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Sports Law Arbitration by CAS: is it the Same as International Arbitration?

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By the early 1980s, a pressing need had emerged to find an ultimate, authoritative and neutral solution to judicial disputes among athletes, international and national sports federations, national Olympic committees, and Olympic and other games organizers. The Olympic Movement decided to create a final and binding court of arbitration for all sports-related disputes, including doping cases.

The Court of Arbitration for Sport ("CAS") was established April 6, 1983 at an International Olympic Committee ("IOC") session in New Delhi,[1] and since that time has dealt with sports-specific disputes of a private nature. The court provides a forum for the world's athletes and sports federations to resolve their disputes through a single independent and accomplished sports adjudication body. The court has developed the ability to apply consistently the rules of different sports organizations and the world-wide rules of the Olympic Movement Anti-Doping Code.[2] The CAS is in the course of developing universal principles that will some day be widely recognized as the *lex sportiva*.[3]

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1. *See* Matthieu Reeb, *Digest of CAS awards* 1986-1998, (Staempfil Eds Berne (1998) XXIII-XXXI); Hon. Justice Kavanagh, *The Doping Cases and the Need for the International Court of Arbitration for Sport*, 22 UN SWT 721 (1992).

2. Olympic Movement Anti-Doping Code 1999 and Explanatory Memorandum Concerning the Application of the Olympic Movement Anti-Doping Code, *available at* http://www.olympic.org.

3. A term coined by the Acting General Secretary of CAS, Matthieu Reeb, at the time of publishing of the first digest of CAS decisions stretching over the period from 1983-1998.

Despite the growth and success of the CAS, some International Federations ("IFs")[4] have not agreed to use it for dispute settlement. The International Amateur Athletic Federation ("IAAF"), at its Athens Congress in 1982, created what it termed the "Arbitration Panel," intended to be the final and binding internal sports court for disputes in athletics. The IAAF Arbitration Panel started its jurisprudential activity in 1985, while the CAS followed suit one year later. By far, the more significant body is the CAS, which has decided twenty-six Olympic cases since 1996 and more than ten times that number of cases outside of the Olympic Games. The IAAF, on the other hand, decided fifteen cases through the end of 1999.[5] At its Congress in Edmonton, Alberta, Canada in August 2001, the IAAF passed a resolution adopting the CAS.[6]

I. FUNCTION OF CAS

The CAS functions independently from all sports organizations. The Code of Sports Related Arbitration[7] (the "Code") is applied to settle sports-related disputes through arbitration. The Code is divided into two parts: Statutes of the Bodies Working for the Settlement of Sports-related Disputes (S1-S26) and Procedural Rules (R27-69). Rule 58 directs a CAS panel to decide a dispute "according to the applicable regulations and the rules of law chosen by the parties."[8] Where the parties make no such choice, the dispute is resolved "according to the law of the country in which the federation, association or sports body which has issued the challenged decision is domiciled." In this manner, the CAS renders decisions on the basis of applicable regulations in the sport or federation concerned. In so doing, the CAS develops universal principles of sports law while contributing to the development of a global system of dispute resolution that is consistent with the needs of global sports.[9]

The CAS operates using two different proceedings: (1) ordinary arbitration proceedings; and (2) appeal arbitration proceedings. Additionally, an Ad Hoc Division ("AHD") was created by the governing

4. FIFA, IAAF.

5. *See* Lauri Tarasti, *Legal Solutions in International Doping Cases Awards by the IAAF Arbitration Panel 1985-1999* (Milan: SEP Editrice, 2000) (discussing the work of IAAF Arbitration Panel with contrasting annotations to the CAS jurisprudence).

6. *See* http://www.eaa-athletics.ch/iaaf01801.htm (last visited Dec. 31, 2001).

7. Code, at http://www.tas-cas.org/english/code/fracode.asp (last visited Nov. 17, 2001).

8. For an example of such a case, see the doping case of tennis professional Petr Korda, where the panel applied English law. *See ITF v. Korda*, TAS 99/A/223 (unpublished).

