



Publish or perish! The need for transparency at the Court of Arbitration for Sport

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Why the CAS matters for sports governance

- **Centrality of the CAS in the functioning of the *lex sportiva***
 - CAS = Firewall against national courts
 - Inflation of number of CAS cases submitted and awards
 - 2000 = 76 cases – 2016 = 599 cases (2015 = 498)
 - CAS jurisprudence key to determine the practical operation of the *lex sportiva* (for example: WADC & RSTP)
- **Weak alternative remedies**
 - Bosman/Pechstein syndrome
 - Unspoken boycotts
 - Lengthy delays
 - Inflated costs
 - International/national asymmetry
 - Political power of the SGBs
- **Potential for the CAS to exercise a true constitutional control over SGBs**
 - CAS could/should play the role of counter-power
 - Subjecting the SGBs' regulations to human rights and proportionality checks



Why sports arbitration is not the same as commercial arbitration

- **Sports arbitration ≠ Commercial arbitration**
 - Centrality of the appeal procedure = 76% of CAS cases in 2016
 - Appeal procedure = Forced arbitration = Post-consensual legitimacy
 - SGBs = Repeat players
 - SGBs = Influence on the CAS through ICAS
- **Therefore, the CAS must be more:**
 - Independent
 - Accessible
 - **Transparent**
 - Commercial arbitration = confidentiality
 - Sports arbitration should = publicity



Transparency matters

- **For the public**
 - Who guards the guardians?
 - Journalists need to be able to access hearings/decisions to better inform the public and hold the CAS/SGBs accountable
- **For the parties**
 - Equality of arms vs. unfair advantage of repeat players (the SGBs)
- **For the CAS**
 - Trust and legitimacy
 - *Justice must not only be done; it must also be seen to be done*



CAS' Transparency deficit (I)

- **CAS administration**

- No public minutes of ICAS meetings
- No annual report
 - CAS budget?
- Limited CAS statistics
- No CAS arbitrators record

- **CAS appeal process**

- Lack of publicity of hearings
- R44.2 CAS Code (also applicable to appeal procedure)
 - Unless the parties agree otherwise, **the hearings are not public**. Minutes of the hearing may be taken.



CAS' Transparency deficit (II)

- **Publication of CAS awards**

- Limited
- Discretionary
- Delayed

YEAR	APPEALS SUBMITTED TO CAS	APPEAL AWARDS PUBLISHED ON THE CAS WEBSITE	PERCENTAGE
1995	8	4	50%
1996	10	6	60%
1997	11	4	36.3%
1998	33	15	45.4%
1999	24	4	16.6%
2000	55	16	29%
2001	32	14	43.7
2002	66	21	31.8
2003	46	6	13%
2004	252	36	14%
2005	185	39	21%
2006	175	41	23.4%
2007	230	65	28%
2008	276	92	33%
2009	245	41	16.7%
2010	244	41	16.8%
2011	294	45	15%
2012	301	61	20%
2013	347	66	19%