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Contact: adulitzky@law.utexas.edu

**Global Constitutionalization and Eurocentric Adjudication:
The case of human rights in sports law**

Ariel Dulitzky

Imagine a football (soccer) international match in Sudan between Sudanese and Egyptian teams organized by the African Confederation of Football (CAF) with headquarters in Egypt. The match is suspended before the end of the reglementary time given the violent incidents conducted by the fans of the Sudanese team. CAF imposes severe penalties against the Sudanese team. So far, this situation appears to be a dispute where all the relevant facts take place in Africa. If we were to analyze this situation from a constitutional law perspective we could look into the Constitutions of Egypt and Sudan in order to determine if they contain any particular regulations related to sports. If we were to explore the situation from a human rights perspective we could look at the United Nations (UN) or African human rights system to see if there are any particular standards to the respect of human rights in the sports field.¹

However, given that football is a transnational system, the Sudanese team can only (as established in the CAF and FIFA regulations) appeal the CAF sanctions in front of the Court of Arbitration for Sports (CAS), an arbitral private tribunal with seat in Switzerland. In our analysis we could look into the constitutive documents of CAF, FIFA and CAS to see if they include any references to human rights. Similarly, we could explore the Swiss Constitution and possible the European Court of Human Rights (European Court) to understand if they deal with sports related matters. Briefly, a football dispute originated in Africa becomes regulated, at least in part, by European law.²

This article intends to explore part of the interrelationship between constitutionalism, human rights and sports as exemplified by the Sudanese case. Despite an ad hoc, intermittent and patchwork approach, the United Nations as well as other regional intergovernmental organizations are increasingly demonstrating a concern to secure full respect of human rights in the sports field. This process, that I call *righting sports law*, refers to the recognition of the right to participate in sports; the realization of human rights through sport; the use of international

¹ I refer to sports field in close relation to Bourdieu's concept of field as an arena (in this case sports) constituted by a network of different actors and relations organized according to its own logic determined by the specificity of the issues (the famous *sports specificity* in our situation) and with their own rules and cultures of "production, circulation, appropriation and exchange of goods, services, knowledge, or status, and the competitive positions held by and competitive struggles among actors." Swartz, D. (1997) Culture and power: The sociology of Pierre Bourdieu at 117.. For an analysis of Bourdieu's analysis of sports see Tomlinson, A. (2004). Pierre Bourdieu and the Sociological Study of Sport: Habitus, Capital and Field. In: Giulianotti, R. (eds) Sport and Modern Social Theorists. Palgrave Macmillan, London. https://doi.org/10.1057/9780230523180_11

² See Al Hilal Club v. Confédération Africaine de Football (CAF), CAS 2020/A/6920 (Ct.Arb. Sport 2020).

human rights to monitor the functioning of sporting governing bodies (SGB); the promotion and protection of human rights in sports practices, competitions, and mega-sporting events; and the increasing attention to sports by human rights organs. The article deals with the *righting sports law* in its first section.

The *righting sports law* is particularly clear in the European context. The European Court has ruled on issues touching directly or indirectly on sports. In particular, the Court has decided cases dealing with arbitration in sports (including CAS), on disciplinary actions in the context of sports and on the rights and obligations of different stakeholders in the sports ecosystem.³ A parallel development takes place in the European Court of Justice and in the activities, resolutions and treaties adopted by the European Union and the Council of Europe. It is a phenomenon that I identify as *sporting European Human Rights Law* and address in the second part of this article.

Two particular trends are present in the process of *righting sports law*. The first one is the inclusion of human rights references in the constitutions, charters, policies and/or regulations of sporting governing bodies (SGBs). Traditionally, international federations resisted the application of international human rights law to their operations and decisions. The *righting sports law* process has moved SGBs (including CAF and FIFA) to incorporate diverse types of commitments to follow internationally recognized human rights in their activities. The International Olympic Committee (IOC) and at least 90 SGBs that form part of the Olympic Movement have human rights references in their documents and/or policies. I label this development *constitutionalizing human rights in sports law*, which is explained in the third part of the article.

A parallel trend is taking place at the national level. At least 94 national constitutions (among them the Egyptian and Swiss) include explicit references to sports in their texts. Those constitutional rules could be broadly grouped into three categories: a) sports as a right (autonomous or as part of other rights such as health, education, culture, leisure or the rights of children/youth); b) sports as one of the objectives of the social policy or State's objectives and; c) sports as one of the competencies attributed to legislative and/or executive branches and to the national, state and/or local authorities. I denominate and explain this approach *constitutionalizing sports* in the following section of the paper.

CAS is a critical actor in the sport ecosystem. By adjudicating international sports disputes CAS is performing the role of a "Supreme Court for Sport"⁴ and a (quasi) constitutional court that exercises a type of judicial review over the functioning of SGBs. Today almost all sports federations and all national Olympic committees recognize CAS.⁵ CAS' caseload has involved 73

³ I use the term sports ecosystem to the understanding that sport is the result of and influenced by a series of private, public and non-for profit stakeholders acting and interacting at the local, national, regional, transnational and international levels. See Center for Sports and Human Rights, Sports Ecosystem, <https://www.sporhumanrights.org/what-we-do/sports-ecosystem>

⁴ Arbitration CAS 2018/O/5830 International Surfing Association (ISA) v. International Canoe Federation (ICF), award of 5 August 2020 at 158.

⁵ The U.S. professional leagues, Formula 1, and the English Football are the main SGBs that have not accepted CAS as the final arbitration mechanism. However, the CAS has decided cases related to current or former NBA players.

different sports.⁶ From its establishment⁷ until 2022 CAS has registered 9695 proceedings.⁸ In 2022 alone CAS registered 830 cases.⁹ This number is as large or larger than the dockets of other major arbitral tribunals and human rights adjudicatory bodies. On the arbitral side, CAS is as active if not more than the Permanent Court of Arbitration (204 cases in 2022),¹⁰ the International Court of Arbitration of the International Chamber of Commerce (775 cases),¹¹ the London Court of International Arbitration (327 cases),¹² and the International Center for Dispute Resolution (993 in 2018).¹³ Comparing with the number of cases decided by human rights institutions, CAS is a quantitative important adjudicatory body. The Inter-American Court of Human Rights had received only 401 since its establishment in 1979 and its sister, the Inter-American Commission on Human Rights had 3,629 pending petitions by the end of 2022.¹⁴ The African Court of Human and Peoples Rights had registered 338 cases since 2004 and the African Commission on Human and Peoples Rights has 220 pending communications.¹⁵ For its part, the UN Human Rights Committee has registered 4,121 communications concerning 94 States parties since 1977, of which 211 were registered during 2021.¹⁶ The European Court of Human Rights, by far the most active body, had more than 74,000 pending communications by the end of 2022, a year in which issued more than 7,000 judgments.¹⁷

See Arbitration CAS 2013/A/3099 Beşiktaş Jimnastik Kulübü Derneği v. Allen Iverson, award of 30 August 2013; Arbitration CAS 2000/A/262 R. / International Basketball Federation (FIBA), preliminary award of 28 July 2000. CAS also decided cases related to the MLS, Arbitration CAS 2017/O/5264, 5265 & 5266 Miami FC & Kingston Stockade FC v. Fédération Internationale de Football Association (FIFA), Confederation of North, Central America and Caribbean Association Football (CONCACAF) & United States Soccer Federation (USSF), award of 3 February 2020. And finally, some CAS awards are connected to the NHL. Arbitration CAS 2004/A/757 Finnish Ice Hockey Association v. International Ice Hockey Federation (IIHF), award of 25 October 2005 and Arbitration CAS ad hoc Division (O.G. Nagano) 98/004-005 Czech Olympic Committee, Swedish Olympic Committee and S. / International Ice Hockey Federation (IIHF), award of 18 February 1998.

⁶ *Id.* at 39.

⁷ HC X. v. Ligue Suisse de Hockey sur Glace (LSHG), CAS 86/1 (Ct. Arb. for Sport Jan. 30, 1987) was the first award rendered by CAS. The case involved a dispute between an ice hockey coach, an ice hockey club and the Swiss Ice Hockey Federation regarding a disciplinary sanction. *See also* Erika Hasler, *Back to the Future: The First CAS Arbitrators on CAS's First Award (TAS 86/1, HC X. c. LSHG) and Its Evolution Since Then*, 2016 Y.B. INT'L SPORTS ARB. 3, 3 (2016).

⁸ *Statistics*, COURT OF ARBITRATION FOR SPORT, https://www.tas-cas.org/fileadmin/user_upload/CAS_Annual_Report_2022.pdf (showing registered proceedings include ordinary (1551); appeal (7221); ad hoc (161); anti-doping (75); mediation (105) and consultation (82) procedures).

⁹ *Id.*

¹⁰ Permanent Ct. of Arb., *Annual Report*, 20 (2022).

¹¹ *See* INTERNATIONAL CHAMBER OF COMMERCE [ICC], ICC DISPUTE RESOLUTION 2020 STATISTICS 9 (2021).

¹² *See* LONDON CT. OF INT'L ARB., ANNUAL CASEWORK REPORT 7 (2022).

¹³ *See* 2022 ICDR Case Data Infographic, ICDR.ORG, https://www.adr.org/sites/default/files/document_repository/AAA430_ICDR_Case_Data_2022.pdf (showing latest disaggregated data from 2022).

¹⁴ Inter-American Ct. of HR, *Annual Report*, 44 (2022) and Inter-American Commission on Human Rights, *Annual Report*, 299 (2022)

¹⁵ African Court of Human and Peoples Rights, *Statistics*, <https://www.african-court.org/cpmt/statistic> and African Commission on Human and Peoples Rights, *52nd and 53rd Combined Activity Reports*, 35 (2022).

¹⁶ Human Rights Committee, *Report* at 22 (2022).

¹⁷ European Court of Human Rights, *Annual Report* 139 (2022).

In the *Al Hilal* case¹⁸ as well as in a growing number of sports arbitrations, CAS refers to the rights guaranteed by the European Convention on Human Rights (the European Convention) and to the European Court. Despite its global jurisdiction, CAS failed to consistently use the United Nations or other regional human rights standards. Additionally, by reviewing the decisions of CAS, the Swiss Federal Tribunal (the SFT) applies indirectly, under limited and strict circumstances, the European Convention (but not the United Nations treaties ratified by Switzerland) to determine if the CAS awards are compatible with public policy and thus valid decisions. I explore this phenomenon that I call *exporting European human rights law* to the realm of sports in the fifth section of the paper.

The majority of CAS arbitrators and the arbitrators appointed for specific CAS panels are European or based in Europe. In the *Al Hilal* case the three arbitrators were from Switzerland, Italy and the Netherlands.¹⁹ CAS arbitrators quite often apply, in addition or in lieu of European human rights law, European Union competition rules in cases involving human rights issues, despite that Switzerland is not a European Union State and most of the SGB are Swiss corporations. I denominate *CAS Eurocentric biasing of sports law* the process of favoring European human rights and competition law and European arbitrators.

The intersection of *righting sports law*, *sporting and exporting European human rights law*, *constitutionalizing sports law* and *Eurocentric biasing of sports law* raises critical questions related to the interplay between a non-judicial and non-traditional adjudicatory body such as CAS with a worldwide constitutionalization of sports and a non-traditional constitutionalization process occurring at the level of sporting organizations. At its core, the paper explores CAS' capacity to manage human rights arguments in a less Eurocentric approach. Currently there is a paradox and internal contradiction between CAS universal jurisdiction, the constitutionalization of universal human rights standards by SGBs and the global constitutionalization of sports in national constitutions and the exclusive (and inconsistent) use of European human rights law by CAS. I argue that the *constitutionalization of sports* and the *constitutionalizing human rights in sports law* process could act as a corrective measure against this Eurocentric bias.

Righting sports law

The Declaration or Program of Action of the 1993 Vienna World Conferences on Human Rights²⁰ did not mention sports at all. Since then, other World Conferences such as the Beijing on

¹⁸ Al Hilal Club, ¶ 67.

¹⁹ Id. ¶ 16.

²⁰ Vienna Declaration and Programme of Action, A/CONF.157/23 (1993).

Women²¹ and the Durban on Racism²², The Second World Assembly on Aging²³ or the 2030 Agenda for Sustainable Development²⁴ make explicit references to human rights violations taking place in the context of sports and the role of sports in promoting and facilitating the enjoyment and respect of human rights.²⁵ Despite an ad hoc, incoherent, intermittent and patchwork approach, the United Nations as well as other regional intergovernmental organizations are increasingly demonstrating a concern to secure full respect of human rights in the sports field. I call this process *righting sports law*. I understand “*righting sports law*” as the use of international human rights to, among other things, recognize the practice of sports and physical activity as a human right²⁶; the monitoring of the functioning of SGB,²⁷ including the respect,²⁸ promotion,²⁹ and/or violation of human rights in sports practices,³⁰ competitions and in mega-sporting events;³¹ the adoption of human rights policies by SGB;³² and the increasing attention to sports by intergovernmental organizations and particularly human rights organs.³³

The UN as well as other regional organizations have adopted treaties related to sports that refer to human rights and human rights treaties that mention sports. For instance, UNESCO’s International Convention against Doping in Sport recalls in its preamble the “existing international instruments relating to human rights.”³⁴ Equally, the Council of Europe Convention

²¹ Fourth World Conference on Women, *Beijing Declaration and Platform for Action*, ¶¶ 83 (m); 107 (f); 183 and 280 (d), U.N. Doc. A/CONF.177/20 (Sept. 15, 1994).

²² World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, *Durban Declaration and Programme of Action*, ¶¶ 86 and 218, U.N. Doc. A/CONF.189/12 (Aug. 31, 2001).

²³ Resolution 1* Political Declaration and Madrid International Plan of Action on Ageing, 2002, ¶¶ 20 and 67.j, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N02/397/51/PDF/N0239751.pdf?OpenElement>

²⁴ U.N. A/70/1, *Transforming our world: the 2030 Agenda for Sustainable Development* (Oct. 15, 2015)

²⁵ C.P. González, *The effective application of international human rights law standards to the sporting domain: Should UN monitoring bodies take central stage?* INT SPORTS LAW J (2022). <https://doi.org/10.1007/s40318-021-00209-8>

²⁶ Bowersox, Zack. *International sporting events and human rights: does the host nation play fair?*. Lexington Books, 2018 at 154 and Lord, Janet E., and Michael Ashley Stein. "Social rights and the relational value of the rights to participate in sport, recreation, and play." *BU Int'l LJ* 27 (2009): 249.

²⁷ Council of Eur., *Recommendation of the Committee of Ministers to Member States on the Principle of Autonomy of Sport in Europe*, CM/Rec(2011)3. See generally Trista Turley, *When the Escape Ends Responsibility of the IOC and FIFA at the Intersection of Sport Law and Human Rights*, 6 NOTRE DAME J. INT’L COMP. L. 145, 165 (2016).

²⁸ UNICEF, *CHILDREN’S RIGHTS IN SPORTS PRINCIPLES* 7 (2018).

²⁹ G.A. Res. 67/17 ¶ 1 (Nov. 28, 2012); Human Rights Council Res. 27/8, U.N. Doc. A/HRC/RES/27/8, at ¶ 2 (2014); UNESCO, *KAZAN ACTION PLAN* ¶ 22 (2017). See generally Brendan Schwab, *Celebrate Humanity: Reconciling Sport and Human rights Through Athlete Activism*, 28-2 J. LEGAL ASPECTS SPORT 170, 206 (2018); and Julie H. Liu, *Lighting the Torch of Human Rights: The Olympic Games as a Vehicle for Human Rights Reform*, 5 NW. J. HUM. RTS. 213, 235 (2007).

³⁰ Donnelly, at 391.

³¹ See generally MEGA-SPORTING EVENTS PLATFORM FOR HUMAN RIGHTS, *CHAMPIONING HUMAN RIGHTS IN THE GOVERNANCE OF SPORTS BODIES* 9 (2018); ZACK BOWERSOX, *INTERNATIONAL SPORTING EVENTS AND HUMAN RIGHTS: DOES THE HOST NATION PLAY FAIR?* (2019).

³² For FIFA, See generally Ruggie, John G. 2016. “For the Game. For the World.” FIFA and Human Rights. Corporate Responsibility Initiative Report No. 68. Cambridge, MA: Harvard Kennedy School.

³³ See footnotes XXXX and accompanying text.

³⁴ UNESCO, *International Convention Against Doping in Sports*, Oct. 19, 2005, 2419 U.N.T.S. 201.

on the Manipulation of Sports Competitions³⁵ and the Revised European Sports Charter³⁶ mention human rights. Human rights conventions such as the Convention on the Elimination of All Forms of Discrimination against Women,³⁷ the Convention on the Rights of Persons with Disabilities,³⁸ include explicit references to sports. The International Convention against apartheid in sports, the first international convention dealing with sports is in fact a human rights treaty.³⁹ In the Inter-American context with the Inter-American Convention on Protecting the Human Rights of Older Persons,⁴⁰ and the Ibero-American Convention on the Rights of Youth also mention sports.⁴¹ ADD NUMBER OF RATIFICATIONS

³⁵ Council of Europe Convention on the Manipulation of Sports Competitions, Council of Europe Treaty Series, No. 215, preamble, art. 34 (2014).

