



**TAS / CAS**

TRIBUNAL ARBITRAL DU SPORT  
COURT OF ARBITRATION FOR SPORT  
TRIBUNAL ARBITRAL DEL DEPORTE

8<sup>TH</sup> CONFERENCE CAS & SAV / FSA | LAUSANNE, SWITZERLAND

# WHAT ARE THE EFFECTS OF ECHR ON SPORT PRACTICE AND JURISPRUDENCE?

ULRICH HAAS | CAS ARBITRATOR

# What are the effects of the ECHR on sport practice and jurisprudence?

ECHR (formally Convention for the Protection of Human Rights and Fundamental Freedoms)


International Convention drafted in 1950 by the Council of Europe (entered into force on 3 September 1950)

All member states of the Council of Europe must ratify the ECHR (47)

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# Contents



Switzerland,  
28.11.1974

The ECHR sets forth a number of fundamental rights and freedoms (right to life, prohibition of torture, prohibition of slavery and forced labour, right to liberty and security, right to a fair trial, etc.)

The ECHR establishes an international enforcement mechanism. To ensure the observance of the engagements undertaken by the Parties, the European Court of Human Rights (ECtHR) in Strasbourg has been set up. The parties to a case must abide by the judgments of the Court and take all necessary measures to comply with them. The Committee of Ministers supervises the execution of judgments.

The ECHR is supplemented by various Protocols, which extend the catalogue of protected rights (e.g. protection of property, Article 1 of the First Additional Protocol).

Applicants must exhaust domestic remedies (available in theory and in practice) before lodging a complaint with the ECtHR (cf. Art. 35).



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# What are the effects of the ECHR on sport practice and jurisprudence?





**Article 1:** "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention."

administrative

legislative

judiciary

Articles 176 et seq PILA

**ECtHR (40575/10; 67474/10)** "... The ... [arbitral tribunal] is neither a domestic court nor any other institution of Swiss public law, but an entity emanating from ... a private-law foundation ..."



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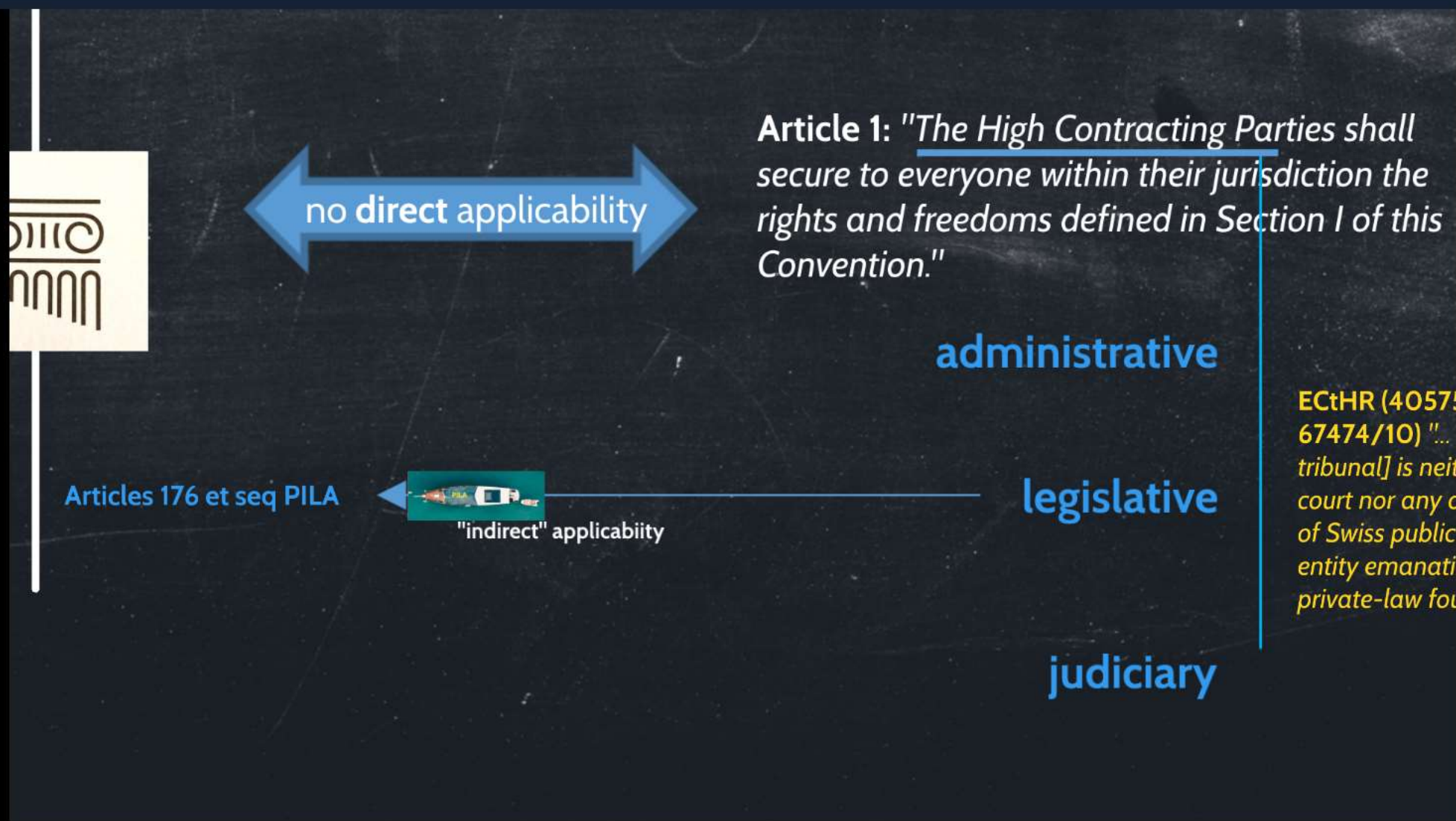
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# Articles 176 et seq PILA



