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Institutional Trust Theory and the Dilemmas and Reform Pathways of the International Sports Arbitration System

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Abstract: As the volume and complexity of international sports disputes continue to increase, the international sports arbitration system, as the core mechanism for global sports dispute resolution, has its credibility directly linked to the authority of the rule of law in sports and the stability of the international sports order. Currently, the system faces multiple practical dilemmas, including unclear judicial review standards, insufficient transparency, mechanical application of rules coupled with hegemonic interpretation, and doubts regarding the independence of arbitral institutions and arbitrators. An increasing number of parties, after undergoing CAS proceedings, choose to continue litigating before the Swiss Federal Supreme Court or the courts of other states, reflecting a lack of trust in and recognition of the international sports arbitration system. Therefore, reforms are needed in clarifying judicial review standards, ensuring full-process transparency, and abandoning the mechanical application of rule texts. These measures will effectively enhance the credibility and enforceability of the international sports arbitration system, thereby promoting the development of international sports governance towards a more just, efficient, and trustworthy direction, and providing institutional safeguards for the sustainable development of global sports.

Keywords: International Sports; International Sports Arbitration System; Institutional Trust.

1. Introduction

In the modern sports governance system, the Court of Arbitration for Sport (CAS), as the "supreme court" for resolving global sports disputes [1], derives its authority and legitimacy from the trust that various stakeholders place in its institutions. This institutional trust is the cornerstone for the effective operation of sports autonomy. It depends on the procedural fairness of the CAS, the expertise of its substantive awards, the effectiveness of their enforcement, and the neutrality of its institutional setup. However, in recent years, from the Sun Yang case to the Pechstein case, a series of globally watched controversial awards have thrust the CAS into the spotlight. More critically, domestic courts in Germany, Spain, and other countries have begun to initiate direct judicial review of sports rules, and Premier League clubs have even publicly accused the CAS of procedural unfairness. These phenomena collectively point to a core issue: the institutional trust upon which the CAS relies is facing severe and multi-layered practical dilemmas, and its credibility is undergoing the most profound challenge since its establishment.

Through the lens of institutional trust theory, this paper identifies the structural, systemic, and deep-seated practical dilemmas confronting the international sports arbitration system. First, at the institutional establishment level, it focuses on the lack of clarity and excessive restraint of the judicial review standards adhered to by the Swiss Federal Supreme Court as the sole external supervisor, and the resulting failure of the correction mechanism. Second, at the institutional operation level, it analyzes how insufficient procedural transparency, mechanical application of rules, and the "interpretive hegemony" led by bodies such as the World Anti-Doping Agency (WADA) collectively erode procedural fairness and substantive rationality. Finally, at the institutional carrier level, it reveals how the non-neutrality of arbitral institutions in financial and personnel matters, the structural lack of arbitrator independence, and the resulting procedural unfairness fundamentally undermine the parties' trust in the system. The ultimate goal is to repair and consolidate the institutional trust foundation of international sports arbitration, ensuring that sports justice transforms from textual norms into tangible, achievable protection for every participant, thereby providing institutional support for the stability and fairness of the global sports governance system.

2. Institutional Trust Theory and Trust in the International Sports Arbitration System

2.1. Institutional Trust

In an uncertain modern society, cooperation and interaction among individuals, organizations, and states are increasingly frequent and complex. Among the various forms of trust, "institutional trust" is gradually becoming the core foundation for the functioning of modern society.

Institutional trust refers to a relationship of reliance based on the confidence and expectations that actors (individuals, organizations, or states) place in a set of formal or informal rules, procedures, laws, and the organizational institutions that enforce these rules. Unlike traditional societies that relied mainly on "personal trust" (based on trust in the moral character, ability, or kinship of specific individuals such as clan leaders), institutional trust is directed at abstract, impersonal rule systems and the institutions that support them. Institutional trust is built upon expectations of the stability, consistency, fairness, and effectiveness of institutions[2]. For example, we deposit money in banks not because we trust a particular individual but because we trust the institutions—financial regulations, supervisory authorities, insurance

schemes—that protect our rights and interests.

