China and CAS

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China and CAS

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China and the establishment of CAS

- Two China and Olympic Movement
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- Two China and Olympic Movement

Chinese Olympic Committee

Chinese Taipei Olympic Committee
China and the establishment of CAS

- Two China and Olympic Movement

Henry Heng Hsu
(Dou Heng)

V. International Olympic Committee
China and the establishment of CAS

- Two China and Olympic Movement

Liang Ren-Guey

（梁仁貴）

Lake Placid 1980
Olympic Games, Inc.

(N.Y. App. Div. 3d Dep't 1980)
China and the establishment of CAS

- In 1981, The creation of a specialized sports jurisdiction envisaged for the first time.

HE Juan Antonio Samaranch, former IOC President
Establishment of CAS

Juge Kéba Mbaye,
Founder of CAS
Establishment of CAS

- Court of Arbitration for Sport (CAS) established in 1984

http://www.tas-cas.org
<table>
<thead>
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<th>Name</th>
<th>Position</th>
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Chinese Arbitrators in the CAS Olympic Ad hoc Division

- *1995 Olympic Charter, article 74* (2013 revised, article 61.2 )
  - Court of Arbitration for Sport
  - Olympic Games
  - Ad Hoc Division
  - CAS OG AHD
61 Dispute Resolution

1. The decisions of the IOC are final. Any dispute relating to their application or interpretation may be resolved solely by the IOC Executive Board and, in certain cases, by arbitration before the Court of Arbitration for Sport (CAS).

2. Any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport (CAS), in accordance with the Code of Sports-Related Arbitration.
Article 61.2 (74)  
Disputes – Arbitration

- Any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport (CAS), in accordance with the Code of Sports-Related Arbitration.
Chinese Arbitrators in the CAS Olympic Ad hoc Division

- 1996 Atlanta Olympic Games
  CAS Ad Hoc Division

Prof. Mingzhong Su (苏明忠)
law professor of the
University of Diplomacy
Andrade v. Cape Verde NOC

Andrade, Cape Verde hurdler
Andrade v. Cape Verde NOC
Chinese Arbitrators in the CAS Olympic Ad hoc Division

- 2004 Athens Olympic Games
- CAS Ad Hoc Division

Huang Jin (黄进), law professor of Wuhan University
Munyasia v. IOC

(Divid Munyasia, Kenya boxer)
Munyasia v. IOC

- Strict Liability for Doping
Chinese Arbitrators in the CAS Olympic Ad hoc Division

- 2008 Beijing Olympic Games
- CAS Ad Hoc Division

Mr. Liu Chi (刘驰), attorney at Beijing Jun He Law Firm
Simms v. FINA

（Joan Christel Simms，Philippine swimmer）
Simms v. FINA
Azerbaijan Field Hockey Federation (AFHF) v. Fédération Internationale de Hockey (FIH)
Chinese Arbitrators in the CAS Olympic Ad hoc Division

- 2010 Vancouver Winter Olympic Games
- CAS Ad Hoc Division

Mr. Liu Chi (刘驰), attorney at Beijing Jun He Law Firm
Virgin Islands NOC v. IOC

International Bobsleigh & Skeleton Federation
Chinese Arbitrators in the CAS Olympic Ad hoc Division

- 2014 Sochi Winter Olympic Games
- CAS Ad Hoc Division

Mr. Wu Wei (David) (吴炜), Senior Partner of Boss & Young Attorneys at Law
Maria Belen Simari Birkner v. Argentine Ski Federation (FASA) and the Argentine NOC (COA)
Sisters of Simari Birkner
CAS cases involving Chinese parties


Wang Wei (王炜)
Cai Huiyu (蔡慧钰)
Zhang Yi (张怡)
Wang Luna (王璐娜)
CAS cases involving Chinese parties


- beyond any reasonable doubts
- balance of probability
- stand of proof
- comfortable satisfaction
CAS cases involving Chinese parties

CAS cases involving Chinese parties

- *P. v. Shanghai Shenhua Football Club (2005)*

Dušan Petković (Serbian)

Shanghai Shenhua Football Club
CAS cases involving Chinese parties


Giuseppe Materazzi (Italy) v. Tianjin Teda Football Club
CAS cases involving Chinese parties

- *Tong Wen v. IJF (2011)*

Tong Wen (佟文)

V.

