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The Iakovos Tsakalidis Dispute Between the Phoenix Suns and Greek AEK Before the Court of Arbitration for Sport

The Iakovos Tsakalidis dispute between the Phoenix Suns and Greek AEK Basketball Club offers a unique opportunity to explain the functions and procedures of the Court of Arbitration for Sport and to understand how it can be utilized to settle commercial conflicts between foreign parties.

Part I will explain the dispute between the Suns and AEK regarding the contractual rights to Tsakalidis and how the dispute was ultimately submitted to the Court of Arbitration for Sport (CAS) for settlement. Part II will focus on the formation and control of the CAS by the International Council of Arbitration for Sport (ICAS). Part III explains the structure and operation of the CAS including the submission of a dispute to the CAS, the pleadings, hearings and the communication of the decision and award. Part IV highlights the importance of The New York Convention to the credibility and enforceability of international arbitration. Part V is an explanation of the decision of the CAS in the Tsakalidis case and Part VI is the author’s reasoning for the decision based upon facts, statements made by the parties, and conjecture.

I. One Player, Two Teams, and Three Countries

On June 28, 2000, a small party broke out inside the Phoenix Suns’ very public NBA Draft headquarters at Bank One Ballpark; only a glass partition separated the rabid fans on the outside from the very happy basketball executives on the inside.¹ The player the Suns wanted, seven-feet-two-inch center Iakovos “Jake” Tsakalidis

¹ See Pedro Gomez, Suns’ Surprising Pick Looks Like Conspiracy, ARIZ. REP., July 6, 2000, at C1. It is now a common occurrence for fans of particular sports teams to gather at the team offices and celebrate the additions to the team at the moment of acquisition.
Tsakalidis is a twenty-one year old professional basketball player born in Rustavi, Republic of Georgia with dual Georgian and Greek citizenship. He was an Olympic-caliber swimmer until he grew seven inches at age fourteen. In 1993, he moved to Greece with his parents and picked up his first basketball. In 1996, his father signed him to a four-year "amateur" contract with AEK (pronounced Ike), which is required for underage players.

Oddly, virtually the same scene that took place in Phoenix took place in downtown Athens at the headquarters of AEK, Tsakalidis' Greek team, once its executives learned of the Suns' selection. The question is why would AEK be so happy about Phoenix selecting its young star player, who has the potential to become one of the most dominant centers in Europe? This phenomenon is global basketball, where the worldwide draft is causing more under-the-table dealings than most casual fans are aware.

Tsakalidis' "amateur" contract expired last season, and AEK knew that he intended to leave for the NBA. But AEK tendered him a "professional" contract on June 10, 2000 when Tsakalidis turned twenty-one. Tsakalidis claims that he had no discussions or negotiations with AEK and he didn't sign the "professional" contract AEK tendered him. AEK contends that based on Greek

5. See Young, supra note 3.
7. Bob Young, "Jake" Didn't Sign Pact, Agent Says, ARIZ. REP., Jun. 30, 2000, at C1. It is a customary practice for Greek athletic organizations to sign underage players to what they refer to as "amateur" contracts. These contracts are usually signed by the player's parent and legally bind the underage player to the professional organization until the player reaches the age of twenty-one. The team will then claim that a reserve clause in the "amateur" contract allows the team to unilaterally sign the athlete to a "professional" contract with the team. See James A.R. Nafzinger, International Sports Law: A Replay of Characteristics and Trends, 86 AM. J. INT'L L. 489, 508 (1992).
8. See Gomez, supra note 1.
9. Id.
10. See Young, supra note 7.
11. Id.
12. Id.
law, this is a perfectly valid contract, and the customary way in which young basketball players contracts are handled. Tsakalidis’ agent, Bill Pollack stated, “They tendered him a unilateral contract, said here’s your new five-year contract, it was sort of like it came in the mail. It could have come in a Cracker Jack box.” He also argued, “That’s a unilateral contract, and it was given to him. Greek law says you can do that. You can’t do it in Arizona, . . . you can’t do it in London. So we’re going to find a lot about the validity of what has been tendered to him. But he did not at any time sign this new contract.”

The Greeks hailed Socrates Lambropoulos, chief legal counsel for AEK, as a conquering hero after he somehow managed to convince all the other NBA teams drafting in front of the Suns not to take Tsakalidis. The draft was two hours old, and only Tsakalidis remained in the greenroom. The seven-feet-two-inch, 283-pound Greek center, had been expected to go as high as number eight to the Cleveland Cavaliers until the Cavaliers and others were scared away by AEK (namely Socrates Lambropoulos), which faxed a legal warning to teams that Tsakalidis has four years left on his contract. So the question remains then, why would Lambropoulos be a hero for dissuading all but the Suns to steer clear of Tsakalidis?