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Article 178 (arbitration agreement)

# Articles 176 et seq PILA



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Article 178(2) "As regards its substance, an arbitration agreement is valid if it conforms either to the law chosen by the parties, to the law governing the subject-matter of the dispute, in particular the law governing the main contract, or to Swiss law."

ECtHR (4075/10 and 67474/10):

(92 et seq.) "Art. 6(1) secures to everyone **the right to have a claim ... brought before a court.** ... The right to access to court ... is not absolute but **may be subject to limitations** ... [However] a limitation will not be compatible with Art. 6(1) if it does not **pursue a legitimate aim** and if there is not a reasonable relationship of **proportionality** ... In addition, a distinction must be drawn between voluntary and compulsory arbitration. **If arbitration is compulsory ... an arbitral tribunal ... must afford the safeguards secured by Article 6(1) ... in case of voluntary arbitration ... no real issues arises.**"



**Article 17(7):** "As regards its substance, an arbitration agreement is valid if it contains either (i) the law chosen by the parties, or (ii) the law governing the subject-matter of the dispute. It is also valid if it contains neither of these elements, and the Tribunal is able to determine the applicable law."

ECtHR 41075/10 and 67474/10  
 92 et seq.) "for failure to recognize the right to have a claim brought before a court... The right to access to court... is not absolute but may be subject to limitations... However, a limitation will not be compatible with Art. 6 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality... In addition, a restriction must be drawn between voluntary and compulsory arbitration. Voluntary arbitration is compulsory... an artificial tribunal... may affect the independent nature of Article 6(1)... in case of mandatory arbitration..."

# Articles 176 et seq PII A

Art. 180(1): "A member of the arbitral tribunal may be challenged: ...

c) if circumstances exist that give rise to legitimate doubt as to his or her independence or impartiality.