International Judo Federation
CAS cases involving Chinese parties

- *Tong Wen v. IJF* (2011)
CAS cases involving Chinese parties

- *Liao Hui v. IWF (2012)*

Liao Hui  (廖辉)

V.

International Weightlifting Federation
CAS cases involving Chinese parties

- Liao Hui v. IWF (2012)

WADA Code vs. IWF Anti-Doping Policy
CAS cases involving Chinese parties

- *Mu-yen Chu v. IOC (2013)*

*Mu-yen Chu* (朱木炎)
Taekwondo Champion of Athens Olympic Games

v.

IOC
IOC Athletes’ Commission Elections 2012

**MY VOTE - MY FUTURE**

THE IOC ATHLETES’ COMMISSION

In London, 21 athletes are standing as candidates for election to the International Olympic Committee (IOC)’s Athletes’ Commission. All of these candidates are active members of their respective National Olympic Committees (NOC)’s athletes’ commission and will participate in London or did so in Beijing.

**MON VOTE - MON AVENIR**

LA COMMISSION DES ATHLÈTES DU CIO

CAS cases involving Chinese parties

- *Koji Murofushi v. IOC* (2013)

Koji Murofushi, Japanese hammer thrower, Champion of Athens Olympic Games
CAS and the 2008 Beijing Olympic Games

- Conflicts between CAS Beijing AD Hoc Division and China’s Law?

  - The arbitrability of sports dispute?
  - The authorities of preliminary measures?
Conflicts between CAS Beijing AD Hoc Division and China’s Law?

- the Law of People’s Republic of China’s Arbitration of 1994

- Article 2: “Contractual disputes between citizens of equal status, legal persons and other economic organizations and disputes arising from property rights may be put to arbitration.”
Conflicts between CAS Beijing AD Hoc Division and China’s Law?

- Procedural Rules of CAS
  R27 Application of the Rules
  “These Procedural Rules apply whenever the parties have agreed to refer a sports related dispute to CAS……”
Conflicts between CAS Beijing AD Hoc Division and China’s Law?

- the Law of People’s Republic of China’s Arbitration of 1994

Article 28: “......If a party applies for property preservation, the arbitration commission shall submit the party’s application to the people’s court in accordance with the relevant provisions of the Civil Procedure Law......”
Conflicts between CAS Beijing AD Hoc Division and China’s Law?

- Procedural Rules of CAS
  R37 Provisional and Conservatory Measures

“......The President of the relevant Division, prior to the transfer of the file to the Panel, or thereafter, the Panel may, upon application by a party, make an order for provisional or conservatory measures......”
The Basis of Establishing CAS AHD in Beijing Olympic Games

1. Olympic Charter (Article 59, now 61.2)

2. Host City Contract for the Games of the XXIX Olympiad (Enclosure M: With regard to the provisions of a special arbitral institutions of the Olympic Games)

3. Notice of the People's Republic of China Supreme People's Court (support the CAS arbitration body to exercise jurisdiction over the Beijing Olympic Games)
The Basis of establishing Sports Arbitration in Beijing Olympic Games

Enclosure M:

With regard to the provisions of the special arbitral institutions of the Olympic Games

2008

The 29th Olympic Games

Host City Contract

Chinese National Olympic Committee

International Olympic Committee

Beijing Municipal Government
The Basis of Establishing Sports Arbitration in Beijing Olympic Games

- On 5 June 2008, the notice of the Supreme People's Court on the admissibility of the people's court during the Beijing Olympics on sports dispute

- High People’s Court of Beijing, Heibei, Shanghai, Tianjin, Shandong, Liaoning Province
中华人民共和国最高人民法院

文件

最高人民法院
关于人民法院是否受理北京奥运会期间有关体育争议的通知

北京、上海、天津、山东、辽宁、河北高级人民法院：

北京奥运会即将于 2008 年 8 月 8 日在北京开幕，部分比赛项目在上海、天津、青岛、沈阳、秦皇岛等地举行。为保证这一重大赛事的顺利举行，现就处理奥运会体育比赛相关争议有关问题通知如下。

一、人民法院要高度重视奥运会比赛相关纠纷的处理工作。北京奥运会是一次世界体育盛会，也是展示我国社会经济文化事业发展成就的重要机会。党中央、国务院高度重视这次奥运会，全国人民对这次体育盛会充满了期待，世界各国也给予了很大关注和支持。因此必须保证奥运会的顺利举办。人民法院作为审判机关，要高度重视奥运会比赛期间相关纠纷的处理，要以维护奥运会秩序和稳定的高度责任感和使命感做好有关案件的审判工作。各级人民法院应当加强和重视奥运会比赛项目的裁判和基层人民法院审判工作的
The Notice of the Supreme People's Court