³⁶ Appendix to Recommendation CM/Rec(2021)5 ,Revised European Sports Charter ¶ 1.2.a; 3.2; 4.3; 5.2.c; 6; 7.1; 8.a; 8.2; 16 and 20.3.

³⁷ G.A. Res. 34/180, Convention on the Elimination of All Forms of Discrimination Against Women, arts. 10(g), 13© (Dec. 18, 1979).

³⁸ G.A. Res. A/RES/61/106, Convention on the Rights of Persons with Disabilities, art. 30 (Dec. 13, 2006).

³⁹ G.A. Res. A/RES/ 40/64 International Convention against Apartheid in Sports (Dec. 10, 1985). See Baker, R. D. (1978). An International Convention Against Apartheid in Sports: Its Legal Significance. *Journal of Sport and Social Issues*, 2(2), 11-23. <https://doi.org/10.1177/019372357800200204> The current interpretation considers that the concept of apartheid covers broader situations than the system that prevailed in South Africa. See Comm. on the Elimination of Racial Discrimination, General Recommendation 19 on art. 3 of the Convention, The prevention, prohibition and eradication of racial segregation and apartheid, U.N. Doc. A/50/18 at 140, (1995).

⁴⁰ Inter-American Treaties A-70, Inter-American Convention on Protecting the Human Rights of Older Persons, art. 22 (June 15, 2015).

⁴¹ Ibero-American Young Organization, Ibero-American Convention on Rights of Youth, art. 33 (Mar. 1, 2008). Technically this is not an Inter-American Convention as it was adopted in the context of the Iberoamerican Conference on Youth.

The UN General Assembly have adopted resolutions linking sports and human rights.⁴² A diverse set of specialized institutions such as UNICEF,⁴³ UNESCO,⁴⁴ ILO,⁴⁵ WHO,⁴⁶ UN Women⁴⁷, UNHCR⁴⁸ and UNODC,⁴⁹ have dealt with human rights in the context of sports within their specific mandates. However other than these case-by-case instances, the UN currently has no single institution nor a document that focuses on the intersection between sports and human rights holistically. A timid effort to overcome this in silos effort is the Inter-Agency Group on Sport for Development and Peace (IAGSDP) established with the purpose of coordinating internal efforts within the UN, including the area of human rights and sports.⁵⁰

Some of the UN documents take a limited approach by referring to the promotion of human rights through sports⁵¹ rather than the protection of human rights in sports. Additionally, many of the UN documents, particularly those from the General Assembly, refer positively to sport

⁴² G.A. Res. 67/17 ¶ 1 (Nov. 28, 2012) ONU, A/RES/67/17, Sport as a means to promote education, health, development, and peace; 5 UN General Assembly Resolution 27/8, Promoting Human Rights through Sport and the Olympic Ideal, (2014); UNGA Res 70/4 Building a peaceful and better world through sport and the Olympic ideal (13 November 2015); UNGA Res 73/24 Sport as an enabler of sustainable development (3 December 2018); UNGA Res 74/16 Building a peaceful and better world through sport and the Olympic ideal (13 December 2019); UNGA Res 74/170 Integrating sport into youth crime prevention and criminal justice strategies (18 December 2019); UNGA A/RES/77/27, Sport as an enabler of sustainable development (1 December 2022) and UNGA Res 77/324, World Basketball Day (25 August 2023).

⁴³ UNICEF, Children's Rights in Sports Principles available at

https://childinsport.jp/assets/downloads/Children's_Rights_in_Sport_Principles_English.pdf

⁴⁴ UNESCO Kazan Action Plan, adopted on 15 July 2017 at the Sixth International Conference of Ministers and Senior Officials Responsible for Physical Education and Sport, MINEPS VI. See also UNESCO, Colour? What colour? Report on the fight against discrimination and racism in football (2017).

⁴⁵ International Labour Organization, Global Dialogue Forum on Decent Work in the World of Sport, Points of Consensus, GDFWS/2020/7, January 2020, available at https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/meetingdocument/wcms_735388.pdf See generally Dantam Le, Leveraging the ILO for Human Rights and Workers' Rights in International Sporting Events, 42 Hastings COMM. & ENT. L.J. 171 (2020). In Case 2481, the ILO Committee on Freedom of Association considered that professional football players are workers. Case No 2481 (Colombia) The Colombian Association of Professional Football Players (ACOLFUTPRO), Report No. 344 (2007).

⁴⁶ World Health Organization, Global Action Plan on Physical Activity 2018-2030 (including a guiding principle on Human Rights Approach) <https://apps.who.int/iris/bitstream/handle/10665/272722/9789241514187-eng.pdf>

⁴⁷ UN Women, Sport for Generation Equality Principles <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/News%20and%20events/Stories/2020/Sport-GenerationEquality.pdf> (2020).

⁴⁸ UNHCR, IOC and Terres des Hommes, Sport for Protection Toolkit: Programming with Young People in Forced Displacement Settings, <https://www.unhcr.org/us/media/sport-protection-toolkit>

⁴⁹ UNODC, Global Report on Corruption in Sport (making references that corruption in sports could lead to human rights abuses), available at https://www.unodc.org/res/safeguardingsport/grcs/22-03221_SPORTS_CORRUPTION_2021_Full_report.pdf and Resolution 8/4 adopted by the Conference of the States Parties to the United Nations Convention against Corruption at its eighth session, held in Abu Dhabi from 16 to 20 December 2019, Safeguarding sport from corruption (2019).

⁵⁰ Department of Economic and Social Affairs Social Inclusion, Inter-Agency Group on Sport for Development and Peace (IAGSDP) available at <https://www.un.org/development/desa/dspd/iagsdp.html>

⁵¹ See supra note XXXX.

autonomy.⁵² Sports autonomy tends to serve as a shield against stronger human rights protections.⁵³ A human rights approach to sports requires a different understanding of autonomy than a simple independence from government interference.⁵⁴ However, the concept of autonomy is being challenged⁵⁵ and there are emerging theories such as ‘supervised autonomy’⁵⁶ or ‘responsible autonomy’⁵⁷ that advocate for more State supervision of sports⁵⁸ and a more collaborative governance model.⁵⁹

International human rights law recognizes that autonomy of associations constitutes an important aspect of their freedom of association.⁶⁰ Such autonomy does not preclude States from imposing restrictions in order, among others to protect the rights and freedom of others.⁶¹

⁵² See e.g., GA, A/RES/75/18 Sport as enabler of sustainable development ¶ 16 (supporting the independence and autonomy of sport); Resolution 8/4 adopted by the Conference of the States Parties to the United Nations Convention against Corruption at its eighth session, held in Abu Dhabi from 16 to 20 December 2019 Safeguarding sport from corruption (recognizing that sports organizations within the Olympic movement have the rights and obligations of autonomy) and HRC Promoting human rights through sport and the Olympic ideal (2020) HRC/43/L.24/Rev.1. (acknowledging the need to support the independence and autonomy of sport).

⁵³ See Gibbs, Martin. "International sports federations, mega-sporting events, and human rights." In *The Routledge Handbook of Mega-Sporting Events and Human Rights*, at 241 (2023).

⁵⁴ Hans Erik Næss, *In Pursuit of Clarity: A Critique of Sports Governing Bodies’ Conceptual Inconsistency in Human Rights Work*, 38 *Nordic J. of Hum. Rts.* 205, 216 (2020) .

⁵⁵ Donnelly, P., Kerr, G. & Kidd, B. Contesting the autonomy of sport to realize the right to safe sport: a Canadian case study. *Int Sports Law J* **22**, 165–170 (2022). <https://doi.org/10.1007/s40318-022-00225-2>

⁵⁶ Foster, K., 2000. Can sport be regulated by Europe? An analysis of alternative models. In: *Professional sport in the EU: regulation and re-regulation*. The Hague: Asser Press, 43-64

⁵⁷ Chappelet, Jean-Loup. *The autonomy of sport and the European Union* in Anderson, Jack, Richard Parrish, and Borja García, eds. *Research handbook on EU sports law and policy*. Edward Elgar Publishing, 2018. Edward Elgar, 2018.

⁵⁸ Baddeley, M. The extraordinary autonomy of sports bodies under Swiss law: lessons to be drawn. *Int Sports Law J* **20**, 3–17 (2020). <https://doi.org/10.1007/s40318-019-00163-6>

⁵⁹ Henk Erik Meier & Borja García (2021) Beyond sports autonomy: a case for collaborative sport governance approaches, *International Journal of Sport Policy and Politics*, 13:3, 501-516, DOI: [10.1080/19406940.2021.1905035](https://doi.org/10.1080/19406940.2021.1905035)

⁶⁰ ECHR, *Lovrić v. Croatia*, 2017, § 71.

⁶¹ International Covenant on Civil and Political Rights, article 21.2; European Convention on Human Rights, article 11.2 and American Convention on Human Rights, article 16.2. The American Convention is the only human rights treaty that recognizes specifically the right to freely associate for sports purposes. I/A Court HR. Rights to freedom to organize, collective bargaining, and strike, and their relation to other rights, with a gender perspective (interpretation and scope of articles 13, 1, 16, 24, 25, and 26 in relation to articles 1(1) and 2 of the American Convention on Human Rights; articles 3, 6, 7, and 8 of the Protocol of San Salvador; articles 2, 3, 4, 5, and 6 of the Convention of Belém do Pará; articles 34, 44, and 45 of the Charter of the Organization of American States; and articles II, IV, XIV, XXI, and XXII of the American Declaration on the Rights and Duties of Man). Advisory Opinion OC-27/21 of May 5, 2021. Series A No. 27, ¶ 193.

Specifically, the UN human rights machinery has addressed sports related issues in multiple occasions in the last two decades. The Human Rights Council,⁶² the Advisory Committee⁶³ and the Office of the High Commissioner for Human Rights⁶⁴ have all addressed issues related to sports and human rights. The human rights treaty bodies in general comments⁶⁵, concluding observations⁶⁶ and resolutions on specific cases⁶⁷ have dealt with sports related issues. Similarly, different UN special procedures in their thematic reports⁶⁸, country reports⁶⁹; urgent appeals and

⁶² HRC A world of sports free from racism, racial discrimination, xenophobia and related intolerance (2010) A/HRC/RES/13/27; HRC Promoting awareness, understanding and application of the Universal Declaration of Human Rights through Sport and the Olympic Ideal (2010) A/HRC/L.18/Rev.1; HRC Promoting human rights through sport and the Olympic ideal (2013) A/HRC/24/L.1; HRC The right of everyone to the enjoyment of the highest attainable standard of physical and mental health: sport and healthy lifestyles as contributing factors (2014) A/HRC/26/L.29; HRC Promoting human rights through sport and the Olympic ideal (2018) A/HRC/37/L.31; HRC, Elimination of Discrimination Against Women and Girls in Sport (2019) A/HRC/RES 40/5; HRC Promoting human rights through sport and the Olympic ideal (2020) HRC/43/L.24/Rev.1. UPDATE

⁶³ Final rep. of the Hum. Rts. Council Advisory Comm. on the possibilities of using sport and the Olympic ideal to promote human rights for all and to strengthen universal respect for them, U.N. Doc. A/HRC/30/50 (2015).

⁶⁴ OHCHR, Race and Gender, *supra* note 35; Rep. of the Off. of the U.N. High Comm’r for Hum. Rts., Participation in physical activity and sport under article 30 of the Convention on the Rights of Persons with Disabilities, U.N. Doc. A/HRC/46/49 (2021).

⁶⁵ UN Comm. on the Rts. of the Child, Gen. Comment No. 17, U.N. Doc. CRC/C/GC/17, at ¶ 6 (Apr. 17, 2013); Committee on Economic, Social and Cultural Rights, ‘General comment No. 21, Right of everyone to take part in cultural life (art. 15, ¶ 1(a), of the International Covenant on Economic, Social and Cultural Rights)’ (21 December 2009) E/C.12/GC/21, ¶ 13.

⁶⁶ Comm. on the Elimination of Discrimination against Women, Concluding observations on the initial report of the State of Palestine, U.N. Doc. CEDAW/C/PSE/CO/1 ¶ 40(b) (July 25, 2018); Comm. on the Elimination of Discrimination against Women, Concluding observations on the fifth periodic report of Kazakhstan, U.N. Doc. CEDAW/C/KAZ/CO/5, ¶ 41(e) (Nov. 12, 2019); Comm. on the Elimination against Women, Concluding observations on the fourth periodic report of Botswana, U.N. Doc. CEDAW/C/BWA/CO/4 at ¶ 39 (Mar. 14, 2019); Comm. on the Elimination of Discrimination against Women, Concluding observations on the seventh periodic report of Italy, U.N. Doc. CEDAW/C/ITA/CO/7 ¶ 44.d (July 24, 2017).; Comm. on the Rts. Of Persons with Disabilities, Concluding observations on the initial report of France, U.N. Doc. CRPD/C/FRA/CO/1 ¶ 60, 61.b (Oct. 4, 2021); Comm. on the Elimination of Racial Discrimination, Consideration of Reports Submitted by State Parties Under Article 9 of the Convention, U.N. Doc. U.N. Doc. CERD/C/ISR/CO/13 (June 14, 2007); Comm. on the Elimination of Racial Discrimination, Concluding observations on the combined twentieth and twenty-first periodic reports of Algeria, U.N. Doc. CERD/C/DZA/CO/20-21 at ¶ 11 (2018). UPDATE

⁶⁷ Comm. on the Elimination of Racial Discrimination, Comm’n No. 26/2002, U.N. Doc. CERD/C/62/D/26/2002 (Apr. 14, 2002); Comm. Econ., Soc. and Cultural Rts., Comm’n No. 3/2014, ¶ 2.3 (Aug. 8, 2014).

⁶⁸ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, U.N. Doc. A/HRC/29/33 at ¶ 13 (2015); UN Special Rapporteur, Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, U.N. Doc. A/76/434 (Oct. 22, 2021). Combating racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of the follow-up to the Durban Declaration and Programme of Action, U.N. Doc. A/69/340 at ¶ 3 (2014); Special Rapporteur on the Sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, A/HRC/40/51.

⁶⁹ Report of the Special Rapporteur on the human rights of migrants, François Crépeau Addendum Mission to Qatar , 73-74 and 132.(2014) U.N. Doc. A/HRC/26/35/Add.1.

other communications⁷⁰ as well as intervention in specific cases⁷¹ have called the attention of different stakeholders regarding human rights in the context of sports.

In sum, there is a rich experience, albeit limited, at the UN level of addressing human rights issues in the context of sports. All the UN initiatives refer to the universal or internationally recognised human rights standards, not restricting them to the European region as CAS does.

Sporting European Human Rights Law

The *righting sports law* is particularly clear in the European context. The European Court of Human Rights has ruled on issues touching directly or indirectly on sports. In particular, the Court has decided cases dealing with CAS.⁷² A parallel expansion, which started earlier, is taking place in the European Court of Justice (including dealing with cases on CAS)⁷³ and in the activities, resolutions and treaties adopted by the European Union⁷⁴ and the Council of Europe.⁷⁵ It is a phenomenon that I call *sporting European Human Rights Law*.

The European Court's docket of cases dealing with sports-related matters⁷⁶ range from disputes where the sport matter is the central or most relevant issue to other legal controversies that took place in the

⁷⁰ Special Rapporteur in the field of cultural rights and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (AL OTH 90/2022); Special Rapporteur on the rights of indigenous peoples, James Anaya, OL Indigenous (2001-8) OTH 3/2014; <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=18160>; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Working Group on the issue of discrimination against women in law and in practice OL OTH 62/2018, https://www.ohchr.org/sites/default/files/Documents/Issues/Health/Letter_IAAF_Sept2018.pdf

⁷¹ UN Special Procedures Written submission to the Court of Arbitration for Sport (CAS) on Cases CAS 2018/O/5794 and CAS 2018/O/5798 (pursuant to rule 41.4 of the Procedural Rules); European Court Of Human Rights, Application no: 10934/21, Case of Mokgadi Caster Semenya v. Switzerland, Intervention Pursuant to Article 36(2) of the European convention on Human Rights and Rule 44(3) of the Rules of Court, By the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, UN Working Group on discrimination against women and girls, and UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 8 October 2021.

⁷² For the most complete description of the work of the European Court in sports related matters, see Daniel Rietiker, *Defending athletes, players, clubs and fans* (2022)

⁷³ L 1. Case C-124/21 P International Skating Union v. Commission. See Lewandowski W (2020) The implications of the recent Jurisprudence of the Court of Justice of the European Union for the Protection of the Fundamental Rights of Athletes and the Regulatory Autonomy of Sporting Federations. *Tilburg Law Rev* 25(1):55–66. <https://doi.org/10.5334/tlir.193>

⁷⁴ Cattaneo, Andrea, and Richard Parrish. *Sports law in the European Union*. Kluwer Law International BV, 2020.

⁷⁵ Moustakas, Louis, and Karen Petry. "Safeguarding in sport and policy advocacy: the role of the council of Europe." *International Journal of Sport Policy and Politics* (2023): 1-16.

