

The Court of Arbitration for Sport and Athlete Protests: A Focus on the 2020 Tokyo Olympics

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Abstract: This research paper aims to delve into the complex intersection of athlete protests, political expressions in sports, and the Court of Arbitration for Sport's (CAS) role, particularly emphasizing the 2020 Tokyo Olympics. An exploratory design is employed, combining historical context with analytical insight. The structure covers an introduction to CAS and the significance of athlete protests, traces the historical precedent of political expressions in Olympic Games, elaborates on the jurisdiction and procedures of CAS, provides a meticulous overview of the 2020 Tokyo Olympics controversies, and conducts a comparative analysis with previous Olympic CAS rulings. The 2020 Tokyo Olympics witnessed an unprecedented surge in athlete protests and political expressions. Key CAS rulings during these games had a profound influence on athlete behaviour, public opinion, and the stance of the Olympic Committee. Notably, CAS's decisions revealed a cautious approach, balancing the Olympic guidelines and athlete rights. The study illuminates the evolving dynamics between sports institutions and athlete expressions. CAS, as an adjudicatory body, plays a pivotal role in shaping the trajectory of such protests, potentially influencing future Olympic policies. Gaining insights into the intricacies of the CAS decisions empowers sports professionals, athletes, and decision-makers to predict the possible outcomes of upcoming disputes. This in turn contributes to more seamless Olympic events. The present study delves deeply into the CAS's engagement with athlete protests during the 2020 Tokyo Olympics. Distinct from previous research, this work amalgamates historical, procedural, and ethical dimensions, offering a comprehensive understanding of an area that is both intricate and under the global spotlight.

Keywords: Court of Arbitration for Sport. Athlete Protests. 2020 Tokyo Olympics. Athlete Rights.

Summary: **1** Introduction – **2** Historical context – **3** The Court of Arbitration for Sport's Jurisdiction and Procedure – **4** The 2020 Tokyo Olympics: context and controversies – **5** Court of Arbitration for Sport's Decisions and their impact – **6** Comparative analysis across Olympics – **7** Ethical consideration – **8** Conclusion – References

1 Introduction

As Nelson Mandela said *“Sport has the power to change the world. It has the power to inspire. It has the power to unite people in a way that little*

else does. It speaks to youth in a language they understand"¹ In the expansive world of international sports, the Olympic Games are emblematic of humanity's pinnacle achievements and the spirit of global harmony. Yet, beyond the grandeur and the limelight, the Olympics unfurl a detailed story of individual athletes, their political statements, and the associated debates that arise. While sports predominantly showcase exceptional athletic talent, they've also been platforms for athletes to articulate their convictions and champion societal transformations.² The Court of Arbitration for Sport, established in 1984, plays a pivotal role in this milieu. It was conceived to address the intricacies and nuances of sports disputes which often don't neatly fit into standard legal paradigms. Throughout Olympic history, athlete protests have left indelible marks, be it the memorable Black Power salute of 1968 or contemporary digital age gestures. As our world gets increasingly interwoven, the interplay between sports, politics, and society's values intensifies. This underscores the significance of institutions like CAS in overseeing these intersections.³ The 2020 Tokyo Olympics aptly illustrates this dynamic. Rescheduled due to the global health crisis, these games weren't merely a sporting event but a reflection of humanity's perseverance and ability to adapt. The Tokyo chapter observed an uptick in athlete activism, capitalizing on the global stage to spotlight diverse concerns. In such evolving scenarios, understanding the role of entities like CAS becomes crucial in shaping, managing, and guiding the broader narrative.⁴ This paper aspires to fill the current knowledge gap, offering insights into the nuanced dynamics between CAS, athlete protests, and the 2020 Tokyo Olympics.

Objective of the Research Paper

- Examine the foundational principles and roles of the CAS in arbitrating sports disputes.
- Understand the historical trajectory of athlete protests and political expressions in Olympic Games.
- Dissect CAS's jurisdiction and procedure with respect to athlete protests.
- Explore specific instances of athlete activism during the 2020 Tokyo Olympics and CAS's response.

¹ Nelson Mandela used power of sport to unify, rebuild South Africa, SPORTANDDEV, <https://www.sportanddev.org/latest/news/nelson-mandela-used-power-sport-unify-rebuild-south-africa>.

² Paul B. Zimmerman, *The Story of the Olympics: B.C. to A.D.*, 63 CALIFORNIA HISTORY 8 (1984).

³ James A. R. Nafziger, *Dispute Resolution in the Arena of International Sports Competition*, 50 THE AMERICAN JOURNAL OF COMPARATIVE LAW 161 (2002).

⁴ Nick Nocita, *POLITICS AND THE OLYMPICS*, 41 HARVARD INTERNATIONAL REVIEW 24 (2020).

- Analyse the ramifications of CAS decisions on athlete behaviour, public perception, and the International Olympic Committee's position.
- Conduct a comparative analysis of CAS rulings over different Olympics to discern trends or shifts in approach.
- Delve into the ethical implications surrounding CAS's rulings, focusing on freedom of speech, athlete rights, and public sentiment.

This research paper systematically explores the relationship between the Court of Arbitration for Sport and athlete protests, focusing on the 2020 Tokyo Olympics. Starting with a historical overview of athlete protests, the study delves into CAS's jurisdiction and procedures. It then highlights specific athlete activism instances during the Tokyo Olympics and analyses CAS's consequential decisions. By contrasting CAS rulings across different Olympics, the paper identifies evolving trends and addresses the ethical implications of these decisions.⁵ Ultimately, the study synthesizes key insights, forecasting potential impacts on future Olympic Games and athlete activism dynamics.

2 Historical context

The Olympic Games, representing a synergy of diverse nations and cultures, have always been more than a mere athletic competition. They epitomize unity, peace, and shared human endeavour. The Olympic Games, dating back to 776 BC in ancient Greece, have long been a convergence point for not only athletic excellence but also political and socio-cultural expressions. Over the years, as the event's prestige grew, it became a global stage where athletes could amplify their voices on contentious issues. However, the intertwining of sports with political activism in this premier event hasn't always been straightforward, and the Olympic Committee has had to strike a balance between preserving the sanctity of the games and recognizing athletes' rights to express themselves.⁶

One of the earliest and most iconic instances of athlete protests in the modern Olympic Games occurred in 1968. Tommie Smith and John Carlos, two African-American athletes, raised a black-gloved fist during the American national anthem as a symbol of Black Power and human rights. Their act wasn't just an isolated protest; it reflected a broader global civil rights movement. This silent gesture resonated across continents, sparking both commendation and criticism.⁷ Notably, the International Olympic Committee (IOC) viewed it as a breach of the

⁵ *Id.*

⁶ Zimmerman, *supra* note 2.