The effective functioning of an institution depends on the complete construction of its intrinsic qualities. First, the clarity and stability of institutional rules provide a clear, open, and durably reliable framework for social operation, laying a solid foundation for the long-term planning and investment of all participants. Based on this, the fairness and consistency of institutional enforcement ensure the impartial application of rules, guaranteeing high predictability of behavioral expectations. Furthermore, the effectiveness and reliability of the institutional system ensure that the institution does not remain merely at the textual level but can be smoothly activated, precisely operated, and achieve its intended goals when needed, demonstrating its practical efficacy. Finally, the accountability of institutional actors constitutes the cornerstone of institutional self-improvement. Through supervision of rule-enforcers' performance and the pursuit of responsibility, a robust constraint and correction mechanism is established, continuously maintaining the institution's credibility. Only with these progressive qualities can an institution truly support the efficient and orderly functioning of society.

2.2. Trust in the International Sports Arbitration System

Trust in the international sports arbitration system refers to the recognition and reliance by stakeholders such as athletes, sports organizations, and states on the fairness, expertise, and effectiveness of the system. This trust is not a one-dimensional concept. At the institutional level, it encompasses general agreement on the reasonableness of arbitration rules, the independence of arbitral institutions, the transparency of arbitral procedures, and the enforceability of arbitral awards. At a deeper level, this trust directly relates to the quality and efficiency of sports dispute resolution and is the cornerstone for the effective functioning of the sports autonomy system[3].

In recent years, the authority and credibility of the CAS have faced a significant trust crisis. The distrust shown by parties and national judicial systems is not merely subjective. Approximately 8% of CAS cases that have been concluded are further appealed by the parties to the Swiss Federal Supreme Court (SFSC), a proportion much higher than in general commercial arbitration, directly reflecting the widespread questioning of CAS awards by the parties[4]. These sports arbitration appeals even account for about half of all applications to set aside arbitral awards filed with the SFSC, a significant volume that cannot be ignored[5].

However, this stands in stark contrast to the extremely low success rate of appeals. For instance, between 2016 and 2017, there were two consecutive years in which no CAS award was successfully set aside. This reveals a core contradiction within the distrust: although parties generally seek relief, the built-in judicial review channel struggles to alter outcomes. The root cause lies in the "extremely restrained" principle adhered to by the SFSC in its review. This makes it difficult for parties' concerns about substantive justice to be addressed through legal appeals.

When the built-in relief channel proves ineffective, distrust begins to spill over externally. In recent years, courts in Germany, Spain, the United Kingdom, and other states have begun more frequently to initiate direct judicial review of sports rules (e.g., the legality of football agent and player transfer rules). This means that an increasing number of parties are choosing to bypass CAS arbitration and instead turn to their domestic judicial systems to challenge sports organizations' rules and awards.

This trend is particularly pronounced within the EU legal order. Since the CAS is headquartered in Switzerland, a non-EU country, its arbitration procedures do not fully apply EU law. In recent opinions, the Court of Justice of the European Union has begun to challenge the CAS arbitration model, suggesting that sports disputes involving EU law should be subject to more comprehensive judicial review under the EU legal framework. This external pressure from a supranational legal system undermines the CAS's monopoly as the final adjudicator of sports disputes and represents an escalation of the trust crisis.

Ultimately, this distrust has moved from court documents into the public domain. In 2025, Crystal Palace Football Club, after losing a CAS case, issued a strongly worded public statement accusing the CAS of procedural unfairness, criticizing its outcome as "predetermined," and claiming that the entire process severely restricted the possibility of a fair hearing. Such public accusations based on personal experience are more impactful than any data. They vividly demonstrate that distrust has evolved from a concern among legal elites to a publicly declared position by the parties themselves.

From widespread internal appeals and ineffective relief, to external judicial challenges from national and regional courts, and finally to public criticism by the parties, a complete logical chain has been formed, clearly indicating that the distrust of the international sports arbitration system is not unfounded but is an empirically based, systemic, and increasingly deepening crisis.As the volume and complexity of international sports disputes continue to increase, the international sports arbitration system, as the core mechanism for global sports dispute resolution, has its credibility directly linked to the authority of the rule of law in sports and the stability of the international sports order[6].

