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Is There a Stare Decisis Doctrine in the Court of Arbitration for Sport? An Analysis of Published Awards for Anti-Doping Disputes in Track and Field

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I. INTRODUCTION

The Court of Arbitration for Sport (CAS) provides a unique example of a private international legal regime that has almost entirely displaced domestic adjudication of certain types of disputes.¹ Based in Lausanne, Switzerland, the CAS exercises jurisdiction over commercial and disciplinary disputes in connection with the Olympic Games, as well as disputes involving international sporting federations that have consented to CAS jurisdiction.² In contrast to the practice in the overwhelming majority of arbitral tribunals, CAS panels rely heavily on previous arbitral awards in reaching their decisions.³ CAS panels' liberal use of citations to previous CAS awards has led legal scholars to recognize the practice as evidence of

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1. Ken Foster, *Is There a Global Sports Law?*, 2 ENT. & SPORTS L.J., no. 1, 2003 at 15 [hereinafter Foster, *Is There a Global Sports Law?*], available at <http://www2.warwick.ac.uk/fac/soc/law/elj/eslj/issues/volume2/number1/foster.pdf> (discussing the means by which international sports federations grant the CAS exclusive jurisdiction, thereby restricting their members from adjudicating disputes in national courts).

2. *History of the CAS: Origins*, CT. ARB. FOR SPORT, <http://www.tas-cas.org/history> (last visited Mar. 31, 2012).

3. See *infra* notes 35-46 and accompanying text (discussing the CAS's unique reliance on precedent, as compared to most arbitral tribunals).

an emerging *lex sportiva*,⁴ defined by CAS interpretations of a growing body of international sporting codes and regulations.

While the importance of precedent in CAS awards is by now a matter beyond dispute,⁵ a more controversial claim concerns whether the CAS applies a de facto principle of stare decisis—a hallmark of the common law system—in its jurisprudence.⁶ In practice, application of stare decisis may be difficult to distinguish from that of *jurisprudence constante*, the civil law doctrine that courts should not depart from a line of past decisions “unless clear error is shown and injustice will arise from continuation of a particular rule of law.”⁷ Thus, in contrast to the doctrine of stare decisis, there is no strict requirement to follow past precedent under *jurisprudence constante*.

This article adopts an empirical approach to the debate over the use of precedent in the CAS by analyzing a sample of CAS awards issued between 2000 and 2010—namely, all published awards involving disciplinary violations related to anti-doping for the sport of track and field. The results of this analysis are consistent with previous scholarship noting the CAS’s tendency to follow past precedent.⁸ Nevertheless, CAS panels’ explicit rejection of a doctrine of stare decisis suggests the practice is better characterized as a doctrine of *jurisprudence constante*.⁹ This study supports

4. See, e.g., FRANCK LATTY, *LA LEX SPORTIVA: RECHERCHE SUR LE DROIT TRANSNATIONAL* (2007); Ken Foster, *Lex Sportiva and Lex Ludica: The Court of Arbitration for Sport’s Jurisprudence*, 3 ENT. & SPORTS L.J., no. 2, 2005 [hereinafter Foster, *Lex Sportiva and Lex Ludica*], available at <http://www2.warwick.ac.uk/fac/soc/law/elj/eslj/issues/volume3/number2/foster/foster.pdf>.

5. See, e.g., Canadian Olympic Comm. (COC) v. Int’l Olympic Comm. (IOC), CAS 2002/O/373, ¶ 14 (Dec. 18, 2003) (“CAS jurisprudence has notably refined and developed a number of principles of sports law . . . which might be deemed part of an emerging ‘*lex sportiva*.’”).

6. Compare Gabrielle Kaufmann-Kohler, *Arbitral Precedent: Dream, Necessity or Excuse?* 23 ARB. INT’L 357, 366 (2007) [hereinafter Kaufmann-Kohler, *Arbitral Precedent*] (arguing that CAS awards “demonstrate the existence of a true *stare decisis* doctrine within the field of sports arbitration”), with IAN S. BLACKSHAW, *SPORT, MEDIATION AND ARBITRATION* 155 (2009) (observing that “CAS arbitrators . . . are not generally obliged to follow earlier decisions (*stare decisis*), but they usually do so in the interests of legal certainty”). See also Matthew J. Mitten & Hayden Opie, “*Sports Law*”: *Implications for the Development of International, Comparative, and National Law and Global Dispute Resolution*, 85 TUL. L. REV. 269, 291 (2010) (questioning whether “CAS jurisprudence [is] functioning as a de facto body of common law legal precedent”).

7. BLACK’S LAW DICTIONARY 933 (9th ed. 2009). See André Tunc, *Methodology of the Civil Law in France*, in CIVIL LAW 327, 332-33 (Ralf Rogowski ed., 1996) (describing French courts’ reliance on the decisions of the Court of Cassation).

8. See, e.g., BLACKSHAW, *supra* note 6; Foster, *Lex Sportiva and Lex Ludica*, *supra* note 4, at 12; Kaufmann-Kohler, *Arbitral Precedent*, *supra* note 6.

9. See, e.g., Int’l Ass’n of Athletics Fed’ns (IAAF) v. U.S.A. Track & Field (USATF), CAS 2004/A/628 (June 28, 2004); Anderson v. Int’l Olympic Comm. (IOC), CAS 2008/A/1545, ¶ 3 (July 16, 2010) (“In CAS jurisprudence there is no principle of binding precedent (‘*stare decisis*’ or ‘collateral estoppel’).”).

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the hypothesis that the use of precedent depends on panel composition. Most panels in this study consisted of both common law and civil law arbitrators, and those comprised of solely civil law jurists were just as likely to cite precedent as common law panels.¹⁰ Further research is needed to clarify how the use of precedent in the CAS interacts with the institution's default rules for choice of law.

Part I of this article outlines a brief history of the CAS and its procedural rules. Part II describes the debate over whether the CAS follows a doctrine of *stare decisis*. Part III sets out the methodology used. Part IV describes the results of the analysis, including an in-depth look at two awards that touch directly on the relevance of past arbitral awards. Part V concludes by discussing the implications of the results of this study and suggesting avenues for future research.

II. OVERVIEW OF CAS HISTORY AND PROCEDURE

The International Olympic Committee (IOC) established the CAS in 1984¹¹ to create a uniform body of rules for international sports disputes, and to avoid the problem of athletes pursuing complex and costly litigation in national courts.¹² Two different arbitration divisions comprise the CAS: Ordinary and Appellate.¹³ The CAS has also established ad hoc tribunals for the Olympic Games¹⁴ and other major international sports competitions, such as the Fédération Internationale de Football Association (FIFA) World Cup soccer tournament.¹⁵ The CAS Ad Hoc Division hears disputes on-site and render decisions within twenty-four hours.¹⁶ The Ordinary Arbitration

10. *See infra* Part IV.

