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ARTICLE

The *international skating union* ruling of the CJEU and the future of CAS arbitration in transnational sports governance

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Abstract
One of the least visible and yet potentially most consequential findings in the trio of decisions related to transnational sports governance rendered by the Grand Chamber of the Court of Justice of the European Union (CJEU) on 21 December 2023 concerns the Court of Arbitration for Sport (CAS). It is relatively easy to overlook, as it is tucked away in the much-less scrutinized International Skating Union (ISU) judgment of the Court. Yet, as will be argued at the end of this article, the CJEU's conclusions regarding the bindingness of CAS arbitration are consequential and will limit the function of the CAS as a kind of safety valve for the Olympic Movement. First, the article traces how the CAS became part of the ISU case in the original decision of the European Commission (EC). Thereafter, I discuss why the General Court (GC), when reviewing the ISU decision, annulled the part dedicated to the CAS, as well as the position of Advocate General (AG) Rantos in his Opinion, which mostly endorsed the GC's findings. This section is followed by a discussion of the main tenets of the ruling of the Grand Chamber. The final part provides a general assessment of the impact of the decision on the CAS and on the future of transnational sports governance.

Keywords Court of arbitration for sport · Court of justice of the EU · International skating union · Access to justice · Arbitration

1 Introduction

One of the least visible and yet potentially most consequential findings in the trio of decisions related to transnational sports governance rendered by the Grand Chamber of the Court of Justice of the European Union (CJEU) on 21 December 2023 concerns the exclusive jurisdiction of the Court of Arbitration for Sport (CAS). It is relatively easy to overlook for untrained eyes, as it is tucked away in the much-less scrutinized *International Skating Union* (ISU) judgment of the Court.[1] Unsurprisingly, therefore, it has until now triggered only a limited number of commentaries, mostly restricted to some blogs.[2]

Yet, as I will argue at the end of this piece, this part of the judgment is consequential and will impact on the function of the CAS as a judicial safety valve for the Olympic Movement. First, I will retrace the place of the CAS in the original decision of the European Commission (EC). Second, I will discuss why the General Court (GC), when reviewing the ISU decision, annulled the part dedicated to the CAS. Third, I will briefly outline the position of Advocate General (AG) Rantos in his Opinion, which mostly endorsed the GC's findings. Fourth, I will explain the main tenets of the ruling of the Grand Chamber reaching the conclusion that the GC had erred on this point. Finally, I will conclude with a general assessment of the impact of the decision on the CAS and the future of transnational sports governance.

[1] Case C-124/21 P *International Skating Union v Commission*, 15 December 2022, ECLI:EU:C:2023:1012.

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[2] See Duval and Rompuy 2024; Paschalidis 2024; Schrader et al. 2024.

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2 The EC's original challenge to the CAS arbitration clause included in the ISU rules

It is the EC in its ISU decision that first challenged the impact of the role of the CAS by concluding that:

> "the hurdles that the Appeals Arbitration rules impose on athletes in obtaining effective judicial protection against potentially anti-competitive ineligibility decisions of the ISU reinforce the restriction of their commercial freedom and the foreclosure of ISU's potential competitors as set out in Sect. 8.3 and 8.4, since those rules protect potentially anti-competitive decisions of the ISU Council issued under the Eligibility rules by curtailing the reach of EU/EEA competition law to those decisions."[3]

More specifically, the EC expressed specific doubts regarding the capacity of the CAS to properly interpret and apply EU competition law in cases put before it.[4] These worries were compounded by the fact that, "in case of doubts about the interpretation of Union competition rules, neither the CAS nor the Swiss Federal Tribunal can make a preliminary reference to the Court of Justice."[5] Furthermore, for the EC, these wants cannot be counterbalanced by the fact that CAS awards could potentially be challenged *ex post* before the national courts of the Member States. Indeed, international sports governing bodies (SGBs) have the capacity to enforce CAS awards through their members via the exercise of their private powers. Hence, they do not require the recognition of the award by national courts, which makes it extremely costly and arduous to resist the implementation of CAS awards.[6] In the words of the EC, "it is precisely the practical hurdles involved in such actions that may discourage athletes from seeking judicial redress against anti-competitive ineligibility decisions."[7] Similarly, the fact that one could potentially submit a competition law complaint to a NCA or the EC is also deemed insufficient to guarantee access to justice, as "they have limited resources and cannot prioritise all complaints."[8]