ECtHR (4075/10 and 67474/10):

(138 et seq.) "Under Art. 6(1) *a 'tribunal' must always be 'established by law' ... an authority which is not classified as one of the courts of the State may, for the purposes of Art. 6(1) fall within the scope of a 'tribunal'. ... only an institution ... that satisfies ... the ... requirements, such as independence ... merits the designation 'tribunal'. In order to establish whether a tribunal can be considered as 'independent', regard must be made, inter alia, to the manner of appointment of its members and their term of office, the existence of guarantees against outside pressure and the question whether the body presents an appearance of independence ... The Court accepts that in matters ... to which consent has been given freely, lawfully and unequivocally, the notions of independence ... may be construed flexibly.*





Article 178 (arbitration agreement)

Article 178(1) "As regards to substance, an arbitration agreement is valid if it is in writing and the dispute is arbitrable. It is not necessary that the dispute is arbitrable in the sense of the law of the place of arbitration."

ECtHR (4073/10 and 61474/10):  
"It is clear from the text of Article 178(1) that the right to have a claim brought before a court... is not absolute but may be subject to limitations... (However) a limitation will not be compatible with Art. 6(1) if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality... In addition, a distinction must be drawn between voluntary and compulsory arbitration. In arbitrations compulsory, an arbitral tribunal must observe the obligations imposed by Article 6(1). In case of voluntary arbitration, no such obligation exists."

Article 180 (1) lit. c (independence)

Art. 180(1) "A member of the arbitral tribunal may be challenged if the circumstances exist that give rise to legitimate doubts as to his or her independence or impartiality."

ECtHR (4073/10 and 61474/10):  
"It is clear from the text of Article 180(1) that the right to have a claim brought before a court... is not absolute but may be subject to limitations... (However) a limitation will not be compatible with Art. 6(1) if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality... In addition, a distinction must be drawn between voluntary and compulsory arbitration. In arbitrations compulsory, an arbitral tribunal must observe the obligations imposed by Article 6(1). In case of voluntary arbitration, no such obligation exists."

Article 182(3) (proc. autonomy)

# Articles 176 et seq DII A



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Article 182(3): "Regardless of the procedure chosen, the arbitral tribunal shall guarantee the equal treatment of the parties and their right to be heard in adversarial proceedings."

ECtHR (13942/88)

"30 It falls to the Court to decide whether the contested proceedings considered as a whole were fair ... . The effect of Article 6(1) is, inter alia, to place the 'tribunal' under a duty to conduct a proper examination of the submissions, arguments and evidence adduced by the parties, without prejudice to its assessment of whether they are relevant to its decision."

(different) deadlines  
for appeal

limiting the mandate to  
review the facts and the law

excessive formalism  
ECtHR (7198/07) no. 31

public hearing

legal aid / "poor party"



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# legal aid / "pool"

ECtHR (54193/07): "The Court recalls that, whilst Article 6 § 1 guarantees to litigants an **effective right of access to the courts** for the determination of their "civil rights and obligations", it leaves to the State **a free choice of the means to be used towards this end** ... . There is **no obligation under the Convention to make legal aid available for all disputes in civil proceedings**, as there is a clear distinction between the wording of Article 6 § 3 (c), which guarantees the right to free legal assistance on certain conditions in criminal proceedings, and of Article 6 § 1, which makes no reference to legal assistance. ... Thus, the right of access to court is not absolute and may be subject to restrictions, provided that these pursue a **legitimate aim and are proportionate**. It may notably be **acceptable to impose conditions on the grant of legal aid based, inter alia, on the financial situation of the litigant or his or her prospects of success in the proceedings** ... , **provided that the legal aid system offers individuals substantial guarantees to protect them from arbitrariness** (see Gnahoré, cited above, § 41; Del Sol, cited above, §§ 25-26).



[92 et seq.] Art. 6(1) secures to everyone the right to have a claim brought before a court. The right to access the court is not absolute but may be subject to limitations. . . . However, a limitation will not be compatible with Art. 6(1) if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality. . . . In addition, a distinction must be drawn between voluntary and compulsory arbitration. If arbitration is compulsory . . . an arbitrary . . . measure will affect the safeguards secured by Article 6(1) . . . in case of voluntary arbitration . . . no real issues arise.<sup>11</sup>

Art. 18(1): "A member of the arbitral tribunal may be challenged if circumstances exist that give rise to legitimate doubts as to his or her independence or impartiality."