There are several coincidences that indicate there may have been an under-the-table deal between the Suns and AEK. First, the Suns’ owner Jerry Colangelo traveled to Greece during the NBA playoffs. Second, Tsakalidis’ U.S. agent, Bill Pollack of Scottsdale, Arizona took on his new client just three weeks before the draft. Pollack and Jerry Colangelo, the owner of the Suns, have been friends for twenty years. Third, rumors persist that the

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13. Bob Young, Tsakalidis Hearing Set Thursday, Could End Same Day, ARIZ. REP., Sept. 20, 2000, at C6. See supra note 7 describing the customary way in which “amateur” contracts are manipulated by Greek teams.
14. See Young, supra note 7.
15. Id.
16. See Gomez, supra note 1.
17. See Pascoe, supra note 2. Bill Pollack’s major contention with the “amateur” contract that was tendered to Tsakalidis and the subsequent “professional” contract was that Tsakalidis never signed any of the contracts in question. So Pollack argues that Tskalidis cannot be held to a reserve clause from an “amateur” contract that he never signed that requires him to play for the professional club. See Young, supra note 7.
18. See Gomez, supra note 1.
19. See id.
20. See id.
21. See id.
twenty-nine letters sent to the Cleveland Cavaliers and the other twenty-eight NBA teams informing them of Tsakalidis' contractual obligations with AEK were nothing more than a smoke screen for all but the Suns. These rumors also indicate that the deal between the Suns and AEK was to permit Tsakalidis to play two more years for AEK before being freed to join the Suns for the 2002-03 season. However, because of the possibility of tampering charges being administered against the Suns and AEK by the NBA and the Greek league, the clubs will never vary from their public stance of pleading ignorance to all of the rumors and innuendo. Otherwise, the Suns and AEK could face sanctions from the NBA and the Federation Internationale de Basketball Associations (FIBA), basketball's international governing body.

The Suns intended to allow Tsakalidis to stay with the Greek club for two more seasons, but "a funny thing happened on the way to the draft." Tsakalidis made it clear that he did not wish to return to AEK. Not surprisingly, AEK has made clear that they want to keep Tsakalidis for the term of his Greek "professional" contract. Reportedly, after AEK determined that Tsakalidis did not intend to return to them, it circulated the rumor that they were going to ask for a buyout of $3 million to $5 million. The Suns now contend that they have a legal right to sign Tsakalidis because his five-year contract with AEK has lapsed, he never signed the initial contract, and he was only sixteen when his father signed the contract. Therefore, the contract should be voided based on American contract law principles.

22. See id.
24. See Gomez, supra note 1. The NBA could impose severe sanctions on the Suns if it ever is determined that the Suns conspired with AEK to create a draft day situation that would chill the interests of all the other NBA teams and allow the Suns to select Tsakalidis with their number eight pick whereas Tsakalidis may have been drafted with a higher selection.
25. See Pascoe, supra note 2. The Suns originally planned to draft Tsakalidis and then allow him to develop for two additional years. This would have been ideal for the Suns because it would have acquired the rights to the potential star without having to pay him for two years while he developed. If the Suns are successful in the AEK arbitration, it will acquire the rights to Tsakalidis, but they will have to place him on the roster. This will require the Suns to pay him while he develops and it will also take up a roster spot that could be occupied by a player that would make less money and could presently contribute more.
26. See Pascoe, supra note 2.
27. See Young, supra note 7.
Despite the polarized arguments, the Suns and Tsakalidis both believe that Tsakalidis will play for the Suns in 2000.29 "I can't sit here and give you promises or guarantees or assurances," Pollack said. "I can only give you the absolute understanding that whatever can possibly be done will be done." Pollack said Tsakalidis is a player with "great resolve" and is determined to play next season for the Suns.31 Tsakalidis said he set his sights on the NBA two years ago.32 "To a point, they didn't believe I would leave," Tsakalidis said. "Among other things, they thought it would be too much of a culture shock for me to leave from Greece and come and live in another country, especially the United States, where (my) knowledge of the language is not excellent."33