11. BLACKSHAW, *supra* note 6, at 151-52.

12. Since 1994, the CAS has been organized under the International Council of Arbitration for Sport, rather than the IOC, but the IOC still funds a major portion of the CAS budget. *Id.* at 152.

13. *Id.* at 152.

14. INT'L OLYMPIC COMM., OLYMPIC CHARTER 103 (2011), available at www.olympic.org/Documents/olympic_charter_en.pdf ("Any dispute rising 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.")

15. FÉDÉRATION INTERNATIONALE DE FOOTBALL ASS'N, FIFA STATUTES: REGULATIONS GOVERNING THE APPLICATION OF THE STATUTES STANDING ORDERS OF THE CONGRESS 44 (2011), available at

<http://www.fifa.com/mm/document/affederation/generic/01/48/60/05/fifastatuten2011%5fe.pdf> (Article 62 states that "the CAS Code of Sports-Related Arbitration shall apply to the proceedings").

16. The first CAS Ad Hoc Tribunal was established for the 1996 Summer Olympic Games in Atlanta, Georgia. *See generally* GABRIELLE KAUFMANN-KOHLER, ARBITRATION AT THE OLYMPICS:

Division handles disputes referred by the parties directly to the CAS; most often, commercial cases or disputes between sports federations.¹⁷ The Appeals Arbitration Division hears appeals from decisions of international and national federations, usually involving disciplinary cases.¹⁸ Both divisions review questions of law and fact de novo,¹⁹ and CAS awards are final and binding.²⁰

The Code of Sports-Related Arbitration, the CAS's governing statute, designates Lausanne, Switzerland as the arbitral seat for any CAS arbitration proceeding,²¹ regardless of whether the actual hearing takes place in Switzerland.²² As a result, domestic courts recognize CAS awards as foreign arbitral awards for purposes of the New York Convention.²³ Thus, parties may only petition to set aside a CAS award through the Swiss Federal Tribunal (Supreme Court).²⁴ For courts outside of Switzerland, the

ISSUES OF FAST-TRACK DISPUTE RESOLUTION AND SPORTS LAW 1 (2001) [hereinafter KAUFMANN-KOHLER, ARBITRATION AT THE OLYMPICS].

17. *History of the CAS: Types of Disputes Submitted to the CAS*, CT. ARB. FOR SPORT, <http://www.tas-cas.org/en/infogenerales.asp/4-3-239-1011-4-1-1/5-0-1011-3-0-0/> (last visited Mar. 31, 2012).

18. *Id.*

19. "The Panel shall have full power to review the facts and the law." INT'L OLYMPIC COMM., STATUTES OF THE BODIES WORKING FOR THE SETTLEMENT OF SPORTS-RELATED DISPUTES R57 (2010) [hereinafter CAS CODE], available at [http://www.tas-cas.org/d2wfiles/document/3923/5048/0/Code%202010%20\(en\).pdf](http://www.tas-cas.org/d2wfiles/document/3923/5048/0/Code%202010%20(en).pdf). The CAS Code is also known as the Code of Sports-Related Arbitration. For a critique of the CAS Appellate Division's de novo standard of arbitral review, see Maureen A. Weston, *Simply a Dress Rehearsal? U.S. Olympic Sports Arbitration and De Novo Review at the Court of Arbitration for Sport*, 38 GA. J. INT'L & COMP. L. 97, 103-04 (2009) (arguing that by granting the CAS the power to hear cases de novo, "the United States has implicitly assigned the protection of the rights of its citizens to a private international tribunal seated in a foreign nation").

20. Although the name suggests otherwise, awards rendered by the Ordinary Arbitration Division may not be appealed to the Appeals Arbitration Division unless "such appeal has been expressly provided by the rules applicable to the procedure of first instance." CAS CODE, *supra* note 19, at R47.

21. *Id.* at R28.

22. In the case of *Raguz v Sullivan*, an Australian athlete challenged a CAS award made in Sydney, Australia in connection with the 2000 Summer Olympic Games on the grounds that the New York Convention did not apply to an arbitral proceeding held in Australia involving Australian parties. *Raguz v Sullivan* [2000] NSWCA 240 (Austl.). The Court of New South Wales upheld the award, holding that designation of Switzerland as the arbitral seat rendered the award "non-domestic" for purposes of the New York Convention. *Id.*

23. Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 330 U.N.T.S. 3; 21 U.S.T. 2517 [hereinafter New York Convention].

24. *20 Questions About the CAS: Is it Possible to Appeal Against a CAS Award?*, CT. ARB. FOR SPORT, <http://www.tas-cas.org/en/20questions.asp/4-3-231-1010-4-1-1/5-0-1010-13-0-0/> (last visited Mar. 31, 2012).

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grounds for resisting enforcement in domestic courts are limited to those found in the New York Convention.²⁵

Each of the two main CAS divisions has its own set of default rules for the applicable substantive law.²⁶ Both rely primarily on international sporting codes and the Olympic Charter, but the choice of subsidiary law varies by division.²⁷ For the Ordinary Arbitration Division, the CAS Code provides that: “The Panel shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to Swiss law.”²⁸ In contrast, the default rule for subsidiary law in the Appeals Arbitration Division is: “[T]he law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate.”²⁹ Since most international sports federations are located in Switzerland, both divisions usually apply the same law.³⁰ For track and field, however, since the International Association of Athletics Federations (IAAF) headquarters are in Monaco,³¹ the subsidiary law applicable to disputes is either Swiss or Monegasque law, depending on whether the Ordinary or Appeals Arbitration Division hears the dispute.³²

An athlete becomes a party to an agreement to arbitrate disputes at the CAS through two possible avenues: (1) through the bylaws of national sporting federations, of which athletes are members,³³ and (2) through signing the entry form required for participation in the Olympic games,

25. New York Convention, *supra* note 23, art. 5.

26. CAS CODE, *supra* note 19, at S3.

27. *Id.*

28. *Id.* at R45.

29. *Id.* at R58.

30. Forty-seven international sports federations are based in Switzerland, compared to five in Monaco, the next most popular federation host country. Samuel Jaberg, *How Switzerland Champions Champions*, SWISSINFO.CH (Julia Slater trans., Jan. 25, 2010, 1:17 PM), http://www.swissinfo.ch/eng/specials/switzerland_for_the_record/world_records/How_Switzerland_champions_champions.html?cid=8149794.

31. INT'L ASS'N OF ATHLETICS FED'NS, CONSTITUTION 7 (2011), available at http://www.iaaf.org/mm/Document/06/28/25/ded17e35-fb04-4a83-801f-a3dcf4ec5f38_PDF_English.pdf (Article 1 states that “[t]he IAAF is established for an indefinite period with legal status as an association under the laws of Monaco (Act No. 1072 of 27 June 1984)”).

