

Athletes' Rights In View After IOC, CAS Differ On Olympians

By [Zachary Zagger](#)

Law360 (February 9, 2018, 10:15 PM EST) -- Nearly 50 Russian athletes lost last-ditch appeals to the [Court of Arbitration for Sport](#) to participate in the Winter Olympics despite a ban on their country's team for state-sponsored doping, raising questions about the due process afforded to athletes and placing new focus on the international sports court.

On Friday, the Switzerland-based CAS [ended hopes for 47 Russian athletes](#) and coaches to compete at the Winter Olympics in Pyeongchang, South Korea. It [upheld their exclusion](#) by the [International Olympic Committee](#), including a reversal of course for 13 athletes and two coaches for whom the CAS had just lifted lifetime doping bans earlier this month. Those 15 people's lifetime bans are still removed, but the CAS said they couldn't compete in this year's Olympics.

The CAS had lifted the bans imposed for doping at the 2014 Winter Games in Sochi, Russia, on Feb. 1 for want of evidence.

However, that decision was decried by the IOC, and its so-called invitation review panel [refused to allow](#) the athletes to participate in the games in South Korea, saying the CAS failed to take into account the "proven existence of the systemic manipulation of the anti-doping system into consideration."

Even IOC President Thomas Bach openly criticized the CAS, calling its decision "extremely disappointing and surprising," during a press conference on Feb. 4. He said the IOC Executive Board was "not satisfied at all with the approach" of the court, saying there is an "urgent need for reforms in the internal structure in a way that it can ensure and better manage the quality and consistency of its jurisdiction."

The CAS decision upholding the exclusions only looked at whether the IOC invitation review panel's denial was "discriminatory, arbitrary or otherwise unfair."

Still, the reversal of course on those 15 athletes and coaches after being chastised by the IOC gives the appearance the arbitration body caved to pressure from the IOC.

Although the IOC played a part in its formation, the CAS is supposed to be independent and have jurisdiction to resolve disputes. The handling of the Russian doping scandal is straining the system, as legal and political interests are directly at odds.

"In my opinion, the condemnation of the CAS earlier this week by the president of the IOC was intended to, and did, have a chilling effect on the CAS," said sports attorney Ronald S. Katz of [GCA Law Partners LLP](#), who has written on the Russian doping ban issue. "That chilling effect succeeded in bending this theoretically independent judicial body to the will of the IOC."

While the CAS, based in Lausanne, Switzerland, is little known by the average American sports fan, it plays a major role in settling sports disputes, including hearing appeals over issues of athlete eligibility in international competition.

The CAS was established in 1984 and is really two bodies: the International Council for Arbitration for Sport and the actual Court of Arbitration for Sport. The 20-member council, which has four members appointed by the IOC, maintains a code governing the arbitration process and appoints arbitrators who serve on the court.

The CAS has gained influence over the past 20 years, as it has been granted jurisdiction to hear [FIFA](#) soccer disciplinary appeals, as well as appeals by athletes sanctioned for performance-enhancing drugs under the World Anti-Doping Code, which took effect in 2004.

Further, the Olympic Charter grants CAS jurisdiction to hear disputes in connection with the Olympic Games and it sets up ad hoc, tribunals in Olympic cities.

But the Russian doping scandal is almost unprecedented in its size and scope.

An independent investigative report released in December 2016 by the [World Anti-Doping Agency](#) authored by Western University law professor Richard H. McLaren found that **more than 1,000 athletes** benefited from or directly participated in the Russian doping ring.

The conspiracy **allegedly extended all the way** up to former Russian Minister of Sport Vitaly Mutko and was carried out with the help of the Russian Federal Security Service, the main successor agency to the former KGB.

In December, the IOC banned the Russian Olympic Committee amid serious allegations of widespread, state-sponsored doping uncovered by whistleblowers and multiple investigative reports, prohibiting the Russian team from competing.

But the IOC left the door open for Russian athletes who could prove they are clean, enabling a total of 169 athletes to compete as neutral "Olympic Athletes from Russia," or OAR, in Pyeongchang.

While there are serious allegations against Russia that the world wants to see punished, it's also important to afford athletes proper due process and not bar athletes who are truly clean.

When it comes to the 13 athletes and two coaches who had their lifetime bans lifted, Friday's CAS decision reveals that there just may be a different standard for competing in the Olympics. The decision recognizes that even if the athletes are not banned, the IOC has the right to keep them out if it thinks the evidence warrants it.

"I agree with the exclusion, however unseemly it may be to exclude athletes that successfully appealed their doping allegations," said Joseph R. Brubaker of [Kirton McConkie PC](#), a sports and international arbitration litigator. "From a legal perspective, it appears that the results can be

justified by the different evidence and standards of review before each decision-making body."

"As a practical matter, however, the best way for the International Olympic Committee to look good in this situation is to tie everything to Russia's state-sponsored doping program," he said.

Still, some say that whether or not the IOC wants to allow certain athletes in amid the scandal over the serious and widespread doping allegations, if the CAS is truly independent and given jurisdiction, it's decisions should be followed.

"I believe that the IOC is violating fair play by not deferring to the judicial body that the IOC itself created," Katz said. "To use a sports analogy, one may not agree with the referee, and sometimes referees make bad calls, but without the referee, all there is, is chaos."

--Additional reporting by Christopher Crosby. Editing by Jill Coffey.