Ultimately, the EC concluded that "in combination with the Eligibility rules, the Appeals Arbitration rules [of ISU] reinforce the restriction of their commercial freedom and the foreclosure of ISU's potential competitors"[9] and required that they be amended,[10] but without providing specific guidelines on what those changes should look like.

3 The General Court's downplaying of the impact of the CAS on the effectiveness of EU law

When the ISU decided to challenge the decision of the EC before the GC, it specifically targeted its reasoning on the CAS arbitration clause in its sixth plea.[11] Arguing that "the Commission wrongly concluded that the arbitration rules made effective judicial protection against a potentially anti-competitive decision of the applicant more difficult" and that "that section is not relevant in so far as the Commission does not consider that recourse to the CAS arbitration procedure constitutes an infringement of Article 101 TFEU."[12]

In its assessment, the GC referred to the *Mutu and Pechstein v. Switzerland*[13] judgment of the ECtHR to support the view that "the binding nature of arbitration and the fact that the arbitration rules confer exclusive jurisdiction on the CAS to hear disputes relating to decisions on ineligibility made by the applicant may be justified by legitimate interests linked to the specific nature of the sport."[14] Further, it stressed that the ECtHR had recognized that it is "clearly in the interest of disputes arising in the context of professional sport, in particular those involving an international dimension, that they could be submitted to a specialised court which is capable of adjudicating quickly and economically."[15]

Turning to the specifics of the case, the GC emphasized that "while it is true that the arbitration rules do not permit skaters to bring an action before a national court for annulment of an ineligibility decision which infringes Article 101(1) TFEU, the fact remains that skaters may bring, if they so wish […] an action for damages before a national

[3] *International Skating Union's Eligibility rules*, AT. 40208 [2017], para. 277.

[4] Ibid, para. 283 ["*the fact that the parties to proceedings before the CAS can invoke Union competition law as mandatory law does not offer any guarantee that Union competition law will be interpreted and applied to the requisite substantive and procedural standards by the CAS arbitrators*"].

[5] Ibid, para. 283.

[6] But not entirely impossible, see the SV Wilhelmshaven case in German courts, OLG Bremen, 30.12.2014, 2 U 67/14.

[7] *International Skating Union's Eligibility rules*, AT. 40,208 [2017] para. 284.

[8] Ibid, para. 285.

[9] Ibid, para. 286.

[10] Ibid, para. 339.

[11] Case T-93/18 *International Skating Union v Commission*, 16 December 2020, ECLI:EU:T:2020:610, para. 131 ["the conclusion in Sect. 8.7 of the contested decision that its arbitration rules reinforce the restrictions of competition caused by the eligibility rules is unfounded and should be ignored"].

[12] Ibid., para. 141.

[13] *Mutu and Pechstein v. Switzerland*, App nos 40,575/10 and 67,474/10 (ECtHR, 2 October 2019).

[14] Case T-93/18 *International Skating Union v Commission*, para. 156.

[15] Ibid.

court."[16] In such cases, a "national court is not bound by the CAS's assessment of the compatibility of the ineligibility decision or the refusal of authorisation with EU competition law and, where appropriate, may submit a request for a preliminary ruling to the Court of Justice under Article 267 TFEU." [17] Additionally, the GC also pointed out that "skaters and third-party organisers who have been the subject of an ineligibility decision or a refusal to grant authorisation contrary to Article 101(1) TFEU may also lodge a complaint with a national competition authority or the Commission, as the complainants have done in the present case."[18] Any decision of these authorities could in turn land before EU courts in the context of an action for annulment or a preliminary reference. In short, the judges considered that there are sufficient avenues available for athletes to challenge *ex post* a CAS award (and the underlying decision of an international SGB) on the basis of its incompatibility with EU competition law.