⁷ Why Black American Athletes Raised Their Fists at the 1968 Olympics, HISTORY (2023), <https://www.history.com/news/black-athletes-raise-fists-1968-olympics>.

Olympic Charter, leading to their suspension from the US Olympic team. Fast-forward to the 1980s; the Cold War politics took centre stage, with the US and its allies boycotting the Moscow Olympics in 1980, and the Soviet Union and its allies reciprocating by skipping the Los Angeles Games in 1984. While not an individual athlete protest, these boycotts underlined the strong political undercurrents flowing through the Olympic Games. Regional disputes too found echoes in the Olympics.⁸ For instance, in the 2000 Sydney Olympics, North and South Korean athletes marched together under a unification flag, symbolizing hopes for a unified Korean Peninsula. Such moments, albeit fleeting, emphasized the potential of sports diplomacy. However, protests haven't been limited to global politics alone.⁹ Environmental concerns, gender equality, and indigenous rights have also been highlighted. For instance, during the 2016 Rio Olympics, marathon runner Feyisa Lilesa made a cross-wrist gesture as he crossed the finish line, drawing attention to the persecution of the Oromo people in Ethiopia.¹⁰

Existing Olympic Rules and Guidelines on Athlete Protests

Given the gravitas of this global event, the International Olympic Committee has established a plethora of rules and guidelines to ensure the smooth conduct of the games. Chief among them are regulations concerning athlete protests and political expressions, which have often been subjects of considerable debate and scrutiny. Central to this discourse is Rule 50 of the Olympic Charter. It explicitly states, "No kind of demonstration or political, religious or racial propaganda is permitted in any Olympic sites, venues, or other areas." The underpinning philosophy of this rule is to preserve the neutral spirit of the Games, ensuring that it stands as a beacon of unity, devoid of divisive forces. However, it's essential to recognize the multifaceted nuances embedded in Rule 50.¹¹ On the one hand, it seeks to uphold the fundamental principle that sport should be free from external influences, such as politics or commercial interests. In a world brimming with divisions, the Olympic Games offer a sanctum where global citizens unite under the emblem of fair competition and mutual respect. On the other hand, athletes, as representatives of their nations, bring with them not just their sporting prowess

⁸ Myles Burke, *In History: How Tommie Smith and John Carlos's Protest at the 1968 Mexico City Olympics Shook the World*, <https://www.bbc.com/culture/article/20231011-in-history-how-tommie-smith-and-john-carloss-protest-at-the-1968-mexico-city-olympics-shook-the-world>.

⁹ Koreans March as One in Sydney at Opening Ceremony of Olympics - Los Angeles Times, <https://www.latimes.com/archives/la-xpm-2000-sep-16-mn-21930-story.html>.

¹⁰ David Smith, *Feyisa Lilesa: Being an Athlete Allowed Me to Be the Voice of My People*, THE GUARDIAN, Sep. 13, 2016, <https://www.theguardian.com/world/2016/sep/14/feyisa-lilesa-being-an-athlete-allowed-me-to-be-the-voice-of-my-people>.

¹¹ Rule-50-Guidelines-Tokyo-2020.pdf, <https://stillmedab.olympic.org/media/Document%20Library/OlympicOrg/News/2020/01/Rule-50-Guidelines-Tokyo-2020.pdf>.

but also their socio-cultural backgrounds, beliefs, and the political realities of their homelands. For many, the Olympic podium becomes a rare platform to voice concerns, advocate for change, or express solidarity. To place a blanket ban on such expressions, some argue, negates the very ethos of the Olympic spirit, which celebrates diversity in all its forms. While the Olympic Charter, through Rule 50, sets the baseline, guidelines accompanying this rule provide more detailed directions. These guidelines elucidate the kind of gestures, slogans, or symbols deemed inappropriate. For instance, wearing armbands, hand gestures, or kneeling – acts which have historically been associated with protests are generally discouraged.¹²

However, the enforcement of these guidelines is where the real challenge lies. The IOC has often found itself in a quagmire, making decisions that sometimes seem inconsistent. For instance, while Tommie Smith and John Carlos faced repercussions for their Black Power salute in 1968, other athletes in different Olympics who made subtle political gestures escaped without any reprimand. Such perceived inconsistencies have often led to public outcries, placing the IOC in a tricky position. An extension of the IOC's efforts to address this complex issue is the establishment of designated protest areas during the Games. These are zones where athletes can freely express their views without facing penalties. In a bid to give athletes a platform to express themselves, some believe that allowing them to protest is merely symbolic, pushing their concerns to the background rather than showcasing them on the grand Olympic podium. It's worth noting that regional Olympic Committees frequently have their own rulebook, sometimes diverging from the global standards set by the International Olympic Committee. This can either strengthen or weaken the overall guidelines. Such variations inevitably create ambiguity and occasionally lead to disagreements, as athletes grapple with understanding and balancing different sets of rules.¹³

Enter the Court of Arbitration for Sport. Acting as an intermediary, it offers a resolution mechanism for disputes arising from these guidelines. Given the often subjective nature of interpreting political gestures, CAS plays a pivotal role in ensuring justice and fairness. However, even the CAS isn't immune to criticisms, with some viewing its decisions as either too lenient or too harsh. The tension between these two perspectives – preserving Olympic neutrality and respecting athletes rights to express has often meant that the IOC navigates a tightrope, making decisions on a case-by-case basis.¹⁴ This reactive approach, while allowing flexibility, has also opened the IOC to accusations of inconsistency. The Olympic

¹² JoAnne D. Spotts, *Global Politics and the Olympic Games: Separating the Two Oldest Games in History*, 13 DICK. J. INT'L L. 103 (1994).

¹³ Burke, *supra* note 8.