FCW (4025, 12 and 4747A/10)  
[34] at ¶ 11, under Art. 3, Subpart "must submit for installation by" the  
authority which is not claimed as one of the courts of the State may, for the  
purpose of Art. 3(1) fall within the scope of a "bilateral" – only an installation, the  
analysis, the requirements such as independence, meets the designation  
"bilateral" in order to establish whether a bilateral can be considered as  
independent, regard must be made, inter alia, to the material appointment of  
members and their term of office, the existence of guarantees against outside  
pressure and the placement within the body persons on appointment of  
"independence". The Court accepts that in matters – to which consent has been  
given freely, fully and unequivocally, the notion of independence, may be  
considered satisfied.

Article 18(1)(3): "Regardless of the procedure chosen, the arbitral tribunal shall guarantee the equal treatment of the parties and their right to be heard in adversarial proceedings."

30 It is for the Court to decide whether the restricted proceedings considered as a whole were fair. The effect of Article 6(1) is not to replace the national judge's assessment of the proper examination of the submissions, arguments and evidence submitted by the parties with a judgment as to its assessment of whether they are relevant to the case.

different deadline for appeal

public hearing

review the facts and the law

different deadline for appeal

different deadline for appeal

public hearing

review the facts and the law

different deadline for appeal



# Article 184(1): "*The arbitral tribunal takes the evidence itself.*"

admissibility of the evidence, standard of proof, etc.