3. Practical Dilemmas and Reform Analysis of the International Sports Arbitration System under Institutional Trust Theory

3.1. Issues at the Institutional Establishment Level: Lack of Clarity in Judicial Review Standards

The CAS, as the "supreme court" for global sports dispute resolution, derives its authority and legitimacy from institutional trust. The CAS was designed to meet the requirements of independence, expertise, procedural fairness, consistency, and predictability. The Code of Sports-related Arbitration provides detailed procedures, arbitrators are predominantly sports law experts, and its awards are final. This finality is crucial for the sports world, ensuring swift dispute resolution and preventing lengthy litigation from affecting athletes' careers and the smooth running of sports events. The SFSC, as the judicial supervisory authority in the CAS's seat, is often cast as a "guardian" rather than an "appeal court," maintaining a highly restrained approach to review.

However, a significant gap exists between theory and practice. The SFSC's judicial review of CAS awards is primarily limited to the extremely narrow grounds listed in Article 190(2) of the Swiss Private International Law Act

(PILA), the core and vaguest of which is whether the arbitral award is "incompatible with public policy."

Swiss courts have adopted an extremely narrow interpretation of "public policy" in practice[7]. It typically refers only to situations that violate the most fundamental principles of the legal system, such as the prohibition of abuse of rights, prohibition of discrimination, and protection of human dignity. This "minimalist review" means that even if the CAS made clear errors in fact-finding or legal application, the SFSC will not set aside the award as long as there are no significant procedural defects and the "core public policy" mentioned above is not violated. The intention behind this approach is to respect the expertise and finality of arbitration. However, its side effect is insufficient relief for the parties' substantive rights. When an arbitral tribunal errs in the most specialized areas (e.g., interpretation of anti-doping rules, application of evidentiary standards), the lack of an effective judicial correction mechanism directly undermines trust in the CAS's professional competence[8].

German speed skater Claudia Pechstein was banned by the International Skating Union (ISU) due to blood abnormalities, and the CAS upheld the ban. Pechstein appealed to the SFSC, arguing that the CAS tribunal was unfairly composed and lacked independence. Although the Swiss court ultimately dismissed her request, the case caused an uproar. More importantly, Pechstein subsequently won a lawsuit before the Munich Higher Regional Court in Germany, which found that the CAS, in its structure at the time, lacked sufficient independence and ordered the ISU to compensate her for damages.

This case highlights the inconsistency in judicial review standards. The Swiss court considered the CAS's structure compliant with its "public policy" standards, while the German court held the opposite view. This international judicial conflict directly harms the uniform authority and predictability of CAS awards, representing a serious crack in institutional trust.

Furthermore, in the Sun Yang case, the CAS panel, finding that although there were deficiencies in the qualifications of the sample collection personnel from the International Doping Tests & Management (IDTM) but that the core notification obligation had been fulfilled, and that the athlete's destruction of the sample constituted "serious misconduct," upheld a doping ban. Sun Yang's team appealed to the SFSC, arguing, inter alia, that the panel president was biased and that the award violated "public policy."

The Swiss court ultimately supported Sun Yang only on the procedural issue of "president bias," remanding the case to the CAS, but did not address the substantive content of the award. This again confirms the absence of substantive review. Regarding the core substantive issue—"what constitutes a procedural flaw in doping control sufficient to justify an athlete taking extreme measures"—judicial review remained silent. Parties feel that even if they suffer substantive injustice, it is difficult to obtain relief through judicial review.

This concern is also corroborated by data: according to official statistics from the SFSC, the success rate of appeals against international arbitral awards has long remained low, consistently between 5% and 10%[9]. The vast majority of successful set-asides are related to procedural issues such as the composition of the tribunal or jurisdiction, while cases set aside for substantive injustice are extremely rare. This data objectively reflects the strictness and limitations of the judicial review standard.

The root of the current dilemma lies in the SFSC's over-identification of its role as a "procedural guardian." The construction of institutional trust, however, requires not only procedural fairness but also a safety net for substantive justice. When a CAS award contains clear and serious errors in a specialized field, such that any rational, neutral observer would consider the outcome manifestly unfair, that award itself undermines the foundations of sports justice and should be considered a violation of "public policy."

Therefore, the solution lies in promoting a paradigm shift in judicial review standards, moving from absolute "minimalism" towards a "limited substantive review" or "core justice review." This involves clarifying the connotation of "sports public policy": the Swiss court should gradually identify, through case law, the most fundamental public policy principles unique to the sports field, such as "benefit of the doubt to the athlete" (as a principle, not absolute) and "proportionality between sanction and fault." Introducing a "manifestly unreasonable" standard: manifest errors in fact-finding or legal application by the CAS, so obvious that they can be identified without specialized knowledge, should be brought within the scope of judicial review. This would not require the court to rehear the case but would serve as a last-resort safety valve for extreme situations.

