

MEDIATION AT THE COURT OF ARBITRATION FOR SPORT (CAS)

The Court of Arbitration for Sport (CAS) is an institution independent of any sports organization which provides for services in order to facilitate the settlement of sports-related disputes through arbitration or mediation by means of procedural rules adapted to the specific needs of the sports world.

The CAS was created in 1984 and is placed under the administrative and financial authority of the International Council of Arbitration for Sport (ICAS). Its seat is in Lausanne, at Avenue de l'Elysée 28, 1006 CH-Lausanne; tel. (41 21) 613 50 00; fax (41 21) 613 50 01.

1. What is mediation?

Mediation is a procedure by means of which parties seek, with the help of a third party, called a mediator, to find an amicable solution to their dispute. It is distinguished from arbitration essentially by its non-formalistic nature, the parties' control over the proceedings and the absence of enforceability of the agreements signed by the parties.

Mediation may be provided for by a clause inserted in a contract or by a separate agreement once the dispute has arisen (see below).

2. What are the advantages of the CAS mediation procedure?

1. *It is adapted to sport*

Mediation is an alternative method of settling disputes which has produced convincing results in countries where it is applied.

Its introduction to sport is an important innovation, as it constitutes a natural extension to and protection of the rules which govern fair play and the spirit of understanding.

Choosing mediators who are specialists in sport and negotiation promotes the finding of concrete settlements to disputes by offering solutions adapted to the context of sport.

2. *It is simple and flexible*

The mediation procedure is not formal.

In principle, the parties choose their own mediator by mutual agreement, and establish the rules governing how the procedure is to be conducted.

3. *It is quick*

Mediation proceedings normally take 90 days from the time the request is made.

An extension to this may be authorised only by the CAS President for valid reasons. This very short time frame is a means of avoiding negotiations used as delaying tactics by one party acting in bad faith. Moreover, the fact that the mediation and arbitration are placed under the same jurisdiction makes it possible to move from one to the other in the event of failure, which has clear advantages (time saving, lack of additional formalities, etc..).

4. *It is confidential*

The parties, the mediator and anyone else involved in mediation proceedings are bound by a strict duty of confidentiality.

No information derived from the proceedings may be used before another arbitral or judicial body, subject to the provisions of the law.

Only the settlement can be brought before one of these bodies in the event of failure by one of the parties to honour its commitments.

5. *It is inexpensive*

One of the aims of the CAS is to make available to the members of the international sporting family an instrument for resolving disputes which is not just fast, but also inexpensive.

In the framework of the mediation, the parties pay the costs and fees of the mediator (calculated according to the CAS table of fees), part of the costs of the CAS and administrative fees fixed at SFr. 500 for each party.

3. What kind of dispute may be submitted for mediation before the CAS?

Mediation may be sought only for disputes related to the CAS ordinary procedure. The following are excluded:

- disputes related to disciplinary cases
- doping cases
- disputes arising from a decision passed by the authority of a sports organisation such as an NOC, national sports federation or International Federation

Disputes submitted to mediation must be related to sport; e.g. a sponsorship contract, an athlete undertaking, etc...

4. Who may apply for CAS mediation?

Any natural or artificial legal person with capacity to effect a legal transaction may have recourse to CAS mediation. This legal remedy is thus open to athletes, clubs, sports associations or federations, organisers of sports events, sponsors, radio/television companies, etc.

5. Whom is the mediation request submitted to?

The mediation request should be sent to the Court Office of the Court of Arbitration for Sport (CAS) in Lausanne/Switzerland (see address above).

6. Under what conditions does the CAS offer mediation?

These are the same as for arbitration. The parties may agree in advance to have recourse to mediation by the CAS. They may also agree to submit an existing dispute to mediation by the CAS by means of a written and signed agreement.

7. How are mediation proceedings instigated?

They are initiated by a written request in English or French from one of the parties or by those parties wishing to have recourse to CAS mediation.

The request must contain the identity of the parties and any representatives they may have, a copy of the mediation agreement and a brief description of the dispute.

Upon filing the request, the applicant party must pay the administrative costs fixed by the CAS Court Office.

8. How is the mediator appointed?

The CAS has a list of mediators which the parties may consult. The mediator is appointed in accordance with the following procedure:

- either the parties agree on a particular mediator chosen from the CAS list, in which case their choice will be ratified by the CAS President;
- or the parties fail to agree on the choice of a mediator or do not make a choice, in which case the mediator is chosen from the list by the CAS President after consultation with the parties.

9. What procedure does CAS mediation follow?

The rules governing the mediation procedure are fixed by the parties by mutual agreement or, failing that, by the mediator. All proceedings are confidential. No written or other record is kept, except for the record of the settlement.

10. What role does the mediator play?

The mediator is a facilitator whose goal is to bring together the divergent positions of the parties with a view to achieving an amicable settlement to the dispute. The mediator may not, however, impose a solution.

The mediator is independent of the parties. He does not need to have had legal training, as the talent required of him is rather that of a negotiator.

11. What is the role of the parties?

The parties have a primordial role to play. They each summarises their understanding of the dispute, identify the points of disagreement and describe their claims. They also allow the mediator to have a clear view of their predisposition to reach a settlement.

12. Can the parties be represented?

Yes, on condition that they make known the name of the representative and grant this person full decision-making powers with regard to settling the dispute.

13. How long does CAS mediation last?

The time limit for mediation is 90 days. This may be extended by the CAS President, however, if the mediator or one of the parties makes a substantiated request to this end.

14. How do the mediation proceedings end?

The parties and the mediator can end the mediation proceedings at any time if they feel that the negotiations cannot lead to a positive outcome, or when the 90-day time limit has expired.

The most desirable outcome is nonetheless the signing of a settlement.

15. What happens after the mediation proceedings are over?

When the mediation ends with the signing of a settlement, the parties must execute this of their own free will. Failing this, each party may rely on the signed settlement before a judicial or arbitral authority.

If the mediation fails, the parties may assert their rights before a court of arbitration or justice, in accordance with the rules of such bodies. Obviously, it makes sense to choose the CAS, as this allows the parties to move from mediation to arbitration without further formalities. Moreover, when the arbitration clause is included in the mediation agreement, the parties may have recourse to the CAS expedited procedure, the details of which are fixed by the Panel in charge of the dispute.

16. How much does mediation cost?

Each party pays CHF. 500 in administrative costs when the request is filed;

- the final costs, including the mediator's fees, are calculated by the Court Office on the basis of the CAS fee scale and split between the parties;
- each party pays its own witness, expert, interpreting and other costs.

17. Is there a model CAS mediation clause?

No. The CAS clause is merely indicative. The parties are free to draft their own clause on condition that they express unequivocally their wish to submit their proceedings to CAS mediation. There are, however, two types of recommended clause:

Recommended clause for CAS Mediation to be inserted in a contract

“Any dispute, any controversy or claim arising under, out of or relating to this contract and any subsequent amendments of or in relation to this contract, including but not limited to, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the CAS Mediation Rules. The language to be used in the mediation shall be”

Additional clause in the absence of a settlement of the dispute

“If, and to the extent that, any such dispute has not been settled within 90 days of the commencement of the mediation, or if, before the expiration of the said period, either party fails to participate or continue to participate in the mediation, the dispute shall, upon the filing of a Request for Arbitration by either party, be referred to and finally settled by CAS arbitration pursuant to the Code of Sports-related Arbitration. When the circumstances so require, the mediator may, at his own discretion or at the request of a party, seek an extension of the time limit from the CAS President.”