protected witnesses

polygraph test

nemo tenetur se  
ipsum accusare

standard of proof

Bulletin TAS  
CAS Bulletin  
Boletín del TAS  
2022/1

Nociones fundamentales de la prueba en el TAS

Yago Vázquez Moraga..... 32



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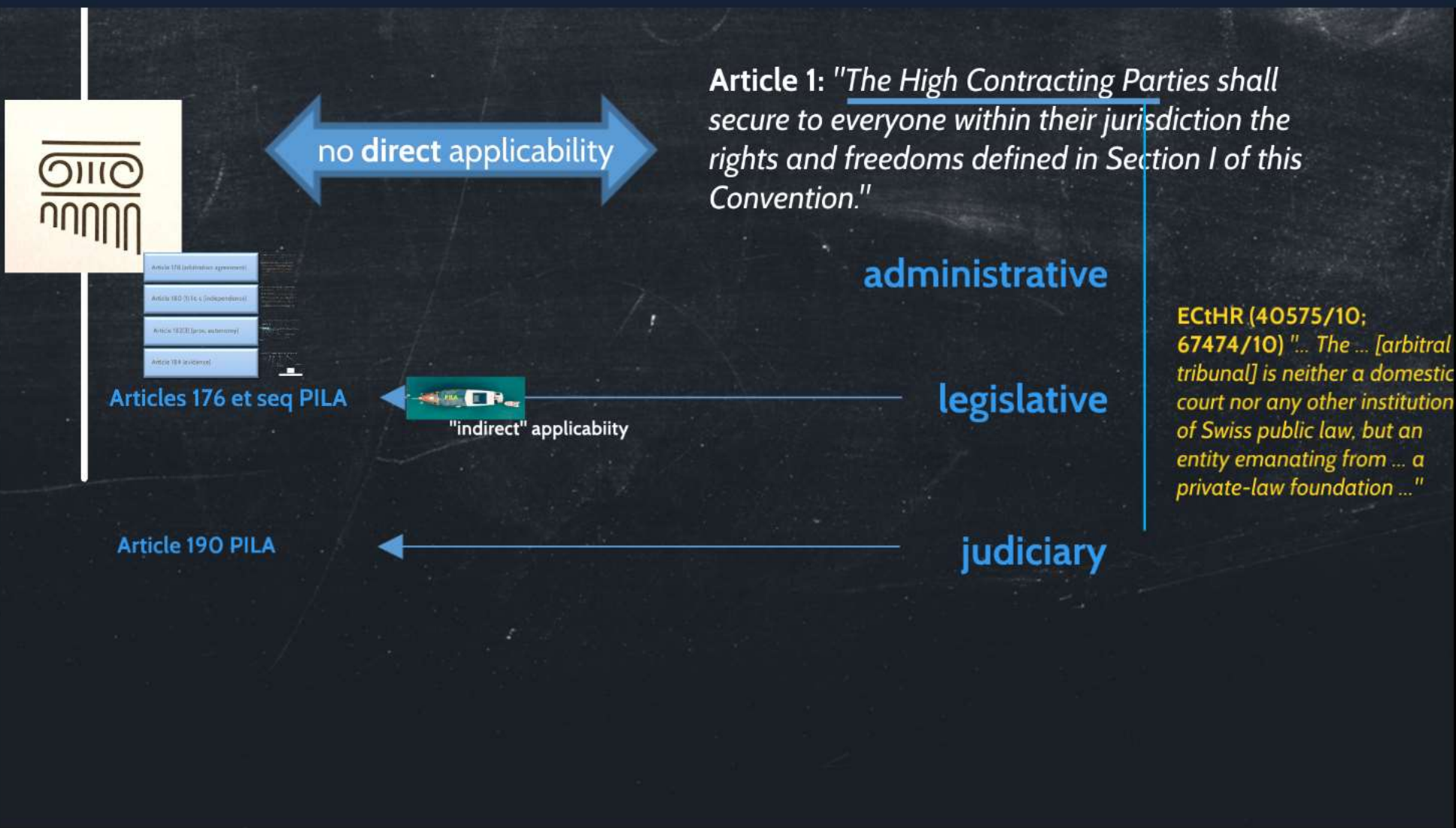
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ECtHR (30226/10) no 153 seq: "According to the Court's established case-law, three criteria, commonly known as the "Engel criteria", need to be considered in determining whether or not there was a "criminal charge" within the meaning of Article 6 § 1 of the Convention ... As regards the remaining criteria, the **nature of the offence and degree of severity of the penalty**, the Court further observes that influencing the match result is unsportsmanlike conduct which goes against the rules of fair play and that the maximum penalty that the applicants risked receiving was a three-year ban under the former Disciplinary Directive ... **In view of the foregoing, the Court considers that none of the elements ... is sufficient to reach a conclusion that the disciplinary proceedings ... concerned the determination of a criminal charge within the meaning of Article 6**".

ECtHR (2006/13 & 10857/13) 29, 32 seq.: "... the Court has **consistently held** that **disciplinary proceedings** in which the right to continue to exercise a profession is at stake **give rise to disputes ... over civil rights** within the meaning of Article 6(1). ... Article 6(2) applies to everyone 'charged with a criminal offence' ... The Court notes that the applicants were placed in pre-trial detention ... and charged with, inter alia, match-fixing offences .... Following ... the commencement of criminal proceedings, the TFF started disciplinary investigations against the applicants ... The fact that the disciplinary authorities of the TFF examined the criminal file and based their reasoning solely on its contents ... (transcripts of tapped telephone conversations which had been authorized for criminal proceedings) ... **is sufficient for the Court to conclude that a strong link existed between the criminal and the disciplinary proceedings that rendered Article 6(2) applicable in the context of the latter.**"

# nemo tenetur





Article 176 (arbitration agreement)  
Article 180 (1) (independence)  
Article 182 (3) (proportionality)  
Article 184 (arbitration)

Articles 176 et seq PILA

Article 190 PILA

no direct applicability

Article 1: "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention."

administrative

legislative

judiciary

"indirect" applicability

exercise in conformity with ECHR

"indirect" applicability

ECtHR (40575/10;  
67474/10) "... The ... [arbitral  
tribunal] is neither a domestic  
court nor any other institution  
of Swiss public law, but an  
entity emanating from ... a  
private-law foundation ..."