As a result of this apparent dispute, the Suns and AEK agreed to go to arbitration before the Court for Arbitration for Sport (CAS).34 The Court of Arbitration for Sport is charged with settling the dispute by determining what laws to apply and the effect that those laws have on the present dispute.35 The Suns base their argument on the American contract law principles such as voidability of infant contracts,36 the disdain for unilateral contracts,37 and common law principles disfavoring reserve clauses.38 AEK's position is grounded in Greek law.39 AEK mandates that their initial "professional" contract with Tsakalidis remains valid and that it contains a reserve clause (provided for by Greek contract law) that allows AEK to renew Tsakalidis' contract at their discretion.40

II. History of the Court of Arbitration for Sport

The Court of Arbitration for Sport (CAS) is an institution independent of any sports organization, created in 1983 to offer its users a means of settling disputes adapted to the specific needs of

29. See Young, supra note 3.
30. See Young, supra note 7.
31. See id.
32. See id.
33. See Young, supra note 7.
34. See Bob Young, Arbitration Likely in Tsakalidis Case, ARIZ. REP., Sept. 7, 2000, at C3.
35. See Court of Arbitration for Sport Code [hereinafter CAS Code], infra note 44.
36. See Young, supra note 6.
38. See id.
39. See id.
40. See supra notes 2, 7.
the global sports world. The CAS has 150 arbitrators from 37 countries, chosen for their specialist knowledge of arbitration and sports law41 and between 1991 and 1995, they have heard more than 100 cases.42 TheCAS operates under the administrative and financial authority of the International Council of Arbitration for Sport, which comprises several independent personalities.43 The task of the ICAS is to facilitate the settlement of sports-related disputes through arbitration or mediation and to safeguard the independence of the CAS and the rights of the parties.44 To effectuate the settlement of these sports-related disputes, it supervises the administration and financing of the Court of Arbitration for Sport.45

A. The International Council of Arbitration for Sport

The International Council of Arbitration for Sport (ICAS) is the supervising authority for the Court of Arbitration for Sport. The ICAS is responsible for effectuating many mandates. Namely, adopting and amending The Code of Sports-Related Arbitration (CAS Code), which is the document from where the ICAS and the CAS derive their authority.46 The ICAS elects the President from among its members for a renewable period of four years. The current President of the ICAS is H.E. Judge Keba Mbaye.47 The ICAS is also empowered to appoint the jurists who constitute the list of CAS arbitrators and to hear and rule on challenges of arbitrators by the participating parties in an arbitration.48

As was stated previously, the ICAS is charged with financing the operation of the CAS. To insure that the CAS will be properly

42. See Nafziger, supra note 7, at 508. There are at least 150 of these arbitrators selected by the ICAS. See CAS Code, art. S13.1.
43. See Nafziger, supra note 7, at 489.
44. See CAS Code, art. S2.1 (providing the premise for the general mission statement of the Court of Arbitration for Sport).
45. See CAS Code, art. S2.1. Article S2.1 establishes the degree of control and responsibility the International Council of Arbitration for Sport has with regard to the Court of Arbitration for Sport. See Nafziger, supra note 7, at 489.
46. See CAS Code, art. S6.1.1.
47. See CAS Code, art. S6.1.2. The current President of the ICAS can be found at http://www.tas-cas.org/english/info/frainfo.asp (last visited Oct. 15, 2001).
48. See CAS Code, art. S6.1.3.
financed and operational, the ICAS receives and manages, in accordance with the financial regulations of the CAS, all the funds allocated to its operations. The ICAS must also approve its own budget that is prepared by the Court Office of the CAS. In short, the ICAS is obliged to manage the finances of the CAS and the Court Office of the CAS which, ironically, is responsible for the ICAS's own budget. The ICAS appoints the Secretary General of the CAS, presently Matthieu Reeb, and terminates his duties upon proposal of the President. Not only does it control the finances of the Court Office of the CAS, but it also supervises the Court Office's activities. If necessary, the ICAS has the authority to establish additional regional, local, permanent or ad hoc arbitral courts.

The ICAS may also create a legal aid fund to facilitate access to CAS arbitration and determine the terms of disbursement of these legal aid funds. The ICAS also possesses considerable equitable power to take any other action which it deems likely to protect the rights of the parties and, in particular, to best guarantee the total independence of the arbitrators and to promote the settlement of sports-related disputes through arbitration. This equitable power allows the ICAS to create a mediation system that promotes efficient and satisfactory settlements of sports-related disputes.

