

Everyone Wants to be a Winner: ADR in Sports Disputes

Kluwer Mediation Blog
June 9, 2012

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Please refer to this post as: Rafal Morek, 'Everyone Wants to be a Winner: ADR in Sports Disputes', Kluwer Mediation Blog, June 9, 2012, <http://mediationblog.kluwerarbitration.com/2012/06/09/everyone-wants-to-win-mediation-in-sports-disputes/>

The 2012 UEFA European Football Championship kicked off yesterday. The final round of the 14th European Championship for national football teams ('Euro 2012') is being hosted by Poland and Ukraine between 8 June and 1 July 2012. As the world's third largest sporting event, the UEFA Championship is equipped with an efficient ADR platform for resolving disputes.

Sport is big business nowadays with huge sums of money involved. The sports industry is estimated to account for between 3 and 6 per cent of total world trade (William McAuliffe, Antonio Rigozzi, Sports Arbitration, www.globalarbitrationreview.com). Thus it comes as no surprise that it is also a major source of legal disputes.

"[T]he unique investment of competitive egos, emotions, expectations, and money in international sports almost guarantees a dividend of highly charged disputes....[and] [t]he structure for resolving them is complex" (James A.R. Nafziger, Forward [in:], Ian Blackshaw, Sport, Mediation and Arbitration, T.M.C. Asser Press 2009).

Why is mediation well-suited for sports? Perhaps because there is not only one winner, and no loser? 'Sport' is by definition a form of competitive activity. Great athletes and coaches hate to lose. In successful mediation everyone can be a winner.

According to *Simon Gardiner* (Sports Law, Routledge 2006, p. 251), another main advantage of using mediation to settle sports disputes is that the process preserves personal and business relationships. *"The sports world is a small one - everyone seems to know somebody - and relationships, and indeed, reputations, are therefore more important and worth preserving"*. Mediation allows *"legal disputes to be resolved within the family of sport"*.

Sports disputes undoubtedly have a negative effect on fans and team morale. Mediation is praised for its potential to promote the 'spirit of understanding and fair play'.

The largest institution providing professional ADR services for sports disputes is the Court of Arbitration for Sport (CAS). CAS was created in 1984 and is placed under the administrative authority of the International Council of Arbitration for Sport (ICAS), in Lausanne.

'Mediation' is defined in art. 1 of 'the CAS Mediation Rules' as: "a non binding and informal procedure, based on a mediation agreement in which each party undertakes to attempt in good faith to negotiate with the other party, and with the assistance of a CAS mediator, with a view to settling a sports - related dispute". CAS' mediation has all generally accepted characteristics of mediation. It may be provided for the resolution of all kinds of sports disputes, except for "disputes related to disciplinary matters as well as doping issues".

For the world largest sports events, including the EURO 2012, the Court of Arbitration for Sport Ad Hoc Division is established. It proceeds in line with the special Arbitration Rules for the UEFA Euro 2012 Final Round. A similar procedure will be created for the Olympic Games in London. What is particularly special about the CAS Ad Hoc Division, is the timing of the procedure. Each dispute should be resolved within 48 hours of the lodging of the application. While arbitration remains the main method to resolve sports disputes, mediation is also seen as an important part of the CAS system.