32. CAS CODE, *supra* note 19, at R45, R58.

33. KAUFMANN-KOHLER, ARBITRATION AT THE OLYMPICS, *supra* note 16, at 106-07.

which contains an agreement to arbitrate disputes according to the Olympic Charter and Swiss law.³⁴

III. LITERATURE REVIEW

A. *Precedent in Arbitration*

In general, arbitral awards do not have precedential value.³⁵ This follows from the practice of keeping international arbitral awards confidential.³⁶ It would be unfair and impractical to require parties to rely on secret precedents.³⁷ Nevertheless, certain arbitral tribunals do ascribe precedential value to past arbitral awards—for example, in international maritime and construction arbitration.³⁸ Proponents of using arbitral precedent justify the practice as a means for the parties to reap the benefits of the arbitrators' industry-specific knowledge and expertise.³⁹ Reliance on precedent also promotes legal uniformity and consistency.⁴⁰

Both of these arguments apply to the use of arbitral precedent in the international sports context. In establishing the CAS, the IOC aimed to provide a “level playing field” for competitors from different countries and to create a uniquely specialized sports dispute resolution forum.⁴¹ There are also practical reasons that may explain the CAS's reliance on previous arbitral awards. Since the CAS exercises near exclusive appellate jurisdiction over disputes in Olympic sports,⁴² national courts no longer have occasion to interpret international sports charters or codes. This lack of judicial precedent grows even more pronounced as these charters and codes

34. *Id.*

35. *See, e.g.*, NIGEL BLACKABY ET AL., REDFERN AND HUNTER ON INTERNATIONAL ARBITRATION § 1.113 (student version, 5th ed., 2009) (“There is no system of binding precedents in international arbitration . . .”).

36. GARY BORN, INTERNATIONAL ARBITRATION: CASES AND MATERIALS 1059 (2010).

37. BLACKSHAW, *supra* note 6, at 159 (stating that “the CAS is able to grant parties in dispute very valuable, relevant and generally effective kinds of interim protection and relief at an early stage in the proceedings; and these measures deserve to be better known and more widely used”).

38. BORN, *supra* note 36, at 1059.

39. *Id.*

40. *See* BLACKSHAW, *supra* note 6, at 155.

41. *See id.* (one-fifth of the arbitrators are chosen with a view to safeguarding the interests of the athletes).

42. *See id.* at 154. Submission forms required for athletes to participate in the Olympic Games include a standard arbitration clause which states: “I agree that any dispute . . . shall be submitted exclusively to the Court of Arbitration for Sports (CAS).” *Id.*

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are amended or replaced. As a result, domestic judicial interpretations of international sports regulations may be practically unavailable.

Other scholars have identified more cynical motives for the emergence of a *lex sportiva*—namely, as “a cloak for continued self-regulation by international sports federations.”⁴³ Under this interpretation, the use of arbitral precedent arises as a means of avoiding national legislation altogether. Indeed, CAS decisions are generally self-enforcing within international sports bodies.⁴⁴ For disciplinary violations, the sanctions often include disqualification or ineligibility for participation in international sports.⁴⁵ Thus, even if a national sports federation wished to evade enforcement of a CAS award, the athlete involved would still remain ineligible for international competition. As a result, the CAS rarely requires the assistance of national authorities for enforcement of its awards.⁴⁶

B. Stare Decisis or Jurisprudence Constante?

Regardless of the reasons for the CAS’s reliance on precedent, there is little doubt that the practice occurs.⁴⁷ The question remains, however, whether CAS case law constitutes binding or persuasive authority. No CAS panel has gone so far as to explicitly recognize a principle of stare decisis, but panels’ frequent citations to previous CAS awards suggests a de facto doctrine of stare decisis may already be in operation.⁴⁸ More precisely, the question is whether the CAS applies a doctrine of *horizontal* stare decisis, “the doctrine that a court . . . must adhere to its own prior decisions, unless it finds compelling reasons to overrule itself.”⁴⁹ Alternatively, what appears to be a doctrine of stare decisis from the perspective of a common law scholar may be more accurately described as a doctrine of *jurisprudence constante*,

43. Foster, *Is There a Global Sports Law?*, *supra* note 1, at 2-18.

44. See BLACKSHAW, *supra* note 6, at 174 (“[T]he CAS decisions are legally effective and can be enforced internationally.”).

45. See *infra* notes 71-77 and accompanying text (discussing cases involving challenges to sanctions imposed for disciplinary violations).

46. One possible exception in which the CAS might require the assistance of national authorities would be for provisional relief measures; however, this question remains a matter of debate. BLACKSHAW, *supra* note 6, at 158-59.

47. See, e.g., Kaufmann-Kohler, *Arbitral Precedent*, *supra* note 6 (noting the CAS’s frequent citations to precedent).

48. See, e.g., Anderson v. Int’l Olympic Comm. (IOC), 2008/A/1545 (July 16, 2010) (containing over twenty citations to previous CAS awards).

49. BLACK’S LAW DICTIONARY 1537 (9th ed. 2009).

in which the CAS generally follows the weight of past precedent, but remains free to depart from previous awards in the interests of justice.⁵⁰

C. Departures from Precedent in the CAS

Scholars have identified at least one counterexample to the CAS trend of following past awards.⁵¹ A commonly cited example of *lex sportiva* is the principle of strict liability for doping cases.⁵² That is, the existence of a positive doping test is itself sufficient to establish a violation, regardless of the athlete's state of mind.⁵³ Nevertheless, in both *A. v. Federation Internationale de Lutttes Associees (FILA)*⁵⁴ and *Q. v. Union Internationale de Tir (UIT)*,⁵⁵ CAS panels declined to recognize a general principle of strict liability. In the *Q.* case, decided in 1995, the panel concluded that the international shooting federation's (UIT)⁵⁶ doping regulations did not create a rule of strict liability.⁵⁷ Thus, subsequent cases recognizing a general principle of strict liability for all sports conflict with the panel's decision in *Q.*, which held instead that the relevant sporting code must clearly establish a standard of strict liability.⁵⁸

In the *Fritz Aanes* case, the panel acknowledged that previous CAS awards recognized a general principle of strict liability, but decided instead to treat a positive doping test as presumptive evidence of guilt and allow the athlete to rebut the presumption.⁵⁹ Janwillem Soek observes that the panel in the *Fritz Aanes* case was comprised of lawyers from the civil law tradition, whereas panels comprised of common law jurists issued previous

50. *Id.* at 933 (defining *jurisprudence constante* as the “doctrine that a court should give great weight to a rule of law that is accepted and applied in a long line of cases . . . unless clear error is shown and injustice will arise from continuation of a particular rule of law.”).

51. JANWILLEM SOEK, *THE STRICT LIABILITY PRINCIPLE AND THE HUMAN RIGHTS OF ATHLETES IN DOPING CASES 164-67* (2006) (citing *A. v. Fed'n Internationale de Lutttes Associees (FILA)*, CAS 2000/A/317 (July 9, 2001) as a counterexample to the principle of strict liability).

52. *Canadian Olympic Comm. (COC) v. Int'l Olympic Comm. (IOC)*, CAS 2002/O/373, ¶ 14 (Dec. 18, 2003).