The ICAS performs its required duties either by acting as a whole, with all of its members participating in the decision making process, or through the intermediary of its Board. The Board is made up of the President and two Vice-Presidents of the ICAS, the President of the Ordinary Arbitration Division and the President of

49. See CAS Code, art. S6.1.5.
51. See CAS Code, art. S6.1.8. This portion of the CAS Code gives the ICAS the mandate to create new courts in other areas to promote the use and application of the Court of Arbitration for Sport in sports-related disputes. The Tsakalidis arbitration is an example of Article S6.1.8 in action because the Tsakalidis arbitration is taking place in London instead of the seat of the Court in Lausanne, Switzerland.
52. See id.
53. See CAS Code, art. S6.1.9.
54. See CAS Code, art. S6.1.10. This portion of the CAS Code provides a mechanism for the ICAS to create mediation systems to further promote the concept of settling these types of sports-related disputes without litigation. See CAS Code, art. S6.1.11.
the Appeals Arbitration Division of the CAS. The ICAS may not delegate to the Board the functions listed under Article S6, paragraphs 1, 2, 5.2 and 5.3 of the CAS Code (these paragraphs deal with the formation of the board and budgetary implications).

B. ICAS Composition

The ICAS is composed of twenty high-level jurists. These jurists are appointed in the following manner: (a) four members are appointed by the International Sports Federations ("IFs"), three by the Summer Olympic IFs (ASOIF), one by the Winter Olympic IFs ("AIWF"), chosen from within or from outside their membership; (b) four members are appointed by the Association of the National Olympic Committees ("ANOC"), chosen from within or from outside its membership; (c) four members are appointed by the International Olympic Committee ("IOC"), chosen from within or from outside its membership; (d) four members are appointed by the twelve members of the International Council of Arbitration for Sport (ICAS), after appropriate consultation with a view to safeguarding the interests of the athletes; and (e) four members are appointed by the sixteen members of the ICAS listed above and chosen from among personalities independent of the bodies designating the other members of the ICAS.

The members of the ICAS are appointed to serve for renewable four-year terms. When the members are appointed to the ICAS they must sign a declaration pledging to exercise their function in a personal capacity, with total objectivity and independence, in conformity with the Code of Sports-Related Arbitration. They are, in particular, bound by the confidentiality obligation that is provided in Article R43 of the CAS Code. As long as these jurists are members of the ICAS, they are barred from serving as arbitrators in the Court of Arbitration for Sport. Furthermore, they may not serve as counsel to any party in proceedings before the CAS.

If an ICAS jurist becomes incapacitated, resigns, dies or in any other way is prevented from carrying out the functions and duties associated with the position, the jurist will be replaced, for the

55. See CAS Code, art. S7.1.
56. See id.
57. CAS Code, art. S4 (this statute describes the composition of the ICAS and the particular areas of interest the members represent).
58. See CAS Code, art. S5.
remaining period of the term, according to the terms incorporated in the language of the jurist's appointment.\textsuperscript{59}

C. \textit{The Operation of the ICAS}

The ICAS meets whenever required by the activity of the CAS or at least once a year.\textsuperscript{60} The CAS Code requires the ICAS to achieve a quorum of at least half of its voting members prior to undertaking any deliberations or voting on any proposal before the board.\textsuperscript{61} Decisions are made during meetings or can be made by correspondence. A simple majority of the voting members is sufficient for a decision by the ICAS to be binding. If by chance there is no simple majority, the President of the ICAS will cast the tie-breaking vote.\textsuperscript{62} However, to modify The Code of Sports-Related arbitration, the results of the vote must result in a super-majority of two-thirds of the members of ICAS.\textsuperscript{63} Although ICAS members may vote by correspondence, they may not, act by proxy.\textsuperscript{64} The Secretary General of the CAS acts as a liaison between the CAS and the ICAS. The Secretary General accomplishes this task by taking part in the decision-making process in the ICAS by consulting and advising the ICAS on particular issues and by acting as Secretary to the ICAS.\textsuperscript{65}

The President of the ICAS also serves as President of the CAS. The President of the CAS is responsible for overseeing the ordinary administrative tasks within the jurisdiction of the ICAS.\textsuperscript{66} The Board of the ICAS meets per the request of the ICAS President in order to address issues pertinent to the ICAS and the CAS.\textsuperscript{67} The Board constitutes a quorum if three of its members participate in taking a decision.\textsuperscript{68}