9. The desire to have one system of rules applicable to all sports is acknowledged as the main task of the newly established World Anti-Doping Agency ("WADA"), to try and harmonize the doping rules and regulations in different sports, federations and countries. The universal principles and dispute-specific application that has been developed by the CAS has and will continue to be an integral part in aiding WADA to achieve its goal.

body of the CAS, the International Council of Arbitration for Sport ("ICAS"), pursuant to Article S6.8 of the Code. Commencing with the Centennial Olympic Games in Atlanta, the AHD has operated at each of the summer and winter Olympic Games.[10] The AHD follows the rules set out in the Code and special additional rules created for the Olympic Games.[11]

The CAS provides a unifying institution that can help ensure fairness and integrity in sport through sound legal control and the administration of diverse laws and philosophies. This article intends to highlight international arbitration law issues that arose in the jurisprudence of the CAS through its Ad Hoc Division at Sydney.[12] Although these issues arose in a sports related context, they nonetheless illustrate the universality of many issues present in international arbitration law.

II. CAS JURISPRUDENCE AND THE ISSUES OF INTERNATIONAL ARBITRATION LAW

The CAS has been working toward the development of a worldwide legal system for sport. The jurisprudence of the pre-games Oceania division of CAS led to an application to the local court of New South Wales.[13] The court decision and the jurisprudence of the AHD reflect the maturing nature of the CAS and how the issues in sports law parallel those in international arbitration law. The jurisprudence raised issues: (1) surrounding the seat of the arbitration; (2) the impact of an award on an affected third party; (3) the jurisdiction of the panel; (4) the inquisitorial principle in connection with the conduct of a hearing; (5) the impact of national court decisions on an international arbitration panel; (6) the relation of CAS decisions to national law; and (7) questions of judicial interpretation, including burden of proof and appropriate sanctions. This article turns to each of these topics in order

10. The author was an arbitrator with the AHD at the Nagano Winter Games in 1998 and the Sydney Summer Games in September 2000. Richard McLaren, *A New Order: Athletes' Rights and the Court of Arbitration at the Olympic Games*, Olympica, Volume VII at *3 (1998) (detailing the author's experience during the Nagano Winter Games); Richard McLaren, *The Court of Arbitration for Sport: an Independent Arena for the World's Sports Disputes*, 35 VAL. U. L. REV. 379 (2001) (detailing the author's experience during the Sydney Games).

11. For a discussion of the operation of the AHD at Sydney, see Michael J. Beloff, QC, *The CAS Ad Hoc Division At The Sydney Olympic Games*, 1 INT'L SPORTS L. REV.—(2000), (London: Sweet and Maxwell, 2001).

12. The jurisprudence of CAS at Sydney is published in booklet form. Matthieu Reeb, ed., *CAS Awards-Sydney 2000: The decisions delivered by the ad hoc Division of the Court of Arbitration for Sport during the 2000 Olympic Games in Sydney*, (Lausanne: ICAS, 2000).

13. A state within the Commonwealth of Australia that served as the location of the Summer Games in September, 2000.

to illustrate the universality of the issues arising in international sports law arbitration.

A. The Seat of Arbitration

Although R28 of the Code provides for the seat of arbitration to be in Lausanne, Switzerland, it allows for the hearing to be held elsewhere. CAS is thus located in Lausanne but has hearing facilities in New York (formerly Denver), United States of America and provides for an Oceania Registry located in Sydney, Australia.[14]

The seat of an arbitral tribunal has two primary impacts. It is used as the link between the arbitration and a set of municipal rules governing the arbitration. It is also used as the national origin of an award for purposes of legal enforcement when the parties are not compliant.

All disputes submitted to the CAS, whether from the AHD, the Ordinary, or Appeals Arbitration Divisions of CAS, are governed by the same municipal law of Switzerland. Therefore, there is a uniform regime in terms of both applicable rules and municipal rules to the arbitration proceedings[15] regardless of where the hearing takes place.

The Swiss municipal rules on appeal from a CAS decision are consistent with the development of international arbitration generally. Chapter 12 of the PIL Act requires the arbitrators to grant due process (Art. 182 paragraph 3). In the same Chapter, Article 190 sets out the parties' remedies against an award.[16]

The seat of the arbitration in Lausanne is intended to provide a uniform legal framework for all CAS arbitrations wherever they may hear a dispute. The choice of Sydney as the place of the Oceania hearings implies that local

14. The United States Anti-Doping Agency ("USADA"), which became the national sport drug testing agency in the USA, adopted a procedure effective October 1, 2000 requiring the use of North American-based CAS arbitrators as the adjudicators of the doping rules in the USA, effective October 1, 2000. http://www.wada-ama.org; http:www.usantidoping.org.