53. *Id.*

54. *A.*, CAS 2000/A/317, at ¶ 39.

55. *Q. v. Union Internationale de Tir (UIT)*, CAS 94/129, ¶ 21 (May 23, 1995).

56. In 1998, the Union Internationale de Tir (UIT) was renamed the “International Shooting Sport Federation.” *The ISSF History*, INT'L SHOOTING SPORT FED'N, <http://www.issf-sports.org/theissf/history.ashx> (last visited Mar. 31, 2012).

57. *Id.*

58. *Id.* ¶ 34-35.

59. *A.*, CAS 2000/A/317, at ¶ 39 (“[T]he Panel is conscious of the fact that there have been CAS decisions where the Panel was prepared to apply a strict liability standard with respect to suspensions and was not willing to take into account the subjective elements of the case in questions.”).

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decisions on strict liability.⁶⁰ Likewise, three civil law jurists served as arbitrators in the *Q.* case.⁶¹ This suggests the use of precedent may vary depending on the backgrounds of the arbitrators.⁶²

IV. METHODS

The sample analyzed consists of published awards for track and field involving doping allegations.⁶³ These include decisions on individual doping violations and the consequence of doping violations for relay eligibility.⁶⁴ Within a single sport and type of dispute there should be less variation in the amount of applicable precedent than would be the case if a greater variety of cases were examined.⁶⁵ As a result, variations in the use of precedent in the cases sampled should be more likely to result from panel decision making than the lack of applicable precedent for a certain type of case.⁶⁶

There are two main sources of published awards: the three-volume print Digest of CAS Awards⁶⁷ and the CAS website, which includes a searchable database of awards.⁶⁸ Neither source is comprehensive. The editors of the print volumes selected cases they considered noteworthy.⁶⁹ Although the CAS has announced its intention to publish on its website all

60. SOEK, *supra* note 51, at 167. The arbitrators in the *A.* case were German, Norwegian, and Swiss. *Id.*

61. Two of the arbitrators in the *Q.* case were from Switzerland and the third was from France. *Q.*, CAS 94/129, at 1.

62. *Id.*

63. *See infra* note 71.

64. *See e.g.*, U.S. Olympic Comm. (USOC) v. Int'l Olympic Comm. (IOC), CAS 2004/A/725 (July 20, 2005).

65. *See e.g.*, Canadian Olympic Comm. (COC) v. Int'l Olympic Comm. (IOC), CAS 2002/O/373, ¶ 14 (Dec. 18, 2003).

66. *See, e.g.*, Ohuruogu v. U.K. Athletics Ltd. (UKA), CAS 2006/A/1165, ¶ 17 (Apr. 3, 2007).

67. COURT OF ARBITRATION FOR SPORT, DIGEST OF CAS AWARDS: 1986–1998 (Matthieu Reeb ed., 1998) [hereinafter CAS DIGEST I]; COURT OF ARBITRATION FOR SPORT, DIGEST OF CAS AWARDS II: 1998–2000 (Matthieu Reeb ed., 2002) [hereinafter CAS DIGEST II]; COURT OF ARBITRATION FOR SPORT, DIGEST OF CAS AWARDS III: 2001–2003 (Matthieu Reeb ed., 2004) [hereinafter CAS DIGEST III].

68. *Welcome to the "Jurisprudence" Database!*, CT. ARB. FOR SPORT (July 10, 2009, 11:24 PM), <http://jurisprudence.tas-cas.org/sites/caselaw/help/home.aspx>.

69. CAS DIGEST I, *supra* note 47, at XXIII.

nonconfidential awards issued since the tribunal was first established, the database is still under construction.⁷⁰

A total of twenty-three awards were examined.⁷¹ These include two awards from ad hoc panels for the Olympic Games, three awards made in Ordinary Arbitration Division proceedings, and eighteen awards rendered on appeal from national or international federation decisions.⁷² The awards were issued between 2000 and 2010.⁷³

Each arbitral award was analyzed according to the following criteria: (1) whether it included citations to previous CAS awards; (2) whether the panel followed, distinguished, or rejected precedent; (3) the proposition which the cited award(s) stands for; and (4) whether the panel was comprised of common law jurists, civil law jurists, or a mix of the two. The author expected that panels would cite frequently to past awards and tend to follow precedent, and when panels did in fact depart from precedent, they were more likely to be comprised of civil law jurists than jurists from common law backgrounds or a mix of the two.

70. "As of January 2009, the awards issued after 2003 are gradually being added to the database so that in the long term . . . there will be a complete coverage of the CAS awards." *Welcome to the Database of CAS Awards*, CT. ARB. FOR SPORT, <http://www.tas-cas.org/jurisprudence-archives> (last visited Mar. 26, 2012).

71. *Anderson v. Int'l Olympic Comm. (IOC)*, 2008/A/1545 (July 16, 2010); *Devyatovskiy v. Int'l Olympic Comm. (IOC)*, CAS 2009/A/1752 (June 10, 2010); *Anderson v. Int'l Olympic Comm. (IOC)*, 2008/A/1545 PA (Dec. 18, 2009); *Int'l Ass'n of Athletics Fed'ns (IAAF) v. All Russia Fed'n*, CAS 2008/A/1718 (Nov. 18, 2009); *Kop v. Int'l Ass'n of Athletics Fed'ns (IAAF)*, CAS 2008/A/1585 (Nov. 10, 2009); *Int'l Ass'n of Athletics Fed'ns (IAAF) v. Real Federación Española de Atletismo (RFEA)*, CAS 2009/A/1805 (Sept. 22, 2009); *Gatlin v. U.S. Anti-Doping Agency (USADA)*, CAS 2008/A/1461 (June 6, 2008); *Ohuruogu v. U.K. Athletics Ltd. (UKA)*, CAS 2006/A/1165 (Apr. 3, 2007); *U.S. Anti-Doping Agency (USADA) v. G.*, 2004/O/649 (Dec. 13, 2005); *U.S. Anti-Doping Agency (USADA) v. M.*, CAS 2004/O/645 (Dec. 13, 2005); *U.S. Olympic Comm. (USOC) v. Int'l Olympic Comm. (IOC)*, CAS 2004/A/725 (July 20, 2005); *A. v. Int'l Olympic Comm. (IOC)*, CAS 2004/A/718 (Mar. 31, 2005); *F. v. Int'l Olympic Comm. (IOC)*, CAS 2004/A/714 (Mar. 31, 2005); *Int'l Ass'n of Athletics Fed'ns (IAAF) v. U.S.A. Track & Field (USATF)*, CAS 2004/A/628 (June 28, 2004); *Int'l Ass'n of Athletics Fed'ns (IAAF) v. Fédération Royale Marocaine d'Athlétisme (MAR)*, CAS 2003/A/452 (Nov. 19, 2003); *Int'l Ass'n of Athletics Fed'ns (IAAF) v. Fédération Camerounaise d'Athlétisme (CMR)*, CAS 2003/A/448 (Oct. 2, 2003); *W. v. UK Athletics*, CAS 2003/A/455 (Aug. 21, 2003); *Longo v. Int'l Ass'n of Athletic Fed'ns (IAAF)*, CAS 2002/A/409 (Mar. 28, 2003); *Int'l Ass'n of Athletics Fed'ns (IAAF) v. U.S.A. Track & Field (USATF)*, CAS 2002/O/401 (Jan. 10, 2003); *Int'l Ass'n of Athletics Fed'ns (IAAF) v. CAF & Z.*, CAS 2002/A/362 (Aug. 27, 2002); *F. v. Int'l Sports Org. for the Disabled (ISOD)*, CAS 2001/A/328 (Aug. 3, 2001); *Melinte v. Int'l Amateur Athletic Fed'n (IAAF)*, CAS 00/015 (Sept. 29, 2000); *Baumann v. Int'l Olympic Comm. (IOC)*, CAS 00/006 (Sept. 22, 2000).

