The new Portuguese Court of Arbitration for Sport

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The Portuguese Court of Arbitration for Sport (CAS) is expected to become fully operational in October 2015. The CAS will have mandatory jurisdiction over all administrative disputes arising in relation to sports federations, sports leagues and the anti-doping authority. Unlike many other examples, the Portuguese CAS is a creation of the state itself, rather than of a sports body.

The sports world is regarding the CAS with both apprehension and enthusiasm. On the one hand, it is understood that the complex and unique legal universe of sports requires that disputes must be handled by people who have sports law expertise. On the other hand, the creation of a mandatory arbitral jurisdiction – of which there are few examples in Portugal – may open a Pandora’s box and it is difficult to predict future developments.

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.

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.

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.

The solution ultimately adopted – which has so far not been questioned – seeks to prevent sports disputes from reaching the state courts, which in the context of sports disputes were often viewed as slow, ineffective and bureaucratic.

An interesting feature of the law is its appeal mechanism. 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.

Beyond its mandatory jurisdiction, voluntary arbitration in non-administrative matters (such as contracts involving image rights, sponsorship, some labour aspects and representation agreements by intermediaries) and arbitration in labour matters involving sports bodies (in respect of which the CAS will have jurisdiction from August 1, 2016), the Portuguese CAS is also responsible for, on appeal, hearing 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’s success over the next few years is likely to be of great
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