ECtHR (7198/07), no. 30 et seq.: "**Le droit d'accès à un tribunal n'est pas absolu** et se prête à des limitations implicitement admises, notamment en ce qui concerne les conditions de recevabilité d'un recours ... Néanmoins, les limitations appliquées ne sont conciliables avec l'article 6(1) que si elles **poursuivent un but légitime** et s'il existe un rapport raisonnable de **proportionnalité** entre les moyens employés et le but visé. ... La Cour rappelle, enfin, le principe fondamental selon lequel **c'est aux ... tribunaux, qu'il appartient d'interpréter et d'appliquer le droit interne** ... La Cour ne peut dès lors mettre en cause l'appréciation des autorités internes quant à des erreurs de droit prétendues que lorsque celles-ci sont **arbitraires ou manifestement déraisonnables**. ...

ECtHR (31737/96): "... the Court ... takes account also of the applicable legislative framework for arbitration ... and the control exercised by the domestic courts within that framework ... **The ... Contracting States enjoy considerable discretion in regulating the question on which grounds an arbitral award should be quashed**, since the quashing of an ... award will often mean that a long and costly arbitral procedure will become useless and that considerable ... expense must be invested in new proceedings. In view of this the ... relevant Finnish legislation does not appear arbitrary or unreasonable."

ECtHR (28101/95): "the grounds on which arbitral awards may be challenged before national courts differ among the Contracting States and ... **it cannot be required under the Convention that national courts must ensure that arbitral proceedings have been in conformity with Article 6 ... each Contracting State may in principle decide itself on which grounds an arbitral award should be quashed.** "

## Article 190 PILA

SFT (4A\_406/2021), consid. 7.2: "**It should also be pointed out that the violation of the provisions of the ECHR or the Constitution is not one of the complaints listed exhaustively in Article 190 of the PILA. It is therefore not possible to invoke such a violation directly. The principles underlying the provisions of the ECHR or the Constitution may, however, be taken into account in the context of public policy in order to give concrete expression to this notion.**"



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"indirect" applicability



exercise in conformity with ECHR

"indirect" applicability



CAS Arbitrator



Swiss federal  
Tribunal

legislat

judicia

**Article 1:** "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention."

administrative

legislative

judiciary



Article 178 (jurisdiction agreement)

Article 180 (1) (independence)

Article 180(2) (non-removal)

Article 184 (independence)

## Articles 176 et

ECtHR 1974/1975, no. 30 et seq. "La Cour a constaté que les États ont tenu compte des obligations qu'ils ont assumées en vertu de l'article 176 de la Convention et qu'ils ont pris les mesures nécessaires pour assurer l'indépendance et l'impartialité de la Cour."

ECtHR 1975/1976, no. 30 et seq. "La Cour a constaté que les États ont tenu compte des obligations qu'ils ont assumées en vertu de l'article 176 de la Convention et qu'ils ont pris les mesures nécessaires pour assurer l'indépendance et l'impartialité de la Cour."

ECtHR 1976/1977, no. 30 et seq. "La Cour a constaté que les États ont tenu compte des obligations qu'ils ont assumées en vertu de l'article 176 de la Convention et qu'ils ont pris les mesures nécessaires pour assurer l'indépendance et l'impartialité de la Cour."

## Article 190 PIL

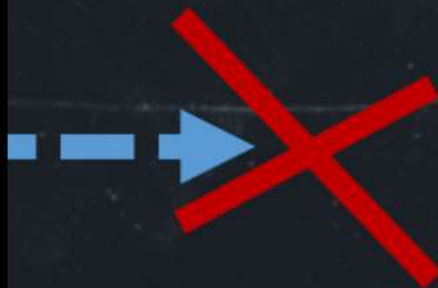
5/17 (AA\_4016/2021) n°47 73 "Il should also be pointed out that the provisions of the ECHR or the Convention are not one of the provisions of the PIL. It is therefore not possible to invoke the provisions underlying the provisions of the ECHR or the Convention in the context of public policy in order to give content."