72. *See supra* note 51.

73. *See, e.g., Anderson*, CAS 2008/A/1545; *Baumann*, CAS 00/006.

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There are a few main limitations to this study. First, not all CAS decisions are published.⁷⁴ While publication remains the default rule, parties may opt to keep the award confidential.⁷⁵ This may lead to selection bias if parties prefer to avoid disclosing awards that deviate from past CAS jurisprudence. Another potential source of bias is the lack of access to the parties' briefs.⁷⁶ In their awards, panels might refer only to previous arbitral awards that the panel believes were rightly decided. Thus, panels might ignore contrary citations in a party's submissions that would reveal the panel's divergence from past precedent. Lastly, this study addresses only disciplinary cases. The CAS also hears commercial disputes, which most likely involve greater overlap with existing domestic and international regulation—such as European Union competition rules.⁷⁷ As a result, the findings in this study may not apply to commercial cases.

V. RESULTS

A. Frequency and Use of Precedent

Of the twenty-three awards analyzed,⁷⁸ seventeen contain at least one citation to a previous CAS award.⁷⁹ In each award that contained a citation to precedent, the panel either followed or distinguished⁸⁰ previous CAS awards. None of the awards explicitly departed from precedent.⁸¹ For

74. See *Procedural Rules: A. General Provisions*, CT. ARB. FOR SPORT, <http://www.tas-cas.org/rules> (last visited Mar. 26, 2012) [hereinafter *Procedural Rules*] (explaining that arbiters “may decide to publish”); *Are the Arbitration Proceedings Confidential?*, CT. ARB. FOR SPORT, <http://www.tas-cas.org/en/20questions.asp/4-3-229-1010-4-1-1/5-0-1010-13-0-0/> (last visited Mar. 26, 2012) [hereinafter *Proceedings Confidential*].

75. *Proceedings Confidential*, *supra* note 54 (“Generally speaking, unless the parties agree otherwise, the award may be published by the CAS.”).

76. *Id.* (“The parties, arbitrators and CAS staff are obliged not to disclose any information connected with the dispute.”).

77. See *What Kinds of Dispute Can Be Submitted to the CAS?*, CT. ARB. FOR SPORT, <http://www.tas-cas.org/en/20questions.asp/4-3-217-1010-4-1-1/5-0-1010-13-0-0/> (last visited Mar. 26, 2012) (writing that CAS accepts “disputes of a commercial nature (e.g. a sponsorship contract”).

78. See *infra* Table 1.

79. See *supra* note 51.

80. See, e.g., *Ohuruogu v. U.K. Athletics Ltd. (UKA)*, CAS 2006/A/1165, ¶ 17 (Apr. 3, 2007) (explicitly distinguishing a previous award).

81. *Id.*

awards that did not contain references to past precedent, the panel appeared to find the applicable sporting codes dispositive.⁸²

An example from two disputes with nearly identical facts illustrates the CAS panels' approach to previous awards. In *United States Olympic Committee (USOC) v. International Olympic Committee (IOC)*, the panel was asked to determine whether the members of the United States 4x400 meter relay team from the 2000 Summer Olympic Games in Sydney, Australia would be allowed to keep their gold medals following the revelation that one of the team members, Jerome Young, had been found guilty of a doping offense prior to the Olympic Games and was therefore ineligible to compete.⁸³ The International Amateur Athletic Federation (IAAF) Rules in force in 2000 did not expressly address the consequences of doping offenses for relay teams, only for individual athletes.⁸⁴ The IAAF cited to previous CAS awards from team sports to argue that a single team member's ineligibility should nevertheless result in disqualification of the entire team.⁸⁵ The panel rejected the IAAF's argument, ruling that previous awards in other sports were not applicable; the plain language of the IAAF Rules omitted any sanctions for relay teams.⁸⁶ Instead, the panel cited *Q*.⁸⁷ for the proposition that there is no liability unless an offense is clearly stated in the relevant code.⁸⁸ In other words, sanctions must be predictable. As a result, the panel allowed the athletes to keep their medals.⁸⁹

Four years later, a CAS panel again faced a nearly identical set of facts in *Andrea Anderson v. International Olympic Committee (IOC)*.⁹⁰ The dispute arose following United States sprinter Marion Jones's admission that she had taken performance-enhancing drugs before, during, and after the 2000 Summer Olympic Games.⁹¹ Jones had competed in two relay races in Sydney, Australia, winning the bronze medal in the 4x100 meter relay and the gold medal in the 4x400 meter relay.⁹² Despite the CAS ruling in the

82. See, e.g., *Gatlin v. U.S. Anti-Doping Agency (USADA)*, CAS 2008/A/1461 (June 6, 2008) (holding that the plain language of the IAAF rules regarding a second doping offense determined the length of United States sprinter Justin Gatlin's suspension from competition).

83. *U.S. Olympic Comm. (USOC) v. Int'l Olympic Comm. (IOC)*, CAS 2004/A/725 (July 20, 2005).

84. *Id.* ¶ 14.

85. *Id.* ¶ 8.

86. *Id.* ¶ 7.

87. *Q v. Union Internationale de Tir (UIT)*, CAS 94/129, ¶ 21 (May 23, 1995).

88. *Id.* ¶ 21.

89. *U.S. Olympic Comm. (USOC) v. Int'l Olympic Comm. (IOC)*, CAS 2004/A/725, at 11 (July 20, 2005).

90. *Anderson v. Int'l Olympic Comm. (IOC)*, CAS 2008/A/1545 (July 16, 2010).

91. *Id.* at 2.

92. *Id.* at 3.