The independence and impartiality of any member of the ICAS or the Board may be challenged by a party to an arbitration

\begin{itemize}
\item[59.] \textit{See id.}
\item[60.] \textit{See CAS Code, art. S8.}
\item[61.] \textit{See id.}
\item[62.] \textit{See id.}
\item[63.] \textit{See id.}
\item[64.] \textit{See id.}
\item[65.] \textit{See CAS Code, art. S8. This portion of the CAS Code allows the Secretary General to advise the ICAS in regard to pending ICAS decisions. This provision establishes a working liaison between the governing body (International Council of Arbitration for Sport) and the functional body (The Court of Arbitration for Sport). \textit{See} Nafziger, \textit{supra} note 7, at 508.}
\item[66.] \textit{CAS Code, art. S9.1.}
\item[67.] \textit{CAS Code, art. S10.2.}
\item[68.] \textit{CAS Code, art. S10.2}
\end{itemize}
before the CAS, pursuant to Article S6, paragraph 4, when circumstances of the arbitration could result in a conflict of interest for an ICAS jurist. The challenged jurist must immediately disqualify himself when, as a party, a sports body to which he belongs is the subject an arbitration proceeding or if a member of the law firm to which he belongs, is an arbitrator or counsel in an arbitration proceeding. The disqualified member of Board may not take part in the deliberations concerning the arbitration in question and cannot receive any information on the activities of the ICAS and the Board concerning the arbitration in question.

III. The Operation of the CAS

The arbitration offered by the Court of Arbitration for Sport is like any other arbitration, the CAS's arbitration is a means of dispensing justice, in the same way as ordinary civil courts. The affect of the arbitration offered by the CAS is binding based on the written agreement by the parties to submit their dispute to the CAS, thus submitting themselves to binding arbitration. The CAS procures the arbitral resolution of disputes arising within the field of sport through the intermediary of arbitration provided by Panels composed of one or three arbitrators.

The CAS is headquartered in Lausanne, Switzerland and comprised of an Ordinary Arbitration Division and an Appeals Arbitration Division. Since 1996, two decentralized courts have been available to parties, one in Sydney, Australia, the other in Denver, Colorado. These decentralized courts were established to provide more athletes and sports-related entities an opportunity to submit themselves to arbitration. Sydney, Australia and Denver were chosen based on their locations in their respective countries. These centralized sites afford Australian and American athletes easier access to the arbitration mechanism. The CAS may also set up ad hoc courts in special situations. The courts associated with the Olympic Games are an example of these ad hoc courts.

69. CAS Code, art. S11.
70. Id.
71. Id.
72. See CAS Code, arts. R27, R46. The Phoenix Suns and Greek AEK contractually agreed to submit to binding arbitration. See Young, supra note 7.
73. See CAS Code, art. S20.
74. CAS Code, art. R28.
75. CAS Code, art. S20.
76. See Rebecca Cantwell, Sports Court Comes to Denver. Two New Locations in World Added to Arbitrate Athletes' Disputes, ROCKY MOUNTAIN NEWS, Aug. 7, 1996, at 2B.
Necessarily, the *ad hoc* courts take into account the circumstances of the situations that required their formation and, thus, special rules of procedure are established. These special rules of procedure provide, for example, that an award must be pronounced within 24 hours, as was the case at the Games in Sydney.\(^7\)

The CAS has the authority to hear any dispute directly or indirectly linked to sport, whether be it commercial or related to the practice and development of sport (e.g. a dispute over a player/service contract) or a dispute following a decision by a sports organization.\(^8\) Any natural or artificial person with capacity to effect a legal transaction may have recourse to the services of the CAS, for example an athlete, club, sports association or federation, organizing committee of a sports event, sponsor, radio or television company, etc.\(^9\)

**A. Initiation of Arbitration**

The parties must agree in writing for a dispute to be submitted to arbitration by the CAS.\(^8\) Such agreement may appear in a contract or in the statutes or regulations of a sports organization.\(^8\) Parties may agree in advance to submit any future dispute to arbitration by the CAS, or they can agree to submit themselves to CAS arbitration after a dispute has arisen.\(^8\) For disputes resulting from contractual relations or wrongful acts, the ordinary procedure is applicable. For disputes resulting from decisions taken by the organs of sports federations or associations, the appeals procedure is applicable.\(^8\)

The Tsakalidis case is an example of a dispute between two sports-related entities concerning a contractual situation. The ordinary procedure of arbitration will be invoked to settle this dispute because neither party had the authority to effectuate a prior decision to be appealed. Because AEK and the Phoenix Suns are, basically of equal stature, the ordinary arbitration procedure was used to settle their dispute. Had there been a conflict created by the Greek League ruling that Tsakalidis was required to play for AEK until his contract expired, then this would then be a conflict arising from a ruling of a sports association. Therefore, the appeals

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\(^7\) See CAS Code, art. R28.
\(^8\) See CAS Code, art. R27.
\(^9\) See id.
\(^8\) See id.
\(^8\) See id.
\(^8\) See id.
\(^8\) See id.
procedure would have been the appropriate convention. Lastly, there is an advisory procedure that permits certain bodies to request an advisory opinion from the CAS on any legal issue concerning the practice or development of sport or any activity relating to sport and not the subject of any dispute. However, the advisory opinion given by the CAS does not constitute an award and is not binding.