⁷⁶ Cathérine Van de Graaf, *The Whereabouts Requirement: Does The ECtHR Protect The Right To Respect For Private And Family Life Of French Sport Professionals?* STRASBOURG OBSERVER (February 16, 2018), <https://strasbourgobservers.com/2018/02/16/the-whereabouts-requirement-does-the-ecthr-protect-the-right-to-respect-for-private-and-family-life-of-french-sport-professionals/>, and Daniel Rietiker, *The European Court of Human Rights and FIFA*, 1 EUR. CONVENTION ON HUM. RTS. L. REV. 62 (2020).

context of sports or by persons related to sports,⁷⁷ but where the sporting activity was not the main issue under review.⁷⁸ The cases involve a multiplicity of stakeholders in the sports ecosystem from professional⁷⁹ to amateur athletes⁸⁰ and former professional sportspersons,⁸¹ from referees⁸² to managers⁸³ and athletes' representatives,⁸⁴ from journalists⁸⁵ to fans,⁸⁶ from students involved in physical activities⁸⁷ to property owners affected by hunting activities⁸⁸ or by the construction of Olympic Games venues,⁸⁹ from persons with disability⁹⁰ to victims of human trafficking for the construction of sporting

⁷⁷ See, e.g., *Đorđević v. Croatia*, Eur. Ct. H.R., App. No. 41526/10, ¶12 (July 24, 2012) (football hooligans and other groups threatened the organizers of a Pride Parade).

⁷⁸ Barcelona Llop, Javier, *Cuestiones sobre derechos fundamentales y deporte en el marco del Convenio Europeo de Derechos Humanos*, 209 REVISTA ESPAÑOLA DE DERECHO ADMINISTRATIVO, 173, 175 (2020).

⁷⁹ See generally *Šimunić v. Croatia*, Eur. Ct. H.R., App. No. 20373/17, ¶ 42 (2017) (decision on the admissibility) (football player convicted for convening hate speech to spectators of a match).

⁸⁰ Second Section, *Case of Ali Rıza and Others v. Turkey*, Eur. Ct. H.R., (Applications nos. 30226/10 and 4 others) Judgment, (28 January 2020) (Article 6 of the Convention is not applicable to amateur players).

⁸¹ *Țiriac v. Romania*, Eur. Ct. H.R., App. no. 51107/16, Fourth Section (Nov. 30, 2021) (former professional tennis player).

⁸² Rıza supra note XXX at 38.

⁸³ *Ekşioğlu and Mosturoğlu v. Turkey*, Eur. Ct. H.R., App. Nos. 2006/13 and 10857/13 (June 15, 2021).

⁸⁴ See generally *Mediation Berti Sports v. Turkey*, Eur. Ct. H.R., App. No. 63859/12 (January 29, 2018).

⁸⁵ See generally *Cinquième Section, Affaire Ressiôt Et Autres C. France*, (Requêtes Nos 15054/07 Et 15066/07), 28 Juin 2012. (ECtHR, Ressiôt).

⁸⁶ See generally *Hentschel and Stark v. Germany*, Eur. Ct. H.R., App. No. 47274/15 (Nov. 9, 2017) and *Maguire v. the United Kingdom*, Eur. Ct. H.R., App. No. 58060/13 (March 3, 2015) (ECtHR, Maguire).

⁸⁷ See generally *Dogru v. France*, Eur. Ct. H.R., App. No. 27058/05 (Dec. 4, 2008); *Kervanci v. France*, Eur. Ct. H.R., App. No. 31645/04 (December 4, 2008) (Muslim students enrolled in a public school refusing to take off their headscarves during physical education classes); *Osmanoğlu and Kocabaş v. Switzerland*, Eur. Ct. H.R., Requête No. 29086/12, (January 10, 2017) (refusal of Muslim parents to send their daughters, who had not reached the age of puberty, to compulsory mixed swimming lessons as part of their public schooling).

⁸⁸ See generally *Herrmann v. Germany*, Eur. Ct. H.R., App. No. 9300/07 (June 26, 2012) (Grand Chamber) (landowner's complaint about being forced to accept hunting on his premises, even though he was morally opposed); *Chassagnou and Others v. France*, Eur. Ct. H.R., App. Nos. 25088/94, 28331/95 and 28443/95, judgment (Grand Chamber) (April 29, 1999); *Schneider v. Luxembourg*, Eur. Ct. H.R., Requête No. 2113/04 (July 10, 2007).

⁸⁹ See generally *Papastavrou and Others v. Greece*, Eur. Ct. H.R., Application No. 46372/99 (November 18, 2004) (expropriation for the constructions related to the Olympic Games) and Eur. Ct. H.R., Application No. 33955/08 (September 15, 2020) (expropriation for the constructions related to the Sochi Winter Olympic Games).

⁹⁰ See generally *Larsson v. Iceland*, Eur. Ct. H.R., App. No. 23077/19 (May 31, 2022).

facilities.⁹¹ Individual athletes,⁹² football teams⁹³ and federations,⁹⁴ associations of fans⁹⁵ or to promote sports,⁹⁶ sports-related workers,⁹⁷ and sporting media⁹⁸ have all standing to bring applications.

The issues dealt with by the Court include fans' safety;⁹⁹ hooliganism;¹⁰⁰ discrimination;¹⁰¹ freedom of religion,¹⁰² association,¹⁰³ and expression;¹⁰⁴ and the right to privacy,¹⁰⁵ property rights,¹⁰⁶ sexual violence,¹⁰⁷ trafficking¹⁰⁸ and corruption¹⁰⁹ in the context of sports and/or physical activity or physical

⁹¹ See generally *Zoletic and others v. Zarbajjan*, Eur. Ct. H.R., App. No. 20116/12 (Oct. 7, 2021).

⁹² See generally *Šimunić*, *supra*, note 243.

⁹³ See generally *FC Mretebi v. Georgia*, Eur. Ct. H.R., App. No. 38736/04 (July 31, 2007) (Football team lack of access to a court regarding a dispute related to the transfer of a footballer).

⁹⁴ See generally *Liga Portuguesa de Futebol Profissional v. Portugal*, Requête, Eur. Ct. H.R., No 4687/11, (May 17, 2016) (labor dispute between a player and a federation) and *Croatian Golf Federation v. Croatia*, Eur. Ct. H.R., Application No. 66994/14 (December 19, 2020). (ECtHR, Croatian Golf) (bankruptcy of the national golf federation). See generally *Athletics South Africa v. Switzerland*, Eur. Ct. H.R., App. No. 17670/21 (October 5, 2021) (complaint of South African athletic regulatory authority about the exclusion of Caster Semenya from competition). (a national SGB, as a member of an international SGB, is not a victim even if is bound by the international SGB regulations and had certain duties with a view to implementing them).

⁹⁵ See generally *Association Nouvelle Des Boulogne Boys v. France*, Eur. Ct. H.R., Requête No. 6468/09 (March 7, 2011); *“Les Authentiks” v. France* and *“Supras Auteuil 91” v. France* 27, Eur. Ct. H.R., App. No. 4696/11 (October 2016) (dissolution of football team supporters' associations, following different violent and racist activities).

⁹⁶ See generally *Association de défense des intérêts du sport v. France*, Eur. Ct. H.R., App. No. 36178/03 (April 10, 2007). (recognizing standing if the entity is directly impacted by the challenged measure).

⁹⁷ See generally *Fédération Nationale des Syndicats Sportifs (FNASS) and Others v. France*, App. Eur. Ct. H.R., Nos. 48151/11 and 77769/13, (Jan. 18, 2018).

⁹⁸ See generally *Hachette Filipacchi Presse Automobile and Dupuy v. France* *Société de conception de presse et d'édition et Ponson v. France*, Eur. Ct. H.R. (March 5, 2009); *Mosley v. The United Kingdom*, Eur. Ct. H.R., App. No. 48009/08 (May 10, 2011).

⁹⁹ See generally *Harrison v. United Kingdom*, Eur. Ct. H.R. (Mar. 25, 2014) (decision on the admissibility) (investigation of the death of supporters in the Hillsborough disaster in 1989); *Hentschel*, *supra* note xxx (complaint by football supporters for ill-treated by the police).

¹⁰⁰ See generally *Ostendorf v. Germany*, App No. 15598/08 (Mar. 7, 2013) (football supporter held in police custody for four hours to prevent a fight between hooligans); see generally *S., V. & A. v. Denmark*, App. Nos. 35553/12, 36678/12 & 36711/12 (Oct. 22, 2018) (applicants' detention for over seven hours to prevent hooligan violence); see generally *Seražin v. Croatia*, App. No. 19120/15 (Oct. 9, 2018) (decision on the admissibility) (measures to deal with hooliganism) (ECtHR, *Seražin*); see generally *Velkov v. Bulgaria*, App. No. 34503/10 (July 21, 2020) (fan's convicted twice -administratively and criminally- of the same offence of breaching the peace during a football match).

¹⁰¹ See generally *Negovanović and Others v. Serbia*, Eur. Ct. H.R., Applications nos. 29907/16 and 3 others (January 25, 2022) (discrimination against blind chess players in granting financial awards).

¹⁰² See generally *Dongru*, *supra*, note XXX.

¹⁰³ See generally *Croatian Golf Federation v. Croatia*, App. No. 66994/14 (Dec. 17, 2020).

¹⁰⁴ See generally *Hatchette*, *supra*, note XXX (conviction of the publishers and directors of two magazines for indirectly or unlawfully publishing tobacco advertising by including, in a sports magazine, photographs of a Formula 1 driver wearing the logo of a cigarette brand); *Ressiot*, *supra* note XXX (investigations carried out at the premises of two sports newspapers and at the homes of journalists in the context of a judicial investigation of possible doping in cycle racing).

¹⁰⁵ See generally *Mosley v. United Kingdom*, Eur. Ct. H.R. (2011).

¹⁰⁶ See generally *Papastavrou v. Greece*, Eur. Ct. H.R., (2011).

¹⁰⁷ See generally *S., V. & A.*, Eur. Ct. H.R. (2017).

¹⁰⁸ See generally *Zoletic & others v. Azerbaijan*, Eur. Ct. H.R. (2021).

¹⁰⁹ See generally *Platini v. Switzerland*, App. No. 526/18 (Feb. 11, 2020), <https://hudoc.echr.coe.int/eng?i=001-201734>

education. It has pronounced indirectly on issues related to security during sporting mega-events such as the Olympic Games.¹¹⁰

The European Court has played an increasingly significant role in overseeing the functioning of CAS, of other SGBs¹¹¹, and also in clarifying States' roles in sports. Some principles that emerge from the Court's case law reflect the same ideas that will be explained in the section on sports in national constitutions. The Court has recognized that the State has duties in relation with sports and that there certain public permissible aims that allow the State to restrict rights in the sports context. For instance, the Tribunal recognized the role of the State in effectively combating violence in stadiums and the legitimate expectations of individuals to attend sports events with complete security.¹¹² The State has a positive duty to secure that SGB do not violate conventional rights and that those sports organizations and tribunal apply the Convention as interpreted by the Court.¹¹³ The State also has a legitimate interest in preventing disorder and combatting racism and discrimination in sports activities.¹¹⁴ The Court has also recognized that sport is a social activity that goes beyond the physical activity, accomplishing other objectives and influencing social behaviors. The Court has understood that the fight against doping in sports is a health concern in which the governing bodies of the sporting world owe responsibilities to both professional and amateur athletes as well as, in particular, young people.¹¹⁵ Additionally, doping sanctions are understood as pursuing the legitimate aim of ensuring "equal and meaningful competition in sports," which is linked to the "protection of the rights and freedoms of others."¹¹⁶ The use of ban substances not only produces an unfair advantage over other athletes, but it is also "a dangerous incitement to amateur athletes, and in particular young people, to follow suit in order to enhance their performance, and deprives spectators of the fair competition which they are entitled to expect."¹¹⁷ The equal treatment of players with and without disability is not only a legal obligation but it also enhances the country's reputation abroad and promotes inclusiveness domestically.¹¹⁸ Finally, the Tribunal has acknowledge the "self-evidently significant public interests of hosting the Olympics".¹¹⁹

¹¹⁰ See generally *A.D. & others v. Turkey*, Eur. Ct. H.R. (2014).

¹¹¹ In a pair of Turkish cases, the Court ruled on the need of an independent and impartial body to solve sporting disputes. See *Riza v. Turkey*, App. No. 30226/10 & 4 others, (Jan. 28, 2020) <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-200548%22%5D%7D>; *Doğan v. Turkey*, App. No. 48909/14, ¶ 1 (May 18, 2021), <https://hudoc.echr.coe.int/eng?i=001-209956>; *Naki v. Turkey*, App. No. 48924/16, ¶ 1 (May 18, 2021) <https://hudoc.echr.coe.int/fre?i=001-209957> ; *Tokmak v. Turkey*, No. 54540/16, ¶ 1 (May 18, 2021) <https://hudoc.echr.coe.int/eng?i=001-209958>.

¹¹² See generally *Ass'n des Nouvelles Boulogne Boys v. France*, Eur. Ct. H.R. at 83 (2011).

¹¹³ See generally *Platini, Mutu, Semenya* supra notes XXXX.

¹¹⁴ See generally *Šimunić v. Croatia*, App. No. 20373/17, ¶ 42 (Jan. 22, 2019), <https://hudoc.echr.coe.int/eng?i=001-189769>.

¹¹⁵ *FNASS*, Eur. Ct. H.R. at ¶ 165 and 174-75.

¹¹⁶ *Id.* at ¶ 166.

¹¹⁷ *Id.* Similarly, CAS has found that fair play and health are the legitimate aims pursued by anti-doping regulations. *Elizabeth Juliano, Owner of Horizon; Maryanna Haymon, Owner of Don Principe; Adrienne Lyle and Kaitlin Blythe v. Fédération Equestre Internationale (FEI), Arbitration CAS 2017/A/5114, Award*, ¶ 66 (March 19, 2018).

¹¹⁸ *Negovanović*, Eur. Ct. H.R. at ¶ 88.

¹¹⁹ *Belova*, Eur. Ct. H.R. at ¶ 43.

Of relevance for this article, the Tribunal has decided cases directly involving CAS.¹²⁰ *Semenya v. Switzerland*¹²¹ and *Mutu and Pechstein v. Switzerland*¹²² are the most important cases decided by the European Court.

Mutu deals with challenges to the lawfulness of CAS proceedings, the forced arbitration clause, the independence and impartiality of CAS and finally the lack of a public hearing.¹²³ The European Court established its jurisdiction given that the acquiescence of the Swiss authorities in the acts of private persons within its jurisdiction may engage the State's responsibility.¹²⁴ On the merits, the Court confirmed that the Convention allows the establishment of an arbitral tribunal to try certain disputes, including the importance of having a centralized and specialized sports adjudicatory body such as CAS.¹²⁵ However, as the acceptance of such arbitration clauses includes the waiver of certain Convention rights, the consent should be free, lawful and unequivocal. The Tribunal found that Mutu provided free consent;¹²⁶ while Pechstein was forced to arbitration, meaning that the only possibility for her to practice her sport at a professional level was to accept the arbitration clause. In those circumstances, all the guarantees of Article 6.1 must be

¹²⁰ In addition to the cases discussed in the text, the Court had decided other cases involving CAS. In *Platini* the European Tribunal explicitly established that SGB (in this case FIFA and UEFA) are private associations and as such, not directly subject to the European Convention. However, States may be required to adopt measures aimed at respecting the right to privacy even in the relationships of individuals with each other. ECtHR, *Platini v. Switzerland* (Application No. 526/18), judgment of 11 February 2020. In rejecting the application of Dutch cyclist Erwin Bakker ban for a doping offence the European Court considered that the restriction on the right of access to a tribunal (CAS and the TF) was neither arbitrary nor disproportionate. ECtHR, Third Section, 3 September 2019, *Bakker v. Switzerland*, no. 7198/07, ¶ 27 and 29. Finally, in *Riza*, the Court expressed certain doubts as to whether the applicant could avail himself of a right of access to a court vis-à-vis Switzerland, as the dispute had only a very tenuous link with Switzerland given that the dispute was almost entirely within Turkey and not substantively involving CAS jurisdiction. Troisième Section, *Affaire Ali Riza c. Suisse*, (Requête no 74989/11), Arrêt, 13 juillet 2021, ¶ 81. See Mavromati, Despina. "CAS through the lens of the European Court of Human Rights and other tribunals." In *Handbook on International Sports Law*, pp. 196-241(2022). There are cases in which the European Court ruled against a different State rather than Switzerland despite that the CAS given that the complaints did not involve the procedure or merits of CAS award. *Ali Riza*, Eur. Ct. H.R. at ¶ 21-24; *Croatian Golf Federation v. Croatia*, App. No. 66994/14, ¶ 38-39 (December 17, 2020), <https://hudoc.echr.coe.int/eng?i=001-206513>; *Šimunić*, Eur. Ct. H.R. at ¶ 3.

¹²¹ *Semenya* was decided by a 4-3 majority decision that could be refer to the Grand Chamber of the European Court. World Athletics note that the decision came from a "deeply divided" chamber and that it will be "encouraging" the Swiss Government "to seek referral of the case to the ECHR Grand Chamber." World Athletics responds to European Court of Human Rights decision, July 11, 2023. <https://worldathletics.org/news/press-releases/response-european-court-human-rights-decision-2023> The Grand Chamber accepted the referral on November 6, 2023. See Referral to the Grand Chamber, https://www.echr.coe.int/w/referral-to-the-grand-chamber-1?p1=1&back_url=%2Fsearch%3Fq%3Dsemenya

¹²² In fact, the first case challenging CAS independence was brought by Larisa Yevgenyevna Lazutina and Olga Valeryevna Danilova. See *Larisa Yevgenyevna Lazutina et Olga Valeryevna Danilova contre la Suisse*, App. No. 38250/03, ¶ 1-3 (July 8, 2008), <https://hudoc.echr.coe.int/eng?i=001-88255>. The applicants challenged the independence of the CAS from the IOC. However, the complaint was withdrawn before the Court could rule on the merits.