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Jerome Young case, the IOC Disciplinary Commission demanded that Jones's teammates return their medals.⁹³ The athletes appealed to the CAS, arguing that the Young award was dispositive for their case.⁹⁴ The panel agreed that the Young case was directly on point, but rejected the appellants' contention that a doctrine of *stare decisis* must apply: "This does not automatically entail that the Panel is bound to decide in the same way as in CAS 2004/A/725 on the basis of either the '*stare decisis*' or the '*collateral estoppel*' principles, as advocated by the Appellants."⁹⁵

While the panel ultimately followed the Young award by overturning the IOC Disciplinary Commission's decision, it was careful to explain that the Young award constituted persuasive, rather than binding precedent: "[A]lthough a CAS panel in principle might end up deciding differently from a previous panel, it must accord to previous CAS awards a substantial precedential value and it is up to the party advocating a jurisprudential change to submit persuasive arguments and evidence to that effect."⁹⁶ Thus, while in practice, the CAS did not depart from precedent in this sample of awards, CAS panels explicitly defend their authority to do so should the need arise.

B. Types of Propositions Advanced

The type of proposition advanced fell into four general categories: (1) use of a particular testing method or procedure as evidence of a doping violation; (2) substance of parties' right to be heard; (3) rules of evidence; and (4) general principles of equity.

In the first category, awards cited to precedent to support the use of a specific type of technical evidence to confirm a doping violation.⁹⁷ The athletes involved had each attempted to discredit a positive doping test on the grounds that the testing methods were somehow scientifically unproven

93. *Id.*

94. *Id.* ¶ 50.

95. *Id.* ¶ 52.

96. *Id.* ¶ 55.

97. See Int'l Ass'n of Athletics Fed'n (IAAF) v. Fédération Royale Marocaine d'Athlétisme (MAR), CAS 2003/A/452, ¶ 17 (Nov. 19, 2003); Melinte v. Int'l Amateur Athletic Fed'n (IAAF), CAS 00/015, ¶ 8 (Sept. 29, 2000); Baumann v. Int'l Olympic Comm. (IOC), CAS 00/006, ¶ 40 (Sept. 22, 2000).

or illegitimate.⁹⁸ In the three awards examined, CAS panels dismissed these allegations by citing to past awards that found doping violations based on the same testing methods.⁹⁹ For example, in *International Association of Athletics Federations (IAAF) v. Fédération Royale Marocaine d’Athlétisme (MAR)*, the Moroccan Track and Field Federation and the world record holder in the steeplechase, Brahmin Boulami, challenged the results of an in-competition doping test conducted on Boulami in Zurich, Switzerland, which detected the presence of the blood booster erythropoietin (EPO).¹⁰⁰ The Moroccan Track and Field Federation argued that the testing method used was scientifically suspect and not “internationally recognized.”¹⁰¹ The CAS panel dismissed this claim, noting that the same testing method had been used in previous cases arbitrated at the CAS in connection with the 2002 Winter Olympic Games in Salt Lake City, Utah.¹⁰²

The second category of precedent involves disputes in which one of the parties claimed that irregularities in the initial national or international disciplinary hearing violated the party’s right to be heard.¹⁰³ For example, in *A. v. International Olympic Committee (IOC)*, Adrian Annus, a Hungarian hammer thrower, challenged the IOC’s decision to strip him of his gold medal after Annus failed to submit to drug testing.¹⁰⁴ Annus claimed, *inter alia*, that the IOC’s disciplinary hearing was invalid because he did not attend, due to poor health.¹⁰⁵ The panel rejected Annus’s claim—as did the panels in the three other cases in the sample involving violations of the right to be heard—on the ground that the CAS’s *de novo* standard of review cures any deficiencies in the initial disciplinary proceedings.¹⁰⁶

An example from the third category, rules of evidence, is the rule that a tribunal may—but is not required to—draw adverse inferences from a party’s silence. In *United States Anti-Doping Agency (USADA) v. M.*, the panel considered how it should address United States sprinter Tim Montgomery’s refusal to testify in response to allegations that Montgomery

98. *Baumann*, CAS 00/006, ¶ 40 (a)-(c); *Melinte*, CAS 00/015, ¶ 8; *MAR*, CAS 2003/A/452, ¶ 9.

99. *Baumann*, CAS 00/006, ¶ 40 (a)-(c); *Melinte*, CAS 00/015, ¶ 8; *MAR*, CAS 2003/A/452, ¶ 16-59.

100. *MAR*, CAS 2003/A/452, at 1-2.

101. *Id.* ¶ 10.

102. *Id.* ¶ 17.

103. *See A. v. Int’l Olympic Comm. (IOC)*, 2004/A/718, ¶ 7 (Mar. 31, 2005); *F. v. Int’l Olympic Comm. (IOC)*, CAS 2004/A/714, ¶ 11 (Mar. 31, 2005); *W. v. U.K. Athletics*, CAS 2003/A/455, ¶ 12 (Aug. 21, 2003); *Int’l Ass’n of Athletics Fed’n (IAAF) v. CAF & Z.*, CAS 2002/A/362, ¶ 21 (Aug. 27, 2002).

104. *A.*, 2004/A/718, at 1-3.

105. *Id.* ¶ 6.

106. *Id.* ¶ 7.

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used performance-enhancing drugs obtained through the Bay Area Laboratory Cooperative (BALCO).¹⁰⁷ Although the panel noted that previous CAS awards permitted a panel to draw “certain adverse inferences”¹⁰⁸ in this context, the panel concluded that the case against Montgomery was strong enough that no adverse inference was needed.¹⁰⁹

Lastly, CAS panels rely on previous awards to establish general equitable principles. For example, in *International Association of Athletics Federations (IAAF) v. U.S.A. Track & Field (USATF)*, the panel faced a dispute over whether USATF was required to disclose to the IAAF the identities of athletes who were exonerated in USATF disciplinary hearings.¹¹⁰ Over a four-year period, USATF responded to IAAF requests for this information by citing the USATF confidentiality policy and asking the IAAF to point to the specific IAAF rule that required disclosure.¹¹¹ The IAAF did not respond to USATF’s repeated requests.¹¹² The CAS panel resolved the issue by citing to previous cases for the proposition that, “[W]here the conduct of one party has led to legitimate expectations on the part of a second party, the first party is estopped from changing its course of action to the detriment of the second party.”¹¹³ Since the IAAF did not respond to USATF’s requests, and the athletes in question had received USATF’s contractual assurances that their identities would not be released, the CAS panel ruled that the IAAF was equitably estopped from requesting this information.¹¹⁴ Revealing the athletes’ identities would conflict with both the legitimate expectations of USATF and the athletes involved.¹¹⁵

C. Panel Composition

This study provides no support for the theory that an arbitrator’s background determines a panel’s approach to precedent. Of the twenty-three

107. U.S. Anti-Doping Agency (USADA) v. M., CAS 2004/O/645, ¶ 9 (Dec. 13, 2005) (error in original source has two ¶¶ 9-11).

108. *Id.* ¶ 11.

109. *Id.* ¶ 9.

110. Int’l Ass’n of Athletics Fed’n (IAAF) v. U.S.A. Track & Field (USATF), CAS 2002/O/401 (Jan. 10, 2003).

111. *Id.* ¶ 42-52.

112. *Id.* ¶ 53.

113. *Id.* ¶ 68.

114. *Id.* ¶ 72-77.