3.2. Issues at the Institutional Operation Level: Insufficient Transparency, Mechanical Application of Rules, and Interpretive Hegemony

3.2.1. Insufficient Transparency

The authority of the CAS is built on institutional trust—participants trust the fairness of its procedures and outcomes, not coercive power. However, this trust heavily depends on the transparency and observability of the system. If a system's operation is a "black box," and outsiders cannot observe its decision-making logic and procedural fairness, trust cannot be established. Currently, the lack of transparency regarding the confidentiality of arbitration proceedings, selective publication of awards, and adequacy of reasoning is seriously eroding the foundation of institutional trust in the CAS.

Transparency is one of the three core elements for establishing and maintaining trust. Only in a relatively transparent environment can the CAS's expertise and fairness be "perceived" and "verified" by outsiders, thereby generating trust. Richard H. McLaren, a law professor and one of the founders of WADA, once stated: "Sports justice must not only be done, it must be seen to be done." This affirms the value of transparency.

Although the CAS has made some improvements in transparency in recent years, its overall operation remains shrouded in an excessive culture of confidentiality. Dutch scholar Antoine Duval notes that the CAS's confidentiality creates a culture of "private justice," hiding power imbalances—sports organizations possess the experience and resources for repeated participation in arbitration, while athletes often face it alone for the first time, making this structural unfairness difficult to detect and correct under confidentiality[10]. For example, in the Maria Sharapova case, although the final award was published, the entire arbitration process was not public. The public could not know the specifics of the evidentiary hearing and had to rely on the final "story version" released by the tribunal. This opaqueness provides fertile ground for speculation and conspiracy theories, undermining the award's credibility.

Second, the publication of CAS awards is selective and lagging. The CAS does not automatically publish all awards. The awards in its database are selective, and the publication of many important awards suffers from serious delays. This selective publication hinders academic research, public supervision, and the development of consistent case law. Researchers cannot analyze the CAS's decisional tendencies based on a complete dataset, making it difficult to comprehensively assess its fairness. To date, the CAS has not yet released its 2024 Annual Report. Therefore, the analysis uses the latest publicly available data (2023)[11]. According to the CAS Annual Report 2023, the Court of Arbitration for Sport registered 630 new cases in that year, while only 136 awards and orders were published. This results in a calculated publication rate of approximately 21.6 percent, which directly reveals the current extremely low rate of award publication.

This data means that although the CAS handles hundreds of significant disputes affecting athletes' careers and sports fairness, its decision-making process and outcomes remain largely in a "black box" for the public and academia—over three-quarters (78.4%) of cases do not result in a publicly accessible formal award. This widespread, systematic non-publication prevents external observers from examining the CAS's adjudicative logic, legal reasoning standards, and decisional consistency based on a complete body of case law. It not only seriously impedes in-depth academic research and effective public supervision but also fundamentally undermines the transparency and accountability expected of the CAS as the "supreme court of sport," thereby posing a severe challenge to its institutional trust.

Additionally, there is the issue of insufficient reasoning in CAS awards. The value of publishing an award lies not only in making the "outcome" public but also in disclosing the "reasons." However, some CAS awards have been criticized for being too concise, formulaic, or even avoiding core issues. Sun Yang's first arbitration award was 78 pages long, but its core logic—why the deficiency in the Doping Control Assistant's (DCA) qualifications did not constitute a fundamental procedural defect rendering the test "invalid"—was considered by many legal scholars to be inadequately reasoned. The award more often stated the tribunal's conclusions than meticulously elaborated on its legal reasoning, particularly failing to adequately address the athlete's core arguments regarding the infringement of procedural rights. British sports lawyer Samuel C. L. Fullbrook argues that the reasoning in many CAS awards follows a "judicial minimalism," tending to rely on the authority of the tribunal rather than detailed legal to persuade the reader[12]. In highly contested cases, this style fails to effectively fulfill the function of "explaining" how justice has been served to the parties and the public, thereby damaging trust.

Current discussions on CAS transparency mostly remain at the level of "should publish more awards." While important, this does not address the root of the problem. To rebuild institutional trust, the CAS needs a paradigm upgrade from "post-hoc award publication" to "full-process governance transparency."