CAS Code R58: The Panel shall decide the dispute according to the applicable regulations and <sup>2a</sup> rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled <sup>2b</sup> according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision. <sup>1</sup>

**level-1** (law applicable to the merits):  
ECHR not applicable, because IF is not a state legislator

**level-1** (law applicable to the merits):  
ECHR applicable, because of self-commitment



ECtHR  
implicit

# ECHR applicable, because of sel



### 3 Human rights

FIFA is committed to respecting all internationally recognised human rights and shall strive to promote the protection of these rights.

### WORLD ANTI-DOPING CODE

2021

The purposes of the World Anti-Doping Code and the World Anti-Doping Program which supports it are:

- To ensure harmonized, coordinated and effective anti-doping programs at the international and national level with regard to the prevention of doping, including:

Rule of law – to ensure that all relevant stakeholders have agreed to submit to the Code and the International Standards, and that all measures taken in application of their anti-doping programs respect the Code, the International Standards, and the principles of proportionality and human rights.



### Statement of Commitment to Respect for Human Rights

No. 1: The Formula 1 companies are committed to respecting internationally recognised human rights in its operations globally.

CAS 2020/O/6689 (Wada v. Rusada), no. 545: "... pursuant to Article 4.4.2 [of the International Standard for Code Compliance with Signatories] ISCCS, the Panel is to interpret and apply the ISCCS in light of the fact that it has been drafted giving due consideration to the principle and respect of human rights, proportionality and other applicable legal principles."

*bound like a state?*

recognised human rights  
rights.

Program which supports it are:

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nt to Respect

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- self-commitment does not turn a sports organisation into a state
- unlike a state, a sports organisation is also a bearer of rights (and not only of obligations)
- respect of ECHR as an objective legal order and value system providing a normative framework and guidepost for interactions

*bound like a state?*


CAS Code R58: The Panel shall decide the dispute according to the applicable regulations and <sup>2a</sup> rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the <sup>2c</sup> challenged decision is domiciled <sup>2b</sup> according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

**level-1 (law applicable to the merits):**

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**level-1 (law applicable to the merits):**

ECHR applicable, because of self-commitment



**3 Human rights**  
This is concerned with respecting all internationally recognised human rights and shall strive to promote the protection of these rights.

**CAS 3010/O/6689 (Wada v. Russia), no. 545 – pursuant to Article 4.4.2 [of the International Standard for Code Compliance with Signatories]**  
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*bound like a state?*


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**level-1 (law applicable to the merits):**


ECHR not applicable, because IF is not a state legislator

**level-1 (law applicable to the merits):**


ECHR applicable, because of self-commitment



**3 Human rights**  
This is concerned with respecting all internationally recognised human rights and not allowing any to be violated in the exercise of these rights.



**WORLD ANTI-DOPING CODE**  
The purpose of the World Anti-Doping Code is to protect the integrity of sport and to ensure that all athletes compete on a level playing field.



**Statement of Commitment to Respect for Human Rights**  
We, the Formula 1 companies, are committed to respecting internationally recognised human rights in the operation of our globally.

CAS 3010/O/6689 (Wada v. Russia), no. 545 – pursuant to Article 4.4.2 [of the International Standard for Code Compliance with Signatories] ISCCS, the Panel is to interpret and apply the ISCCS in light of the fact that it has been drafted giving due consideration to the principle and respect of human rights, proportionality and other applicable legal principles"

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*bound like a state?*

**level-1 (law applicable to the merits):**

ECHR applicable, because part of the lex sportiva?