The party wishing to submit a dispute to the CAS must send the CAS Court Office a Request for Arbitration (ordinary procedure) or a Notice of Appeal (appeals procedure), the contents of which are specified by the Code of Sports-related Arbitration. The party intending to submit a petition should file a request with the CAS containing: 1) the name and address of the respondent; 2) a brief statement of the facts and legal argument, including a statement of the issue to be submitted to the CAS for determination; 3) the claimant's request for relief; 4) a copy of the contract containing the arbitration agreement or of any document providing for arbitration in accordance with these Procedural Rules; and 5) any relevant information about the number and choice of the arbitrator(s).

Upon the filing of the request, the claimant must pay a minimum Court Office fee of 500 Swiss francs to commence the CAS proceedings. The CAS will keep this fee and take it into account when assessing the final amount of the fees.

The Court Office of the CAS will determine the amount of the advance of costs required for arbitration after the formation of the Arbitration Panel. The filing of a counterclaim or a new claim will result in a determination by the Court Office of separate advances for the counterclaim and new claim. To determine the amount of the advance, the Court Office will estimate the costs of the arbitration for which the parties will likely be responsible. The required advance is to be paid in equal portions by the claimant and the respondent. If a party fails to pay its share, the other may substitute for it; in the absence of substitution, the claim associated

84. See id.
85. CAS Code, art. R62.
86. CAS Code, art. R38.1.
87. Id.
88. See CAS Code, art. R64.1.
89. Id.
90. See CAS Code, art. R64.2.
91. Id.
with the unpaid portion will be considered withdrawn from the arbitration proceedings.92

Each party is responsible for the cost of its own witnesses, experts and interpreters and must advance the cost of these individuals at the onset of the arbitration. If the Panel appoints an expert, retains an interpreter or orders the examination of a witness, the Panel will issue directions with respect to an advance of costs (from the appropriate party).93

At the close of the proceedings, the Court Office will determine the final amount of the cost of arbitration. This is the sum of the CAS Court Office fee and the costs of the arbitrators, witnesses, experts and interpreters.94

The final arbitral award will state all the foregoing costs and will indicate how the costs have been allocated to the individual parties.95 Usually, the award grants the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters.96 When determining the final award and costs, the Panel will take into account the outcome of the proceedings and any other factors relevant to the ultimate conclusion of the dispute and effectuation of the award.97

B. The Arbitration Panel

Generally, the arbitral matter is submitted to a panel of three arbitrators.98 The arbitrators must be independent, i.e., they must not have any particular connection with any of the parties, and must not have played any role in the case in question.99

In each case, each party chooses an arbitrator from the CAS list, then the two designated arbitrators select a third, who acts as President of the Panel. However, if the parties agree, or if the CAS deems it more appropriate, a single arbitrator may be appointed to the case.100 This was the case in the Suns/AEK arbitration. The

92. Id.
93. See CAS Code, art. R64.3.
94. See CAS Code, art. R64.4.
95. See CAS Code, art. R64.5.
96. Id.
97. See CAS Code, art. R65.4 (other relevant factors may be the party's conduct and financial resources).
98. See CAS Code, art. R40.1. The arbitration can also proceed with only one arbitrator if the parties agree to that stipulation. See CAS Code, art. R27.
100. See CAS Code, art. S40.2.
Suns and AEK agreed to allow the CAS to appoint a single arbitrator.101

The parties may agree on the method of appointment of the arbitrators. However, barring an agreement between the parties, the arbitrators are appointed following the manner outlined in the CAS Code. If, according to an arbitration agreement or a decision of the President of the Division (Ordinary or Appellate), a sole arbitrator is to be appointed, the parties may select him by mutual agreement within a time limit of twenty days set by the Court Office upon receipt of the request.102 If the parties fail to reach an agreement within the allotted time, the President of the Division will appoint the arbitrator.103 If the arbitration agreement or a decision of the President of the Division mandates that three arbitrators are to be appointed, the claimant must appoint its arbitrator in the request or within the time limit set in the decision on the number of arbitrators and the respondent must choose its arbitrator within the time limit set by the Court Office upon receipt of the request.104 If the parties fail to designate arbitrators, the President of the Division will make the necessary appointments.105