¹⁴ Thomas T. Roberts, *Sports Arbitration*, 10 INDUSTRIAL RELATIONS LAW JOURNAL 8 (1988).

rules and guidelines concerning athlete protests encapsulate a broader narrative of our times – one that grapples with the boundaries of free expression in a globalized world. As the Olympics continue to evolve, so will these rules, echoing the ever-changing dynamics of global discourse. The challenge, as always, will be to find a harmonious path that respects individual voices while celebrating collective unity.¹⁵

3 The Court of Arbitration for Sport's Jurisdiction and Procedure

Established in 1984, CAS emerged as an initiative of the International Olympic Committee. Positioned as a quasi-judicial body, its primary objective is to offer resolution for sports-related disputes, ensuring a fair, swift, and specialized adjudication process. Over time, its significance has grown, handling disputes that range from doping allegations to contractual conflicts between athletes and sponsors. However, its involvement in cases related to athlete protests has attracted considerable attention. So, when and how does CAS enter the engagement? The stepping stone lies in the very essence of the Olympic Charter. When athletes, or their respective national committees, believe that there's been a misinterpretation or misapplication of the Olympic Charter, especially rules pertaining to protests, CAS becomes the go-to avenue for redressal. But it's not an automatic process. Parties involved typically attempt to resolve disputes internally, through dialogue and mediation. It's only when these initial efforts stumble that CAS's arbitration process comes into play.¹⁶

The procedure at CAS is designed to be robust yet streamlined. Once a case is brought before it, the parties involved (often the athlete or their representative and the IOC or a relevant sports federation) agree upon an arbitrator or a panel of arbitrators. For instance, the Olympic Charter itself mandates CAS as the final appellate body for Olympic-related disputes, giving it significant clout in matters concerning the Games. These arbitrators, drawn from a closed list maintained by CAS, possess deep expertise in both sports law and the specific issues in contention. Their role isn't merely adjudicatory; they also mediate, trying to foster an amicable resolution. If mediation doesn't bear fruit, the arbitration process intensifies. Parties present their cases, buttressed by evidence, legal provisions, and precedents. What sets CAS apart is its ability to tailor the arbitration process to the unique dynamics of each case. While it abides by its procedural rules,

¹⁵ James A. R. Nafziger, *International Sports Law as a Process for Resolving Disputes*, 45 THE INTERNATIONAL AND COMPARATIVE LAW QUARTERLY 130 (1996).

¹⁶ Centrefield LLP-Stuart Baird & Matthew Bennett, *Sports Law : Court of Arbitration for Sport (CAS)*, LEXOLOGY (2021), <https://www.lexology.com/library/detail.aspx?g=59532e84-6609-44ef-baf9-1ef8648650f8>.

flexibility is maintained to ensure that justice isn't just done but is perceived to be done. One might wonder about the global reach of CAS. Given that the Olympics host athletes from diverse jurisdictions with varying legal landscapes, does CAS's jurisdiction overshadow these national frameworks? In essence, it does. By participating in the Olympics, athletes and their federations inherently accept the overarching jurisdiction of CAS. Its decisions are binding, and while they can be appealed, such appeals are directed towards the Swiss Federal Tribunal and are limited to potential procedural lapses rather than the merits of the decision.¹⁷ The 2020 Tokyo Olympics highlighted the ever-present need for robust sports arbitration mechanisms. Whether it's the international purview of CAS or the regional focus of The Brazilian Center for Arbitration and Mediation (CBMA), these institutions play a critical role in upholding the integrity of sports. As the world of sports continues to evolve, so too will the complexities of disputes. Thus, the continued collaboration, learning, and growth of sports arbitration bodies will remain essential.¹⁸

Take, for instance, the case involving Indian wrestler Narsingh Yadav ahead of the 2016 Rio Olympics. Accused of doping, Yadav was cleared by the National Anti-Doping Agency of India. However, the World Anti-Doping Agency appealed this decision to CAS, which subsequently overturned the initial clearance. This instance underscores CAS's supreme jurisdiction in sporting disputes, even when national bodies have made contrary determinations. It's noteworthy that CAS's involvement in athlete protests doesn't mean it inherently supports or opposes the protest's substance. Its role is more nuanced, assessing whether the actions align with the regulations set by sporting bodies, and if penalties levied are proportionate and consistent with previous actions.¹⁹

Outline of the arbitration process for these specific disputes

From its inception, CAS's jurisdiction has been grounded in consent. Parties involved in a dispute, be it federations, athletes, or other stakeholders, must agree to arbitrate under CAS's auspices. Often, this consent is embedded in the contractual agreements or statutes of sports organizations. Now, when athlete protests come to the fore, CAS's role becomes especially pivotal. Over time, sports arenas, including the Olympic stage, have transformed into platforms where athletes channel voices on societal, political, or environmental issues. And

¹⁷ Code: Procedural Rules, (2023), <https://www.tas-cas.org/en/arbitration/code-procedural-rules.html>.

¹⁸ Gustavo da Rocha Schmidt, Natália Ribeiro & Daniel Brantes Ferreira, *The Brazilian Center for Arbitration and Mediation (CBMA) as an Appellate Sports Arbitration Institution*, 3 REVISTA BRASILEIRA DE ALTERNATIVE DISPUTE RESOLUTION - BRAZILIAN JOURNAL OF ALTERNATIVE DISPUTE RESOLUTION - RBADR 93 (2021).