# ECHR applicable, because part of the lex sportiva?

**Purpose and contents** CAS 98/200 (AEK Athens v. Slavia Prague), no 156: "The Panel is of the opinion that *all sporting institutions*, and in particular all international federations, **must abide by general principles of law**. Due to the transnational nature of sporting competitions, the effects of the conduct and deeds of international federations are felt in a sporting community throughout various countries. Therefore, the substantive and procedural **rules to be respected by international federations cannot be reduced only to its statutes and regulations** and to the law where federation is incorporated ... Sport Law has developed ... a set of unwritten legal principles, a sort of **lex mercatoria for sport so to speak ... to which national and international sports federations must conform**."

CAS 2015/A/4304 (Tatyana Andrianova v. ARAF), no. 45: "The Sole Arbitrator further notes that **the 2015 WADC makes frequent references to "human rights"** (cf. page 11, 17, 57 [comment], 113 [comment]). The Sole Arbitrator also notes that **the 2015 ADR [of the signatory] deleted all references to human rights** and have not – at least in this respect – implemented the 2015 WADC verbatim. Whether this is in line with the obligations of a Signatory to the Code can be left unanswered here. It is – again – **rather obvious for the Sole Arbitrator that a federation cannot opt out from an interpretation of its rules and regulations in light of principles of "human rights" just by omitting any references in its rules and regulations to human rights**!"



legislative

# judiciary

case, the Panel shall give reasons for its decision.

**level-1** (law applicable to the merits):  
ECHR not applicable, because IF is not a state legislator

**level-1** (law applicable to the merits):  
ECHR applicable, because of self-commitment



**level-1** (law applicable to the merits):  
ECHR applicable, because part of the *lex sportiva*?

**Keywords and themes:** CAS 98/2002 (Jury Rights v. State's Rights); on the "The Power is in the agreement, all among constitutions, and in particular of international treaties, must reside by general principles of law. Thus in the international context of sporting competition, its effects of the transfer and benefits of international federations are felt by a sporting community worldwide across countries. Therefore, the subjective and procedural 'rules' in force for the international federations cannot be reduced only to its domestic law competences, and to the law where federation is incorporated – sport law has developed – as a set of universal legal principles, a sort of the standards for sport as such – in which national and international legal federations have been developed."

CAS 1015/14/304 (Tarauna Andronescu v. AAPM, no. 45, 7 Feb. 2016). The Sole Arbitrator further notes that the 2015 WAC makes reference inhuman rights in "human rights" (para 11, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837

## Article 190 PILA

ECtHR (526/18), no. 59 et seq.:" ... la sanction litigieuse a en l'espèce été infligée par la FIFA ... une association de droit privé suisse. En l'absence d'une mesure étatique, la Cour estime qu'elle ne peut pas aborder le grief formulé sur le terrain de l'article 8 sous l'angle de la théorie de l'ingérence. *Il lui appartient, dès lors, d'examiner si l'État défendeur s'est acquitté de ses obligations positives ... de la Convention. ...*

## Article 190 PILA

Celles-ci peuvent nécessiter l'adoption de mesures visant au respect de la vie privée jusqu'à dans les relations des individus entre eux. Si la frontière entre les obligations positives et négatives de l'État au regard de l'article 8 ne se prête pas à une définition précise, *les principes applicables sont néanmoins comparables*. En particulier, dans les deux cas, il faut prendre en compte le juste équilibre à ménager entre l'intérêt général et les intérêts de l'individu, l'État jouissant en toute hypothèse d'une marge."

*Control further limited because of appeal against arbitral award*

# What are the effects of the ECHR on sport practice and jurisprudence?

Article 1: "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention."

administrative

legislative

judiciary



no direct applicability

Article 1: "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention."

administrative

legislative

judiciary



ECHR (formally Convention for the Protection of Human Rights and Fundamental Freedoms)

International Convention drafted in 1950 by the Council of Europe (entered into force on 3 September 1950)

All member states of the Council of Europe must ratify the ECHR (47)

Contents



ECHR (40575/10; 67474/10) "... The ... [arbitral tribunal] is neither a domestic court nor any other institution of Swiss public law, but an entity emanating from ... a private-law foundation ..."

## What are the effects of the ECHR on sport practice and jurisprudence?



Thank you for your attention