

The legitimacy of the Court of Arbitration for Sport (CAS) under Monegasque law

The Court of First Instance was recently led to assess the validity and scope of an arbitration clause conferring jurisdiction on the Court of Arbitration for Sport of Lausanne.

The applicant athlete challenged the legality of the principle of reconsideration of samples kept for more than 10 years, as well as the result of the review, alleging the violation of many rules (including those of the World Anti-Doping Agency, of the European Court of Human Rights and in particular the *non bis in idem* principle).

The Tribunal of the Principality declared itself incompetent because of the matter devolved to arbitration.

The autonomous assessment of the arbitration clause in Monegasque private international law

In line with the jurisprudence of the Court of Appeal, the Court of First Instance applies the principle of independent assessment of the arbitration clause in international matters, legally independent of the main contract.

Its existence and its effectiveness are therefore assessed according to the common will of the parties, subject to the Monegasque mandatory rules and the Monegasque conception of international public policy.

The legitimacy of the CAS in Monegasque law, as demonstrated by Article 13 of Sovereign Ordinance No. 15.656 of 7 February 2003, establishing a Monegasque Anti-Doping Committee

The Monegasque Tribunal notes that sports law does not run up against any mandatory territorial jurisdiction, and that arbitration by the Court of Arbitration for Sport is recognized by Monegasque law.

Article 13 of Sovereign Ordinance No. 15.656 provides that: "*When the decision of the Disciplinary Chamber relates to a case resulting from tests having taken place during an international event or involving an international level athlete, the appeal shall be lodged with the Court of Arbitration for Sport*".

Although Article 13 is not applicable as such in the present case, the Monegasque Tribunal therefore finds that this provision establishes the legitimacy of the CAS in Monegasque law.