¹²³ *Mutu & Pechstein*, Eur. Ct. H.R. at ¶ 51-52.

¹²⁴ *Id.* at ¶ 64.

¹²⁵ *Id.* at ¶ 94.

¹²⁶ *Id.* at ¶ 116-120.

respected.¹²⁷ The Court did not find a violation regarding CAS alleged lack of independence.¹²⁸ The Court rejected the challenges concerning CAS's lack of institutional independence and impartiality.¹²⁹ The Court found a violation of Convention regarding the absence of a public hearing.¹³⁰ The dispute surrounding the doping sanction required a hearing subject to public scrutiny.¹³¹

Semenya involved the well-known situation of South African middle-distance runner who challenged the World Athletics' Eligibility Regulations for the Female Classification (Regulations) that define the circumstances under which female and intersex sportspersons with particular kinds of differences of sex development (DSDs) can participate in international competitions. Semenya complained that the requirement to lower her natural testosterone levels in order to participate as a woman violate the prohibition of inhuman or degrading treatment, her right to respect for her private life, the prohibition of discrimination and the right to a fair hearing and to an effective remedy.¹³² This case is particularly important, as it directly challenged CAS¹³³ and STF¹³⁴ rulings on substantive human rights, rather than the independence or procedure of CAS as in *Mutu*. The Court first ruled on its jurisdiction relying mainly on *Mutu*. The Court understood that the complaint involved the regulations and actions of two private actors, the IAAF (a Monegasque private-law association) and CAS (a Swiss private association), both of which were non-State actors. Thus, the Convention did not apply to them directly. However, to the extent that CAS award was reviewed by the STF, the case fell within the "jurisdiction" of Switzerland. On the merits, the Court found that Switzerland had not been afforded sufficient institutional and procedural safeguards because CAS and the STF failed to apply the relevant provisions of the Convention or the Court's case-law.¹³⁵ This failure constituted a violation of the equality provision of the Treaty. For similar reasons, the Court found a violation of the right to an effective remedy.¹³⁶

The *Sporting of European Human Rights Law* is an especially important process that helps to clarify the responsibility (albeit indirect) of SGB to guarantee and enforce human rights

¹²⁷ *Id.* at ¶ 115.

¹²⁸ *Id.* at ¶ 159.

¹²⁹ *Id.* at ¶¶ 159, 165 & 168.

¹³⁰ *Id.* at ¶ 183.

¹³¹ *Id.* at ¶ 182.

¹³² Press release issued by the Registrar of the Court Discrimination against international-level athlete who as not afforded sufficient procedural safeguards when challenging World Athletics regulations ECHR 219 (2023) 11.07.2023.

¹³³ Mokgadi Caster Semenya v. International Association of Athletics Federations & CAS, Arbitration CAS 2018/O/5794, Athletics South Africa v. International Association of Athletics Federations, Arbitration CAS 2018/O/5798, Award (April 30, 2019).

¹³⁴ Tribunal fédéral [TF] [Federal Supreme Court] Aug. 25, 2020, 4A_248/2019 4A_398/2019 BGE 147 III 49 S. 50 (Switz.).

A. v. International Association of Athletics Federations (IAAF) & Athletics South Africa (ASA), case No. 4A_248/2019 and Athletics South Africa (ASA) v. A. & International Association of Athletic Federations (IAAF), case No. 4A_398/2019 (Federal Tribunal, Switzerland, Aug. 25, 2020).

¹³⁵ *Id.* ¶ 174 and 200.

¹³⁶ *Id.* ¶ 240.

standards. Additionally, the European Court had provided guidance on the positive obligations of States in guaranteeing that the conventional rights are respected by SGBs. The European Tribunal has also recognized a role for the State in the sports ecosystem.

Constitutionalizing human rights in sports law

Several SGB include human rights references in their constitutions, charters, policies and/or regulations. I call this process *constitutionalizing human rights in sports law*. The righting sports law has moved more SGBs to include diverse types of commitments to follow internationally recognized human rights.

The process of *righting* and *constitutionalizing* sports demonstrates that sports regulation is “collaborative, polycentric and networked, undertaken by a variety of different actors (state and non-state; public and private) across multiple sites (local, national and international). 6 Nor is regulation confined to rules made and coercively enforced by the state. Rules also can be made by private (non-government) entities” as described by Windholz .¹³⁷ Connecting the SGB and national constitutions demonstrate the private/public, State/non-State, national/transnational/international interactions taking place in the sports area and the polycentric characteristics of sports regulations. And CAS, as part of the sports ecosystem, became an integral part of this polycentric character and judicial and jurisdictional pluralism including national courts and regional human courts and adjudicatory bodies.¹³⁸

The *constitutionalization* of sports and human rights plays a significant role. The practice of sports could become a constitutional right. Similarly, the inclusion of human rights in the SGBs constitutions means that human rights become constitutional rights in the realm of such SGBs. Bützler explains that constitutional rights have a dual function in transnational sports adjudication.¹³⁹ According to Bützler, constitutional rights embody the fundamental values informing the normative content and structure of transnational institutional arrangements.¹⁴⁰ Second, constitutional rights provide the framework for guaranteeing procedural legitimacy standards.¹⁴¹

SGB documents as Constitutions

The main documents of the SGB could be considered as or at least equated to a Constitution. The IOC defines itself as the “supreme authority of the Olympic Movement”¹⁴² and the Introduction

¹³⁷ Windholz, Eric, International Sports Transnational Legal and Regulatory Order: Quintessential Regulatory Capitalism (2022). (2022) 1(1) Sports Law and Governance Journal 1–22, Monash University Faculty of Law Legal Studies Research Paper , Available at SSRN: <https://ssrn.com/abstract=4095454>

¹³⁸ Duval, Lost in Translation at 149.

¹³⁹ Bützler, Bodo P. "The Dual Function of Constitutional Rights in Lex Sportiva." *Sport, Law and Philosophy: The Jurisprudence of Sport* (2023): 91.

¹⁴⁰ Id.

¹⁴¹ Id.

¹⁴² See IOC, Who we are, available at <https://olympics.com/ioc/careers/who-we-are>

to the IO Charter stipulates that basic instrument of a constitutional nature CAS has established that even non-Olympic members, such as the “Recognized International Federations, are subject and bound to the Olympic Charter.¹⁴³ The doctrine has also utilized the constitutional framework to describe the SGBs and their founding documents. For instance, Gürcüoğlu discusses whether the Olympic system can be defined as a constitutionalized one and concludes that the IOC “appears as a constitutional order to a certain degree.”¹⁴⁴ Similarly, Butz Bützler and Shoddert consider that FIFA is going through a “constitutionalizing process”¹⁴⁵. Muñiz Perez speaks about a “constitutional vocation” of the Olympic Charter that “emulates the national model”¹⁴⁶ Others have talked about a “self-constitution”¹⁴⁷, a “soft-Constitution”¹⁴⁸, a “social constitution”¹⁴⁹, a “constitution-like document”¹⁵⁰ or a “transnational constitution.”¹⁵¹ “Indeed, relying on a constitutional vocabulary with regard to the OC is not absurd, neither in descriptive nor in normative terms. It captures the very real transnational authority bestowed on this text inside and outside of the Olympic regime, as well as the tone of the legitimate demands that must be opposed to it in the name of the public(s).”¹⁵²

Accepting a constitution-like approach means that sports federation can freely establish their provisions. However, there are limits to this autonomy.¹⁵³ The SGBs are limited when adopting rules and regulations by the higher-ranking SGBs provisions, particularly their statutes.¹⁵⁴ So, the human rights provisions contained in the constitutive documents should act as a limit to the actions of the SGBs. However, and as correctly pointed out by CAS, “a federation cannot opt out from an interpretation of its rules and regulations” considering principles “of human rights just by omitting any references in its rules and regulations to human rights.”¹⁵⁵

CAS has treated SGB and their regulations similarly to a constitution. CAS for instance, has recognized FIFA as a “self-regulated organisation, being only slightly curtailed in its autonomy at

¹⁴³ Arbitration CAS 2018/O/5830 International Surfing Association (ISA) v. International Canoe Federation (ICF), award of 5 August 2020 at 223 and 229.

¹⁴⁴ Gürcüoğlu, B. To what extent is the law of the Olympics constitutionalised? A global constitutionalist reading of the International Olympic Committee. *Int Sports Law J* 23, 3–16 (2023). <https://doi.org/10.1007/s40318-022-00224-3>, at 15.

¹⁴⁵ Bodo P. Bützler and Lisa Schöddert, ‘Constitutionalizing FIFA: Promises and Challenges’ (2020) 25(1) *Tilburg Law Review* pp. 40–54, at 53.

¹⁴⁶ Pérez, Julio César Muñiz. “Coubertin y la Carta Olímpica: un ejemplo de Constitución transnacional o soft-Constitución= Coubertin and the Olympic Chart: An example of transnational Constitution or Soft-Constitution.” *Materiales para la Historia del Deporte* 23 (2022): 20-39.

¹⁴⁷ Bützler and Schöddert, at 53 and Bützler at 100.

¹⁴⁸ Perez Muniz, at 20.

¹⁴⁹ Bützler and Schöddert, at 53.

¹⁵⁰ Gürcüoğlu, at 15.

¹⁵¹ Duval, Antoine. “The Olympic charter: a transnational constitution without a state?.” *Journal of Law and Society* 45 (2018): S245-S269

¹⁵² Id. at 269.

¹⁵³ Stephen Weatherill, *Is There Such a Thing as EU Sports Law*, in *LEX SPORTIVA: WHAT IS SPORTS LAW?* 300, 305 (Robert Siekmann & Janwillen Soek ed., 2012).

¹⁵⁴ Arbitration CAS 2008/A/1705 Grasshopper v. Alianza Lima, award of 18 June 2009 at 25.

¹⁵⁵ Tatyana Andrianova v. All Russia Athletic Federation, CAS 2015/A/4304, 45 (Apr. 14, 2016).

international level by a few court decisions.” FIFA acts “in a manner analogous to that of a state legislator” treating its “own regulations much like laws, promulgating them as binding on national . . . associations, clubs, players.” Given these special powers and albeit being a private entity, FIFA “must respect general principles that also constrain legislators and governmental administrations.”¹⁵⁶ This correct reasoning should lead CAS to subject SGBs to the same human rights standards as those binding public authorities.

Additionally, the regulatory status, functionally equivalent to state legislators and the special responsibilities that accompany them, should require that SGBs follow standards even if they “were conceived as applicable to the conduct of public authorities.”¹⁵⁷ CAS has emphasized the obvious parallel between a public authority and a sports federation. SGB adopt their rules and reach their decisions by a process similar to those used by State authorities and those actions have an analogous effect on those concerned as State actions do.¹⁵⁸ Freeburn challenged the idea of equating SGB to State regulatory entities precisely for the lack of accountability.¹⁵⁹ In this sense, our approach proposes to use the analogy of States to hold SGBs accountable for human rights violations.

Building upon the parallel between a State and an SGB, CAS determined that a domestic sporting tribunal action could be attributed to the pertinent SGB. CAS explained that the identical legal approach developed in public international law where States are internationally liable for judgments rendered by their independent courts.¹⁶⁰ In the same light, CAS could be equated to a Swiss state court bound by international human rights law.

The forced arbitration character of CAS makes the traditional contractual sports model obsolete and leads to a more constitutional interpretation of the sports ecosystem particularly the role that CAS plays in it.¹⁶¹ Professional athletes must accept not only all the regulations of international federations but also submit their disputes for arbitration to CAS. For instance, Rule 61 of the Olympic Charter defines CAS’ jurisdiction, stating that any Olympic Games-related dispute “shall be submitted exclusively to the Court of Arbitration for Sport in accordance with the Code of Sports Related Arbitration.”¹⁶² “There is practically no elite sport without consent to

¹⁵⁶ Gibraltar Football Ass’n v. Fédération Internationale de Football Ass’n, CAS 2014/A/3776, ¶¶ 237-40 (Apr. 27, 2016).

¹⁵⁷ *Id.* ¶ 240.

¹⁵⁸ Brit. Equestrian Fed’n v. Fédération Equestre Internationale, CAS 2010/A/2058, ¶¶ 15-16 (July 13, 2010).

¹⁵⁹ Lloyd Freeburn, Forced Arbitration and Regulatory Power in International Sport - Implications of the Judgment of the European Court of Human Rights in Pechstein and Mutu v. Switzerland, 31 MARQ. Sports L. REV. 287 (2021) ¶ 311 and 314.

¹⁶⁰ FIFA v. Superior Tribunal de Justiça Desportiva do Futebol, CAS 2007/A/1370, & WADA v. Superior Tribunal de Justiça Desportiva do Futebol, CAS 2007/A/1376, ¶ 19 (Sept. 11, 2008).

¹⁶¹ Lindholm, J. A legit supreme court of world sports? The CAS(e) for reform. *Int Sports Law J* 21, 1–5 (2021). <https://doi.org/10.1007/s40318-021-00184-0> at 3.

¹⁶² International Olympic Committee [IOC], Olympic Charter, Rule 61(2) (Aug. 8, 2021). More broadly, it also provides that any disputes regarding the IOC decisions or its application or interpretation of the Olympic Charter are to be submitted to the CAS for resolution. *Id.* Rule 61(1).

sport arbitration.”¹⁶³ Today almost all sports federations and all national Olympic committees recognize CAS.¹⁶⁴ The Federal Swiss Tribunal recognized that professional athletes need to accept the SGBs regulations and CAS final jurisdiction.¹⁶⁵ The STF recognized the hierarchical structure of competitive sports.¹⁶⁶ In most situations, athletes lack enough power over their sport federations having to accept the SGB rules.¹⁶⁷ Therefore, professional athletes wishing to participate in a competition organized by a SGB that has a mandatory arbitration clause in its regulations have the sole option of accepting such clause.¹⁶⁸ Athletes either agree with the mandatory arbitration or renounce to practice their sport as a professional and watch the competitions on television or practice their sport in their garden.¹⁶⁹ This is exactly one of the roles that a constitution plays in a national context. It determines who has the power to dictate and enforce the laws, what the rights are, and who and how disputes are adjudicated. ADD CITATION

CAS as a constitutional court

CAS acts and understands that part of its role is to function as a constitutional court. For instance, CAS has declared unlawful and invalid internal rules of sporting federations¹⁷⁰ or required the adoption of certain procedures based on the Olympic Charter or the Statutes of the specific sporting federation.¹⁷¹

CAS serves the same function as a constitutional court by checking how the SGBs exercise regulatory and executive powers.¹⁷² In many aspects, CAS resembles a constitutional court when interpreting and applying the constitutive documents of the different SGBs.¹⁷³ CAS itself has asserted its role as exercising “judicial review,”¹⁷⁴ by overruling the norms of sports federations.¹⁷⁵ In that sense, CAS acts as a centralized review mechanism over sporting institutions.¹⁷⁶ In several awards, CAS has claimed the primacy of its rulings over domestic

¹⁶³ A & B v. World Anti-Doping Agency (WADA) & Flemish Tennis Fed’n, 4A_428/2011, ¶ 3.2.3 (Swiss Fed. Trib.) (Feb. 13, 2012).

¹⁶⁴ The U.S. professional leagues, Formula 1, and the English Football are the main SGBs that have not accepted CAS as the final arbitration mechanism.

¹⁶⁵ *Cañas v. ATP Tour*, Tribunal fédérale [TF] [Federal Tribunal] Mar. 22, 2006, 4P.172/2006 ¶ 4.3.2.2 (Switz.).

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ Leeper, Ruling 2.

¹⁷¹ SNOC Ruling 1.

¹⁷² Lindholm, J. A legit supreme court of world sports? The CAS(e) for reform. *Int Sports Law J* 21, 1–5 (2021). <https://doi.org/10.1007/s40318-021-00184-0> at 1.

¹⁷³ Kendall Thielemann, *The Court of Arbitration for Sport: Where are the Sidelines to its Authority?* 45 N.C. J. INT’L L. 47, 51 (2020).

¹⁷⁴ *WCM-GP v. Fédération Internationale Motocycliste*, CAS 2003/A/461 & 471 & 473 ¶ 30 (Aug. 2003).

¹⁷⁵ *Hellenic Olympic Comm. & Kaklamanakis v. Int’l Sailing Fed’n*, CAS OG 04/009 at ¶ 6.8 (Aug. 24, 2004).