Accordingly, the ruling concluded that the "use of the CAS arbitration system is not such as to compromise the full effectiveness of EU competition law." [19] This lead the GC to insist that "the fact that the arbitration rules conferred on the CAS exclusive jurisdiction to review the legality of ineligibility decisions and that the arbitration in the present case is binding do not constitute unlawful circumstances which make the infringement found in the present case more harmful, as the circumstances listed within the meaning of point 28 of the 2006 Guidelines do"[20] and to annul the EC decision on this point.[21]

4 The Opinion of Advocate General Rantos: an embrace of the need for the CAS

The Opinion of AG Rantos on the cross-appeal lodged by Mark Tuitert, Niels Kerstholt and EU Athletes against the part of the GC's ISU judgment dedicated to the CAS constituted at times an enthusiastic embrace of the CAS. Like the GC, AG Rantos invoked the *Mutu and Pechstein v. Switzerland* judgment of the ECtHR to stress that the Strasbourg Court had recognized that "in a sporting context, it is legitimate to submit disputes to a specialised international arbitral tribunal, such as the CAS, in so far as such a mechanism guarantees procedural uniformity, legal certainty and rapid and cost-effective decisions, while at the same time recognising the independence and impartiality of the CAS."[22] He insists, further, that it is "difficult to imagine the organisation or conduct of any sports discipline or event if each participant (athlete or sports club) had the possibility of challenging some aspect of such an event on any legal basis before national courts or other judicial bodies." [23] In the context of international events, such challenges would "automatically lead to a fragmentation of the current system."[24] Hence, AG Rantos concluded that "the binding nature of arbitration and the fact that the arbitration rules confer exclusive jurisdiction on the CAS to hear disputes relating to decisions on ineligibility may be justified by legitimate interests linked to the specific nature of the sport", and that "a non-State mechanism for dispute resolution at first or second instance, such as the CAS, with a possibility of appeal, however limited, before a national court in the last instance, is adequate in the field of international sports arbitration."[25] Ultimately, the AG embraced the legitimacy of binding CAS arbitration, in the name of combatting 'fragmentation' and preserving the 'specific nature of sport', these goals were also emphasized to justify his acceptance of forced arbitration in the sporting context, at least as long as "the independence and impartiality of the CAS are not called into question."[26] However, AG Rantos failed to engage with the arguments of the cross-appeal related to the threat posed by binding CAS arbitration to the effectiveness of EU competition law,[27] a failure which would prove consequential in the judgment of the Grand Chamber.

5 The CJEU's Grand Chamber distrust in CAS and the Swiss Federal Supreme Court

In its final ruling, the Grand Chamber reached the opposite conclusion to its AG. While the CJEU refused to consider the arguments raised by the cross-appeal regarding the independence of the CAS, due to the fact that this issue was not raised in the EC Decision or the GC ruling, it sided on all other points with the counterclaims raised by the athletes. First, it rejected unequivocally the GC and the AG's acritical endorsement of CAS arbitration on the basis of the specificities of sport, as disregarding:

[16] Ibid., para. 159.

[17] Ibid.

[18] Ibid., para. 160.

[19] Ibid., para. 163.

[20] Ibid., para. 163.

[21] The GC also found in favour of ISU's 7th plea, which argued that the corrective measures imposed by the EC with regard to ISU's arbitration rules were unrelated to the alleged infringement. Ibid., paras. 165–174.

[22] Case C-124/21 P *International Skating Union v Commission*, 15 December 2022, Opinion of AG Rantos, para. 157, ECLI:EU:C:2022:988.

