



SPORTS

PORTUGUESE COURT OF ARBITRATION FOR SPORT

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With the publication of Law no.74/2013 of 6 September a **Court of Arbitration for Sport (CAS) was created in Portugal**. The law will come into force 90 days after the setting up of the CAS, which will be based at the Portuguese Olympic Committee (POC). In an official communication dated 13 September the POC has already announced that it will respond positively to the mandate conferred on it to set up the CAS. Despite the publication of the legislation there is still a request for successive checking of the constitutionality of two provisions (in relation to appeals from arbitral decisions) made by the President of the Republic. However, it is hoped that the Constitutional Court will make a decision before the CAS is set up and/or before the law now published comes into force.

The legislation defines the CAS as a jurisdictional entity that is independent from the public administration sports bodies and the bodies that make up the sports system, and it has both administrative and financial autonomy. It has specific power to administer justice in relation to disputes arising from the sports legal system or related to the practice of sports.

It exercises its jurisdiction throughout Portugal and has power, in the context of necessary arbitration, to hear disputes arising from the acts or omissions of federations and other sports entities and professional leagues in the context of exercising the corresponding powers of regulation, organisation, management and discipline. This power covers the

forms of litigation guarantee provided for in the Portuguese Code of Procedure in Administrative Courts. Access to the CAS is, however, only admissible by way of appeal against the decisions of the jurisdictional bodies of sports federations or final decisions of other sports bodies and professional leagues. The existence of the CAS does not dispense with the need to make use of internal means to challenge, appeal or sanction the acts or omissions done in exercise of powers of regulation, organisation, management and discipline provided for in the law or in statutory or regulatory rules. However, provision is made for a time limit for the decision of federation jurisdictional bodies and for the final decision of federations and other sports bodies and professional leagues. This limit is 30 days. If the decision is not made in this period, an initial application may be presented to the CAS 10 days after the time limit has passed. The resolution of issues arising from the application of technical and disciplinary rules directly relating to the practice of

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sports competitions is excluded from the jurisdiction of the CAS. The CAS is also given power to hear appeals from decisions taken by the disciplinary bodies of sports federations or by the Portuguese Anti-doping Authority on matters of violation of anti-doping rules under Law no. 38/2012 of 28 August.

In the area of voluntary arbitration all disputes which, not being subject to necessary arbitration, are related directly or indirectly to the practice of sport and which, under the terms of the voluntary arbitration law (Law 63/2011 of 14 December) may be resolved by arbitral decision may be heard by the CAS under an arbitration agreement or a clause in the statutes of a federation or other sports body. The submission to voluntary arbitration of disputes arising from sports employment contracts made between athletes or technical staff and agents or sports bodies is admissible. The CAS may also decide on whether or not a dismissal is lawful. As a consequence, the CAS is attributed the arbitral powers that were formerly in the hands of the Inter-Party Arbitral Committees (*Comissões Arbitrais Paritárias*).

The law also creates **specific mechanisms for the appointment of arbitrators** in the context the court's necessary arbitration jurisdiction, determining that the said jurisdiction is exercised by a panel of 3 arbitrators. In the context of voluntary arbitration, the jurisdiction of the CAS is exercised by a single arbitrator or a panel of arbitrators.

The elements of organisation and operation of the CAS are the following: Council for Sports Arbitration, the chairperson, the vice-chairperson, the arbitrators, the managing council, the secretariat, and the appeals chamber and arbitrators.

The chairperson of the CAS represents the court in its external relationships, coordinates the activity of the court, calls

and chairs meetings of the management council and is a member of the Council for Sports Arbitration.

The Council for Sports Arbitration is made up of the chairperson of the CAS and of a further 10 members appointed by the Portuguese Olympic Committee, the Portuguese Sports Federation, the National Council for Sport, the Superior Council of the Judiciary, Superior Council of the Administrative and Tax Courts, The Superior Council of the Public Prosecutor's Office, the Council of Rectors of the Portuguese Universities and the Bar Association. It has powers to monitor the activity and operation of the CAS, approve the regulations on procedure and costs, and the list of mediators and consultants, among other powers related to the operation of the CAS.

The Management Council is made up of the chairperson, the vice-chairperson, two members and the general secretary, and has powers over management and administration of the CAS.

The Secretariat of the CAS handles the judicial and administrative services that are necessary and appropriate for the operation of the court.

The Appeals Chamber is made up of the chairperson (and by the vice-chairperson as their substitute), by eight arbitrators appointed by Council of Arbitration for Sport from the arbitrators on the court's list.

The CAS is made up of a maximum of **40 independent and impartial arbitrators** appointed by the following entities: 5 by the sports federations for Olympic sports that do not organise professional sports competitions, 5 by the sports federations for non-Olympic sports, 5 by the Portuguese Sports Federation, 2 by federations responsible for organising professional sports competitions, 2 by

the leagues that organise professional competitions, 1 by each of the socio-professional organisations of athletes, trainers, referees and umpires of the sports for which they organise professional sports competitions, 2 by the Committee of Olympic Athletes, 2 by the Portuguese Confederation of Trainers' Associations, 2 by the associations representing other agents in the sports world recognised by the sports federations, 1 by the Portuguese Sports Law Association and 5 by the Executive Committee of the Portuguese Olympic Committee and the others by the Council for Sports Arbitration. The arbitrators are appointed for a period of 4 years, renewable, without prejudice to the fact that it is possible for them to be excluded at any time by the Council for Sports Arbitration if certain conditions are met. Any person appointed to the list of CAS arbitrators may not act as an advocate in the same court.

Operating alongside the CAS are a **specific mediation service (duly regulated)** and a **consultancy service** responsible for issuing non-binding opinions on legal questions related to sport, at the request of sports public administration bodies, the Portuguese Olympic Committee, the Portuguese Paralympic Committee, sports federations that have sporting public utility, the professional leagues and the Portuguese Anti-Doping Authority, upon payment of a consultation.

The law also establishes specific rules for the operation of the Court of Arbitration. It establishes, together with some common provisions, provisions applicable to the process of necessary arbitral jurisdiction and to the process of voluntary arbitral jurisdiction. Some rules are also established in relation to procedural costs in the context of necessary arbitration which will only become relevant after the CAS has been set up.

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