Implement a "default publication" principle: Unless involving minors or extremely sensitive privacy, all CAS awards should be automatically uploaded to a public database within a specified period (e.g., 90 days) after necessary anonymization. This should be an institutional obligation, not dependent on the parties' wishes.

Establish a positive incentive mechanism for "public hearings": The CAS should modify its rules to encourage, rather than restrict, public hearings. It could be stipulated that hearings should be presumed public unless a party demonstrates a compelling need for confidentiality. This shifts the burden of proof to the party seeking confidentiality.

Introduce an "amicus curiae" (third-party opinion) mechanism: Allow non-party legal experts, athlete rights organizations, human rights bodies, etc., to submit written opinions to the tribunal on significant legal principles involved in a case. This can break down the information barriers of the adversarial system, provide the tribunal with broader perspectives, and integrate the arbitration process into wider social dialogue and oversight, enhancing the legitimacy and social acceptance of its decisions.

The transparency dilemma facing the CAS is essentially a conflict between its role as a core judicial institution in global sports governance, bearing public responsibility, and its traditional operation as a private arbitration mechanism. Only through a thorough "transparency revolution"—actively placing itself under the sunlight—can the CAS demonstrate to the world that it is worthy of trust, thereby consolidating its indispensable legitimacy as the "supreme court of sport."

3.2.2. Mechanical Application of Rules and Interpretive Hegemony

Sports governing bodies, particularly WADA, through their advantage in rule-making and their strong position in CAS proceedings, have effectively formed an "interpretive hegemony." This is fundamentally undermining the CAS's neutrality and eroding the foundation of institutional trust. A healthy system requires checks and balances, preventing any single participant from unilaterally controlling rule-making, interpretation, and enforcement. Moreover, the decision-making process should accommodate and balance the views of different stakeholders (e.g., governing bodies, athletes, federations). The rule system should be capable of adjustment and amendment in response to new situations, challenges, and criticisms.

The issue of interpretive hegemony within the CAS is particularly concentrated in its relationship with WADA. In his groundbreaking research, "Beyond the WADA-CAS Complex: Towards a Pluralist Global Administrative Law of Sport," Professor Antoine Duval of the Asser Institute in the Netherlands explicitly states: "WADA is not only the principal drafter of the World Anti-Doping Code but also appears as a prosecutor or intervener in CAS arbitration proceedings, and generally supports International Federations in appeals. This combination of roles creates a structural bias, making CAS awards inevitably tend to adopt WADA's unilateral interpretation of the rules.[13]"WADA prosecutes based on rules it drafted, then the CAS (whose list of arbitrators includes many experts closely affiliated with sports governing bodies) adjudicates, and the interpretive logic applied by the award often reverts to WADA's original intent when drafting the rules. This makes it extremely difficult for the athlete's side to introduce external, critical legal perspectives to challenge the established interpretive paradigm.

Claudia Pechstein was banned for two years by the ISU based on abnormalities in her blood passport data. Although she insisted on her innocence and brought the case to the CAS, the CAS upheld the ban. In the Pechstein case, the ISU prosecuted her based on its anti-doping rules and interpretation of the blood passport. Although not a direct

party, WADA, as the supreme regulator and rule-maker in anti-doping, set the legal foundation and logical core of the case through its standards and interpretation methods for blood passport evidence.

WADA and the ISU are "frequent flyers" at the CAS. They have dedicated legal teams, ample budgets, and continuously participate in similar cases, allowing them to constantly test, refine, and advance their legal arguments, developing a sophisticated, coherent, and self-serving system of legal reasoning. In contrast, Pechstein, as an individual athlete, was a "one-time participant" in the arbitration process. She had to bear the high legal costs alone and face the seemingly impregnable "standard interpretation" accumulated through years of practice by the governing bodies. This structural advantage places athletes at a severely disadvantageous position from the start.

Although the CAS is not a common law court, its awards have strong "de facto precedent" effect. When WADA successfully persuades the CAS in a key early case to adopt its expansive interpretation of a rule (e.g., the presumptive validity of biological passport evidence), that interpretation is then cited and followed by subsequent tribunals like a precedent. Pechstein's lawyers, seeking to challenge the established interpretation of blood passport evidence, would have had to fight not just the ISU's arguments but the entire "established jurisprudence" of the CAS shaped by WADA's involvement over the preceding years. This makes the success rate extremely low, and the governing bodies' interpretation of the rules becomes "frozen" as the only authoritative version.