[23] Ibid., para. 158.

[24] Ibid.

[25] Ibid., para. 159.

[26] Ibid., para. 167.

[27] He alludes to these arguments in Ibid., paras 161 and 162.

> "[the] requirements that must be satisfied for an arbitration mechanism such as that at issue in the present case to be capable of being regarded, on the one hand, as allowing effective compliance with the public policy provisions that EU law contains to be ensured and, on the other hand, as being compatible with the principles underlying the judicial architecture of the European Union."[28]

In short, while the CJEU did not fundamentally challenge the legality or independence of CAS arbitration, it refused to write a blank check to the CAS. At least not when the sporting rules concerned have an economic impact on the internal market and are, therefore, susceptible to infringing the EU competition rules.[29]

In this regard, the Grand Chamber also stresses that from its point of view the main problem lies not in the intervention of the CAS to review the decisions of ISU, but in the fact "that they [ISU's arbitration rules] subject the review of the arbitral awards made by the CAS and the last-instance review of decisions of the ISU to the Tribunal Fédéral (Federal Supreme Court), that is to say, a court of a third State." [30] In short, the CAS can in principle be entrusted with the review of ISU decisions, but the review of its review must "be able to cover the question whether those awards comply with the fundamental provisions that are a matter of EU public policy, which include Articles 101 and 102 TFEU." [31] This is "particularly necessary when such an arbitration mechanism must be regarded as being, in practice, imposed by a person governed by private law, such as an international sports association, on another, such as an athlete." [32] Conversely, if such a judicial review is absent "the use of an arbitration mechanism is such as to undermine the protection of rights that subjects of the law derive from the direct effect of EU law and the effective compliance with Articles 101 and 102 TFEU, which must be ensured – and would therefore be ensured in the absence of such a mechanism – by the national rules relating to remedies."[33] It is thus essential that "the court having jurisdiction to review the awards made by that body may confirm that those awards comply with Articles 101 and 102 TFEU." [34] This entails that the reviewing court satisfies "all the requirements under Article 267 TFEU, so that it is entitled, or, as the case may be, required, to refer a question to the Court of Justice where it considers that a decision of the Court is necessary concerning a matter of EU law raised in a case pending before it."[35] Hence, the CJEU took direct aim at the fact that individuals are forced to leave the EU's judicial system, with no possibility to regain access to it through the review exercised by the Swiss Federal Supreme Court (FSC).

In addition, the Grand Chamber also rejected the view of the GC "that the effectiveness of EU law was ensured in full, given, on the one hand, the existence of remedies allowing recipients of a decision refusing to allow them to participate in a competition or of an ineligibility decision to seek damages for the harm caused to them by that decision before the relevant national courts and, on the other hand, the possibility of lodging a complaint with the Commission or an NCA." [36] First, regarding the possibility to claim damages before the national court ex post, the CJEU held that:

> [the] fact that a person is entitled to seek damages for harm caused by conduct liable to prevent, restrict or distort competition cannot compensate for the lack of a remedy entitling that person to bring an action before the relevant national court seeking, as appropriate following the grant of protective measures, to have that conduct brought to an end, or where it constitutes a measure, the review and annulment of that measure, if necessary following a prior arbitration procedure carried out under an agreement that provides for such a procedure.[37]

This applies especially "to persons practising professional sport, whose career may be especially short, in particular where they practise that sport at a high level."[38] Second, the Grand Chamber also considered that "the possibility of lodging a complaint with the Commission or a NCA cannot be relied on in order to justify the lack of a remedy such as that referred to in paragraph 201 of the present judgment."[39] This conclusion is supported by the Court's endorsement of the view of the Commission and the cross-appellants, who stressed that "Article 7 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 and 102 TFEU] (OJ 2003 L 1, p. 1) does not give a person who lodges an application under that article the right to insist that a final decision as to the existence or non-existence of the infringement he or she alleges be taken."[40]

Hence, unlike the GC and the AG, the CJEU's Grand Chamber took account in its assessment of the specificity of the professional careers of athletes, in particular their short

[28] Case C-124/21 P *International Skating Union v Commission*, 15 December 2022, ECLI:EU:C:2023:1012, para. 188.

