

Sports Governance and Autonomy of Sports Organisations

In the light of the CAS
case law

Dr Despina Mavromati
Head of Research & Mediation

Introduction

- ▶ Sport Accord:
- ▶ Good governance of international sports federations and organisations is essential to ensuring the development of sport in accordance with the ethics and values of sport.
- ▶ Transparency, democracy, integrity and solidarity of sports-governing bodies

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Good governance and autonomy

- ▶ IOC: Basic Universal Principles of Good Governance of the Olympic Movement.
- ▶ "Autonomy is a necessity for the Olympic and Sports Movement"
- ▶ **"Good governance is a very important way for sports organisations to achieve autonomy"**
- ▶ Control of the NOCs' good governance
 - IOC – Olympic Charter – Principles...
 - CAS case law



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Autonomy – definition and limits

- ▶ Autonomy from State control
- ▶ Internal autonomy (IOC, International Federations etc.)
- ▶ Good governance → → Autonomy
- ▶ Limits to the autonomy of an association?
 - IOC basic universal principles of good governance
 - CAS case law re: limits of the autonomy of an association
 - Mandatory laws/ legal principles of the country of the association
 - EC Law
 - WADA Code...



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CAS case law on good governance

- ▶ Different sports
- ▶ *Golf, Box, Bowling, Judo, Football...*
- ▶ Different types of associations
- ▶ *NOCs, IFs...*
- ▶ Different subject matter of the dispute
- ▶ *Elections, expulsion/ admission of members, adoption of rules and policies...*
- ▶ Different way to come to CAS
- ▶ *Ad hoc arbitration clause, prior agreement*
- ▶ *Statutes providing for CAS jurisdiction*

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A. Challenge of NOC elections

1. Panama NOC (CAS 2013/A/3052)
2. Algerian NOC (CAS 2010/A/2054)

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CAS 2013/A/3052

- ▶ Miguel Sanchiz v. Camilo Amado et al & Panama NOC (COP)
- ▶ Appeal against the elections of the COP board of directors
- ▶ **CAS Jurisdiction:** Article 22.1 August Electoral Regulations & 14.1 November Electoral Regulations
- ▶ **CAS findings:** GA was validly held with all COP members, incl. Appellants → approval of Electoral Regulations & December EGA
- ▶ → All decisions are valid



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TAS 2010/A/2054

- ▶ Athlete v. Algerian Olympic Committee (COA)
- ▶ Challenge of the election results within a NOC
- ▶ **CAS Jurisdiction:** Article 39 (1) COA Statutes
- ▶ Questions: lawfulness of the COA elections (under the Olympic Charter), lawfulness of the election of another candidate and the votes
- ▶ **CAS:** the non-respect of the OC impacts on the recognition of the NOC by the IOC
- ▶ No direct effect on the election process



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B. Autonomy in the adoption of rules & policies

1. **Autonomy limits: CAS 2011/A/2422 USOC v IOC**
2. **Registration of the statutes: CAS 2013/A/3052 Panama NOC**
3. **Turkish Boxing Federation v. AIBA (IF): CAS 2009/A/1827**

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CAS 2011/O/2422

▶ USOC v. IOC

- Validity and enforceability of a rule prohibiting doped athletes from participation in the next OG (“Osaka Rule”)
- **CAS Jurisdiction: ad hoc arbitration agreement**
- **CAS Findings: Osaka Rule not in conformity with the WADC & IOC OC**
- ▶ → **Not valid and not enforceable**

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CAS 2013/A/3052

- ▶ Miguel Sanchiz v. Camilo Amado et al & Olympic Committee of Panama (COP)
- ▶ Applicable law: Panamanian law + Olympic Charter (OC)
- ▶ OC: supersedes if the COP statutes are inconsistent with the OC
- ▶ Applicable COP statutes: the 1970 Statutes (amended in 2006), certified by the Panamanian Ministry of Interior
- ▶ CAS findings
- ▶ COP is an association subject to the law of seat (Panamanian law on registration of statutes)



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CAS 2009/A/1827

- ▶ Turkish Boxing Federation v. AIBA
- ▶ Power of an international federation to adopt new rules
- ▶ CAS jurisdiction: Article 59 of the AIBA Statutes
- ▶ Respect of the autonomy of an IF to dictate its own rules but: obligation of transparency
- ▶ CAS findings: Rules/amendments must be transparent – Article 6 & Article 10.2 AIBA By-Laws null and void



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C. Expulsion / admission of members (IFs)

1. Croatian Golf Federation – CAS 2010/A/2275
2. Panama Judo Federation – CAS 2007/A/1392
3. Spanish Bowling federation – CAS 2007/A/1424
4. NF v. NOC – CAS 2014/A/3452

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CAS 2010/A/2275

- ▶ Croatian Golf Federation v. European Golf Federation
- ▶ Expulsion of a member federation – violation of its right to be heard
- ▶ Expulsion of a NF by the NOC and expulsion from the European Association
- ▶ **CAS Findings: Obligation of federations to respect their members' right to be heard when making their decisions and within their internal proceedings**

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CAS 3007/A/1392

- ▶ Federación Panameña de judo & Federación Venezolana de Judo v. International Judo Federation
- ▶ CAS jurisdiction: IJF Statutes, Art. 27
- ▶ Respect of the agenda of a congress
- ▶ Right to be heard, principle of legality and rules of public policy
- ▶ CAS findings: the decisions passed by the IFJ 2007 Ordinary Congress as regards the FPJ were annulled because
- ▶ They were against the IFJ statutes

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CAS 2007/A/1424

- ▶ Spanish Bowling Federation v. International Bowling Federation & Catalan Bowling federation
- ▶ Decision to admit a new member through the GA of an IF
- ▶ CAS Findings: Autonomy of the association, to the extent that such decision is not contrary to the statutes and constitutes common practice of the IF
- ▶ Decisional power of the GA of the IF

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Request to suspend the execution of the decision of a NOC (provisional measures)

- National Federation v. NOC
- Subject: e.g. Recognition as the national federation
- **Jurisdiction:** prima facie (provisional measures): control of the NOC Bylaws
- Reason for provisional measures: e.g. participation in the annual session of the NOC
- **CAS: conditions of article R37 CAS Code →**
- **No lack of «irreparable harm»**
- Request is denied.



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Sochi 2014, Case N° 001 Daniela Bauer v. ASF & Austrian NOC



- ▶ Athlete's request to be placed on the Olympic team to represent Austria in the women's freestyle ski halfpipe at the Sochi OG
- ▶ She met the qualification requirements – a quota had been promised to her
- ▶ CAS Panel's findings:
- ▶ Discretion of the ASF / NOC (limits: arbitrariness, unfairness, unreasonableness)
- ▶ **CAS Ad hoc division: rejected the application**
- ▶ But: ASF should establish clear qualification criteria



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Concluding remarks

- Autonomy as the result of good governance
- Compliance with general legal principles and the OC
- Election process: OC not directly applicable
- Adoption of new rules: transparency as the main condition
- Control of compliance with the NOC's own statutes!
- Expulsion/admission of members: right to be heard
- Limits in the autonomy: WADC, mandatory laws of the country of the association

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TAS / CAS
TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT

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Thank you!

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