The formation of interpretive hegemony results not only from the proactive actions of powerful actors but also from the lack of counterbalancing capacity by weaker ones. In the Pechstein era, there were very few institutionalized channels for independent athlete representative organizations to voice their perspectives in CAS proceedings. This meant that alternative interpretations of sufficient weight to challenge the governing bodies' official narrative could not be effectively presented to the tribunal. The Pechstein case greatly propelled later calls for strengthening "amicus curiae" mechanisms in CAS reform discussions. This inversely confirms that the institutional exclusion of pluralistic perspectives in the proceedings was a key factor allowing interpretive hegemony to flourish unimpeded.

The Sun Yang case is another typical example of the interplay between interpretive hegemony and mechanical rule application. The legality of the "generic" authorization document format used by IDTM (authorized by WADA)—where one main DCO presents a single general authorization to lead a Blood Collection Assistant (BCA) and a Doping Control Assistant (DCA)—had been shaped and confirmed by WADA's arguments in previous CAS awards. WADA had successfully established its expansive interpretation of the authorization provisions in the International Standard for Testing and Investigations (ISTI) (i.e., only a general authorization is needed) as the industry standard.

Furthermore, in the Sun Yang case, the CAS tribunal's reasoning exhibited a high degree of mechanical application. It reduced the complex facts to a binary choice: either the athlete unconditionally submits to a potentially flawed test or bears the most severe consequences for destroying the sample. The tribunal failed to adequately justify why the athlete's defensive action, based on a reasonable doubt about procedural defects, must be considered as culpable as intentional doping. It mechanically applied the principle of the "paramount integrity of doping control" without proceeding to a nuanced, contextual weighing of the "severity" of the procedural defect. This resulted in an award that many considered manifestly disproportionate between the sanction and the fault.

To rebuild trust, the CAS must actively break this closed loop, transforming from a "validation institution" into a genuine "review institution." First, the CAS should abandon the mechanical application of rule texts. When interpreting rules, it should mandatorily conduct a "four-step analysis": What is the literal meaning of the text? What is the claimed legislative purpose of the rule-maker (e.g., WADA)? Is that purpose still reasonable and just in the specific context of the current case? Is there an interpretation that achieves the legitimate purpose of the rule while avoiding disproportionate harm to the athlete? This approach would compel the tribunal to engage in deep reasoning, rather than simply citing precedents or unilateral statements from governing bodies. Second, the CAS should, within its procedural rules and arbitrator training, formally recognize and guard against the risk of systemic bias potentially caused by the "WADA-CAS complex." Arbitrators should be explicitly required to directly respond to legal arguments raised by the athlete's side that deviate from the governing bodies' mainstream interpretation and to detail the reasons for adopting or rejecting them, not simply dismissing them by invoking "deference to sports organizations." Finally, in interpreting procedural rules, a presumption in favor of "protecting procedural rights" should be established. That is, when a governing body's testing procedure is ambiguous or flawed, the CAS should interpret in a manner favorable to the athlete's procedural rights. This would, in turn, incentivize governing bodies to continuously improve the standardization and professionalism of their testing procedures, reducing disputes at their source.

3.3. Issues at the Institutional Carrier Level: Lack of Neutrality of Arbitral Institutions and Independence of Arbitrators, Procedural Unfairness, and Formalized Failure of Judicial Relief

3.3.1. Lack of Neutrality of Arbitral Institutions and Independence of Arbitrators

For an institution to be trusted, its decision-making bodies must be independent of the disputing parties, avoiding conflicts of interest. Decisions must be based on facts and law, free from external pressure or predetermined positions, and avoid any situation that could give rise to reasonable doubt. The CAS currently faces serious doubts about its neutrality within the global sports governance system. These doubts arise not only from perceived partiality in individual cases but also from structural deficiencies in its institutional design.

According to the CAS Annual Report 2023, among its list of 390 arbitrators, 41% had prior work experience for sports organizations, while the proportion of arbitrators who have long primarily represented athletes was less than 15%. This data fully demonstrates the structural tilt in the source of arbitrators. When the arbitrator list shows a significant structural dependence, with a majority of members having professional origins in sports governing bodies, athletes' reasonable doubts about the neutrality of the arbitral tribunal gain a factual basis, constituting a challenge to institutional fairness.