115. *Id.*

total awards, five were issued by panels comprised of exclusively common law jurists, three by exclusively civil law jurists, and fourteen by a combination of the two.¹¹⁶ Of the five awards from common law panels, three included citations to precedent,¹¹⁷ and two of the three civil law panels did as well.¹¹⁸ Thus, the percentage of awards that cited previous arbitral awards was actually slightly higher for civil law panels than for common law panels. For mixed panels, twelve of fourteen cited to past precedent.¹¹⁹

VI. CONCLUSION

The results of this study lend further support to the view that the CAS is developing its own body of private international legal precedent outside the purview of domestic legislation. Although CAS panels unambiguously reject the notion that they apply a doctrine of *stare decisis*, this study illustrates panels' de facto adherence to precedent. As long as CAS panels continue to assert their authority to depart from past precedent, the CAS approach appears more akin to one of *jurisprudence constante* than *stare decisis*.¹²⁰ For parties, the practical implication is perhaps the same under either doctrine—claims that run contrary to previous CAS awards are

116. *F. v. Int'l Sports Org. for the Disabled (ISOD)*, CAS 2001/A/328 (Aug. 3, 2001) (arbitrators not named).

117. *Compare* *U.S. Anti-Doping Agency (USADA) v. G.*, 2004/O/649 (Dec. 13, 2005); *U.S. Anti-Doping Agency (USADA) v. M.*, CAS 2004/O/645 (Dec. 13, 2005); *Baumann v. Int'l Olympic Comm. (IOC)*, CAS 00/006 (Sept. 22, 2000) (citing previous CAS awards), *with* *Int'l Ass'n of Athletics Fed'ns (IAAF) v. U.S.A. Track & Field (USATF)*, CAS 2004/A/628 (June 28, 2004); *Int'l Ass'n of Athletics Fed'ns (IAAF) v. Fédération Camerounaise d'Athlétisme (CMR)*, CAS 2003/A/448 (Oct. 2, 2003) (previous CAS awards not cited).

118. *Compare* *F. v. Int'l Olympic Comm. (IOC)*, CAS 2004/A/714 (Mar. 31, 2005); *Longo v. Int'l Ass'n of Athletic Fed'ns (IAAF)*, CAS 2002/A/409 (Mar. 28, 2003) (citing previous CAS awards), *with* *Kop v. Int'l Ass'n of Athletics Fed'ns (IAAF)*, CAS 2008/A/1585 (Nov. 10, 2009) (previous CAS awards not cited).

119. *Compare* *Anderson v. Int'l Olympic Comm. (IOC)*, CAS 2008/A/1545, ¶ 3 (July 16, 2010); *Devyatovskiy v. Int'l Olympic Comm. (IOC)*, CAS 2009/A/1752 (June 10, 2010); *Anderson v. Int'l Olympic Comm. (IOC)*, 2008/A/1545 PA (Dec. 18, 2009); *Int'l Ass'n of Athletics Fed'ns (IAAF) v. All Russia Fed'n*, CAS 2008/A/1718 (Nov. 18, 2009); *Ohuruogu v. U.K. Athletics Ltd. (UKA)*, CAS 2006/A/1165 (Apr. 3, 2007); *U.S. Olympic Comm. (USOC) v. Int'l Olympic Comm. (IOC)*, CAS 2004/A/725 (July 20, 2005); *A. v. Int'l Olympic Comm. (IOC)*, CAS 2004/A/718 (Mar. 31, 2005); *Int'l Ass'n of Athletics Fed'ns (IAAF) v. Fédération Royale Marocaine d'Athlétisme (MAR)*, CAS 2003/A/452 (Nov. 19, 2003); *W. v. UK Athletics*, CAS 2003/A/455 (Aug. 21, 2003); *Int'l Ass'n of Athletics Fed'ns (IAAF) v. U.S.A. Track & Field (USATF)*, CAS 2002/O/401 (Jan. 10, 2003); *Int'l Ass'n of Athletics Fed'ns (IAAF) v. CAF & Z.*, CAS 2002/A/362 (Aug. 27, 2002); *Melinte v. Int'l Amateur Athletic Fed'n (IAAF)*, CAS 00/015 (Sept. 29, 2000) (citing previous CAS awards), *with* *Int'l Ass'n of Athletics Fed'ns (IAAF) v. Real Federación Española de Atletismo (RFEA)*, CAS 2009/A/1805 (Sept. 22, 2009); *Gatlin v. U.S. Anti-Doping Agency (USADA)*, CAS 2008/A/1461 (June 6, 2008) (previous CAS awards not cited).

120. BLACKSHAW, *supra* note 6, at 155.

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unlikely to succeed.¹²¹ CAS panels are extremely reluctant to depart from precedent.¹²² In the interest of fairness to the parties, it is therefore critical that the CAS publish all nonconfidential awards, and refrain from allowing parties to rely on confidential awards.

The application of *jurisprudence constante* to CAS arbitration also raises questions with respect to the parties' choice of law. For example, CAS awards sometimes cite precedent from a different division.¹²³ Since the Ordinary and Appeals Arbitration Divisions follow different default rules for the applicable subsidiary law, reliance on precedent across divisions runs the risk of a conflict with the applicable subsidiary law.¹²⁴ Admittedly, the difference between interpreting international sports regulations under Swiss as opposed to Monegasque law is perhaps of no practical import.¹²⁵ Nevertheless, citing to precedent without reference to the applicable law runs contrary to the principle of party autonomy in arbitration. One CAS panel attempted to evade this quandary by arguing that the parties implicitly chose *lex sportiva* as their governing law: "Since CAS jurisprudence is largely based on a variety of sports regulations, the parties' reliance on CAS precedents in their pleadings amounts to the choice of that specific body of case law encompassing certain general principles derived from and applicable to sports regulations."¹²⁶

That is, when parties refer to precedent in their briefs, the panel may rely on past awards as a means of honoring the principle of party autonomy.¹²⁷ This doctrine could create a problematic dilemma for parties, however. Considering the CAS tends to follow past awards, claims that run contrary to precedent have little chance of succeeding. Thus, a party would be remiss to avoid citing to CAS awards that favor her position. On the other hand, panels may treat citations to precedent as evidence of the party's acquiescence to the choice of *lex sportiva* as a source of substantive law

121. See *supra* note 51; *Ohuruogu*, CAS 2006/A/1165, at ¶ 17 (rather than departing from prior precedent, the Panel distinguished the case from prior precedent).

122. See *Anderson*, CAS 2008/A/1545, ¶ 55 ("[I]t must accord to previous CAS awards a substantial precedential value and it is up to the party advocating a jurisprudential change to submit persuasive arguments . . .").