¹⁷⁶ Lorenzo Casini, *The Making of a Lex Sportiva by the Court of Arbitration for Sport*, 12 GER. L.J. 1317 (2011).

courts.¹⁷⁷ CAS controls whether SGBs act within their competencies and follow established procedures and particularly respect the rights of different stakeholders.¹⁷⁸ Lindholm considers that this is a *vertical*, constitutional-like form of review. The CAS also engages in *horizontal* constitutional review by settling disputes where SGBs disagree on the division of powers between them.¹⁷⁹

CAS, in recent years, has established that its jurisdiction cannot be imposed in violation of the athlete's rights. CAS arbitration should provide the same level of protection of the athletes rights afforded by a state court. "[A]rbitration may be accepted, in the eyes of the European Convention on Human Rights, as a valid alternative to access to State courts, only if arbitration proceedings constitute a true equivalent of State court proceedings."¹⁸⁰

In conclusion, I consider that the constitutive documents of the different SGBs could be equated to constitutions; the sports regime could be assimilated as a self-contained constitutional regime and CAS as a sport constitutional court.

Human Rights in SGBs Constitutions

Since 1996 the Olympic Charter has recognized that "the practice of sport is a human right"¹⁸¹ requiring all National Olympic Committees to ensure that no athlete "has been excluded for racial, religious, or political reasons or by reason of other forms of discrimination."¹⁸² This provision is one of the Olympic values. CAS has clarified that the practice of sport as a human right does not mean the right to participate in the Olympic Games.¹⁸³ In October 2018, the IOC adopted the Athletes' Rights and Responsibilities Declaration (the Declaration).¹⁸⁴ The Declaration defines a "common set of aspirational rights and responsibilities for athletes within the Olympic Movement. Athletes and their interests are integral to the Olympic Movement."¹⁸⁵

¹⁷⁷ Union Cycliste Internationale (UCI) c/ Iñigo Landaluce Intxaurreaga & Real Federación Española de Ciclismo (RFEC), TAS 2006/A/1119 ¶ 49-50 (Dec. 19, 2006); Union Cycliste Internationale (UCI) c/ Aitor Gonzalez & Real Federación Española de Ciclismo (RFEC), TAS 2006/A/1120 ¶ 47 (Dec. 20, 2006); World Anti-Doping Agency vs Federación Mexicana de Fútbol, CAS 2006/A/1149 and 2007/A/1211 ¶ 26-30; Agence Mondiale Antidopage (AMA) c. ASBL Royale Ligue Vélocipédique Belge (RLVB) & Iljo Kisse, TAS 2009/A/2014 ¶ 27 (July 6, 2010); Yanina Wickmayer c. Vlaams Doping Tribunaal (VDT) & TAS 2009/A/2021 Agence Mondiale Antidopage (AMA) c. VDT, Fédération flamande de tennis (VTV) et Yanina Wickmayer, TAS 2009/A/1995 ¶ 36 (Dec. 3, 2012).

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Katusha Management SA v. Union Cycliste Internationale*, CAS 2012/A/3031, ¶ 68 (May 2, 2013) (operative part of 15 February 2013).

¹⁸¹ Olympic Charter, *supra* XXX, Fundamental Principles of Olympism ¶ 4.

¹⁸² *Id.* at 44.4.

¹⁸³ Arbitration CAS ad hoc Division (OG Tokyo) 20/005 Oksana Kalashnikova & Ekaterine Gorgodze v. International Tennis Federation (ITF), Georgian National Olympic Committee (GNOC) & Georgia Tennis Federation (GTF), award of 23 July 2021 at 7.5

¹⁸⁴ International Olympic Committee, *Athletes' Rights and Responsibilities Declaration*, 133d IOC Session (Oct. 9, 2018),

https://www.gymnastics.sport/site/pdf/safeguarding/IOC_Athletes_rights_and_responsibilities_declaration.pdf.

¹⁸⁵ *Id.*

The IOC includes in Article 1.4 of its Code of Ethics “respect for international conventions on protecting human rights insofar as they apply to the Olympic Games’ activities.”¹⁸⁶ The contract of the IOC with the host city for the Olympic Games also includes as one of the Core Requirements the protection and respect of human rights.¹⁸⁷ And finally, the IOC adopted in September 2022, its “Strategic Framework on Human Rights”.¹⁸⁸

The inclusion of human rights in the IOC Charter as one of the Fundamental Principles of Olympism¹⁸⁹ is particularly important given that the Charter “is hierarchically the paramount body of rules governing the IOC’s activities.”¹⁹⁰ International federations¹⁹¹ and national Olympic committees¹⁹² are bound by the Charter. International federations are bound by the Principles of Olympism as detailed in the Olympic Charter.¹⁹³ International federations and national Olympic committees must comply with the Olympic Charter’s rules and fundamental principles.¹⁹⁴ Referring specifically to Principle 4, a CAS ad hoc panel said that “[t]he principles of Olympism must axiomatically inform an interpretation of the substantive rules and by-laws of the Charter”.¹⁹⁵

CAS has acknowledged that FIFA’s recognition of human rights in its Statute creates the possibility that rights claims will play a greater role in disputes at the CAS. The arbitral tribunal “would have to assess the compliance of a particular FIFA decision or regulation with internationally recognized human rights.”¹⁹⁶ In *Leeper*,¹⁹⁷ CAS was required to decide on the applicability of the IOC Charter, including its reference to human rights.¹⁹⁸ CAS ruled on whether a SGB (in that case, the IAAF) is subject to “The Fundamental Principles of Olympism” as set out in the Olympic Charter including the recognition of the practice of sport as a human right.¹⁹⁹ CAS understood

¹⁸⁶ International Olympic Committee, *IOC Code of Ethics*, IOC Code of Ethics and other texts (2016), <https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/IOC/What-We-Do/Leading-the-Olympic-Movement/Code-of-Ethics/EN-IOC-Code-of-Ethics-2016.pdf>.

¹⁸⁷ See Int’l Olympic Comm., [Host City Contract – Principles – Games of the XXXIII Olympiad in 2024](#) at 13.2.b.

¹⁸⁸ IOC Strategic Framework on Human Rights (2022) <https://stillmed.olympics.com/media/Documents/Beyond-the-Games/Human-Rights/IOC-Strategic-Framework-on-Human-Rights.pdf>

¹⁸⁹ The Charter makes references to the Fundamental Principles of Olympism. See Olympic Charter, XXX, at 5.1, 14.4, 10.4, 18.3, 28.2.4, 29.1.3.3.4, 49.1.

¹⁹⁰ *COC & Scott v IOC*, TAS 2002/O/373 (December 18, 2003).

¹⁹¹ *Baumann v. IOC, Nat’l Olympic Comm. of Ger., & IAAF.*, CAS Ad Hoc Div. OG 00/006, 12-13 (Ct. Arb. Sport 2000).

¹⁹² *Id.* at 14. See generally ALEXANDRE MIGUEL MESTRE, *THE LAW OF THE OLYMPIC GAMES* 15 (2009).

¹⁹³ *Islamic Republic of Iran Judo Fed’n v. Int’l Judo Fed’n*, CAS 2019/A/6500, 103 (Ct. Arb. Sport Mar. 1, 2021); see also *Islamic Republic of Iran Judo Fed’n v. Int’l Judo Fed’n*, CAS 2019/A/6580, 103 (Ct. Arb. Sport Mar. 1, 2021).

¹⁹⁴ *Chiba v. Japan Amateur Swimming Fed’n*, CAS 2000/A/278 ¶ 4 (Ct. Arb. Sport 2000); at 4; *Nabokov v. Int’l Ice Hockey Fed’n*, CAS 2001/A/357 ¶ 18 (Ct. Arb. Sport 2002); para. 18; *Baumann v. Int’l Olympic Comm.*, CAS Ad Hoc Div. 00/OG/006 ¶ 13 (Ct. Arb. Sport 2000); *Gib.*, para. 13; *Gibraltar Badminton Ass’n v. Int’l Badminton Fed’n*, CAS 2001/A/329 at 4 (Ct. Arb. Sport 2001); page 4; *Swedish Nat’l Olympic Comm. v. Fédération Internationale des Luttes Associées*, CAS Ad Hoc Div. 08/OG/007 ¶ 3 (Ct. Arb. Sport 2008), para. 6.1.

¹⁹⁵ CAS ad hoc Division (OG Beijing) 08/007, award of 23 August 2008, para. 19.

¹⁹⁶ CT. OF ARB. FOR SPORT, *SPORT AND HUMAN RIGHTS: OVERVIEW FROM A CAS PERSPECTIVE* 1, 5 n. 3 (Apr. 16, 2021).

¹⁹⁷ *Leeper v. Int’l Ass’n of Athletics Fed’ns*, CAS 2020/A/6807 (Ct. Arb. Sport Oct. 23, 2020).

¹⁹⁸ *Id.* at 267.

¹⁹⁹ *Id.*

that in the particular case, the provisions of the IAAF were sufficient to decide the dispute.²⁰⁰ However, the Panel added that the IAAF, is bound by the IOC Charter, including the human rights principle by virtue of its participation in the Olympic Movement.²⁰¹

The inclusion of human rights references has another important effect as they are not limited to the regulation of mega-sporting events but all the operations and actions of the SGBs.²⁰² So far, the human rights references have not fully been measured or properly understood.²⁰³ For instance, a comprehensive study on the national sports governance does not consider the inclusion of human rights policies or commitments as one of the elements to be assess.²⁰⁴

The inclusion by FIFA and the IOC of human rights language in their constitutive documents served to spread by example as they are the two largest, most influential sporting organizations and administer of the two biggest mega-sporting events in the world.²⁰⁵ The IOC and FIFA are not alone in this process of constitutionalizing human rights. Organizations considered part of the Olympic movement²⁰⁶ include references to human rights in their constitutive or similar documents. 11 international sports federations (ISF), 19 recognized federations (RF), 16 recognized organizations (RO) and 13 National Olympic Committees (NOC) expressly mention human rights in their documents.²⁰⁷

²⁰⁰ *Id.* at 277.

²⁰¹ *Id.*

²⁰² Davis, Rachel. "The role of sports governing bodies in embedding respect for human rights into mega-sporting events." In *The Routledge Handbook of Mega-Sporting Events and Human Rights*, at 198(2023).

²⁰³ Haas, Ulrich; Hessert, Björn (2021). *Sports Regulations on Human Rights Applicability and Self-Commitment*. In: Chaussard, David; Fortier, Charles; Jacotot, Cécile. *Le sport au carrefour des droits: Mélanges en l'honneur de Gérald Simon*. Paris: Payot Librairie, 287-307.

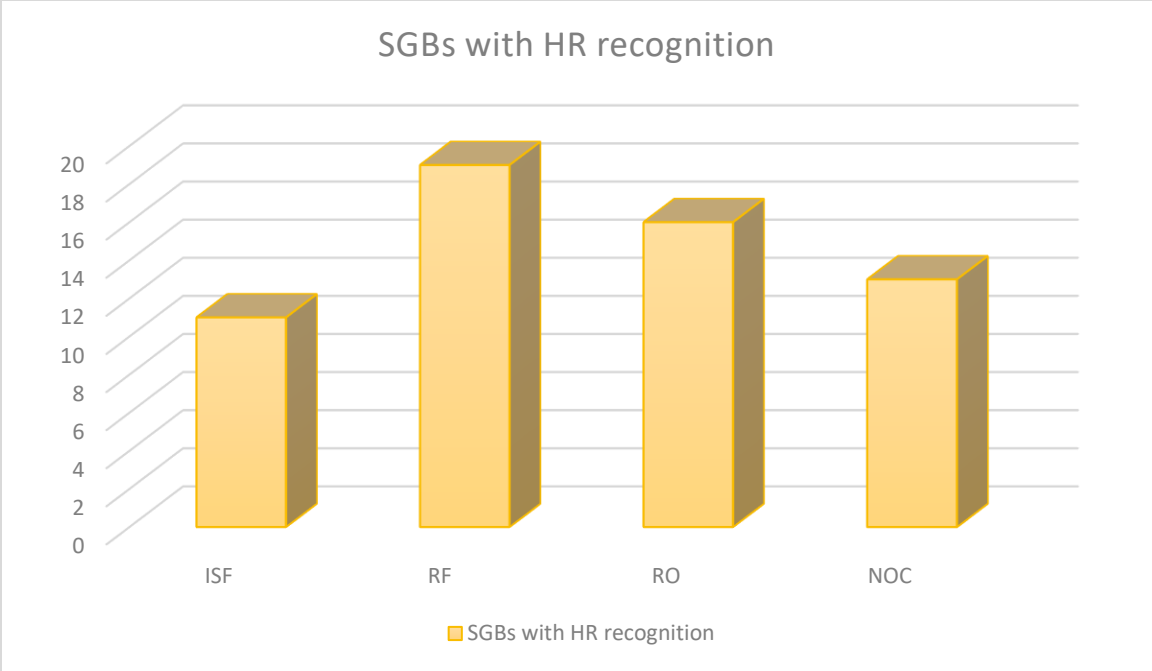
²⁰⁴ National Sports Governance Observer 2. Benchmarking governance in national sports organisations Author Sandy Adam (ed.) (2021) at 11 (including 46 none of which specifically refer to human rights in general although some are extremely pertinent such as "gender equality" or "athlete's rights").

²⁰⁵ Byrne, Seamus, and Jan Andre Lee Ludvigsen. "Sport mega-event governance and human rights: the 'Ruggie Principles,' responsibility and directions." *Leisure Studies* 42, no. 2 ¶ 157 (2023).

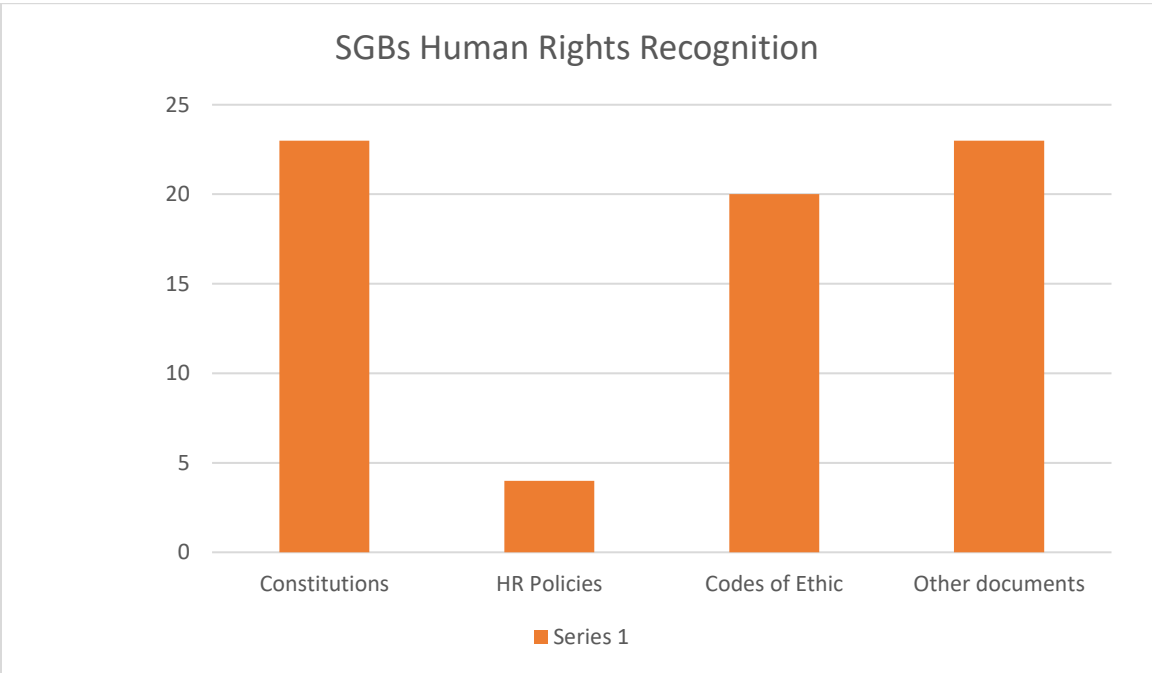
²⁰⁶ For the list of the institutions belonging to the Olympic movement, see <https://olympics.com/ioc/olympic-movement>

²⁰⁷ Businesses that are part of the sport ecosystem also have adopted human rights policies. Within of the Olympic Partner Programme, Allianz [https://www.allianz.com/en/sustainability/ratings/business/human-rights.html#:~:text=As%20an%20employer%2C%20we%20apply,OECD%20Guidelines%20for%20Multinational%20Enterprises](https://www.allianz.com/en/sustainability/ratings/business/human-rights.html#:~:text=As%20an%20employer%2C%20we%20apply,OECD%20Guidelines%20for%20Multinational%20Enterprises;); Atos <https://atos.net/wp-content/uploads/2018/05/atos-human-rights-policy-statement.pdf>; Bridgestone https://www.bridgestone.com/responsibilities/social/human_rights/pdf/global_human_rights_policy.pdf; Coca Cola <https://www.coca-colacompany.com/policies-and-practices/human-rights-principles> ; Deloitte <https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/about-deloitte/deloitte-uk-commitment-to-responsible-business-practices-1.1.pdf> ; Intel <https://www.intel.com/content/www/us/en/policy/policy-human-rights.html>; Omega <https://www.omegawatches.com/en-us/responsibility#:~:text=OMEGA's%20Ethics&text=Applying%20the%20OECD's%20five%2Dstep,conflict%20or%20high%2Drisk%20areas>; Panasonic https://holdings.panasonic/global/corporate/sustainability/pdf/sdb2021e-human_rights.pdf; P&G <https://us.pg.com/ethics-and-corporate-responsibility/respecting-human-rights/>; Samsung https://www.samsung.com/global/sustainability/popup/popup_doc/AYYMsK6CmAALx-G/#:~:text=Samsung%20Human%20Rights%20Principles&text=We%20ensure%20respect%20for%20human,make%20our%20business%20more%20valuable; Toyota <https://global.toyota/en/sustainability/esg/human-rights/> and

