

PORTUGUESE COURT OF ARBITRATION FOR SPORT NOW OPERATIONAL - ABBC

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The Portuguese state has created an Arbitral Court for sports, which has mandatory jurisdiction over all administrative disputes arising in relation to sports federations, sports leagues and the anti-doping authority. The goal was to remove these type of cases from the state courts, which in the context of sports disputes were often viewed as slow, ineffective and bureaucratic. The Portuguese Court of Arbitration for Sport (CAS) has been fully operational since 1 October, 2015.

The legal process that led to the creation of the Portuguese CAS was fraught with challenges. Two earlier versions of the law seeking to create a CAS were rejected by the Constitutional Court, essentially due to the lack of provision of an appeal to the state courts.

The solution adopted, and, for the time being, not challenged, seeks to prevent sports disputes from reaching the state courts, without removing the possibility of them going to state courts in the second instance. An initial CAS decision can be appealed to the administrative courts – however, the parties may agree to refer the matter to an inner body of CAS, thereby expressly waiving the right of appeal to the state courts. This inner body of CAS is, in effect, an internal CAS forum for appeals.

Its mandatory jurisdiction refers to disputes arising from acts or omissions of sports federations, professional leagues and other sports entities, in the exercise of their regulatory, organisational, direction and discipline powers (all having a public law nature). This is a significant development in

the scope of arbitral jurisdiction in Portugal, and the extent of CAS' success over the next few years is likely to be of great interest.

Also, voluntary arbitration (such as contracts involving image rights, sponsorship, some labour matters and representation agreements by intermediaries) and arbitration in labour matters involving sports bodies (in respect of which the CAS will have jurisdiction from 1 August, 2016), can be subject to the Portuguese CAS. A mediation process and consulting service are also provided by the CAS Law.

From a practical point of view, it is likely that sports disputes in Portugal will be resolved in a faster, more efficient and simpler way, which will be of benefit both to parties and the legal community. Indeed, the complex and unique legal universe of sports requires that disputes must be handled by people who have sports law expertise. However, the creation of a mandatory arbitral jurisdiction over administrative issues gives rise to many concerns and qualms.

Notwithstanding the anxieties, Portuguese sports entities are committed to creating the best possible conditions for the functioning of the arbitral tribunal so the CAS can set an example for other jurisdictions.

José Manuel Meirim is of counsel at ABBC. He can be reached at j.meirim@abbc.pt

Marta Vieira da Cruz is an associate at ABBC. She can be reached at m.cruz@abbc.pt