¹⁹ Indian wrestler Yadav given four-year doping ban after WADA appeal | Reuters, <https://www.reuters.com/article/olympics-rio-doping-yadav-idUSL8N1AZ5VX>.

as we've witnessed, these expressions can sometimes collide with established norms, leading to disciplinary actions, such as disqualifications or bans. It is here that CAS's jurisdiction emerges, addressing appeals from athletes or national bodies against decisions made by the IOC or its affiliated entities. However, the heart of our discussion lies not just in understanding CAS's jurisdiction but in delving into its arbitration process tailored for these specific disputes.²⁰

Upon an appeal's initiation, a key feature of CAS proceedings is the formation of an arbitral panel, typically comprising one or three arbitrators. The parties involved can either mutually agree on these arbitrators or draw from CAS's list of recognized experts, ensuring the panel's neutrality and expertise. The next juncture, crucial for time-sensitive cases like those during the Olympics, is the expedited procedure. Recognizing the fleeting nature of sports events, CAS has provisions for an ad-hoc division, operating on-site during the Olympics.²¹ With a streamlined process, this division ensures decisions within 24 hours, ensuring minimal disruption to ongoing events. For instance, during the Rio 2016 Olympics, the CAS ad-hoc division addressed 28 cases, a testament to its vital role in the swift resolution of disputes. Post the establishment of the panel and the procedure's determination, the arbitration process embarks on its fact-finding mission. Both parties submit written statements, detailing their positions, arguments, and evidence. This written phase, punctuated with document exchanges, allows both parties to comprehend the nuances of the dispute thoroughly. However, CAS's distinctiveness shines in the hearing phase. Unlike traditional court settings, CAS hearings exude a more informal ambiance. Held in a closed environment, without the spectacle of public galleries, these hearings prioritize frank, open discussions.²² The parties present their cases, often buttressed by witness testimonies or expert opinions. It's worth noting that while legal representation is not mandatory, given the intricate intertwining of sports regulations and legal principles, parties often lean on legal counsel for guidance. Post-hearing, the arbitral panel retreats into deliberations. They sift through the evidence, weighing arguments, and ensuring adherence to the principles of "lex sportiva" – the specific set of laws and customs governing sports. The culmination of this rigorous process is the issuance of an arbitral award, binding on all parties. Yet, the depth of CAS's arbitration isn't solely in its procedural robustness. It lies in its commitment to balance – ensuring athletes' rights are safeguarded while preserving the broader ethos of sports events. Time and again,

²⁰ Louise Reilly, *Introduction to the Court of Arbitration for Sport (CAS) & the Role of National Courts in International Sports Disputes, An Symposium*, 2012 (2012).

²¹ Baird and Bennett, *supra* note 16.

²² A summary of the CAS Ad Hoc Division decisions at the Rio Olympic Games - LawInSport, <https://www.lawinsport.com/topics/features/item/a-summary-of-cas-ad-hoc-division-at-the-rio-olympic-games>.

CAS has reiterated the principles of fairness, neutrality, and promptness, attributes that make it an indispensable institution in the sports justice landscape.²³

4 The 2020 Tokyo Olympics: context and controversies

In the vast annals of Olympic history, the 2020 Tokyo Olympics, held in 2021 due to the global COVID-19 pandemic, stands as an edition both unique and contentious. Beyond the athletic feats, the Tokyo iteration was rife with a multitude of challenges, complexities, and most pertinently for our discourse, controversies related to athlete protests. Initially, the very context of these Games was unprecedented. The global pandemic had wreaked havoc on international sporting schedules, prompting the decision-makers to postpone the Olympics by a year, a first in the modern era. When the event finally rolled out in Tokyo, it was in a severely constrained format. The stadiums, which are usually full of loud fans, were empty during the 2020 Tokyo Olympics. The only sounds you could hear were from the athletes themselves. The omnipresent pandemic protocols, including rigorous testing and quarantine measures, added another layer to the athletes' challenges, both mentally and physically. However, despite these overt operational challenges, it was the undercurrent of athlete activism and protest that truly captured global headlines and ignited debates.²⁴ In the years leading up to the Tokyo Olympics, the world witnessed significant socio-political upheavals. From the Black Lives Matter movement in the USA to pro-democracy protests in Hong Kong, and a myriad of causes in between, the global socio-political landscape was ripe for reflection in the Olympic arena. Anticipating potential expressions of dissent, the International Olympic Committee offered a minor amendment to the previously discussed Rule 50. While the rule's core tenet of prohibiting demonstrations in official Olympic venues remained, athletes were now permitted to express their views during press conferences and interviews, provided they adhered to certain guidelines. The Olympic flame might have symbolized hope and unity at the Tokyo 2020 Olympics, but the games also bore witness to an undercurrent of dissent, protest, and political expression. In an era marked by global upheavals, from civil rights movements to the lingering effects of a pandemic, the Tokyo Olympics became a nexus where sport intertwined with larger socio-political narratives.²⁵

The Tokyo Olympics saw athletes pushing these boundaries. One of the upsetting moments was the display of support for Black Lives Matter (BLM).

²³ Richard H McLaren, *Sports Law Arbitration by CAS: Is It the Same as International Arbitration?*

²⁴ Olympics review: The highs, lows and controversies of Tokyo 2020 | Coronavirus pandemic News | Al Jazeera, <https://www.aljazeera.com/news/2021/8/9/olympics-review-the-highs-lows-and-controversies-of-tokyo-2020>.

²⁵ Nocita, *supra* note 4.

Although the IOC maintained its stance on not allowing protests during medal ceremonies, it did make a landmark decision by allowing athletes to “express their views” before starting their events. Consequently, we saw gestures like taking a knee or raising a fist, reminiscent of earlier Olympic protests but now a global symbol against racial injustice. Athletes from different nationalities and sports, such as soccer and rugby, demonstrated solidarity with the BLM movement, exemplifying how interconnected global socio-political movements have become. Costa Rican gymnast Luciana Alvarado, at the conclusion of her routine, took a knee, raised a fist, and tilted her head back, a gesture resonating with the Black Lives Matter movement’s motifs. Meanwhile, Raven Saunders, an American shot-putter, made an “X” gesture on the podium, symbolizing “the intersection of where all people who are oppressed meet.” From a regional standpoint, the Tokyo Olympics also spotlighted political tensions in Asia.²⁶ For instance, a diplomatic row ensued when the South Korean broadcaster used “inappropriate” images to represent certain countries during the opening ceremony. These images, considered by many to be stereotypical or offensive, stirred debates on cultural sensitivity and national representation in a hyper-connected age. However, not all expressions were confrontational. Some were symbolic, aiming to shed light on long-standing issues. The inclusion of the Indigenous Ainu community in the opening ceremony, though brief, was a significant gesture, acknowledging their presence and history in Japan. In a subtler form of protest, some athletes used their platform to highlight issues like mental health, a pressing concern that transcended borders and resonated with global audiences. Simone Biles’ decision to withdraw from several gymnastics events, citing mental health concerns, wasn’t a protest in the traditional sense. Still, it amplified the conversation around the pressures athletes face and the need for mental well-being.²⁷

The Olympics weren’t devoid of more direct political statements either. Hong Kong’s presence as a separate entity from China, especially in the backdrop of the recent pro-democracy protests and the introduction of the National Security Law, was itself a subtle political statement. Further adding to regional tensions, Taiwan, or Chinese Taipei as it’s referred to in the Olympics, found its position often conflated or misinterpreted in the media, pointing to larger geopolitical dynamics at play.²⁸ The Tokyo 2020 Olympics also witnessed individual acts of courage. Belarusian sprinter Krystsina Tsimanouskaya’s refusal to return to her home country

²⁶ IOC gives athletes more scope for protest at Tokyo Olympics | AP News, <https://apnews.com/article/tokyo-olympic-games-2020-tokyo-olympics-race-and-ethnicity-sports-3f8d420b7e94bbafa037d22327efb38b>.