Visa <https://usa.visa.com/about-visa/esg/operating-responsibly.html#:~:text=Policies%20contributing%20to%20the%20respect,Policy%20and%20Non%2DRetaliatio%20Policy>. Similarly, FIFA partners have adopted human rights policies: Adidas <https://www.adidas-group.com/en/sustainability/social-impacts/human-rights/#:~:text=Modern%20Slavery%20Policy%20Framework%20and,with%20a%20zero%2Dtolerance%20approac> h ; Coca Cola <https://www.coca-colacompany.com/policies-and-practices/human-rights-principles>; Hyundai <https://www.hyundai.com/content/dam/hyundai/ww/en/images/company/csr/csr-materials/hmc-human-rights-policy-v2-eng.pdf> and Visa <https://usa.visa.com/about-visa/esg/operating-responsibly.html#:~:text=Policies%20contributing%20to%20the%20respect,Policy%20and%20Non%2DRetaliatio%20Policy>. Finally, some of the biggest sports apparel companies also have human rights policies: Nike <https://about.nike.com/en/newsroom/resources/human-rights-and-labor-compliance-standards>; Adidas <https://www.adidas-group.com/en/sustainability/social-impacts/human-rights/#:~:text=Modern%20Slavery%20Policy%20Framework%20and,with%20a%20zero%2Dtolerance%20approac> h; Puma <https://about.puma.com/en/sustainability/social/human-rights-statements> ; Lululemon Athletica Inc <https://info.lululemon.com/about/modern-slavery-statement#:~:text=OUR%20POLICIES%20ON%20MODERN%20SLAVERY,business%2C%20including%20our%20suppl> y%20chains; Under Armour <https://about.underarmour.com/en/Purpose/Sustainability/social-and-labor.html#:~:text=We%20follow%20the%20United%20Nations,the%20communities%20where%20we%20operate> ; Deckers Outdoor Corporation <https://www.deckers.com/responsibility/efforts-initiatives> ; Columbia Sportswear Company <https://www.columbiasportswear.co.uk/l/columbia-slavery-act-policy#:~:text=We%20maintain%20and%20enforce%20internal,best%20possible%20strategy%20for%20resolution> ; Gildan Activewear https://gildancorp.com/media/uploads/policies/bgildans_global_human_rights_policy.pdf ; Asics <https://corp.asics.com/en/csr/respect-for-human-rights#humanright> ; FILA https://www.filaholdings.com/FILA_HPR_ENG.pdf ; VF Corporation <https://d1io3yog0oux5.cloudfront.net/vfc/files/documents/Sustainability/Resources/VF+Corporation+Human+Rig> hts+Commitment+2020.pdf ; Mizuno https://corp.mizuno.com/sites/corp/files/2023-08/230823_%E3%83%9F%E3%82%BA%E3%83%8E%E3%82%B0%E3%83%AB%E3%83%BC%E3%83%97%E4%BA%BA%E6%A8%A9%E6%96%B9%E9%87%9D_%E8%8B%B1%E6%96%87_%E7%BD%B2%E5%90%8D%E8%BF%BD%E5%8A%A0.pdf The adoption of human rights policies by the sponsors is quite important as many of the changes in the SGBs were the result of pressures or initiatives coming from the major commercial partners of the SGBs. Cho, Wan-Ching; Tan, Tien-Chin; Bairner, Alan (2022). Managing the compliance of national federations: an examination of the strategies of international Olympic sports federations. Loughborough University. Journal contribution. <https://hdl.handle.net/2134/20935414.v1> and Recommendations for an IOC Human Rights Strategy Independent Expert Report by Prince Zeid Ra'ad Al Hussein and Rachel Davis at 19 (March 2020).



Out of those 58 SGBs with expressed references to human rights, 23 make those commitments in their Statues, Constitutions, Charters or By Laws. 4 SGBs have adopted specific human rights policies or frameworks. The Code of Conduct, Ethics or Integrity of 20 SGBs mention human rights. Finally, 23 SGBs include human rights provisions in diverse documents such as policies on gender equality, safe sports or good governance.



Every single document reviewed refers to “human rights” or “international recognized human rights” or similar expressions. None of these references to human rights are limited to the European Convention. It could not find any SGB document referring to the ECHR. The introduction of human rights commitments in the statutes, regulations and/or policies of the different international organizations should affect how CAS settles sport-related disputes. Indeed, Article 58 of the Sports Code requires that the Panel decide the dispute according to “the applicable regulations” of the SGB. This means that human rights should no longer just apply subsidiarily (if at all), but directly.²⁰⁸ As CAS said in 2009 if the Constitutional Rules and Regulations of an SGB include rights based on the ECHR or if they refer to the ECHR as applicable to its disciplinary proceedings then the Convention is applicable based on that SGB’s own Rules and Regulations.²⁰⁹

The Code makes the relevant sports regulations the primary default rules applied in appeals.²¹⁰ CAS and the TF have recognized the autonomy of SGB or their freedom to establish their own provisions. CAS endorses this autonomy imposing mainly governance limits.²¹¹ The SGBs are limited by their higher ranking provisions, in particular the association’s statutes, when adopting new rules and regulations.²¹² The sports regulations apply over domestic law unless that legislation is part of the public order.²¹³ If there is a contradiction with domestic law, the provisions of the SGB are still applicable.²¹⁴ In *Semenya*, the CAS noted that the SGB regulations could be unenforceable in or contrary to domestic law. It would be for the national estic courts to make such determinations rather than CAS.²¹⁵ In sum, as long as the SGB rules do not contradict public policy in the limited understanding of the TF, follow the SGB’s statutes, the CAS will not further review their substance but will rely on the autonomy of the association.²¹⁶

²⁰⁸ Bodo P. Bützler & Lisa Schöddert, ‘Constitutionalizing FIFA: Promises and Challenges’ 25 TILBURG L. REV. 40, 46 (2020).

²⁰⁹ CAS 2009/A/1957 Fédération Française de Natation (FFN) v. Ligue Européenne de Natation (LEN), award of 5 July 2010, para. 20.

²¹⁰ U.N. High Comm’r for Hum. Rts., Intersection of Race and Gender Discrimination in Sport, U.N. Doc. A/HRC/44/26, ¶ 44 [hereinafter, OHCHR Race and Gender].

²¹⁰ See

<https://jurisprudence.tas-cas.org/layouts/15/osssearchresults.aspx?u=https%3A%2F%2Fjurisprudence%2Ecas%2Eorg&k=%22human%20rights%22#k=%22human%20rights%22> (visited on 7/19/2023).

²¹¹ Arbitration CAS 2008/A/1708 Football Federation Islamic Republic of Iran (IRIFF) v. Fédération Internationale de Football Association (FIFA), award of 4 November 2009 ¶ 24.

²¹² Id.

²¹³ Grasshopper v. Alianza Lima, CAS 2008/A/1705 ¶¶ 22 and 23 (Ct.Arb. Sport 2009).

²¹⁴ Id. ¶ 22.

²¹⁵ CAS 2018/O/5794 *Mokgadi Caster Semenya v. The International Association of Athletics Federation (IAAF)* and CAS 2018/O/5798 *Athletics South Africa v. The International Association of Athletics Federation (IAAF)*, ¶¶ 553, 469 and 555.

²¹⁶ Mavromati, Despina, Autonomy and Good Governance in Sports Associations in Light of the CAS Case Law (June 1, 2014). Available at SSRN: <https://ssrn.com/abstract=2573303> or <http://dx.doi.org/10.2139/ssrn.2573303> and Donnelly, P., Kerr, G. & Kidd, B. Contesting the autonomy of sport to realize the right to safe sport: a Canadian case study. *Int Sports Law J* 22, 165–170 (2022). <https://doi.org/10.1007/s40318-022-00225-2>

Autonomy has been used to avoid State intervention in sports human rights cases.²¹⁷ In the first published CAS award referring to FIFA’s Human Rights Policy, the Panel avoided deciding on the merits of the allegation that FIFA’s decision to postpone dealing with the conflict between the Palestinian and Israeli Federations was a violation of such article.²¹⁸

The mere inclusion of human rights commitments in the SGBs founding documents is not going to be enough to change the sports culture of refusing to apply international human rights standards. For instance, Haas, a prominent sports law professor and one of the most appointed arbitrator to CAS has argued for a limited effect of those inclusions. Haas proclaims that those self-human rights commitments of SGBs should be construed in light of the specific nature of sports.²¹⁹ Insisting with the idea that human rights are mainly applicable to States actors and arguing that SGB can not lead to the application of international human rights law to them.²²⁰ Finally, for Haas, the main purpose of those human rights commitments is to serve as a uniform guideline that exceptionally could have a binding nature.²²¹

Another aspect to consider is the lack of athletes’ proper knowledge of their rights. A survey determined that close to 80% of athletes were unaware of their rights²²². So, the inclusion of human rights commitments needs to be accompanied by a comprehensive strategy including education to athletes.

Constitutionalizing sports

A second constitutionalization process is taking place at the national level. At least 94 national constitutions include explicit references to sports in their texts. I denominate this approach *constitutionalizing sports*. The following chart provides a classification of the constitutional provisions related to sports.²²³

	RIGHT	STATE POLICY	DISTRIBUTION OF COMPETENCES	MISCELLANEOUS
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²¹⁷ Heerdt, D., Rook, W. Remedy and redress for sport-related human rights abuses. *Int Sports Law J* **22**, 85–92 (2022). <https://doi.org/10.1007/s40318-022-00227-0>

²¹⁸ Palestine Football Ass’n v. Fédération Internationale de Football Ass’n, CAS 2017/A/5166 & 5405 ¶¶ 97-98 (Ct. Arb. Sport 2018).

²¹⁹ Haas, Ulrich; Hessert, Björn (2021). *Sports Regulations on Human Rights Applicability and Self-Commitment*. In: Chaussard, David; Fortier, Charles; Jacotot, Cécile. *Le sport au carrefour des droits: Mélanges en l'honneur de Gérald Simon*. Paris: Payot Librairie, 287-307 at 304.

²²⁰ Id. at 306.

²²¹ Id. at 306-307.

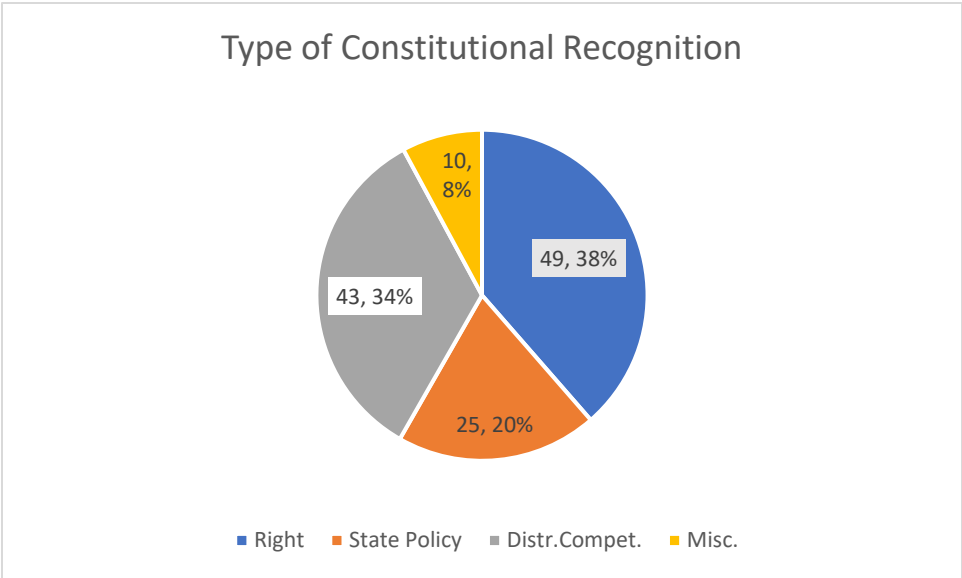
²²² Tuakli-Wosornu, Y. A., Goutos, D., Ramia, I., Galea, N. G., Mountjoy, M. L., Grimm, K., Wu, Y., & Bekker, S. (2022). 'Knowing we have these rights does not always mean we feel free to use them': Athletes' perceptions of their human rights in sport. *BMJ Open Sport and Exercise Medicine*, 8(3), [e001406]. <https://doi.org/10.1136/bmjsem-2022-001406>

²²³ I know of only one preliminary comparative constitutional law study on sports in national constitutions. Soek, Janwillem. "Sport in national sports acts and constitutions: definition, ratio legis and objectives." *The international sports law journal* 3-4 (2006): 28-35.

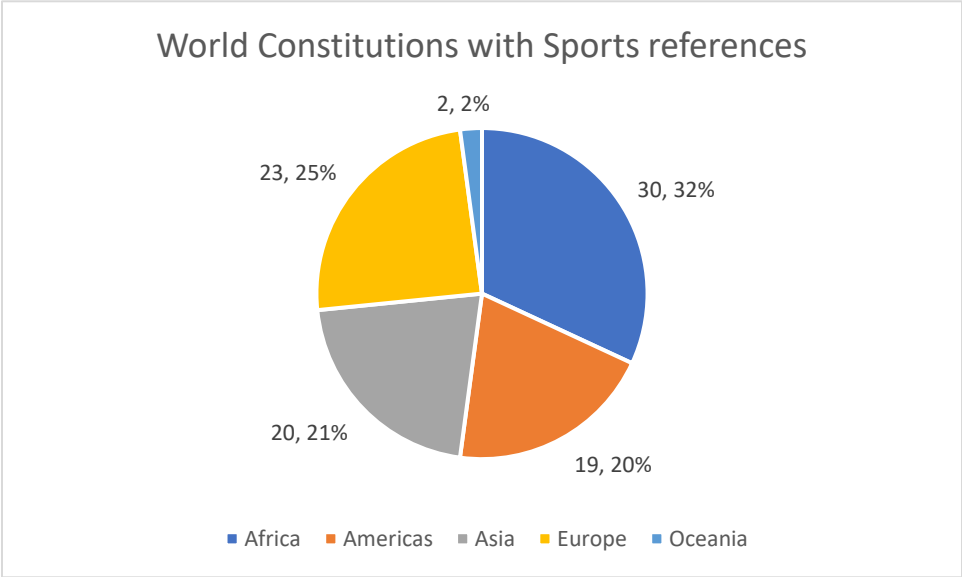
Afghanistan 2004	X			
Albania 1998 (Rev. 2016)		X		
Algeria 2020	X		X	
Andorra 1993			X	
Angola 2010	X		X	
Armenia 1995 (Rev. 2015)		X	X	
Austria 1920 (Reinst. 1945, Rev. 2013)			X	
Belarus 1994 (Rev. 2004)	X			
Bolivia (Plurinational State Of) 2009	X		X	
Brazil 1988 (Rev. 2017)	X	X	X	
Bulgaria 1991 (Rev. 2015)	X			
Burkina Faso 1991 (Rev. 2015)	X			
Cambodia 1993 (Rev. 2008)	X			
Cameroon 1972 (Rev. 2008)		X		
Cape Verde 1980 (Rev. 1992)	X			
Chad 2018			X	
Chile 1980 (Rev. 2021)			X	
China (People's Republic Of) 1982 (Rev. 2018)		X		
Colombia 1991 (Rev. 2015)	X		X	
Comoros 2018		X		
Congo (Democratic Republic Of The) 2005 (Rev. 2011)			X	
Congo (Republic Of The) 2015			X	
Côte D'Ivoire 2016	X		X	
Croatia 1991 (Rev. 2013)	X		X	
Cuba 2019	X	X	X	
Cyprus 1960 (Rev. 2013)			X	X
Dominican Republic 2015	X			
Ecuador 2008 (Rev. 2021)	X	X	X	X
Egypt 2014 (Rev. 2019)	X			
El Salvador 1983 (Rev. 2014)				X
Eritrea 1997	X	X		
Eswatini 2005		X		
Ethiopia 1994	X			
Gambia (The) 1996 (Rev. 2018)		X		
Georgia 1995 (Rev. 2018)		X		
Ghana 1992 (Rev. 1996)		X		X
Guatemala 1985 (Rev. 1993)	X			X
Guinea-Bissau 1984 (Rev. 1996)		X		
Honduras 1982 (Rev. 2013)	X			
Hungary 2011 (Rev. 2016)	X			
India 1949 (Rev. 2016)			X	
Iraq 2005	X			
Italy 1947 (Rev. 2020)			X	
Jordan 1952 (Rev. 2016)	X			
Kenya 2010			X	
Korea (Democratic People's Republic Of) 1972 (Rev. 2016)		X	X	
Kyrgyzstan 2010 (Rev. 2016)	X			