[29] Ibid., para. 189.

[30] Ibid., para. 191.

[31] Ibid., para. 193.

[32] Ibid.

[33] Ibid., para. 194.

[34] Ibid., para. 198.

[35] Ibid.

[36] Ibid., para. 200.

[37] Ibid., para. 201.

[38] Ibid.

[39] Ibid., para. 203.

[40] Ibid.

duration, and recognized the need to allow them a direct access to national courts in cases involving EU public policy.[41] Furthermore, contrary to the GC, the CJEU showed realism when considering the practical limitations of NCAs or the EC as potential avenues to access remedies. In short, the judgment prioritizes the athletes' right to access justice and challenges the binding nature of CAS arbitration clauses insofar as the disputes affect EU public policy.

6 Transnational sports governance after binding CAS arbitration

The ripple effects of this decision will be felt beyond the specific parties to the case and will affect the entire Olympic Movement. In particular, this decision will simultaneously weaken the autonomy of SGBs and strengthen the political power of athletes (and potentially other stakeholders). It also constitutes an additional sign of distrust vis-à-vis the CAS and the FSC after the recent ECtHR judgement in the *Semenya* case. Finally, it opens the way for the increasing involvement of national courts and the CJEU in transnational sports governance.

6.1 Weakening the autonomy of SGBs, strengthening the hands of athletes

First, by lifting the bindingness of CAS arbitration clauses in cases involving claims submitted by athletes on the grounds of EU public policy (including EU competition law and EU free movement rights), the judgment will facilitate challenges directed against the regulations and decisions of the SGBs before the national courts of the EU member states. Formulated differently, it shatters the dream of SGBs of a reinforced autonomy from the scrutiny of national courts enabled by the exclusive jurisdiction of the CAS and implies that they should prepare to defend their regulations and decisions in a variety of national jurisdictions. Henceforth, SGBs will have to become much better acquainted with the intricacies of EU (competition) law if they are to effectively fend-off such challenges.

SGBs will also have increased incentives to engage with the legitimate representatives of athletes before adopting regulations in order to ensure that they have their buy-in and to ward-off the risks of ex-post (and costly) litigation. Indeed, athletes and their representatives will have a new strategic game to play in their engagement with SGBs. When they are contesting a particular decision or regulation of an SGB, the value of considering going to national courts in the EU has increased. Previously, athletes had to face the delaying tactics of SGBs, which were keen to invoke the existing CAS arbitration clause to challenge the competence of national courts; from now onward, athletes will be able to rely on the ISU judgment to bypass these objections. In short, especially when provisional measures are sought, athletes will seriously consider renouncing going to the CAS and deciding instead to head to a national court. This judicial route is not entirely cleared of roadblocks, as such cases could potentially raise jurisdictional issues connected to the applicable private international law rules . Furthermore, individual athletes will still face considerable material hurdles, as engaging in litigation before national courts is both an expensive and uncertain prospect. In sum, in order to fully benefit from the opportunities for strategic litigation opened by the judgment, athletes would certainly benefit from organizing collectively and from seeking out the advice of EU law experts.[42] While athletes will not prevail each time that they go to the national courts, they will likely have better chances to do so than at the CAS.[43]

6.2 Another warning to the CAS and the FSC

The CAS itself will certainly see its prestige diminished by the decision of the CJEU. This decision, coming shortly after the *Semenya* judgment of the ECtHR and the *Pechstein* decision of the German Constitutional Court,[44] is another sign of the increasing scepticism vis-à-vis the CAS in Europe's highest constitutional courts. From a practical perspective, the CAS will probably not lose much of its caseload after this decision. Indeed, it is primarily dealing with disputes linked to players transfers or contracts in football and doping sanctions, which are both unlikely to be moving *en masse* before national courts for practical reasons (the parties to disputes under the FIFA RSTP are primarily interested in tapping into FIFA's private enforcement capabilities of CAS awards) and legal considerations (anti-doping rules seem unlikely to be deemed contrary to EU competition law after the *Meca-Medina* judgment). Hence, the CAS could probably ignore the ruling and continue to operate as it did until now without losing much in terms of the number of cases lodged.