15. Provided one party is not a Swiss domiciliary, the effect of the seat of arbitration being Switzerland is to make the Swiss Private International Law of December 18, 1987 (in force as of January 1, 1989) apply, in particular Chapter 12 Article 176 and the subsequent PIL Act. Therefore, the CAS decision is final and binding and shall not be subject to further review or appeal except as permitted by the PIL or the Swiss Judicial Organization Act. In matters of procedure during the course of the arbitration hearing, the Code vests the Presidents of the various Divisions with powers to appoint arbitrators, provide interim relief, and remove arbitrators as permitted by Chapter 12 of the PIL Act. Therefore, it is unlikely that court assistance form Switzerland will be required during the arbitral process.

16. Grounds for vacating the award are found when the arbitral tribunal: (1) was not properly constituted; (2) had no jurisdiction; (3) ruled beyond the claims submitted to it; (4) failed to decide one of the claims; (5) failed to grant due process; or (6) rendered an award irreconcilable with public policy. Swiss Federal Tribunal, No. 5P.427/2000 (Dec. 4, 2000). The specific grounds used in the appeal from the Andreea Raducan AHD decision were based on due process and public policy concerns. *Id.*

courts within the state of New South Wales have jurisdiction over the award of the arbitrators.

The Oceania division heard a large number of Australian Olympic team selection cases leading up to the Sydney Games. Perhaps the most significant jurisprudential issue arising out of the Games came from one of these decisions, prior to the opening ceremonies and the subsequent decision of the New South Wales Court of Appeal.[17]

Raguz and Sullivan were two Australian judokas seeking nomination as the Australian representative for the Olympic Team in the women's under fifty-two kilogram category. Ms. Raguz was selected by the governing body for the sport in Australia. Ms. Sullivan unsuccessfully challenged the selection through the internal appeals procedure provided by the sports governing body. On appeal to the CAS through the Oceania Registry, Ms. Sullivan named the sports body and its adjudication panel as the respondent and Ms. Raguz as an affected third party. The CAS panel of the Oceania division overturned the decision of the sports governing body adjudication panel and awarded the selection to Ms. Sullivan. Ms. Raguz sought to challenge the CAS award by seeking leave to appeal to the courts of New South Wales ("NSW") on a question of law arising out of the award as a matter of procedure. The application was then removed to the Court of Appeal. The NSW Court concluded that an agreement existed between the parties that excluded any right of appeal. Therefore, pursuant to the Commercial Arbitration Act,[18] the NSW Court had jurisdiction to review the decision only if the dispute involved a domestic arbitration agreement entered into prior to the commencement of arbitration proceedings. Ultimately, the court held that the unqualified choice of Lausanne as the "seat" of all CAS arbitrations within the scope of the arbitration agreement indicated that the agreement did provide for arbitration in a country other than Australia. Accordingly, this was not deemed a domestic arbitration agreement.[19]

As with all international arbitrations, whether a municipal court has jurisdiction to review an arbitration award often revolves around the location of the seat of arbitration. The NSW Court upheld the seat as the legal connection between the arbitral tribunal, the parties, and the applicable municipal law. In effect, it held that the parties had excluded a review of the

17. *See* Raguz v. Sullivan, 2000 NSWCA 290; Reeb, *supra* note 12, at 185 (offering a reproduction of the *Raguz* decision).

18. Commercial Arbitration Act, 1984 No. 160, as amended by Act 1990 No. 100, *available at* http://www.austlii.edu.au/au/legis/nsw/consol_act/ca1984219.txt (last visited Sept. 21, 2001).