²⁷ Simone Biles receives support from around the web after pulling out of team final, OLYMPICS.COM (2021), <https://olympics.com/en/news/support-pours-in-simone-biles-social-media-messages-gymnastics-tokyo-2020>.

²⁸ Hong Kong national security law: What is it and is it worrying?, BBC NEWS, May 22, 2020, <https://www.bbc.com/news/world-asia-china-52765838>.

after alleging mistreatment by her national committee, and her subsequent plea for asylum, brought global attention to the state of political freedoms in Belarus. Her story became emblematic of the struggles many athletes face in countries where political dissent is not tolerated.²⁹ These instances from Tokyo 2020 underscore a salient point: the Olympic Games are not isolated from the world's socio-political landscape. Rather, they mirror and sometimes amplify the global zeitgeist. Athletes, representing various countries and cultures, bring with them not just their sporting prowess but also their personal and national narratives. The challenge for bodies like the IOC and CAS lies in distinguishing between genuine expressions of dissent and mere provocations, all while upholding the foundational Olympic values of unity, respect, and excellence. The Tokyo 2020 Olympics, set against a backdrop of a global pandemic and rising geopolitical tensions, were rife with controversies. The athlete protests and political expressions at these games, whether overt or subtle, not only enriched the tapestry of stories but also reminded us of the complex, multifaceted world we inhabit. The games reaffirmed that while sports can be a unifying force, they are also a reflection of our times, echoing global sentiments, struggles, and hopes.³⁰

5 Court of Arbitration for Sport's Decisions and their impact

The Court of Arbitration for Sport's, acts as a sort of Supreme Court for sports disputes. Its arbitration verdicts, particularly on matters as charged as athlete protests, can reverberate significantly, influencing both immediate outcomes at sporting events and the broader socio-political landscape. The 2020 Tokyo Olympics, replete with its unique challenges and controversies, provided several moments where the CAS's decisions profoundly impacted the discourse around athlete activism. Delving into the Tokyo Olympics, the backdrop was already set for heightened political expressions. From concerns related to the pandemic to global movements like Black Lives Matter, the stage was ripe for athletes to voice their perspectives on pressing issues. The Olympics, with its global audience, presented a potent platform, and many athletes were prepared to utilize it, even if it meant breaching Rule 50 of the Olympic Charter, which prohibits any form of political demonstrations.³¹

²⁹ Belarusian sprinter refuses to leave Tokyo | Reuters, <https://www.reuters.com/lifestyle/sports/exclusive-olympics-belarusian-athlete-says-she-was-taken-airport-go-home-after-2021-08-01/>.

³⁰ Reilly, *supra* note 20.

³¹ Nocita, *supra* note 4.

The Court of Arbitration for Sport often found itself in the spotlight during the 2020 Tokyo Olympics due to the pivotal role it played in determining the fate of athletes and teams embroiled in controversies.

1. *Belarusian Sprinter Krystsina Tsimanouskaya Case*: One of the most prominent controversies of the Tokyo Olympics revolved around Belarusian sprinter Krystsina Tsimanouskaya. After criticizing her national team's management on social media, she was allegedly pressured to leave Japan prematurely. Fearing for her safety upon returning to Belarus, she appealed to the CAS. While the CAS didn't have to make a direct ruling on her asylum case, its decision not to intervene with the actions of the Belarusian Olympic Committee meant the athlete sought and obtained protection elsewhere, notably in Poland.³²
2. *South African Multiple Medallist Caster Semenya*: While this case predates the Tokyo Olympics, its ramifications were clearly felt in 2020. Caster Semenya, an 800m Olympic champion, was barred from defending her title due to CAS's decision upholding the World Athletics' rule that required her to lower her natural testosterone levels to compete in women's middle-distance races. This controversial decision sparked a global debate on gender, biology, and fairness in sports.³³
3. *Rule 50 - Athlete Protests*: The International Olympic Committee (IOC) has Rule 50 in place, which states that "No kind of demonstration or political, religious or racial propaganda is permitted in any Olympic sites, venues or other areas." Ahead of the Tokyo Olympics, there were strong indications from certain athlete groups about the intent to protest, particularly to show support for the global Black Lives Matter movement. The CAS played an observatory role here, ready to mediate should any controversies arise from protests during the Games. While the IOC slightly relaxed the rules to allow gestures like taking a knee before the start of play, podium protests were still prohibited.³⁴
4. *Russia's Doping Ban*: Another noteworthy CAS decision affecting the Tokyo Olympics was the one regarding Russia's state-backed doping scheme. While the World Anti-Doping Agency recommended a four-year ban, the CAS reduced this to two years. It meant that Russia could not

³² Staff, *Belarusian Sprinter Who Criticised Coaches Refuses to Be Sent Home*, THE GUARDIAN, Aug. 1, 2021, <https://www.theguardian.com/sport/2021/aug/01/belarus-sprinter-krystsina-tsimanouskaya-criticised-coaches-says-she-will-not-return-to-country>.

³³ Track's Caster Semenya Loses Appeal to Defend 800-Meter Title - The New York Times, <https://www.nytimes.com/2020/09/08/sports/olympics/caster-semenya-court-ruling.html>.

