

SPORTS ARBITRATION AND THE WORLD ANTI-DOPING CODE: BACKGROUND AND RECENT DEVELOPMENTS

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CIARB EUROPE, NICE, 24 APRIL 2015

THEMES

- **Some key figures**
- **Relevance and history of WADA**
- **2015 World Anti-Doping Code**
- **Key issues facing anti-doping policy enforcement through sports arbitration**

TRENDS IN SPORT JUSTICE

Court of Arbitration for Sport (CAS) 2013: 407 cases

2009-13: more than 50% of all arbitration awards appealed to Swiss Federal Court were sports matters

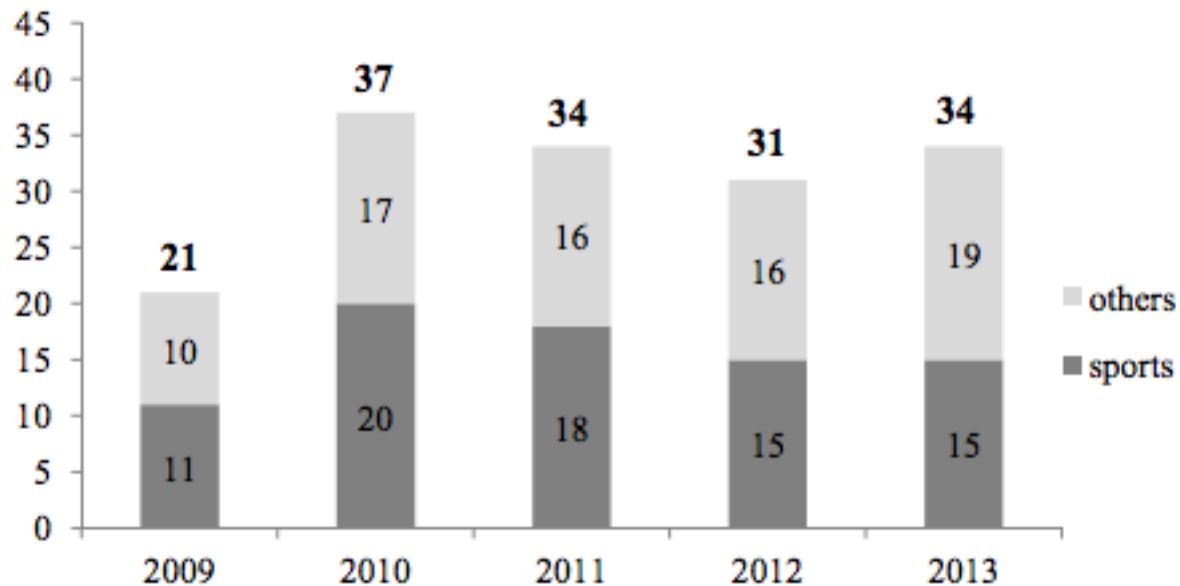


Chart 1: Number of decisions per year 2009 – 2013

Source: F. Dasser, ASA Bulletin 3/2014

TRENDS IN SPORT JUSTICE

Successful appeals of CAS decisions before the Swiss Federal Court

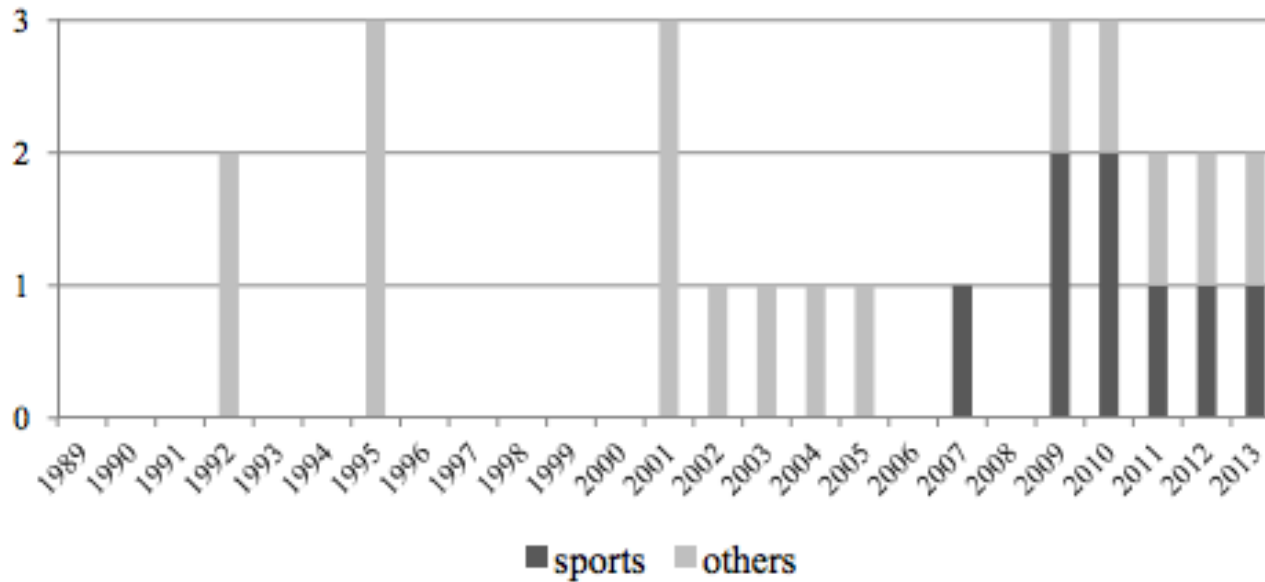


Chart 3: Successful Appeals per Year 1989 - 2013

Source: F. Dasser, ASA Bulletin 3/2014

WHY?