19. *Raguz*, 2000 NSWCA 290, at 109.

decision in Australia under its municipal law regime and had acknowledged Switzerland as the national legal system with jurisdiction in aid or control of arbitration.[20]

The NSW decision demonstrates the importance of the CAS in providing Lausanne, Switzerland as the exclusive seat of arbitration for all of their proceedings. Such a provision does not, however, detract from the ability of CAS arbitrators to apply the appropriate law.[21]

B. Affected Party

The CAS functions outside of all sports organizations in order to settle through arbitration, sports-related disputes. The Code in S1 provides for arbitration "only in so far as the statutes or regulations of the said sports bodies or a specific agreement" establish the CAS jurisdiction.[22] Thus, CAS arbitration, as with most arbitrations, is founded upon contractual agreement. This foundation raises an issue regarding the extent to which a party who is not an applicant or a respondent is affected by an arbitration award. The effect that an arbitration award has on third parties is a complex issue. It is clear, however, that arbitration awards can have serious consequences on parties that are not directly involved in the proceedings. The Code and Special Rules for the Games provide that the Panel has full control over the proceedings and can organize the procedure as it deems appropriate.[23] Therefore, in order to address this issue, the CAS developed the practice of serving notice to interested third parties at the Sydney Games. The *Raguz* case,[24] the *Perez* trilogy,[25] and the two related *Miranda* decisions[26] illustrate the extent to which affected parties are bound by a CAS decision.

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20. Beloff, *supra* note 11, at 7 n.17.

21. As mentioned above, R58 directs a CAS panel to decide the dispute "according to the applicable regulations and the rules of law chosen by the parties"; and where the parties make no such choice then the dispute is resolved "according to the law of the country in which the federation, association or sports body which has issued the challenged decision is domiciled." Code of Sports Related Arbitration, § R58, *available at* http://www.tas-cas.org/english/code/indexR.asp (last visited Sept. 21, 2001). Therefore, in the *Raguz* selection arbitration the relevant rules where those of the Australian Sports Federation as interpreted and applied under Australian law.

22. *Id.* at 51. Most of the world's sports bodies have included such a statute or regulation into their rules except for the IAAF and FIFA.

23. *Id.* at R44.3; Special Rules for the Games, § 15(b), *available at* http://www.tas-cas.org/english/rules/textes/reg;ementJO.pdf (last visited Sept. 21, 2001).

24. *Raguz*, 2000 NSWCA 290.

25. United States Olympic Comm. v. Int'l Olympic Comm., Arbitration CAS Ad Hoc Division (O.G. Sydney 2000) 001, award of Sept. 13 (*"Perez #1"*); Perez v. IOC, Arbitration CAS Ad Hoc Division (O.G. Sydney 2000) 005, award of Sept. 19 (*"Perez #2"*); In re Perez, Arbitration CAS Ad Hoc Division (O.G. Sydney 2000) 009, award of Sept. 25, 2000 (*"Perez #3"*).

26. Miranda v. IOC, Arbitration CAS Ad Hoc Division (O.G. Sydney 2000) 003, award of Sept. 13, 2000 (*"Miranda #1"*); Miranda v. IOC, Arbitration CAS Ad Hoc Division (O.G. Sydney 2000) 008, award of Sept. 24, 2000 (*"Miranda #2"*).

In *Raguz*, when the selection dispute proceeded to CAS Oceania via the application of Ms. Sullivan, Ms. Raguz was named as an affected party. In the subsequent appeal, the NSW Court held that Ms. Raguz had been a party affected by the interlocking contractual agreements that existed between the athletes and their sports federation.[27] As such, the CAS award was binding upon Ms. Raguz.

The *Perez* and *Miranda* cases revolved around Article 46 of the Olympic Charter. Under this provision the Cuban Olympic Committee ("COC") attempted to exclude both Perez and Miranda from competition. Accordingly, the disputes were brought before CAS.

In the first case of the *Perez* trilogy, Perez appeared as a witness but was not served as an affected party. This case was decided against the United States Olympic Committee ("USOC"), who had appeared on behalf of Perez. However, because Perez had not been named as a party to the arbitration, he was allowed to apply to the court and have his case heard on the merits. This resulted in *Perez #2*, which addressed many of the issues presented in *Perez #1* and raised the question of res judicata.[28] Ultimately, the court ruled in favor of Perez. It should be noted, however, that had Perez been served as a party to *Perez #1* the court might never have heard the case on its merits in *Perez #2*.[29] As it stood, Perez was not an affected party in the *Perez #1* case, where the only parties were the USOC and the International Olympic Committee ("IOC"). In contrast, the COC had been served as an affected third party but declined to attend *Perez #1* and *Perez #2*. Eventually, the COC recanted its decision not to attend the previous two hearings and brought the issue of Article 46 of the Olympic Charter back to a differently constituted Panel of the AHD. In the final decision of the *Perez* trilogy, the Panel held that the COC was estopped from disputing that it was a party to *Perez #2*.[30]

The *Miranda* decisions addressed issues similar to those found in the *Perez* trilogy. *Miranda #1* was brought before the court by the Cuban-Born Canadian diver, Miranda, and the case was decided against him. However, after the CAS ruling in *Perez #2*, the Canadian Olympic Association

27. *Raguz*, 2000 NSWCA 290.