³⁴ IOC extends opportunities for athlete expression during the Olympic Games Tokyo 2020 - Olympic News, INTERNATIONAL OLYMPIC COMMITTEE (2022), <https://olympics.com/ioc/news/ioc-extends-opportunities-for-athlete-expression-during-the-olympic-games-tokyo-2020>.

officially compete at the Tokyo Olympics, but Russian athletes (under strict conditions) could compete under the banner “Russian Olympic Committee”, sans their national flag and anthem.³⁵

The ramifications of these CAS decisions during the Tokyo Olympics were profound. Each verdict was much more than a judicial declaration; it resonated with global debates on human rights, gender issues, national pride, and the spirit of fair competition. The decisions made by the CAS are intricate and well-considered. Instead of giving general bans or approvals, they examine the finer details of each situation. They consider the reason for the protest, its possible disturbances, and the larger background. By doing so, they ensure that their choices are based on a full grasp of the situation. The decisions CAS took during the Tokyo Olympics had a bigger impact than just affecting the athletes directly involved. Notably, they ignited worldwide discussions on whether athletes should also be seen as activists. Should they restrict themselves to their sporting roles, or is it their moral imperative to leverage their platform for larger causes? The CAS’s rulings, whether in favour of or against athlete protests, added fuel to these debates. Moreover, these decisions influenced public perception. For many viewers, the Olympics isn’t just about sports; it’s a reflection of global unity and diversity. The way athlete protests were handled, and the CAS’s role in arbitrating disputes, played a pivotal role in shaping this narrative. A decision perceived as stifling freedom of speech could draw criticism, while a perceived lenient stance could be viewed as undermining the event’s sanctity. Although, national Olympic committees and global sports organizations closely monitored the CAS’s rulings, using them as potential benchmarks for formulating their policies on athlete activism.³⁶

Influence on Athlete Behaviour:

1. *Expressing Dissent Safely:* CAS’s decisions have shown that it provides a protective, albeit limited, platform for athletes to express dissent. Cases such as Belarusian sprinter Krystsina Tsimanouskaya’s situation highlighted that athletes can and do raise their voice against oppressive sporting bodies. Such decisions, implicitly, have encouraged many athletes to trust international bodies over their own nations if they feel threatened or oppressed.³⁷
2. *Adherence to Sporting Norms:* At the same time, the CAS’s rulings, like the one concerning South African runner Caster Semenya, subtly

³⁵ Russia Banned From Olympics and Global Sports for 4 Years Over Doping - The New York Times, <https://www.nytimes.com/2019/12/09/sports/russia-doping-ban.html>.

³⁶ Nocita, *supra* note 4.

³⁷ Staff, *supra* note 32.

underscored the importance of adhering to globally accepted sporting norms and regulations. It served as a reminder for athletes worldwide that global sports bodies have regulations that must be respected, even if these decisions occasionally border on contentious.³⁸

Impact on Public Perception:

1. *A Dual-Edged Sword:* CAS's decisions have often drawn public ire or appreciation, depending on one's perspective. On one hand, CAS's decision in the Semenya case was perceived by many as a violation of human rights, while others viewed it as necessary for maintaining fair competition. Such decisions showcased CAS as a body that makes bold decisions, not always popular, but rooted in its interpretation of fairness and equity.³⁹
2. *Perceived Neutrality:* While the CAS has been heralded for its seemingly neutral stance, it's not immune to criticism. Its verdict allowing Russian athletes to participate as the "Russian Olympic Committee" after the state-backed doping scandal drew mixed reactions. While some appreciated the nuanced decision, allowing athletes to compete without penalizing them for state-level misdemeanours, others felt it wasn't punitive enough.⁴⁰

Olympic Committee's Stance:

1. *Re-evaluation of Rule 50:* CAS's observatory stance on the potential athlete protests during the Tokyo Olympics, especially concerning Rule 50, nudged the IOC towards a slight re-evaluation. While the rule, which prohibits any "demonstration or political, religious, or racial propaganda," remained, the IOC permitted gestures like taking a knee before the start of play, although podium protests were still prohibited. CAS's implicit influence meant that the Olympic body had to strike a balance between maintaining the Olympics' sanctity and respecting the evolving global sociopolitical climate.⁴¹
2. *Doping and Fair Play:* The CAS decision on the Russian doping scandal reaffirmed the IOC's commitment to clean sports. Despite the compromise of letting Russian athletes compete under the ROC banner,

³⁸ Caster Semenya Won Her Case, But Not the Right to Compete | Human Rights Watch, (Jul. 18, 2023), <https://www.hrw.org/news/2023/07/18/caster-semenya-won-her-case-not-right-compete>.

³⁹ *Id.*

⁴⁰ Russia Banned From Olympics and Global Sports for 4 Years Over Doping - The New York Times, *supra* note 35.

⁴¹ Rule-50-Guidelines-Tokyo-2020.pdf, *supra* note 11.

the message was clear: unfair practices would not be tolerated, and nations, no matter how powerful, would be held accountable.⁴²

Its decisions, particularly in the spotlight of a global event like the Olympics, influence not just the immediate stakeholders but also the global sporting community and the public at large. Through its nuanced, and occasionally divisive decisions, CAS essentially shapes the narrative around contemporary issues in global sports. For example, considering athletes from various regions, CAS decisions regarding the Tokyo Olympics seemed to adopt a more holistic and globally inclusive approach. Athletes from Africa, Europe, and Asia found themselves at the centre of some of CAS's most crucial decisions, ensuring that the global South and North were represented, and their issues addressed. Moreover, beyond specific decisions, the very existence of CAS as an arbitration body serves as a reminder of the necessity for impartial judicial entities in sports. As sports become increasingly globalized and commercialized, with billions at stake, the role of bodies like CAS becomes even more crucial. CAS's influence on the 2020 Tokyo Olympics cannot be understated. From shaping athlete behaviours, swaying public opinion, to subtly guiding the hands of the Olympic Committee, CAS's shadow loomed large. Whether one agrees with its decisions or not, its importance as an arbiter of justice in the sporting realm remains uncontested. One can only hope that as sports evolve, CAS continues to uphold the principles of fairness, equity, and justice that the sporting world so dearly needs.⁴³

6 Comparative Analysis across Olympics

The Olympics, transcending mere sport, often becomes a mirror reflecting global socio-political sentiments. Athlete protests and political expressions, embedded in this fabric, have time and again sought to use the Olympic platform for wider awareness. The Court of Arbitration for Sport, playing arbiter, has had the daunting task of discerning the limits of such expressions.