Yet, such an attitude would only delay the need for a reckoning. The CAS cannot continue to ignore the increasing

[41] The Court does envisage that this access to national court could cpme "if necessary following a prior arbitration procedure carried out under an agreement that provides for such a procedure" (Ibid., para. 201), but this seems to hint at the need for a consensual 'agreement' between the parties.

[42] O'Leary 2024.

[43] Duval 2015.

[44] *Semenya v. Switzerland*, App no 10,934/22 (ECtHR, 11 July 2023) and BVerfG, Beschluss der 2. Kammer des Ersten Senats vom 3. Juni 2022–1 BvR 2103/16, ECLI:DE:BVerfG:2022:rk20220603.1bvr210316.

signs of distrust sent by the most respected courts of the European continent. Instead, they call for a profound institutional reform. In fact, there is probably some truth to AG Rantos' consideration that issues of fairness and equality in international sports call for the concentration of dispute resolution in the hands of a single institution.[45] Yet, the empowerment of the CAS, by conferring on it a monopoly, must be met with strict criteria in terms of independence, which the Court is currently hardly meeting,[46] as well as the willingness of CAS Panels to stand up to SGBs on the basis of EU law or human rights law, which until now they have been very reluctant to do.[47] In short, in the absence of a trustworthy CAS, it is only natural that athletes are allowed to choose to turn to national courts in cases involving EU law. The CAS can still (re)gain their trust, but for that it will need to show that it is not only (allegedly) cheaper and faster than national courts, but equally inclined to challenge the decisions of the SGBs on the basis of EU law and European human rights law. If it doesn't, it might very well survive in the short run as a matter of a case-flow, but the most fundamental governance and regulatory disputes will irremediably move to national courts. In this regard, the CAS could try to close the jurisdictional loophole opened by the CJEU by relocating (at least parts of) its activities to an EU Member State, as the access for challenges against CAS awards to a national court capable of sending preliminary references to Luxembourg would respond to the main critique raised by the CJEU.[48] Yet, this would also entail renouncing the privileged relationship between the CAS and the FSC, as well as putting into question a large body of case law that is currently anchored in Swiss law.[49] It is, thus, not surprising that such an option does not seem to be on the table for the current CAS leadership.[50]

Finally, while the centrality of the CAS in transnational sports governance will certainly be affected by the ISU ruling, the CJEU refrained from criticizing the CAS directly, although it also did not endorse its independence. Instead, its primary focus has been on the limited check exercised by the FSC over the CAS and its awards. This aspect of the decision is reminiscent of, and might have been indirectly influenced by, the critical stance adopted vis-à-vis the FSC by the ECtHR Chamber in its *Semenya* judgment.[51] Furthermore, the Court seems also to be sending the message that it is suspicious of extra-EU arbitration, as a strategy to escape the control exercised by national courts over the respect of EU public policy by private parties. While the judgment hints at the specific dimension of sports arbitration, through the emphasis on its forced nature,[52] this consideration might have effects beyond the context of sports if it were extended to commercial arbitration more generally. Indeed, many commercial disputes are being decided by arbitral tribunals seated outside of the EU, which could potentially also fall under the scope of the ISU ruling. Hence, this judgment is a reminder that the CJEU, and the EU member states, are increasingly suspicious of arbitration as a dispute resolution mechanism, and of its strategic use to allow parties to escape the full reach of EU law.[53]