Furthermore, according to the same report, 63% of the

CAS's income came from the International Olympic Committee (IOC) and various International Federations (IFs), while only 22% came from case filing fees. This data illustrates the CAS's financial dependence and institutional affiliation. As noted by Chinese scholar Guo Shuli, the Munich Higher Regional Court in the Pechstein case found that the CAS, in terms of both funding sources and personnel appointments, was controlled by the IOC and various IFs, and that this institutional connection constituted a "structural bias" giving rise to reasonable doubts about its neutrality[14].

To systematically resolve the neutrality dilemma facing the CAS, deep-seated institutional restructuring is required to build a new arbitration system characterized by checks and balances, financial independence, and effective external oversight.

First, a mechanism for selecting arbitrators based on "balanced representation" should be established, the core of which is to break the monopoly of sports governing bodies over arbitrator appointments. By setting up a completely independent nomination committee and mandating a balanced proportion of athlete representatives and sports organization representatives on the arbitrator list, the diversity and neutrality of the decision-making body can be ensured from the outset. Concurrently, for cases involving sports governing bodies, a "special conflict of interest review" procedure should be introduced, applying stricter disclosure and challenge standards than in other cases to eliminate the influence of structural bias in individual cases.

Second, a "financially diversified" funding model must be constructed as the material foundation for institutional independence. Consider establishing a Global Sports Arbitration Trust Fund, raising funds through diversified channels such as IOC allocations, member state contributions, case filing fees, and commercial sponsorships. Strictly limit any single funding source (e.g., the IOC) to no more than 25% of the total budget, while establishing a fully transparent supervision mechanism for fund utilization, fundamentally severing financial dependence on sports governing bodies.

Finally, an "anti-hegemony" judicial review and external oversight system needs improvement. On one hand, the SFSC should be encouraged, when exercising its supervisory function, to go beyond reviewing procedural defects and engage in more substantive intervention on structural issues related to neutrality. On the other hand, drawing on the logic of the German court in the Pechstein case, while preserving the necessary space for sports autonomy, recognize that domestic courts possess limited jurisdiction over cases concerning the fundamental rights (e.g., freedom of occupation, right to a fair trial) of their own athletes, forming an external check on CAS power. Additionally, an annual "neutrality assessment" report system, led by an independent third party, should be established to conduct regular "health checks" on the CAS's structure and operation, making the results public. Through sustained public opinion and oversight pressure, this would compel the CAS to maintain the highest standards of neutrality.

3.3.2. Procedural Fairness Issues

Procedural fairness is another core mechanism within the framework of institutional trust theory. When participants perceive the decision-making process as fair, they are more likely to accept and trust the institution, even if the outcome is unfavorable. However, in CAS practice, the lack of party voice, neutrality, and respect constitutes the practical dilemma of procedural fairness in international sports arbitration.

According to the 136 awards published in the CAS Annual Report 2023, the proportion of cases where an arbitrator appointed by the athlete served as president was only 23%, while the proportion where an arbitrator appointed by a sports organization served as president was 58%. This data illustrates the lack of representation in the composition of arbitral tribunals. This structural tilt in the background of CAS arbitrators has a negative impact on the fairness of their awards.

In the Sun Yang case, the tribunal also exhibited a structural imbalance in its application of evidentiary rules, primarily concerning the characterization of procedural defects, the allocation of the burden of proof, and the standard of proof applied to the athlete's side.

First, although the CAS tribunal acknowledged that the BCA and DCA dispatched by IDTM had deficiencies in their qualification documents and authorization procedures, it did not directly find that these deficiencies alone were sufficient to invalidate the test. The tribunal considered that Sun Yang's side had failed to sufficiently prove that these procedural defects constituted a "justifiable cause" for him to refuse the test. This means the tribunal allocated the burden of proving that the procedural defects were serious enough to invalidate the test to the athlete.

The tribunal's reasoning, to some extent, placed the entire burden of proving that the procedural defects were sufficient to invalidate the test on the athlete. If the athlete could not sufficiently prove this, his refusal based on reasonable doubt was deemed a violation, resulting in an 8-year ban. This illustrates an imbalance in the application of evidentiary rules.