28. Under the principles of res judicata, a matter that has been previously determined shall not be heard again.

29. This was precisely the stance that the AHD took in Perez #3.

30. *Perez #3*, Arbitration CAS Ad Hoc Division (O.G. Sydney 2000) 009 at 28. The panel held that the Cuban NOC had been aware of the hearing, and indeed had made written representations to the panel. In any event, the panel determined that a complaint questioning whether the COC had been given the opportunity to be heard should have been directed to the Swiss Federal Tribunal and not to the CAS.

("COA") raised a subsequent application that became *Miranda #2*. The facts between *Miranda* and *Perez* were sufficiently different that the AHD found against the COA.

The variety of applications brought before the AHD by these cases concentrated on Article 46 of the Olympic Charter and raised issues about the principle of res judicata and estoppel. In this regard, these decisions suggest that the court will entertain an application by a party even when the application addresses issues it has already heard. However, as demonstrated in *Perez #3*, so long as an interested party has received notice and had an opportunity to participate in the arbitration proceedings, the court's award will be binding upon that party, and they will be estopped from bringing a further application.

The extent to which a CAS award binds an affected third party strikes at the very heart of the contractual underpinnings of CAS arbitration. Although the court addressed the matter on an ad hoc basis, it will require further refinement of the Code and the related specific Games rules to address the problem more completely. In the meantime, the practice of CAS and its jurisprudence, supported by the New South Wales Court of Appeal, will remain the benchmarks in resolving the affected third party issue.[31]

C. Jurisdiction of the panel

Article 1 of the CAS Arbitration Rules for the Games of the XXVII Olympiad in Sydney ("the Olympic Rules")[32] provided for disputes arising in Australia between September 5 and October 1, 2000, (which are covered by Rule 74 of the Olympic Charter and by the arbitration clause inserted into the entry form for the Olympic Games)[33] to be resolved by the CAS AHD in Sydney. The AHD also has jurisdiction over the IFs at the Games by consideration of CAS arbitration clauses in their bylaws or regulations. However, the notable exception is the IAAF, which was, rather ironically, involved with three of the fifteen cases[34] before the AHD in Sydney.

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31. This is a point that The Law Commission for England and Wales, *Working for Better Law*, addresses in Part XIV of their report at http://www.lawcom.gov.uk/library/lc242/part-14.htm#para14.14, at 14.15, 14.16. The Commission notes the problem of binding third parties to arbitration awards when they have not agreed to be so bound. *Id.* The Commission entertains the idea that "an arbitration agreement . . . could operate as a procedural benefit to [a] third party and could also constitute a procedural condition on the third parties right to enforce the substantive promise." However, the Commission ultimately put aside this possibility, noting the difficulties arising out of the contractual nature of arbitration agreements. *Id.*

32. These rules are issued in connection with the Games to augment the Code and are promulgated by ICAS pursuant to powers conferred in Article S6.8 of the Code. OG Rules, *available at* http://www.tas-cas.org.

33. Beloff, *supra* note 11, for the precise content and discussion of the arbitration clause.

34. Baumann v. IOC, Arbitration CAS Ad Hoc Division (O.G. Sydney 2000) 6, award of Sept. 22, 2000; Segura v. IAAF, Arbitration CAS Ad Hoc Division (O.G. Sydney 2000) 013, award of Sept. 30, 2000; Melinte v. IAAF, Arbitration CAS Ad Hoc Division (O.G. Sydney 2000) 15, award

The IAAF Arbitration Panel is an internal sport tribunal, with its jurisdiction directed only at disputes inside the IAAF, including determinations of the Games' rules by member federations and their application to athletes. The jurisdiction of the IAAF Arbitration Panel came into conflict with that of the CAS AHD at the Sydney Games.

