Context

In the early 1980s, the increase in international sport-related disputes,[1] coupled with the absence of any special adjudicatory authority, prompted the International Olympic Committee (IOC) to institute an arbitration system.

The CAS, a permanent judicial body based in Lausanne, dealt primarily with sport-related issues until its mandate was extended to international anti-doping disputes in 2003 following the adoption of the World Anti-Doping Code. However, the specific organizational requirements of the Olympic Games call for special procedures designed to settle disputes within a very short timeframe.

A dedicated structure of the CAS, functioning in situ at the 1996 Olympic Games in Atlanta, was created in the form of the Ad Hoc Division. The same mechanism has been replicated with each subsequent edition of the OG. Similar concerns led to the creation of an additional division during and after the 2016 Games in Rio de Janeiro, dealing with anti-doping disputes. The need for efficiency and speed resulted in succinct and clear rules of procedure for these dispute mechanisms.[2]
Mission and Jurisdiction

The CAS has exclusive jurisdiction for any dispute that arises on the occasion of, or in connection with the Games pursuant to Rule 61.2 of the Olympic Charter. During the Games and during a period of ten days preceding the Opening Ceremony, this competence lies with the Ad Hoc Division.[3] Among the six cases submitted to the Ad Hoc Division during the PyeongChang Games,[4] four applications filed by Russian athletes and members of their entourage against the IOC involved jurisdictional questions.[5] The arbitrators found that they had no jurisdiction in two of these applications because the dispute arose more than ten days before the opening ceremony.[6] Even though the two other disputes were also outside the jurisdiction of the CAS Ad Hoc Division, the IOC “accepted” the arbitrators’ jurisdiction to decide on the merits.[7]

During the OG, the CAS anti-doping division,[8] upon delegation of the IOC Executive Board, adjudicates alleged violations of the Anti-doping Code. At other times, these questions are handled by anti-doping institutions.[9] In Korea, the CAS ADD registered four cases relating to violations of anti-doping rules promulgated by the IOC or any of the International Federations[10] and confirmed that Anti-Doping Rule Violations (ADRV) were committed in each of them.

Structure of the Divisions

Each division is headed by a president and a co-president.[11] The president selects arbitrators to sit on the panels adjudicating specific disputes. The Ad Hoc Division in PyeongChang was comprised of nine arbitrators and the CAS ADD had six[12] selected from lists drawn up by the Board of the International Council of Arbitration for Sport.[13] These arbitrators come from varying legal traditions and are all experienced lawyers, judges, or professors, specialized in sports law and arbitration, with several having a prior career in sport. A Court office, led by the CAS secretary general, receives the written applications and supports the Divisions.[14]

Procedure Before a Panel of Arbitrators

From the moment the Court office registers the application, the president of the division constitutes a panel of arbitrators. The panel is usually composed of three arbitrators, but the president may, at her discretion, appoint a sole arbitrator if it appears appropriate under the circumstances. The panel must issue its decision within twenty-four hours of receiving the application.[15] During the PyeongChang Games, single arbitrators were appointed in all cases submitted to the CAS ADD.

If the president finds that two cases are linked, she may submit the cases to the same panel. The hearings may also be joined.[16] The first two applications filed by the Russian athletes and the members of their entourage during the PyeongChang Games were submitted to the same panel of arbitrators and their hearings were joined. A common panel also examined the third and fourth cases concerning the Russian appeal.[17]

Proceedings before the two divisions are normally twofold: an exchange of written statements followed by hearings. However, panels may decide to dispense with the hearing and rule solely on the basis of written submissions. The panel for the third and fourth Russian applications ruled on the basis of the written submissions to deal with jurisdictional issues.[18]
Panels may make either a final or a partial award, and the latter may involve a referral to the regular CAS procedure for any unresolved parts.[19] In PyeongChang, the Ad Hoc Division rendered only final awards. By contrast, the CAS ADD made partial awards in its four anti-doping cases.[20] It issued provisional suspensions, which disqualified the athletes from the Games. The procedure on the merits of the cases will continue after the Games and the same panels will give final awards. CAS ADD final decisions may be appealed to the CAS Ad Hoc Division or the CAS after the end of the Olympic Games.

Parties may be represented or assisted in proceedings before the Ad Hoc Division and CAS ADD.[21] The CAS provides a pool of pro bono lawyers for athletes. The Seoul Bar Association made a pool available during the PyeongChang Games.