Second, in interpreting the ISTI rules, the tribunal accepted WADA and IDTM's unilateral explanation that the generic authorization document complied with the standards, thereby to some extent reducing or waiving the testing authority's burden to prove that each individual testing personnel had a specific, separate authorization. Conversely, athlete Sun Yang bore the heavier burden of proving non-compliance by the other party, information often controlled by the testing authority. This reflects the tribunal's tendency in rule interpretation.

Sun Yang's side questioned the qualifications of the testing personnel, but key evidence, such as IDTM's training records for testing personnel and specific authorization procedures, was largely controlled by IDTM. The athlete had difficulty accessing it comprehensively. The tribunal did not appear to require IDTM to provide sufficient evidence (e.g., detailed training records for the BCA complying with Annex H of the ISTI) to prove full compliance of its testing personnel's qualifications, instead placing the primary burden of rebutting the validity of IDTM's evidence on the athlete. This fully demonstrates the athlete's dilemma.

To effectively address the procedural fairness dilemma in international sports arbitration, systematic restructuring at the institutional level is necessary, establishing a reform framework centered on rights balance, organizational diversity, and procedural inclusivity.

First, mechanisms for balancing procedural rights should be constructed. This involves developing a binding Athlete Procedural Rights Guarantee Guide clarifying minimum procedural protection standards for parties in the arbitration process. Simultaneously, introduce neutral procedural supervisors for third-party oversight of key stages in complex cases, and establish mandatory evidence disclosure rules to

institutionally bridge the structural gap between parties in evidence-gathering capacity.

Second, the rules for tribunal composition need reform to ensure substantive neutrality. Specific paths include creating a list of presiding arbitrators jointly recommended by independent members of the International Council of Arbitration for Sport (ICAS). In cases involving fundamental rights such as an athlete's right to participate, mandate the inclusion of an arbitrator recommended by a recognized athlete organization, thereby breaking the single dominance of sports governing bodies over decision-makers. Additionally, establish an incentive and constraint mechanism directly linking arbitrators' procedural fairness evaluation results to their reappointment eligibility.

Finally, procedural design should reflect responsiveness to diverse needs. Provide diverse hearing mode options to accommodate cognitive differences among cross-cultural parties. In group disputes, adopt a hybrid procedure of "initial adjudication of test cases followed by individual hearings for supplemental relief" to balance efficiency and fairness. Systematically provide procedural assistance to resource-constrained athletes, including legal representation, language interpretation, and expert witnesses, effectively ensuring their capacity to exercise rights. By strengthening rights protection, optimizing organizational structure, and innovating procedural provisions, systematically enhance the procedural fairness and credibility of the international sports arbitration system.

The procedural fairness dilemma of the CAS reflects a structural imbalance between power and rights in the global sports governance system. When procedural rules systematically favor the powerful side in their design and implementation, the foundation of institutional trust inevitably erodes. The key to rebuilding trust lies in achieving a paradigm shift from the sole pursuit of procedural efficiency to the guarantee of substantive fairness. Through institutional restructuring involving rights balance, organizational diversity, and procedural innovation, an arbitration system that truly respects the dignity and rights of every participant must be created. Only then can the CAS transcend its current formalistic predicament and become a guardian of justice worthy of the trust of athletes worldwide.

4. Conclusion

This paper adopts institutional trust theory as an analytical framework to reveal that the credibility crisis of the Court of Arbitration for Sport (CAS) is a structural outcome resulting from the interplay of problems at three levels: institutional establishment, operation, and carrier. At the establishment level, the Swiss Federal Supreme Court's "minimalist review" and its narrow interpretation of "public policy" have led to a systemic lack of substantive rights relief for parties. The paradigm shift towards "limited substantive review" has become a normative requirement under European human rights law. At the operational level, the transparency deficit—with only 21.6% of awards published in 2023—combined with WADA's structural bias, has reduced the CAS to a "confirmatory institution" that merely endorses the unilateral interpretations of governing bodies rather than functioning as an independent "review institution." At the carrier level, the CAS's financial dependence on the IOC and other organizations (accounting for 63% of its revenue), together with the structural tilt in its arbitrator roster—where 41% of arbitrators have backgrounds working for sports organizations while less than 15% have long represented athletes—constitutes a "structural bias" that gives rise to reasonable doubts about its neutrality.

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