Dieter Baumann is a German middle-distance runner and was the Olympic 5000 meter champion in 1992 at Barcelona. He was cleared of an alleged doping infraction by his IAAF member federation the German Athletic Federation ("DLV"). He was, therefore, properly accredited for participation in the Sydney Games by the IOC. The IAAF believed that the DLV had made an erroneous decision related to doping control, and brought the case before its Arbitration Panel sitting in Sydney.[35] On September 18, 2000, the Panel found that a doping infraction occurred and applied the sanction of a two-year ineligibility to Baumann pursuant to Rule 60.2 of the IAAF Rules, thereby overruling the national decision. At the request of the IAAF, the IOC removed the athlete's accreditation. Baumann, who had not been a party to the IAAF arbitration, brought an appeal to the AHD, which had jurisdiction over the athlete by virtue of the Games entry form. The IAAF raised a preliminary objection, disputing the jurisdiction of CAS based on the absence of a CAS arbitration clause in its constitution and because its own panel had just made a final and binding determination.

The CAS AHD dismissed the objection and retained jurisdiction over the accreditation decision. Both the IOC and the IAAF, being members of the Olympic movement, were deemed by the panel to have subscribed to the arbitration clause in the Olympic Charter under Article 74. Upon hearing the decision, the IAAF proceeded to withdraw from the proceedings and walked out of the hearing room.

The AHD, having established jurisdiction over the involved parties, addressed a preliminary claim that this case could not be heard because it would be contrary to the principle of res judicata. The panel dismissed this contention, noting that neither Baumann nor the IOC had been a party to the IAAF arbitration and that the issues in dispute had been expanded. Therefore, the AHD was able to examine the merits of Bauman's case. Despite reaching this determination, the court did not interfere with the IAAF's previous decision once it was satisfied that the IAAF Arbitration Panel had dealt with all the evidence. The AHD effectively operated as an

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of Sept. 29, 2000.

35. The jurisdiction to so act arises out of Rule 21.3(ii) and 59.2 of the IAAF Constitution. Tarasti, *supra* note 6, at 171 and Bevilacqua 25/11/96, IAAF v. Federazione Italiana di Atletica Leggera FIDAL at 143.

appeals court over the IAAF. It held the removal of Baumann's accreditation valid and consequently the athlete was no longer able to compete in the Games.[36]

The AHD relied upon the decision in *Baumann* in resolving a dispute brought before the court by Melinte. Ms. Melinte was the world record holder in the Women's Hammer Throw and was accredited by the IOC to compete in the Games upon her arrival in Sydney. However, Melinte had tested positive for nandrolone on June 7, 2000. On September 17, while she was at the games, the IAAF requested an explanation of the result from the Romanian Athletic Federation. Thereafter, the IAAF provisionally suspended Melinte and removed her from competition the morning she was to compete. The IAAF had exercised its ability to suspend following the A sample positive.[37]

The case raised many of the issues addressed in the *Baumann* case, and the AHD relied upon its previous determinations in support of their jurisdiction to resolve the dispute. Although the IAAF still refused to be recognized as a party to the dispute, it nonetheless agreed to participate in the hearing by answering questions, unlike the scenario in *Baumann.* The AHD rejected an attempt to distinguish the jurisdictional issues in this dispute from those in *Baumann* on the grounds that the IOC did not revoke Melinte's accreditation. It dismissed the claim, indicating that the athlete had been removed from the field of play in Stadium Australia, which constituted a dispute arising during the Games within the meaning of Article 74 of the Olympic Charter. The primary issue raised by Melinte was that she had been denied due process. The court concluded that the information put before the AHD by Melinte would have been the same information provided to the IAAF. Ultimately, the applicant's submissions did not persuade the Panel, and it dismissed the application. However, the court noted that its decision was not to be viewed as a determination of whether Melinte had in fact committed a doping offense. Rather, the decision only denied the applicant emergency relief with respect to her participation in the Games. Accordingly, the IAAF procedures would have to be followed, first within the member's process and perhaps subsequently before the IAAF Arbitration Panel.[38]

The AHD preserved the jurisdiction of the IAAF Arbitration Panel while finding that it had jurisdiction to determine the issue of emergency relief. Essentially, the autonomy of each arbitration body remained. The

36. *First Class Verdict of Guilt*, Frankfurter Allgemeine Zeitung, Sept. 23, 2000; *It Is Not Over, It Just Started*, Saarbrucker Zeitung, Sept. 23, 2000 [hereinafter *German Paper*].