1968 Mexico City Olympics: Long before the CAS was established, the Olympics bore witness to iconic protests. The Black Power salute by Tommie Smith and John Carlos during their medal ceremony is still vividly remembered. Both athletes were subsequently expelled from the Olympic Village, signalling a clear intolerance to political gestures.⁴⁴

⁴² Russia Banned From Olympics and Global Sports for 4 Years Over Doping - The New York Times, *supra* note 35.

⁴³ A summary of the CAS Ad Hoc Division decisions at the Rio Olympic Games - LawInSport, *supra* note 22.

⁴⁴ Burke, *supra* note 8.

2008 Beijing Olympics: Fast forward to more recent times, in the lead-up to the Beijing Olympics, there was considerable global tension regarding China's human rights record, particularly concerning Tibet. Several athletes voiced their concerns, and while the CAS wasn't directly involved, the IOC consistently tried to stifle any overt political protests, arguing that sports should remain separate from politics.⁴⁵

2016 Rio Olympics: The CAS, in this edition, had its hands full with doping scandals but athlete protests did make a mark. Ethiopian marathoner Feyisa Lilesa crossed his hands above his head as he finished the race – a gesture showing solidarity with the Oromo protests back in his home country. Unlike 1968, Lilesa wasn't penalized, hinting at a softer stance towards athlete expressions.⁴⁶

2020 Tokyo Olympics: As already highlighted, Rule 50 of the Olympic Charter, which prohibits demonstrations or political, religious, or racial propaganda, was thrust into limelight. While the CAS and IOC's guidelines remained clear, there was a tacit acknowledgment of the importance of such expressions. Athletes taking a knee or raising a fist in support of the Black Lives Matter movement, for instance, weren't penalized. This was a marked shift from previous stances, arguably influenced by global conversations around racial justice and equity.⁴⁷

Comparatively, while the CAS and the broader Olympic machinery have maintained a consistent line of keeping the Games 'apolitical', there's been a noticeable shift in approach towards athlete protests. The once rigid stance, as witnessed in 1968, seems to have evolved into a more understanding, if not entirely accepting, one by the time Tokyo 2020 rolled around. This progression is not just reflective of the CAS's evolving jurisprudence but also mirrors the changing global socio-political landscape. However, the path hasn't been linear. While certain gestures are reluctantly accepted, others are still met with retribution. The challenge for CAS and the IOC lies in discerning which protests get the green light and which ones are red-flagged, a task that, given the intricate interplay of global politics and individual rights, will never be straightforward. Yet, it's imperative to note the changing tides. From absolute non-acceptance to reluctant acknowledgment, the Olympic narrative on athlete protests, under the CAS's watchful eye, is undeniably evolving.

⁴⁵ China: Olympics Harm Key Human Rights | Human Rights Watch, (Aug. 6, 2008), <https://www.hrw.org/news/2008/08/06/china-olympics-harm-key-human-rights>.

⁴⁶ Ethiopia's Lilesa makes protest gesture at marathon finish | Reuters, <https://www.reuters.com/article/us-olympics-rio-athletics-m-marathon-lil-idUSKCN1OWOPR>.

⁴⁷ IOC Athletes' Commission's recommendations on Rule 50 and Athlete Expression at the Olympic Games fully endorsed by the IOC Executive Board - Olympic News, INTERNATIONAL OLYMPIC COMMITTEE (2022), <https://olympics.com/ioc/news/ioc-athletes-commission-s-recommendations-on-rule-50-and-athlete-expression-at-the-olympic-games>.

7 Ethical consideration

In the international sports, the Olympic Games stand out as the quintessential forum of unity, transcending boundaries of race, religion, and politics. However, history has repeatedly shown that the confluence of sports and politics is unavoidable. Athletes, as global ambassadors, have time and again utilized this platform to voice socio-political concerns. Enter the Court of Arbitration for Sport, which often finds itself at the epicentre of these seismic events, adjudicating with an imperative to maintain both the spirit of the games and respect individual rights. It's within this duality that the ethical considerations are most intricate.

Freedom of Speech: Freedom of speech is universally recognized as an unalienable right. Yet, its application within a controlled environment like the Olympics becomes an area of contention. At the heart of many athlete protests lies the principle of freedom of speech. Athletes, like any other individuals, possess the right to express their opinions. However, when juxtaposed against the backdrop of the Olympics - an event premised on universal values of unity and non-discrimination - the ethical waters become murkier. CAS's adjudication on matters of protest is often viewed through the lens of this fundamental right. For instance, when athletes took a knee or raised a fist in solidarity with the Black Lives Matter movement during the Tokyo Olympics, CAS's tacit acceptance signalled a recognition of their freedom of expression. However, it's crucial to discern the boundaries. The question becomes: Can a global event, representing myriad cultures and values, ever offer a one-size-fits-all guideline for such a complex right? Where do we draw the line? The challenge for CAS lies in balancing this cherished right with the sanctity of the sporting event.⁴⁸

Athlete Rights: While freedom of speech is paramount, it's but one facet of the broader spectrum of athlete rights. Participation, fair competition, non-discrimination, and the right to dignity are equally pertinent. Athletes, despite their celebrity status, are foremost human beings with inherent rights. Beyond freedom of speech, their right to participate, to fair treatment, and to be free from discrimination all come into play. The Olympic Charter, especially Rule 50, which curtails demonstrations or political, religious, or racial propaganda, can sometimes be perceived as infringing upon these rights. CAS's role in arbitrating these issues becomes ethically pivotal. Should an athlete be sidelined or penalized for espousing a cause they deeply believe in, especially when it mirrors global sentiments? The Rio Olympics example of Ethiopian marathoner Feyisa Lilesa's gesture in support

⁴⁸ The Olympics are about diversity and unity, not politics and profit. Boycotts don't work, THE GUARDIAN, Oct. 23, 2020, <https://www.theguardian.com/sport/2020/oct/24/the-olympics-are-about-diversity-and-unity-not-politics-and-profit-boycotts-dont-work-thomas-bach>.