2、During the Beijing Olympic games, according to the agreement *the 29th Olympic Games Host City Contract* signed by we and International Olympic Committee, the Court of Arbitration for Sports will establish special arbitration body in Beijing to arbitrate the three kinds of sports disputes related to the Games.
The three kinds of controversies contain:

1. the dispute on eligibility of the Olympic athletes;
2. the dispute over doping test results;
3. the dispute about games results and decisions of the referees.
The Notice of the Supreme People's Court

- the People’s Court will not hear the petition for the settlement of disputes above mentioned during the Games; if the parties request the court to repeal the arbitration decision on the cases above mentioned awarded by Court of Arbitration for Sport, or apply for enforcement, the court will not hear as well.
The Shanghai CAS Alternative Hearing Center

- In 2012, CAS concluded the partnerships with the cities of Shanghai (China), Abu Dhabi (UAE), Kuala Lumpur (Malaysia) and Cairo (Egypt).
The Shanghai CAS Alternative Hearing Center

Ms. Zhao Wen (赵雯), Vice Mayor of Shanghai, and Mr John D. Coates, the President of CAS
The Shanghai CAS Alternative Hearing Center

Seoul FC (South Korean) v. Newcastle Jets FC (Australian)
CCAS: Chinese Courts of Arbitration for Sports?

- the People’s Republic of China’s Sports Law of 1995, Article 33:

  “Disputes arising in competitive sports activities shall be mediated and arbitrated by sports arbitration institutions. Measures for the establishment of sports arbitration institutions and the scope of arbitration shall be prescribed separately by the State Council.”
CCAS: Chinese Courts of Arbitration for Sports?

- the People’s Republic of China’s Legislation law of 2000, Article 7:

  “The National People’s Congress and its Standing Committee exercise the legislative power of the State. The National People’s Congress enacts and amends basic laws governing criminal offences, civil affairs, the State organs and other matters.

  The Standing Committee of the National People’s Congress enacts and amends laws other than the ones to be enacted by the National People’s Congress, and when the National People’s Congress is not in session, partially supplements and amends laws enacted by the National People’s Congress, but not in contradiction to the basic principles of such laws.”
CCAS: Chinese Courts of Arbitration for Sports?

- the People’s Republic of China’s Legislation law of 2000, Article 8:

  “The following affairs shall only be governed by law:
  
  ......

  (9) Systems of litigation and arbitration;
  
  ......”
Article 9: “If laws have not been enacted on the affairs specified in Article 8 of this Law, the National People’s Congress or its Standing Committee has the power to make a decision to authorize the State Council to formulate, according to actual needs, administrative regulations first on part of those affairs, except for the affairs concerning criminal offences and their punishment, mandatory measures and penalties involving deprivation of citizens of their political rights or restriction of the freedom of their person, and the judicial system.”
CCAS: Chinese Courts of Arbitration for Sports?

- Conflict of the Legislation Act and the Sport law Act?
CCAS: Chinese Courts of Arbitration for Sports?

- Who has the power to set up the sport arbitration? the National People's Congress and its Standing Committee, or the State Council?
CCAS: Chinese Courts of Arbitration for Sports?

- the Law of People’s Republic of China’s Arbitration of 1994 (commercial arbitration)
CCAS: Chinese Courts of Arbitration for Sports?

CCAS:  Chinese Courts of Arbitration for Sports?

- *the Law of People’s Republic of China’s Mediation and Arbitration of Rural Land Contract Disputes of 2009*
CCAS: Chinese Courts of Arbitration for Sports?

- the Law of People’s Republic of China’s Arbitration of 1994 (commercial arbitration)
CCAS: Chinese Courts of Arbitration for Sports?

- the Law of People’s Republic of China’s Sport Arbitration of 20XX?
CCAS: Chinese Courts of Arbitration for Sports?

- The example of AAA Olympic Sports Panel
- The example of Russian CCCAS (Chamber of Commerce Court of Arbitration for Sport)
- The CIETAC (China International Economic and Trade Arbitration Commission) CCAS?
Thank you! Xiexie!