37. Rule 59.2 IAAF Rules and Regulations (allowing for the suspension of an athlete where the IAAF believes that a National Federation failed to impose the proper suspension before the case has been resolved at the national level as seen in *Baumann*).

38. Rule 59.2 IAAF Rules and Regulations (granting the IAAF power to put a case before its own arbitration panel when it disagrees with a National Federation decision).

AHD asserted its control over the dispute arising in connection with the Games, although the Panel ultimately found no grounds to intervene to grant the athlete's request.

The final case dealing with the jurisdiction of the AHD and the IAAF involved Segura, the Mexican race walker in the twenty kilometer event. The case involved the application of the Games' rules with respect to infractions leading to a disqualification. Some fifteen minutes after Segura apparently won the race and while he was being congratulated on a mobile phone by the President of Mexico, he was disqualified for committing infractions during the course of the event. This time, the IAAF was a full participant before the AHD and argued its case.

The AHD held that the relevant IAAF rules do not provide that disqualifications are invalid if they are not communicated immediately. Accordingly, the AHD rejected Segura's argument that the way IAAF officials had dealt with the consequences of the three warnings violated his rights.

Overall, the IAAF appeared to come full circle in recognizing the jurisdiction of the AHD. They went from a refusal to participate on the grounds of lack of jurisdiction and a decision having already been made, to remaining as an observer and finally to submitting to the jurisdiction and arguing their case. The change of attitude apparently arose from the way the CAS had dealt with the two previous IAAF cases and the praise it received in the German newspapers.[39]

D. The Inquisitorial Principle

The Code at R44.2 and Article 15(b) of the Olympic Rules grant arbitrators extensive power and discretion to organize the procedure in a hearing. There was also a similar discretion in relation to evidence as found in Article 15(d). Thus, there was a mixture of styles in conducting the hearings. Some were conducted on the inquisitorial principle, others more on the common law approach of formal oral evidence and submissions.[40] The result has been that the AHD has preserved a wide range of powers to study each case and clarify the material truth. The process is a curious mixture of the civil law approach through the use of the inquisitorial principle, and the common law approach of examination and cross-examination. The clash of these two methods in conducting the hearing

39. German Paper, *supra* note 36.

40. Beloff, *supra* note 11, at n.37 (discussing pro bono services of Australian barristers).

process is most evident in doping cases, particularly in the *Raducan*[41] doping case that arose at the Games.

E. The Impact of the National Court Decisions on the International Arbitration Panel

National court decisions frequently interact with international arbitration proceedings. Two cases at the Sydney Games illustrate how national court orders become part of international sports arbitration proceedings and the effect that such orders have on parties to the arbitration.

The first of these cases addressed the effect of a national court order on an IF. The International Weightlifting Federation ("IWF") adopted a suspension issued by the Samoan Weightlifting Federation ("SWF") that precluded Samoan weightlifter Ofisa Jr. Ofisa from participating in the Olympic Games.[42] The athlete obtained a Samoan interim court order precluding enforcement of the suspension imposed by the SWF. The CAS acknowledged that the court order clearly affected the SWF and consequently removed its ability to impose a suspension on the athlete. The AHD held that the Samoan court order was not binding on the IWF. The keystone to the IWF's suspension was the SWF's decision. Therefore, the Samoan court order removed the foundation of the IWF's suspension, and as a result, the IWF's decision became invalid. Accordingly, the CAS set aside the IWF suspension.