Lao People's Democratic Republic 1991 (Rev. 2015)		X		
Lithuania 1992 (Rev. 2019)		X		
Malaysia 1957 (Rev. 2007)			X	
Mexico 1917 (Rev. 2015)	X		X	
Moldova (Republic Of) 1994 (Rev. 2016)	X			
Montenegro 2007 (Rev. 2013)	X			
Morocco 2011	X			
Mozambique 2004 (Rev. 2007)	X			
Myanmar 2008 (Rev. 2015)			X	
Nepal 2015 (Rev. 2016)	X	X	X	
New Zealand 1852 (Rev. 2014)				X
Nicaragua 1987 (Rev. 2014)	X			
Niger 2010 (Rev. 2017)			X	
North Macedonia (Republic Of) 1991 (Rev. 2011)	X		X	
Pakistan 1973 (Reinst. 2002, Rev. 2018)				X
Panama 1972 (Rev. 2004)	X			
Papua New Guinea 1975 (Rev. 2016)			X	X
Paraguay 1992 (Rev. 2011)		X	X	
Peru 1993 (Rev. 2021)	X		X	
Philippines 1987		X		
Portugal 1976 (Rev. 2005)	X			
Romania 1991 (Rev. 2003)	X			
Russian Federation 1993 (Rev. 2014)	X		X	
Saint Kitts And Nevis 1983			X	
Sao Tome And Principe 1975 (Rev. 2003)	X			
Senegal 2001 (Rev. 2016)	X			
Serbia 2006			X	
Somalia 2012	X			
South Africa 1996 (Rev. 2012)			X	
South Sudan 2011 (Rev. 2013)	X		X	
Spain 1978 (Rev. 2011)		X	X	
Sri Lanka 1978 (Rev. 2015)			X	
Suriname 1987 (Rev. 1992)	X			
Sweden 1974 (Rev. 2012)			X	
Switzerland 1999 (Rev. 2014)			X	
Tajikistan 1994 (Rev. 2016)	X			
Thailand 2017		X		
Tunisia 2014	X			
Turkey 1982 (Rev. 2017)	X			
Turkmenistan 2008 (Rev. 2016)	X	X		
Uganda 1995 (Rev. 2017)		X		
Ukraine 1996 (Rev. 2019)	X			
United Kingdom 1215 (Rev. 2013)			X	
Uruguay 1966 (Reinst. 1985, Rev. 2004)			X	
Venezuela (Bolivarian Republic Of) 1999 (Rev. 2009)	X		X	X
Zambia 1991 (Rev. 2016)			X	
Zimbabwe 2013 (Rev. 2017)		X		

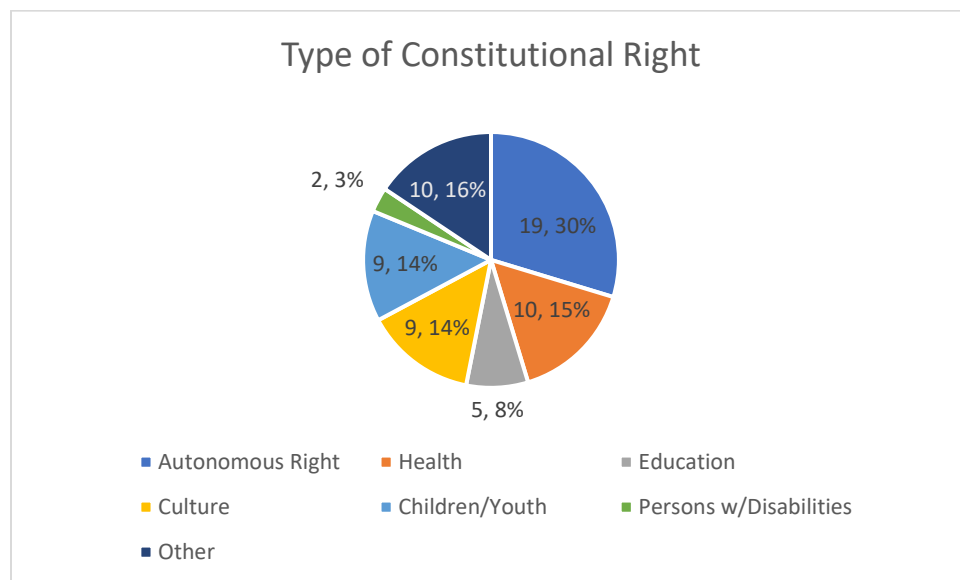
Those constitutional rules could be broadly grouped into three categories: a) sports as a right (autonomous right to the practice of sports or as part of other rights such as health, education, culture, leisure or the rights of children/youth and persons with disabilities); b) as one of the objectives of the social policy or State’s objectives and; c) sports as one of the competencies attributed to legislative and/or executive branches and to the national, state and/or local authorities.



The constitutional sports provisions are a global phenomenon as those regulations come from all over the world. In fact, out of the 94 Constitutions, 30 belong to Africa, 23 to Europe, 20 to Asia, 19 to the Americas and 2 to Oceania.



Among the constitutions that refer to sports as a right, 19 recognize it as an autonomous right to the practice of sports, 10 as part of the right to health, 9 as an aspect of children and/or youth rights, 9 consider sports as integrative part of cultural rights, 4 as connected to the right to education, 2 to the rights of persons with disabilities and finally 10 constitutions include sports in different rights categories.



The *constitutionalization of sports* offers important consequences. First, those constitutions assume a true commitment to the recognition of an active role of the State in the area of sports. In fact, the only three constitutions that refer to sports autonomy (Brazil, Guatemala and Morocco) still provide for an active State involvement in the sports field. In fact, constitutional courts and high courts have ruled on the basis of constitutional human rights arguments. The Colombian Constitutional Court has clearly recognized that football is not exempt from rights protection extending the reach of such rights to private relations among private actors such as players, teams and sports federations.²²⁴ In *Comitis*, a South African court recognized the public function of the National Soccer League.²²⁵ Additionally, given soccer’s large support, the fate of professional players constitutes a matter of public interest. In this context, the constitutional rights of professional players should be protected.²²⁶ In *Zee Telefilms*, the Indian Supreme Court was very clear that the SGB (the cricket national board) does discharge some activities that similar to public duties or State functions.²²⁷ In those cases, if there is a violation of a constitutional obligation or rights, the victim does not enjoy access to a constitutional remedy.²²⁸ However, that

²²⁴ María Ximena Dávila, Nina Chaparro, Nelson Camilo Sánchez, Rights-based constitutionalism and gender justice in Colombian women’s soccer, *International Journal of Constitutional Law*, Volume 20, Issue 1, January 2022, Pages 351–372.

²²⁵ *Coetzee v Comitis & Others*, 22 Indus. L.J. (JUTA) 331, 332 (2001).

²²⁶ *Id.* at 1264.

²²⁷ *Zee Telefilms Ltd. v. Union of India*, AIR 2005 SC 2677 (India).

²²⁸ *Id.*

does not mean that the SGB would not have to respond because they are not a State actor. Under Indian law there should always be a remedy for violation of a right.²²⁹

Secondly, the recognition of sports as a constitutional right means that the constitutional remedies of those rights could be exercised in the realm of sports.²³⁰ Constitutional courts in Colombia,²³¹ Chile,²³² and Peru²³³ have allowed the use of constitutional remedies in order to enforce constitutional rights against SGB, recognizing that constitutional protections are enforceable *vis a vis* private entities.

In particular, different courts have ruled on the compatibility of sports arbitration, particularly CAS, based on constitutional grounds. The Colombian Constitutional Court, in Tutela T-550/16 implicitly recognized that access to CAS could be considered an effective remedy given its role as the final instance to decide sports disputes.²³⁴ The Colombian Court admitted that access to CAS could present obstacles such as additional costs for international travel and lodging and the need to count with international experts.²³⁵ Thus, it ordered the Football Colombian Federation to cover those costs.²³⁶ The Peruvian Constitutional Court recognized that arbitration is the main form of solving sporting disputes and that the autonomy of SGB allows them to impose sanctions to its members as far as they respect due process guarantees and respect fundamental rights.²³⁷ It also allows SGB to use arbitration as the main tool to decide disputes, including giving jurisdiction to CAS.²³⁸ However, arbitration runs in parallel and does not displace the jurisdiction of regular courts to protect fundamental rights if needed or to intervene in matters, such as criminal cases, that cannot be dealt by arbitration and are not protected by freedom of association.²³⁹ In Germany, the Federal Constitutional Court found, on that CAS arbitration violated the right to a public hearing with similar arguments as those of the European Court in *Mutu*. In this case, the Federal Constitutional Court was noticeably clear in requiring that if there is forced arbitration, the constitutional requirements are fully applicable.²⁴⁰

²²⁹ *Id.*

²³⁰ María Ximena Dávila, Nina Chaparro, Nelson Camilo Sánchez, Rights-based constitutionalism and gender justice in Colombian women's soccer, *International Journal of Constitutional Law*, Volume 20, Issue 1, January 2022, Pages 351–372.

²³¹ See generally Corte Constitucional, [C.C.] [Constitutional Court], octubre 11, 2016, Sentencia T550/16, M. P: Aquiles Arrieta Gómez, Expediente T-5.489.438(Colom.).

²³² See generally Corte Suprema de Justicia [C.S.J.] [Supreme Court], 3 noviembre 2021, Rol de la causa: 56.134-2021 (Chile).

²³³ See generally Constitutional Tribunal Constitucional [T.C.] [Constitutional Tribunal], 1 octubre 2007, Exp No. 035 74-2007-PA/Tcat 54 (Peru).

²³⁴ Corte Constitucional [C.C.], octubre 11, 2016, T 550/16, M.P.: A. Gómez, ¶ 6.8 (Colom.).

²³⁵ *Id.* ¶ 7.2.

²³⁶ *Id.*

²³⁷ Constitutional Tribunal, octubre 1, 2007, No. 035 74-2007-PA/TC, at 54 (Peru).

²³⁸ *Id.* At 31.

²³⁹ *Id.* At 41, 61, 63.

²⁴⁰ Constitutional complaint challenging admissibility of arbitration clause successful, Press Release No. 61/2022 of 12 July 2022, Order of 3 June 2022 [1 BvR 2103/16](https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2022/bvg22-061.html)
<https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2022/bvg22-061.html>

The Ecuadorian Constitutional Court recognized that the autonomy of sports organizations allow them to establish arbitration mechanisms to enforce their international regulations. That autonomy does not violate the Constitution.²⁴¹ To the contrary, other tribunals have rejected the idea that arbitration and the impossibility of challenging SGB in domestic courts are compatible with constitutional protections. For instance, the Chilean Supreme Court found it unconstitutional to prohibit football teams from challenging decisions of the Chilean Federation in ordinary courts and to impose sanctions on the team if they used such courts.²⁴²

The introduction of constitutional references to sports provides an important element for CAS as R58 of the Sports Code establishes that in the absence of a choice of law by the parties, the Panel should decide “according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled”.²⁴³ Additionally, CAS has recognized that even when national rules do not directly apply, CAS still finds them useful to take inspiration from such rules.²⁴⁴ In fact, the constitutional review by domestic courts of CAS has been called “constitutionalizing” CAS.²⁴⁵

Exporting European human rights law

In a number of sports arbitrations, CAS has made increased references to the rights guaranteed by the European Convention on Human Rights (the European Convention)²⁴⁶ and to the European Court.²⁴⁷ Additionally, by reviewing the decisions of CAS, the Swiss Federal Tribunal (the SFT) applies indirectly, under limited and strict circumstances, the European Convention to determine if the CAS awards are compatible with public policy and thus valid decisions. I call this phenomenon *exporting European human rights law* to the realm of sports. The process of borrowing from the European human rights system is not unique to CAS. In fact, several judicial and human rights bodies have relied or “imported” the case-law and analytical methodology of the European Court.²⁴⁸

²⁴¹ See Constitutional Court of Ecuador, Sentencia No. 2-13-IN y acumulado/21 Juez ponente: Agustín Grijalva Jiménez, (Dec. 1, 2021).

²⁴² See Corte Suprema de Chile, Tercera Sala, Rol Nº 56.134-2021 (Nov. 3, 2021).

²⁴³ Despina Mavromati, Matthieu Reeb, *The Code of the Court of Arbitration for Sport: Commentary, Cases and Materials*, Commentary on Article R58.

²⁴⁴ *KSF, Saud Abdulrahman Ahmad Habeeb, Pourya Mohammadreza Norouziyan & Elham Hossein Harijani v. IOC & ISSF* (2016) CAS 2015/A/4289, para. 133.

²⁴⁵ Duval, Antoine: *Constitutionalizing the Court of Arbitration for Sport: The Return of Claudia Pechstein*, *VerfBlog*, 2022/7/20, <https://verfassungsblog.de/constitutionalizing-the-court-of-arbitration-for-sport/>, DOI: [10.17176/20220720-233624-0](https://doi.org/10.17176/20220720-233624-0).

²⁴⁶ See Pierre Cornu et al., *Human Rights Protection in Europe in the Context of Sports Organisations’ Disciplinary and Arbitration Procedures* (Council of Eur., Good Practice Handbook No. 5, 2018).

²⁴⁷ For an excellent analysis of CAS’ use of European Human Rights Law see A. Duval, *Lost in translation? The European Convention on Human Rights at the Court of Arbitration for Sport*, *INT SPORTS LAW J* (2022). <https://doi.org/10.1007/s40318-022-00221-6>

²⁴⁸ Deftou Maria-Louiza, *Exporting the European Convention on Human Rights* (2022); Neuman, Gerald L. "Import, export, and regional consent in the Inter-American Court of Human Rights." *European journal of international law* 19, no. 1 (2008): 101-123.

A legal fiction²⁴⁹ (the seat of CAS in Lausanne, Switzerland²⁵⁰) means that CAS and its awards come under the jurisdiction of Swiss law and made European human rights law relevant even if none of the relevant facts in a particular case took place in Europe. The seat of CAS also opens the possibility of accessing the European Court to question the rulings of the Swiss Tribunal and indirectly the procedure and reasoning of CAS. CAS arbitrators quite often apply European Union competition rules²⁵¹ in cases involving human rights issues,²⁵² despite that Switzerland is not a European Union State and most of the SGB are Swiss corporations.

Most CAS decisions consider that “[w]hether and to what extent sports associations are bound by the ECHR in the context of their disciplinary jurisdiction is not clear.”²⁵³ Generally, CAS arbitrators raise “serious doubts as to the applicability of the ECHR in said cases in view of Art. 1 ECHR. According to this provision only state authority, not private third parties, are bound to observe the rights under the Convention.”²⁵⁴ CAS has explained that rights are directed against the State and involved a vertical relationship between the State and the individual and not intended to apply directly in private relationships.²⁵⁵

For CAS, the Convention protects individual rights against violations by the state. The ECHR is not applicable to legal relationships between private entities such as associations and its members.”²⁵⁶ SGBs are not an organ of the State, notwithstanding the fundamental importance of its role in the organization of sports.²⁵⁷ Recently, CAS reaffirmed its reasoning asserting that “the ECHR, and Article 8 ECHR in particular, in principle cannot be invoked by private parties against another private party, such as FIFA, in purely horizontal situations”.²⁵⁸

CAS asserted that human rights norms should be excluded when not explicitly chosen by the parties. According to the Code and its case law, and to the extent that there are gaps in SGB

²⁴⁹ See Gabrielle Kaufmann-Kohler, *Globalization of Arbitral Procedure*, 36 VANDERBILT LAW REVIEW 1313, ¶ 1318 (describing the seat of arbitration as a “legal fiction”).

²⁵⁰ Code, S1

²⁵¹ See Agreement between the European Union and the Swiss Confederation concerning cooperation on the application of their competition laws and Margareta Baddeley, *The application of antitrust legislation by Swiss Courts in cases involving international sports governing bodies in* EU ANTITRUST LAW AND SPORT GOVERNANCE, pp. 71-84. Routledge, 2022.

²⁵² See for instance, TAS 2016/A/4490 RFC Seraing c. FIFA (taking into consideration of European Union law as applicable law and the legality of FIFA’s regulations on status and transfers of players with regard to freedom of movement and competition law; CAS 2012/A/2852 SCS Fotbal Club CFR 1907 Cluj SA & Manuel Ferreira de Sousa Ricardo & Mario Jorge Quintas Felgueiras v. FRF, ¶ 77 (on the principle of non-discrimination and freedom of movement) and CAS 2016/A/4492 Galatasaray v. UEFA, ¶ 42 – 45 (on the mandatory nature of European Competition Law and EU fundamental rights).

²⁵³ Hoch v. Fédération Internationale de Ski & Int’l Olympic Comm., CAS 2008/A/1513, ¶ 9 (Jan. 29, 2009).

²⁵⁴ *Id.*

²⁵⁵ Bordeaux v. Fédération Internationale de Football Ass’n, TAS 2012/A/2862, ¶¶ 105-07 (Jan. 11, 2013) (translation by the author, internal references omitted); see also Diakite v. Fédération Internationale de Football Ass’n, TAS 2011/A/2433, ¶ 23 (Mar. 8, 2012).

²⁵⁶ Eder v. Ski Austria, CAS 2006/A/1102, TAS 2006/A/1146, ¶ 45 (2006).

²⁵⁷ Bordeaux, TAS 2012/A/2862, ¶¶ 105-07; see also Diakite, TAS 2011/A/2433, ¶ 23.

²⁵⁸ CAS 2023/O/9370 Professional Football Agents Association (PROFAA) v. FIFA.

statutes, CAS could use Swiss law that reflects European human rights standards to fill the regulatory gaps. In the Semenya case the CAS considered unnecessary to examine “detailed principles” of “international human rights law” including the International Convention on the Elimination of all forms of Discrimination against Women. CAS determined the irrelevancy of those human rights instruments even if they are part of the domestic legislation of the country where the SGB’s headquarters are located or the legal systems of the members of the SGB or where the SGB conducts competitions. This lack of proper human rights analysis was the main reason for the European Court to rule against Switzerland in this case.