After selection of the initial two arbitrators (either by the parties or by the President of the Division), the two arbitrators will then select the third member of the Panel who will serve as President of the Panel. The selection of the President of the Panel must occur within a time limit set by the Court Office.106

The President of the Division must confirm the selection of each arbitrator selected by the parties or by the other arbitrators.107 Confirmation by the President of the Division requires that each arbitrator fulfills the requirements of Article R33 concerning the independence and qualifications of arbitrators.108 After confirmation by the President of the Division, the Court Office will officially recognize the Arbitration Panel and transfer the corres-

102. See CAS Code, art. 40.2.
103. Id.
104. Id.
105. Id.
106. Id.
107. See CAS Code, art. 40.3.
108. See id. Every arbitrator shall be and remain independent of the parties and shall immediately disclose any circumstances likely to affect independence with respect to any of the parties. CAS Code, art. R33.
ponding file (i.e. dispute or request for opinion) to the newly formed Panel.109

C. The Procedure

A major consideration of the CAS is the efficiency of its proceedings.110 This is evident by the provisions for multiparty arbitration, joinder and intervention.111

109. See CAS Code, art. 40.3.
110. See CAS Code, art. S12. Article S12 describes the goal of the CAS to provide a smooth and efficient proceeding for the settlement of disputes.
111. Article R41 is divided into four subparts; 1) R41.1 Plurality of Claimants/Respondents, 2) R41.2 Joinder, 3) R41.3 Intervention, and 4) R41.4 joint Provisions on Joinder and Intervention.

R41.1 Plurality of Claimants / Respondents.

If the request for arbitration names several claimants and/or respondents, the CAS shall proceed with the formation of the Panel in accordance with the number of arbitrators and the method of appointment agreed by all parties. In the absence of such an agreement, the President of the Division shall decide on the number of arbitrators in accordance with Article R40.1.

If a sole arbitrator is to be appointed, Article R40.2 shall apply. If three arbitrators are to be appointed and there are several claimants, the claimants shall jointly appoint an arbitrator. If three arbitrators are to be appointed and there are several respondents, the respondents shall jointly appoint an arbitrator. In the absence of such a joint appointment, the President of the Division shall proceed with the appointment in lieu of the claimants/respondents. If (i) three arbitrators are to be appointed, (ii) there are several claimants and several respondents, and (iii) either the claimants or the respondents fail to jointly appoint an arbitrator, then both co-arbitrators shall be appointed by the President of the Division in accordance with Article R40.2. In all cases, the co-arbitrators shall select the President of the Panel in accordance with Article R40.2.

R41.2 Joinder

If a respondent intends to cause a third party to participate in the arbitration, it shall so state in its answer, together with the reasons therefore, and file an additional copy of its answer. The Court Office shall communicate this copy to the person the participation of which is requested and set such person a time-limit to state its position on its participation and to submit a response pursuant to Article R39. It shall also set a time limit for the claimant to express its position on the participation of the third party.

R41.3 Intervention

If a third party intends to participate as a party in the arbitration, it shall file with the CAS an application to this effect, together with the reasons therefore within the time-limit set for the respondent’s answer to
The procedure before the Panel comprises written submissions and, if the Panel deems it appropriate, an oral hearing. Upon receipt of the file, the President of the Panel, if appropriate, will issue directions to the parties pertaining to the written submissions. In most cases, there is one statement of the claim, one response and, if the circumstances so require, one reply and one second response. The parties may, in the statement of claim and in the response, raise claims not contained in the request for arbitration and in the answer to the request. Thereafter, no party may raise any new claim without the consent of the other party.

Along with their written submissions, the parties will produce all written evidence upon which they intend to rely. After the exchange of the written submissions, further written evidence may

the request for arbitration. To the extent applicable, such application shall have the same contents as a request for arbitration. The Court Office shall communicate a copy of this application to the parties and set a time limit for them to express their position on the participation of the third party and to file, to the extent applicable, an answer pursuant to Article R39.

R41.4 Joint Provisions on Joinder and Intervention

A third party may only participate in the arbitration if it is bound by the arbitration agreement or if itself and the other parties agree in writing. Upon expiration of the time-limit set in Articles R41.2 and R41.3, the President of the Division shall decide on the participation of the third party, taking into account, in particular, the prima facie existence of an arbitration agreement as referred to in Article R39 above. Such decision shall be without prejudice to the decision of the Panel on the same matter.