of the Oromo protests becomes relevant. Here, the absence of retribution was arguably a nod to his inherent rights. Yet, a consistent approach remains elusive, adding layers to the ethical debate.⁴⁹

Public Opinion: In an age of global connectivity, public opinion isn't just a background noise; it's a formidable force. Every athlete protest sparks worldwide debates, with diverse perspectives colliding and coalescing. While the Olympics aims to remain neutral, it operates within a world deeply segmented by political, cultural, and social divides. Public opinion, informed by these divides, becomes a significant stakeholder. An athlete's protest can resonate differently across geographies. While one segment may laud it as a brave act of resistance, another could decry it as misplaced activism. CAS, in its judgments, cannot be entirely impervious to these sentiments. The broader acceptance of the Black Lives Matter gestures during the Tokyo Olympics, for instance, was arguably influenced by the immense global support for the movement. However, an over-reliance on fluctuating public moods can compromise the integrity of CAS's decisions. The ethical conundrum then becomes: How much weight should public sentiment carry in CAS's adjudicative process?⁵⁰

While the immediate concerns of protests and CAS rulings are evident, there's a broader ethical perspective that warrants attention. The very essence of the Olympics is about fostering unity, understanding, and peace. When athletes protest, they spotlight global issues, indirectly urging unity and understanding on those fronts. CAS's decisions, thus, carry the weight of this broader Olympic mission. Their rulings aren't merely about an event or an athlete; they are directives that shape the future discourse of sports and its role in global conversations.⁵¹ The nexus of CAS's rulings, athlete protests, and the Olympics is a microcosm of the larger world, with its intricate blend of rights, responsibilities, and ethical considerations. As the world evolves, so do the nature of protests and the consequent challenges for CAS. What remains constant is the imperative for CAS to maintain a delicate balance, ensuring that while the sanctity of the Games is preserved, the voice of the athletes is not stifled. This journey is not just about legal precedents but a commitment to ethical integrity in the face of ever-evolving global challenges. In this intricate dance, CAS's decisions, whether they pertain to the 2020 Tokyo Olympics or any other edition, must be evaluated not just for their legal soundness but their ethical robustness. This dual scrutiny ensures that the spirit of the Games, intertwined with global socio-political realities, is preserved

⁴⁹ Freedom of Expression - Athlete Voice and Activism, CENTRE FOR SPORT AND HUMAN RIGHTS, <https://www.sporhumanrights.org/freedom-of-expression-athlete-voice-and-activism/>.

⁵⁰ Timeline: Politics and Protest at the Olympics, COUNCIL ON FOREIGN RELATIONS, <https://www.cfr.org/timeline/olympics-boycott-protest-politics-history>.

⁵¹ Nocita, *supra* note 4.

while upholding the rights and sentiments of its most vital stakeholders – the athletes.⁵²

8 Conclusion

The Olympic Games, over the years, have evolved to become not only a celebration of sporting talent but also a platform for political, social, and ethical expressions. Throughout history, sportspersons have used the Olympic platform to voice their convictions, sometimes leading to disputes with the Olympic officials. During the 2020 Tokyo Olympics, which took place amidst unparalleled global crises, there was a renewed wave of athlete-led demonstrations and political stances. This brought the Court of Arbitration for Sport into public focus. Dating back to the Olympics early days, these athlete demonstrations have always served as a medium to broadcast sentiments that go beyond just the sporting arena. While the Olympic regulations have usually encouraged a neutral approach, refraining from any political or activist undertones, the real-world application of this neutrality has seen numerous challenges. As societies evolve, so does the interpretation of these guidelines. The CAS, created to address disputes in the world of sports, operates within a specific framework to tackle such athlete demonstrations. Its role becomes pivotal when there are breaches or perceived breaches of Olympic guidelines, ensuring a clear and systematic adjudication procedure. This autonomous institution plays an essential part in striking a balance between the rights of athletes and the overarching goals of the Olympic community. During the 2020 Tokyo Olympics, numerous instances, ranging from gestures during medal ceremonies to attire and accessories bearing messages, showcased the athlete's sentiments. These actions were not just about personal beliefs but also echoed wider societal issues and movements. The CAS's involvement in these cases was inevitable. Their decisions, particularly during these games, had a profound impact, influencing the behaviour of other athletes, shaping public opinion, and even prompting introspection within the Olympic Committee. In comparing the CAS rulings from Tokyo 2020 to other Olympics, it's evident that there's a slow but definite shift towards acknowledging the changing societal dynamics. While the CAS decisions still aim to uphold the Olympic Charter, there's an increased sensitivity towards the rights and voices of athletes. However, the line between maintaining the sanctity of the Games and ensuring freedom of expression remains blurry and is constantly negotiated. The ethical considerations surrounding CAS decisions are vast and complex. While the CAS's primary role is to interpret and enforce existing

⁵² Reilly, *supra* note 20.

rules, the ethical underpinnings of those rules and the broader implications for society cannot be ignored. Issues of freedom of speech, athlete rights, and the influence of public opinion are intrinsically linked with the decisions made by the CAS. The tug-of-war between maintaining Olympic neutrality and allowing genuine expressions of belief is a continuous challenge.

Having delved deep into the intersection of the CAS's role and athlete protests, especially during the Tokyo Olympics, it's evident that the objectives of understanding the impact and implications of these decisions were achieved. This research offers a comprehensive overview of the topic, making it a valuable reference for future studies. However, like all research endeavours, this study is not without its limitations. The primary limitation is the confinement of the focus to the 2020 Tokyo Olympics. While this provides an in-depth view of the Games, the ever-evolving nature of athlete protests and CAS decisions suggests that continuous updates and research are necessary to stay current. The implications of this research are multi-faceted. It provides stakeholders, including the Olympic Committee, athletes, and the public, a nuanced understanding of the CAS's decisions and their broader societal impacts. Furthermore, by shedding light on the ethical considerations, this paper paves the way for future debates on how sports can balance between preserving its core values and reflecting the changing societal narratives. To sum up, the Tokyo 2020 Olympics, with its unique challenges, highlighted the intricate dance between athlete protests and the role of the CAS. As society progresses, it's inevitable that the Olympic Games will continue to be a mirror reflecting global sentiments, and the CAS's role in navigating this complex arena will remain crucial.

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