6.3 All eyes on national courts and the CJEU

Finally, this decision will also empower further national courts and the CJEU, as they will likely get to decide an increasing number of cases involving transnational sports law and governance. In other words, the three rulings of 21 December 2023 will probably be followed by a growing number of preliminary references. This also means that the way in which the national courts and the CJEU will interpret the application of EU (competition) law in the context of sports governance in the aftermath of the three judgments will be decisive for the SGBs. Consequently, unless the CJEU decides in future rulings to drastically curtail the reach of the application of EU law to the SGBs (for now, the 21 December decisions seem to point rather in the opposite direction), national courts and the CJEU will become part and parcel of the judicial system of transnational sports governance and be regularly called upon to review the legality of the SGBs' actions on the basis of EU law. This is not without posing some potential problems that will need to be scrutinized in the future. First, national courts are not necessarily well placed institutionally to review policy decisions in transnational matters over which they have limited expertise. Second, there is a risk of forum shopping and fragmentation, as different national courts might adopt different approaches to the application of EU law in the sporting context. Hence, this situation might call, as other contributors to this Special Issue have argued, for the regulatory intervention of the European legislator and the constitution of a new

[45] Duval 2020.

[46] Even though the *Mutu and Pechstein v Switzerland* ruling of the ECtHR is invoked by many as substantiating the independence of the CAS, its reasoning is hardly convincing as forcefully argued in the dissent of judge Keller and Serghides under the decision.

[47] Duval 2015 and Duval 2022.

[48] For concrete suggestions, see Duval and Van Rompuy 2024 and, similarly, Paschalidis 2024.

[49] On the important role played by Swiss law and the FSC in the operation of the CAS, see Duval 2021.

[50] See the views expressed by the CAS Director General, Mathieu Reeb, in Operli 2024.

[51] See Krech 2023 and Holzer 2023.

[52] Case C-124/21 P *International Skating Union v Commission*, 15 December 2022, ECLI:EU:C:2023:1012, para. 193.

[53] See famously case C-284/16 *Slowakische Republik v Achmea BV*, 6 March 2018, ECLI:EU:C:2018:158.

form of European administrative regulator,[54] which could provide day-to-day specialized supervision of the governance practices of SGBs.

7 Conclusion

We are about to enter a time of legal turbulences for international SGBs to which the ISU judgment will contribute probably more than publicly understood. Most importantly, the Grand Chamber's ruling will enable strategic litigation by athletes (individually or collectively) against SGBs in the national courts of the EU Member States. This will translate into increased risks and costs for the SGBs. Coupled with the CJEU's ambiguous interpretation in its 21st December rulings of the application of EU competition law to sports governance, it makes for an unstable legal cocktail. The uncertainty ahead could potentially lead to a variety of alternative developments. First, one could envisage a move of the seat of the CAS (or of one of its chambers) to an EU member state, which would restore the bindingness of CAS arbitration at the expense of its current embeddedness in the Swiss legal system. This option would potentially be quite disruptive for the operation of the CAS. Second, as some have been arguing in this Special Issue, it is possible to envisage that the cumulative effects of the judgments of the 21st December will destabilize the Olympic Movement to such an extent that EU legislation might become an attractive option.[55] Such a shift in the governance of sport in Europe from (mostly) private to formally public-private would have considerable implications also on the transnational judicial system of international SGBs. Third, the international SGBs could bet on the fact that they are too big societally to fail, and that national courts or the CJEU, if flooded with cases challenging them, will quickly revert to a more favourable interpretation of the application of EU (competition) law to sports governance. This would see the special status of the SGBs restored through an interpretative shift, which would largely diffuse the increased risk of litigation before national courts. For now, what is certain is that the CAS arbitration clause will not anymore be acting as a hurdle to preclude, or at least disincentivize, athletes from challenging the SGBs in national courts: Legal fireworks ahead!

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[54] See, for example, Zglinski 2024.

[55] Maduro 2024.

Declarations

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