The Olympic Games and Russian Doping

The Ad Hoc Division and the CAS ADD acted in a specific context, navigating both geopolitical affairs and doping issues. In December 2017, the IOC banned Russia from participating in the 2018 Olympic Winter Games. This ban occurred after two IOC disciplinary commissions investigated the results of the 2016 McLaren Report[22] accusing Russia of a massive state-sponsored doping program between 2011 and 2015.

The Oswald Commission[23] investigated alleged doping violations by Russian athletes at the 2014 Olympic Winter Games in Sochi. It found forty-three Russian athletes ineligible to participate in any capacity in any future Olympic Games. The Commission also decided to disqualify them from the events in which they participated in Sochi, as well as withdraw the medals of those who had won. Forty-two of these athletes successfully appealed the IOC’s decision before the CAS.[24] The CAS annulled the sanctions and reinstated the athletes’ individual results achieved in Sochi in twenty-eight cases.[25] The CAS deemed the evidence collected insufficient to establish an anti-doping rule violation. Nonetheless, these athletes were not invited to participate in the PyeongChang Olympic Games, an issue they appealed before the Ad Hoc Division of the CAS at the beginning of the Games. As noted above, in two cases the panel of arbitrators found that it lacked jurisdiction and in two other cases the arbitrators dismissed the claims on the merits.[26]

The Schmid Commission focused on the so-called “Russian Institutionalized Doping Conspiracy,”[27] particularly in the context of the Sochi Games. Based on its findings, the IOC Executive Board suspended the Russian Olympic Committee (ROC) from the 2018 Winter Olympic Games, allowing the invitation of individual Russian athletes as “Olympic Athletes from Russia” and the possibility of lifting the suspension for the Closing Ceremony provided that the decisions taken by the IOC were respected and implemented by both the ROC and the invited athletes and officials.[28] A panel[29] listed athletes, support staff, and officials that would be invited to participate under the Olympic flag and a banner bearing the name “Olympic Athletes from Russia.” The IOC suspension decision indicated criteria for the selection of such persons and established the Olympic Athletes from Russia Implementation Group (OARIG) to assess the behavior of the delegation during the Games. Among other things, the Implementation Group mentioned in its report that Anti-Doping Rule violations (ADRV) were committed by two Russian athletes,[30] referring to two decisions rendered by the CAS ADD.[31] The OARIG qualified these violations as “individual and isolated, and did not show a pattern of systematic organized doping activity.”[32] However, after receiving the report, the IOC unanimously decided not to lift the suspension for the Closing Ceremony. Russia was
eventually reinstated as part of the Olympic family three days after the closing ceremony of the Olympic Games in PyeongChang.

**Concluding Remarks**

The Ad Hoc Division and the Anti-doping Division played an important role in the conduct of the PyeongChang Winter Olympic Games. While their primary function is the adjudication of sports-related disputes, they also play a preventative role by ensuring compliance with the rules. The events at this Winter Olympics, in particular, have brought into sharp focus the need for these mechanisms, and their capacity to operate in an efficient and flexible way. Perhaps, this is a model that could be replicated in other domains.

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[4] Results to be compared to the twenty-eight procedures registered up until the close of the Rio Olympic Games.


[6] CAS OG 18/04, supra note 5; CAS OG 18/05, supra note 5.

[7] The arbitrators found that the IOC decision did not constitute a sanction but rather an eligibility decision, and that there was no evidence the special commissions in charge of the selection of the Russian athletes improperly exercised their discretion CAS OG 18/02 and CAS OG 18/03.


[11] Ad Hoc Division Rules, supra note 2, art. 4; Anti-doping Division Rules, supra note 2, art. 4.


[14] The offices were led by the CAS Secretary General Matthieu Reeb.


[16] CAS OG 18/02, supra note 5; CAS OG 18/03, supra note 5.

[17] CAS OG 18/04, supra note 5; CAS OG 18/05, supra note 5.

[18] Id.

[19] Anti-doping Division Rules, supra note 2, art. 20.


[21] See Anti-doping Division Rules, supra note 2, art. 8.


[26] CAS OG 18/02, supra note 5; CAS OG 18/03, supra note 5; CAS OG 18/04, supra note 5; CAS OG 18/05, supra note 5.

[27] See McLaren, supra note 22.


[29] The Invitation Panel was chaired by Valerie Fourneyron, the Chair of the Independent Testing Authority.