The second CAS case involved two seventy-six kilogram Greco-Roman wrestlers representing the United States, Matt Lindland and Keith Sieracki.[43] In the United States, Lindland protested the results of an amateur wrestling match that determined the U.S. Olympic Team selection. Arbitration of the dispute led to an award providing for the bout to be re-wrestled. Lindland won the re-match, but the USOC did not nominate him to the team. Lindland then appealed to the Seventh Circuit,[44] where the arbitration award was enforced and the USOC nominated Lindland to the U.S. Olympic Team. While Lindland was bringing his case before the Seventh Circuit, Sieracki attempted to have the results of the re-bout nullified through further arbitration proceedings. However, the Seventh Circuit's order ended Sieracki's attempt to win the dispute at the domestic level. As a final recourse, Sieracki raised an appeal to the CAS following the IOC's removal

41. Raducan v. IOC, Arbitration CAS Ad Hoc Division (O.G. Sydney 2000) 011, award of Sept. 28, 2000. This decision was appealed to the Swiss Federal Court and later dismissed. *Swiss Tribunal*, No. 5P.427/2000 (Dec. 4, 2000).

42. Samoa NOC v. IWF, Arbitration CAS Ad Hoc Division (O.G. Sydney 2000) 002, award of Sept. 12, 2000. The suspension was based upon alleged sexual misconduct with a minor at the Oceania Weightlifting Championships. *Id.*

43. Lindland v. United States Wrestling Ass'n, 230 F.3d 1036 (7th Cir. 2000).

44. *Id.* at 1037.

of his accreditation.[45] The proceedings came to an abrupt halt when, on the application of Matt Lindland, the U.S. District Court in the Northern District of Illinois issued an order restraining Sieracki from pursuing the proceedings before the AHD on pain of contempt of court proceedings. As a consequence, Sieracki withdrew his application, and the AHD terminated the proceedings.

These cases show that national court orders have no binding effect upon non-national parties but are binding upon parties within the jurisdiction of the national court. Thus, the order of the *Samoa* court, although not binding on the IWF or upon the CAS, had the effect of invalidating an international body's suspension. Similarly, the U.S. Court order had no effect on the jurisdiction of the AHD to hear Sieracki's application but prohibited Sieracki himself from seeking any such relief.

F. The Relation of CAS Decisions to National Law

The preceding section illustrates the extent to which national court orders can affect international arbitrations. However, how do international arbitration proceedings impact upon domestic courts? Two cases arising out of CAS decisions address this issue.

In the *Raguz* case[46] discussed above, the NSW Court of Appeal confirmed the substantial autonomy of CAS and the extent to which it could review a CAS decision.[47] Referring to the interlocking agreements among the Australian Olympic Committee, the Judo Federation of Australia, the athlete, and the Swiss Seat of Arbitration, the NSW Court declared that it did not have jurisdiction to review a question of law arising out of the CAS decision. Specifically, the NSW Court's jurisdiction was precluded by the existence of an exclusion agreement that was permitted under the Australian Commercial Arbitration Act of 1984.

Similarly, the CAS decision in respect to Andreea Raducan[48] at the Games resulted in proceedings before the Swiss Federal Tribunal.[49] In the *Raducan* appeal, the Swiss Tribunal held that factual issues about the quantity of urine supplied did not infringe the applicant's right to be heard because the Panel restricted its answers to the factual issues. It was determined that this issue could not be reasonably considered as having any

45. Sierocki v. IOC, Arbitration CAS Ad Hoc Division (O.G. Sydney 2000) 007, award of Sept. 21, 2000.

46. *Raguz*, 2000 NSWCA 290.

47. *Id.*

48. *Raducan*, Arbitration CAS Ad Hoc Division (O.G. Sydney 2000) 011.

49. *Décan*, 5P. 427/2000 (Dec. 4, 2000).

impact on the analysis of the AHD panel. It was also found that there was no unequal treatment inconsistent with the public order, which was another ground of appeal. Therefore, the Swiss Court refused to interfere in the findings or result of the AHD and would not declare a breach of the Olympic Movement Anti-Doping Code for failure to have obtained the required seventy-five milliliter minimum quantity of urine.

Together, these two cases stand for the proposition that CAS awards will be final, binding, and offer very narrow grounds for review. Enforcement of the award will be carried out in accordance with the decision of the CAS. The Swiss Federal Court, through the reciprocal enforcement of international arbitration awards through the 1958 New York Convention, will result in the enforceability of the final and binding decision of CAS in the event that a party will not comply.

III. CONCLUSION

CAS is emerging as a competent, independent, and accomplished sport adjudicating body, just as its founders had hoped. In so doing, it is required to address many of the same issues found in the more broadly based law of international arbitrations generally. Its jurisprudence on those matters reflects the competency with which it undertakes its tasks.