- **IOC Charter Art. 25, Recognition of IFs**
 - *“The statutes, practice and activities of the IFs within the Olympic Movement must be in conformity with the Olympic Charter, including the adoption and implementation of the World Anti-Doping Code.”*
- **IOC Charter Art 27.2.6, Mission and role of the NOCs**
 - *“The NOCs’ role is: ... to adopt and implement the World Anti-Doping Code”*

WHY?

- **World Anti-Doping Agency**
 - Grew out of 1999 *Lausanne Declaration on Doping in Sport*, called for agency to be operable by 2000 Sydney Olympic Games
 - Olympic Movement Anti-Doping Code: basis for consultation with stakeholders
 - World Anti-Doping Code mandatory for sports on programme of 2004 Athens Olympic Games
 - Third version adopted in 2013 effective 1 January 2015.
 - Swiss Foundation, Montreal-based. 38-member Foundation Board: half states, half sports organizations.

WHY?

- **World Anti-Doping Code**
 - Purpose
 - “To protect the *Athletes*’ fundamental right to participate in doping-free sport and thus promote health, fairness and equality for *Athletes* worldwide; and
 - To ensure harmonized, coordinated and effective anti-doping programs at the international and national level with regard to detection, deterrence and prevention of doping.”

WHY?

WADC Art. 13 – Appeals

- **Art. 13.1.3 WADA not required to Exhaust Internal Remedies**
- **Art. 13.2 Right of WADA to appeal ADO decisions**
- **Art. 13.3 Failure to Render a Timely Decision by an *Anti-Doping Organization***

RELATED INSTRUMENTS

- **UNESCO International Convention against Doping in Sport**
 - Purpose
 - To bind states who cannot be bound by the World Anti-Doping Code and align their domestic laws and rules with the Code
 - Entered into force February 2007
 - As of 12/2014: 177 states have ratified

2015 WADC

- **Changes centered on protection of clean athletes**
- **Longer periods of ineligibility for “real” cheaters**
- **More flexibility in sanctioning others (athletes or support personnel)**
- **Greater reach – Athletes’ entourage / support personnel**
- **Importance of investigation / intelligent testing**

2015 WADC

- **New Anti-Doping Rule Violations (ADRVs):**
 - Prohibited Association (Art. 2.10)
 - Complicity (Art. 2.9)
- **Elimination / Reduction of sanctions**
 - Intent differentiates “real” from “accidental” cheaters
 - Burden of proof depends on circumstances (Specified Substance? Use in- or out- of competition?)

SANCTIONS

- **4 years**
 - Presence (2.1)
 - Use / Attempted Use (2.2)
 - Evading / refusing / failing to submit to sample collection (2.3)
 - Tampering / Attempted Tampering (2.5)
 - Possession (2.6)
 - Trafficking / Attempted Trafficking (2.7) (4 yrs to life)
 - Administration / Attempted Administration (2.8) (4 yrs to life)

SANCTIONS

- **2 years**
 - Whereabouts failures (2.4)
 - Complicity (2.9) (2-4 yrs)
 - Prohibited Association (2.10) (2 yrs)

INTENT

- *“...engaged in conduct which he or she knew constituted an [ADRV] or knew that there was a significant risk that the conduct might constitute or result in an [ADRV] and manifestly disregarded that risk” (10.2.3)*
- **Reduction from 4 yrs to 2 years of ineligibility (Presence, Use/ Attempted Use, Possession) if:**
 - Specified Substance and ADO cannot establish that ADRV was intentional
 - Not a Specified Substance and Athlete can establish ADRV was not intentional
- **If Specified Substance banned only In-Competition and used Out-of-Competition or Substance used Out-of-Competition for reasons unrelated to sport performance**
 - Rebuttable presumption that violation was non-intentional

DEGREE OF FAULT

- **10.4 No Fault or Negligence**
 - Eliminates ineligibility
- **10.5.1 No Significant Fault or Negligence**
 - Reprimand to 2 years depending on degree of fault (contamination / Specified Substances)

Contaminated Product: “A product that contains a *Prohibited Substance* that is not disclosed on the product label or in information available in a reasonable Internet search”

ISSUES

- **Independence**

- Gundel (1993) – ATF 119 II 279
- Lazutina (2003) – ATF III 445
- Pechstein (2015) – Munich Oberlandesgericht, ECHR 67474/10

- **Consent**

- Cañas (2007) – ATF 133 III 235

- **Human rights**

- Mutu (ECHR 40575/10)
- Matuzalem (2012) – ATF 4A_558/2011

ISSUES

- **Criminalization and parallel proceedings**
- **Science (ABP, retesting)**
- **Privacy / proportionality**

THANK YOU

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