123. See Mitten & Opie, *supra* note 3, at 291.

124. See CAS CODE, *supra* note 19, at R45.

125. See *id.*

126. Canadian Olympic Comm. (COC) v. Int'l Olympic Comm. (IOC), CAS 2002/O/372, ¶ 14 (Dec. 18, 2003).

127. *Id.*

governing the arbitration.¹²⁸ If only one party cites to CAS precedent, what then? The award in *Anderson* confirms that parties may at least “in theory” plead based on the *lex sportiva*, provided the content of the law asserted is sufficiently clear and predictable.¹²⁹ Future research on the CAS is needed to determine the means by which parties “opt in” or “opt out” of the use of CAS precedent.

In sum, while this study does not attempt to provide a definitive answer to the debate over whether the CAS follows a doctrine of stare decisis, to the extent that the sample is representative of CAS jurisprudence more generally, it suggests that the use of precedent approximates the civil law doctrine of *jurisprudence constante* rather than stare decisis. CAS panels follow past awards, but do not regard precedent as binding.¹³⁰ At a minimum, the CAS’s exclusive jurisdiction over disciplinary cases involving international-level Olympic athletes, as well as the emergence of a body of CAS jurisprudence independent of national legislation, has already led to the emergence of a distinctively autonomous system of global private regulation.

128. See, e.g., LATTY, *supra* note 1.

129. *Anderson*, CAS 2008/A/1545, ¶ 65.

130. See BLACKSHAW, *supra* note 6, at 155.

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TABLE 1: COMPARISON OF PUBLISHED CAS AWARDS IN TRACK AND FIELD

| | CASE NO. | PARTIES | ARBITRATOR BACKGROUND | USE OF PRECEDENT | FOLLOWED/ DISTINGUISHED |
|---|-----------------|--|-----------------------|------------------|-------------------------|
| 1 | CAS 00/006 | <i>Dieter Baumann v. International Olympic Committee (IOC), National Olympic Committee of Germany & International Amateur Athletic Federation (IAAF)</i> | Common law | Yes | Followed |
| 2 | CAS 00/015 | <i>Mihaela Melinte v. International Amateur Athletic Federation (IAAF)</i> | Mixed | Yes | Followed |
| 3 | CAS 2001/A /328 | <i>F. v. International Sports Organization for the Disabled (ISOD), International Paralympic Committee (IPC), Disabled Sports USA (DS/USA)</i> | Unknown | No | n/a |

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|---|-----------------------|---|------------|-----|----------|
| 4 | CAS 2002/A /362 | <i>International Association of Athletics Federations (IAAF) v. CAF & Z.</i> | Mixed | Yes | Followed |
| 5 | CAS 2002/O /401 | <i>International Association of Athletics Federations (IAAF) v. USA Track & Field (USATF)</i> | Mixed | Yes | Followed |
| 6 | CAS 2002/A /409 | <i>Longo v. International Association of Athletic Federations (IAAF)</i> | Civil law | Yes | Followed |
| 7 | CAS 2003/A /448 | <i>International Association of Athletics Federations (IAAF) v. Fédération Camerounaise d'Athlétisme (CMR)</i> | Common law | No | n/a |
| 8 | CAS 2003/A /452 | <i>International Association of Athletics Federations (IAAF) v. Fédération Royale Marocaine d'Athlétisme (MAR) & B.</i> | Mixed | Yes | Followed |
| 9 | CAS 2003/A /455 | <i>W. v. UK Athletics</i> | Mixed | Yes | Followed |

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|----|-----------------------|---|------------|-----|----------------------------|
| 10 | CAS 2004/A /628 | <i>International Association of Athletics Federations (IAAF) v. USA Track & Field (USATF) & Y.</i> | Common law | No | n/a |
| 11 | CAS 2004/O /645 | <i>United States Anti-Doping Agency (USADA) v. M. & International Association of Athletics Federation (IAAF)</i> | Common law | Yes | Followed |
| 12 | CAS 2004/O /649 | <i>United States Anti-Doping Agency (USADA) v. G.</i> | Common law | Yes | Followed |
| 13 | CAS 2004/A /714 | <i>F. v. International Olympic Committee (IOC)</i> | Civil law | Yes | Followed |
| 14 | CAS 2004/A /725 | <i>United States Olympic Committee (USOC) v. International Olympic Committee (IOC) & International Association of Athletics Federation (IAAF)</i> | Mixed | Yes | Distinguished and Followed |

| | | | | | |
|----|---|--|-------|-----|---------------|
| 15 | CAS 2004/A /718 | A. v. <i>International Olympic Committee (IOC)</i> | Mixed | Yes | Followed |
| 16 | CAS 2006/A /1165 | <i>Christine Ohuruogu v. UK Athletics Limited (UKA) & International Association of Athletics Federations (IAAF)</i> | Mixed | Yes | Distinguished |
| 17 | CAS 2008/A /1461, CAS 2008/A /1462 | <i>Justin Gatlin v. United States Anti-Doping Agency (USADA) & IAAF v. USA Track & Field (USATF) & Justin Gatlin</i> | Mixed | No | n/a |
| 18 | CAS 2008/A /1545 PA | <i>Andrea Anderson, LaTasha Colander Clark, Jearl Miles- Clark, Torri Edwards, Chryste Gaines, Monique Hennagan, Passion Richardson v. International Olympic Committee (IOC)</i> | Mixed | Yes | Followed |

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|----|---|--|-----------|-----|----------|
| 19 | CAS 2008/A /1545 | <i>Andrea Anderson, LaTasha Colander Clark, Jearl Miles- Clark, Torri Edwards, Chryste Gaines, Monique Hennagan, Passion Richardson v. International Olympic Committee (IOC)</i> | Mixed | Yes | Followed |
| 20 | CAS 2008/A /1585, CAS 2008/A /1586 | <i>Yücel Kop v. IAAF & TAF, Süreyya Ayhan Kop v. IAAF & TAF</i> | Civil law | No | n/a |

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|----|--|--|-------|-----|-------------------------------|
| 21 | CAS 2008/A /1718, CAS 2008/A /1719, CAS 2008/A /1720, CAS 2008/A /1721, CAS 2008/A /1722, CAS 2008/A /1723, CAS 2008/A /1724 | <i>IAAF v. All Russia Athletic Federation & Olga Yegorova, IAAF v. All Russia Athletic Federation & Svetlana Cherkasova, IAAF v. All Russia Athletic Federation & Yuliya Fomenko, IAAF v. All Russia Athletic Federation & Gulfiya Khanafeyeva, IAAF v. All Russia Federation & Tatyana Tomashova, IAAF v. All Russia Athletic Federation & Yelena Soboleva, IAAF v. All Russia Athletic Federation & Darya Pishchalnikova</i> | Mixed | Yes | Distinguished and Followed |
| 22 | CAS 2009/A /1752, CAS 2009/A /1753 | Vadim Devyatovskiy v. IOC & Ivan Tsikhan v. IOC | Mixed | Yes | Followed |

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|----|---|---|-------|----|-----|
| 23 | CAS 2009/A /1805, CAS 2009/A /1847 | <i>IAAF v. RFEA & Josephine Onyia</i> | Mixed | No | n/a |
|----|---|---|-------|----|-----|