CAS Eurocentric biasing of sports law.

So far, and despite its global jurisdiction, CAS failed to use the United Nations or the African or Inter-American human rights standards. This is a process that I denominate *CAS Eurocentric biasing of sports law*.²⁵⁹ Additionally, by reviewing the decisions of CAS, the SFT applies indirectly, under limited and strict circumstances, the European Convention (but not the United Nations treaties ratified by Switzerland) to determine if the CAS awards are compatible with public policy and thus valid decisions. Similarly, CAS arbitrators quite often apply European Union competition rules in cases involving human rights issues, despite that Switzerland is not a European Union State and most of the SGB are Swiss corporations.

In general, CAS does not pay attention to the pertinent applicable human rights standards. For instance, in the *Al Hilal* case,²⁶⁰ the dispute between the Sudanese professional football club and the Confédération Africaine de Football with its headquarters in Egypt, the CAS referred to a European Court case that is inapplicable in the domicile country of the team and the federation. Similarly, in *Kuze*, a controversy between the state of a coach and a Chinese football team, CAS referred to a commentary of the European Convention but not the UN documents applicable in China.²⁶¹

A quantitative search of the CAS database shows an explicit reference to human rights in hundreds of decisions. A simple search of the phrase “human rights” in CAS database returned 246 results.²⁶² Out of those results, CAS referred to the European Convention on 108 occasions and to the European Court in 123 results.²⁶³ For the United Nations human rights treaties, CAS database returns only 10 results (4 to the International Covenant on Civil and Political Rights²⁶⁴,

²⁵⁹ For the risks of a Eurocentric approach in other areas of sports, see Turley, Trista (2016) "When the 'Escape Ends Responsibility of the IOC and FIFA at the Intersection of Sport Law and Human Rights," *Notre Dame Journal of International & Comparative Law*: Vol. 6: Iss. 1, Article 12 at 154.

²⁶⁰ *Al Hilal Club v. Confédération Africaine de Football (CAF)*, CAS 2020/A/6920 ¶ 67 (Ct.Arb. Sport 2015).

²⁶¹ *Ana Kuže v. Tianjin TEDA FC*, CAS 2015/A/3910 ¶ 158 (Ct.Arb. Sport 2015).

²⁶² CAS database, [https://jurisprudence.tas-cas.org/Search/results.aspx#k=\(%22human%20rights%22\)](https://jurisprudence.tas-cas.org/Search/results.aspx#k=(%22human%20rights%22)) (last visited August 4, 2023).

²⁶³ *Id.* It is important to note that we include 30 citations of the European Convention *of* human rights, 66 mentions of the European Convention *on* Human Rights and 12 references to the European Convention for the Protection of Fundamental Rights.

²⁶⁴ See e.g., *World Anti-Doping Agency and Union Cycliste Internationale v. Valverde*, CAS 2007/A/1396 & 1402, ¶ 116 (May 31, 2010).

2 to the Convention on the Rights of Persons with Disabilities²⁶⁵, 2 to the Convention on the Rights of the Child²⁶⁶, one to the International Convention on the Elimination of All Forms of Racial Discrimination²⁶⁷ and one to the Convention on the Elimination of All Forms of Discrimination against Women²⁶⁸), There are no references to any of the United Nations treaty bodies, such as the Human Rights Committee. In fact, in an almost insulting manner, in the *Caster Semenya* case, the CAS panel said that the opinion of the UN human rights experts were not “particularly useful.”²⁶⁹ This Eurocentric approach contrasts with the fact that Switzerland has ratified almost all the core United Nations human rights treaties with the exception of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.²⁷⁰ There are also no CAS awards mentioning the Inter-American and African regional human rights systems or treaties.

“Sports and Human Rights. A CAS perspective,” a document prepared by the CAS Secretariat also reflects this Eurocentric approach.²⁷¹ The first section of the document titled “Human rights in sport regulations” refers to the IOC, FIFA, WADAC, World Athletics, and to two United Nations documents: the United Nations Guiding Principles on Business and Human Rights and the Sports for Climate Action. The only regional sporting organization mentioned is the European UEFA despite the fact that all other regional football federations include express references to human rights in their Statutes or Code of Conduct.²⁷² The second section of the CAS document titled “Selected CAS cases related to human rights,” includes a segment on “Procedural rights and European Convention on Human Rights (ECHR)” with a subsection on “Indirect application of Article 6(1) ECHR.” The next section is titled “Sport and the European Convention on Human Rights (ECHR).” The document does not mention any other United Nations or regional human rights instrument. Similarly, the section of the document citing the eight seminars related to

²⁶⁵ See e.g., *Leeper v. Int’l Ass’n of Athletics Fed’ns*, CAS 2020/A/6807 (Ct. Arb. Sport Oct. 23, 2020).

²⁶⁶ See e.g., *Stichting Anti-Doping Autoriteit Nederland v. W.*, CAS 2010/A/2311 & 2312, ¶ 66 (Aug. 22, 2011).

²⁶⁷ *Feyenoord Rotterdam N.V v. UEFA* (2016) CAS 2015/A/4256, para. 48.

²⁶⁸ *Mokgadi Caster Semenya v. International Association of Athletics Federations & CAS*, Arbitration CAS 2018/O/5794, *Athletics South Africa v. International Association of Athletics Federations*, Arbitration CAS 2018/O/5798, Award ¶ 219, 277, 281 and 544 (April 30, 2019).

²⁶⁹ *Mokgadi Caster Semenya v. International Association of Athletics Federations & CAS*, Arbitration CAS 2018/O/5794, *Athletics South Africa v. International Association of Athletics Federations*, Arbitration CAS 2018/O/5798, Award ¶ 544 (April 30, 2019).

²⁷⁰ See OHCHR, Switzerland, Status of Ratification available at

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=169&Lang=EN

²⁷¹ Sport and Human Rights. Overview from a CAS perspective (as at 20 June 2022), available at https://www.tas-cas.org/fileadmin/user_upload/2022.06.20_Human_Rights_in_sport_20_June_2022.pdf

²⁷² See CONCACAF Statutes <https://stconcacafwp001.blob.core.windows.net/media/ye0pc4nb/concacaf-statutes-edition-2016-final.pdf> (article 3) and Code of Conduct available at <https://secure.ethicspoint.com/domain/media/en/gui/40739/code.pdf> (page 6), CAF Statutes available at <https://images.cafonline.com/image/upload/caf-prd/fdbr2ozuuxzf2z1iotbs.pdf> (article 2.4), the CONMEBOL Statutes available at <https://www.conmebol.com/estatutos/>, (article 4.b) and Code of Ethics available at <https://www.conmebol.com/documentos/codigo-de-etica-2023/> (preamble), the AFC Statutes available at [https://assets.the-afc.com/downloads/mission-and-statutes/AFC-Statutes-\(2022-Edition\)---English.pdf](https://assets.the-afc.com/downloads/mission-and-statutes/AFC-Statutes-(2022-Edition)---English.pdf) (article 3) and the OCF Statutes available at <https://www.oceaniafootball.com/cms/wp-content/uploads/2021/08/FINAL-Statutes-2021.pdf> (article 4).

human rights conducted by CAS include three specific seminars on the European Convention with no other focusing on any other human rights instrument.

Probably no data shows the Eurocentric bias²⁷³ more than the list of CAS arbitrators.²⁷⁴ According to CAS, there are currently 467 arbitrators.²⁷⁵ 25 of those arbitrators are African nationals, 28 from Oceania, 68 from Asia, 90 from the Americas and 236 from Europe.²⁷⁶ In other words, 52% of the CAS arbitrators are Europeans. This imbalance is even more pronounced if disaggregating the European arbitrators by nationality. 70% of the European arbitrators come from 6 countries (UK with 39, Switzerland 36, France 29, Italy 24, Spain 22 and Germany 16).²⁷⁷ Similar data revealed that the imbalance is present in the appointments to a specific panel. Of the 2,194 arbitrator appointments for specific panels, more than 77 percent went to European based arbitrators.²⁷⁸ In the context of those arbitrators with “specific expertise in human rights,” 55% are Europeans.²⁷⁹ The CAS repeats many of the problems of other international adjudicatory bodies by relying on European sources rather than on universal ones.²⁸⁰

Conclusion

CAS does not apply a human rights analysis to the cases even if it refers to similar principles. As the European Court has established in the *Semenya* case, even if CAS conducted a detailed examination of the allegation of discrimination and applied a criterion quite similar to the Court's considerations, CAS failed to apply the relevant provisions of the Convention or the Court's case-law.²⁸¹

A more proper protection of human rights in the sports ecosystem calls not only for the consistent application of human rights law by CAS but also for the use and application of United Nations and/or regional human rights institutions and standards. Similarly, CAS should pay proper attention to the constitutionalization process of sports at the national level and at the SGBs. A global approach calls for the recognition and protection of a common universal core of

²⁷³ Of course, this Eurocentric bias reflects the same problem present in the SGBs in general. According to the Sports Political Power Index, 5 of the top 10 countries with most powerful representations in SGBs are Europeans. If we add the US, Canada and Australia, the only non-Western or European country is China. The sports political power index 2019-2021 <https://www.dif.dk/media/gf4n0x20/sports-political-power-index-2021.pdf> at 21 (2022).

²⁷⁴ Even Goh who considers that CAS substantially follows the standards and practices of other international arbitral tribunals, criticizes the egregious regional imbalance of CAS' list of arbitrators. Goh, Chui Ling, and Jack Anderson, *The Credibility of the Court of Arbitration for Sport*, HARVARD JOURNAL OF SPORTS & ENTERTAINMENT LAW 13, no. 2 (2022).

²⁷⁵ CAS, List of Arbitrators (general list), available at <https://www.tas-cas.org/en/arbitration/liste-des-arbitres-liste-generale.html?GenSlt=2&nmlpt=&ContinentSelected%5B%5D=2> (last visited on 7/20/2023).

²⁷⁶ There is a discrepancy in the CAS list. While it cites a total of 267 arbitrators, the total sum of all the regional groups results in 447 arbitrators.

²⁷⁷ *Supra* note xxx.

²⁷⁸ Lindholm, J., Lindholm and Reschke, 2019. *Court of Arbitration for Sport and Its Jurisprudence*. The Hague: TMC Asser Press ¶ 271.

²⁷⁹ See *supra* notes xxxx and xxx.

²⁸⁰ See e.g., Manley, Stewart, Pardis Moslemzadeh Tehrani, and Rajah Rasiah. "The (Non-) Use of African Law by the International Criminal Court." *European Journal of International Law* 34, no. 3 (2023): 555-580.

²⁸¹ Troisième Section, *Affaire Semenya c. Suisse*, (Requête no 10934/21), 11 juillet 2023, at 174 and 200.

basic human rights standards.²⁸² A comprehensive approach should understand the multilevel protection of human rights taking place at the national level as well at different transnational systems. In this integration, CAS should apply what the Inter-American Court calls “the *corpus juris* of International Human Rights Law” a “series of international instruments with different legal content and effects (treaties, conventions, decisions, and declarations).”²⁸³

CAS needs to move beyond the sole and inconsistent application of the European Convention that is only applicable for a limited number of European States.²⁸⁴ The European Court has asserted that the European Convention is a multi-lateral treaty operating in a regional context, notably in the Europe. The Convention was not designed to be applied throughout the world, even regarding the conduct of European States.²⁸⁵ When CAS uses human rights standards based on the SGBs norms, it should apply all internationally recognized rights and not just the European Convention. Additionally, international human rights law tends to integrate the regional and universal systems and shows a need to complement regional with universal human rights mechanisms.²⁸⁶

CAS Eurocentric approach of using a regional human rights treaty applicable only in Europe limits CAS’ aspiration to become a global sports court.²⁸⁷ The OHCHR explained that the sport ecosystem is a global one that extends far beyond Europe. The Eurocentric approach by CAS creates “the risk of inconsistencies among jurisdictions in terms of protection and remediation for human rights violations in sport.”²⁸⁸ A more universal approach will increase equity and legitimacy as well as the quality of CAS reasoning.²⁸⁹ For instance, the Inter-American human

²⁸² "Other Treaties" Subject to the Consultative Jurisdiction of the Court (Art. 64 of the American Convention on Human Rights), Advisory Opinion OC-1/82, September 24, 1982, Inter-Am. Ct. H.R. (Ser. A) No. 1 (1982), ¶ 40.

²⁸³ The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law. Advisory Opinion OC-16/99 of October 1, 1999. **Inter-Am. Ct. H.R. (Ser. A) No. 16 (1999)**, ¶115.

²⁸⁴ Haas, Ulrich; Hessert, Björn (2021). *Sports Regulations on Human Rights Applicability and Self-Commitment*. In: Chaussard, David; Fortier, Charles; Jacotot, Cécile. *Le sport au carrefour des droits: Mélanges en l'honneur de Gérald Simon*. Paris: Payot Librairie, 287-307 ¶ 290.

²⁸⁵ *Bankovic and Others v. Certain NATO Member States*, Grand Chamber Decision as to the Admissibility of Application no. 52207/99, 12 December 2001 ¶ 78.

²⁸⁶ *Id.* ¶ 41 and 43.

²⁸⁷ Cho, Wan-Ching; Tan, Tien-Chin; Bairner, Alan (2022). *Managing the compliance of national federations: an examination of the strategies of international Olympic sports federations*. Loughborough University. Journal contribution. <https://hdl.handle.net/2134/20935414.v1> at 125.

²⁸⁸ OHCHR, *Race and Gender*, *supra* note 35, ¶ 49.

²⁸⁹ See similarly, Manley, Stewart, Pardis Moslemzadeh Tehrani, and Rajah Rasiah. "The (Non-) Use of African Law by the International Criminal Court." *European Journal of International Law* 34, no. 3 (2023): 555-580.

rights system has a much more expansive interpretation of questions such as reparations²⁹⁰, interim measures²⁹¹, protection of groups in situations of vulnerability²⁹².

The Eurocentric approach taken by CAS is more problematic as many interpret that CAS is the creator of a sort of “lex sportiva,” the foundational legal principles regulating sports. As far as CAS continues with this Eurocentric bias, the whole “lex sportiva” will be impregnated by the same bias.²⁹³ This is another twist in the Eurocentric character of international law and the legal favoritism for the Global North.²⁹⁴

The European Court could accelerate the globalization process by consistently applying the *Riza* “tenuous link” standard to determine the joint, concurrent, or exclusive responsibility of other European States (in Europe rather than Switzerland) or non-European States for the actions or omissions of SGB and CAS.²⁹⁵ The often-disputed concept of legal space (*espace juridique*) of the European Convention²⁹⁶ should lead the Court to encourage CAS to apply other human rights standards when there is only a “tenuous link” between the European space and the sport dispute. And finally, the Court should continue its approach in *Semenya* by looking closely to the *iusuris corpus* developed by the United Nations and other regional bodies in areas intersecting sports and human rights.

²⁹⁰ Sandoval, Clara. "Two steps forward, one step back: Reflections on the jurisprudential turn of the Inter-American Court of Human Rights on domestic reparation programmes." In *The Inter-American Human Rights System*, pp. 82-98. Routledge, 2020.

²⁹¹ Burbano Herrera, Clara, and Yves Haeck. 2019. "The Impact of Precautionary Measures on Persons Deprived of Liberty in the Americas." In *The Inter-American Human Rights System : Impact beyond Compliance*, edited by Par Engström, 89–113. Cham: Palgrave Macmillan. https://doi.org/10.1007/978-3-319-89459-1_4.

²⁹² Beloff, Mary, and Laura Clérico. "Derecho a condiciones de existencia digna y situación de vulnerabilidad en la jurisprudencia de la Corte Interamericana." *Estudios constitucionales* 14, no. 1 (2016): 139-178.

²⁹³ Id.

²⁹⁴ Arnout Geeraert et al., *Good Governance in International Sport Organizations: an Analysis of the 35 Olympic Sport Governing Bodies*, 6 INT’L J. of Sport POL’Y & POL. 281, 281-306 (2014).

²⁹⁵ *Riza* involves a dispute between a professional football player and his team decided by Turkish Football Federation and appealed to CAS. The Court was doubtful that *Riza* could claim a right of access to a Swiss court given that the dispute had only a very “tenuous link” with Switzerland. The Turkish proceedings had no connection with the Swiss courts and no international element. Accordingly, there had been no right of appeal to the CAS or the Swiss TF .

²⁹⁶ In *Bankovic* the European Court describe the Convention as a multi-lateral treaty operating in an essentially regional context in the “legal space (*espace juridique*)” of the European states. The Convention was not designed to be applied throughout the world, even in respect of the conduct of European States. *Bankovic and Others v. Certain NATO Member States*, Grand Chamber Decision as to the Admissibility of Application no. 52207/99, 12 December 2001 at 78. The *Bankovic* decision has been vastly criticized for creating a distinction “between what Contracting parties can do 'at home' and what they can do 'abroad.'" Matthew Happold, *Bankovic v. Belgium and the Territorial Scope of the European Convention on Human Rights*, 3 HUM. Rts. L. REV. 77 (2003) ¶ 88.