If the President of the Division accepts the participation of the third party, the CAS shall proceed with the formation of the Panel in accordance with the number of arbitrators and the method of appointment agreed by all parties. In the absence of such an agreement, the President of the Division shall decide on the number of arbitrators in accordance with Article R40.1. If a sole arbitrator is to be appointed, Article R40.2 shall apply. If three arbitrators are to be appointed, the co-arbitrators shall be appointed by the President of the Division and shall choose the President of the Panel in accordance with Article R40.2.

Regardless of the decision of the Panel on the participation of the third party, the formation of the Panel cannot be challenged. In the event that the Panel accepts the participation, it shall, if required, issue related procedural directions. These subparts reflect the CAS's desire to handle disputes as efficiently as possible by allowing all interested or affected parties to participate in the hearings. See CAS Code, art. R41.

112. CAS Code, art. R41.
113. CAS Code, art. R44.1.
114. See id.
115. See id.
only be submitted by mutual agreement or by permission of the Panel on the basis of exceptional circumstances. In their written submissions, the parties must specify any witnesses and experts which they intend to call and state any other evidentiary measure which they request.

D. The Hearings

At the close of the pleadings, the President of the Panel will set the hearing date and issue any directions with respect to the hearing. Usually, the Arbitration Panel will conduct only one hearing. During this hearing the Panel will hear testimony and consider evidence from the parties, the witnesses and the experts. The parties may call only the witnesses and experts which they have specified in their written submissions. Similar to trials, witnesses and experts will be sworn in by the Arbitration Panel.

A party seeking the production documents by the other party must satisfactorily demonstrate the relevance and existence of the documents in question. If the Panel is satisfied as to the relevance and existence of such documents, the Panel can order the other party to produce the requested documents. Accordingly, the Panel may at any time order the examination of witnesses or appoint and hear experts to supplement the presentations of the parties. The President of the Panel (if a three person Panel) or the sole arbitrator presides over the hearing and ascertains whether the statements made are concise and relevant to the subject of the written presentations. A major difference between CAS arbitration proceedings and United States court proceedings is that there is no provision in the CAS Code for cross-examination of witnesses.

The hearings are private unless both parties agree to allow them to be public. A court reporter will be present to record the minutes of the hearing, however, the minutes remain private, as

116. CAS Code, art. R44.1.
117. See id.
118. See CAS Code, art. R44.2.
119. See supra notes 110-11.
120. CAS Code, art. R44.2.
121. See id.
122. See CAS Code, art. R44.3.
123. See id.
124. See CAS Code, art. R44.2.
125. See CAS Code, art. R43.
does the decision of the Panel, unless both parties agree to publication.126

E. The Decision and Award

The final award is made by a majority vote of the Panel or by the decision of the sole arbitrator (i.e. the Tsakalidis case). Usually, the final decision and the award are communicated to the parties a few weeks after the hearing.127 In the context of the Ordinary Arbitration (i.e. the Tsakalidis case), the Panel will decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to Swiss law.128 In some circumstances, the parties may authorize the Panel to decide ex aequo et bono (according to what is equitable and good).129 In the context of the Appeals Arbitration procedure, the arbitrators rule on the basis of the regulations of the federations or associations concerned by the appeal, and the law of the country in which the sports body which has issued the challenged decision is domiciled.130

As previously stated, the Ordinary Arbitration procedure requires confidentiality.131 The parties, arbitrators and CAS staff are obliged not to disclose any information connected with the dispute. However, the Appeals Arbitration procedure does not specify particular rules of confidentiality. Unless the parties agree to the contrary, the decision and award in an appeals proceeding may be published by the CAS.132

An award pronounced by the CAS is final and binding on the parties from the moment it is communicated.133 The award is to be executed in accordance with the New York Convention on the Recognition and Execution of Arbitral Awards, which more than 130 countries have signed.134 For disputes concerning awards,

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126. See CAS Code, art. R44.2. Awards will not be made public unless the award itself so provides or all parties agree. See CAS Code, art. R43.
127. See CAS Code, art. R46.
128. See CAS Code, art. R45.
129. CAS Code, art. R45. Ex aequo et bono is the Latin phrase that means, “what is equitable and good.” BLACK’S LAW DICTIONARY 581 (7th ed. 1999).
130. CAS Code, art. R58.2.
131. See supra notes 125-26.
132. See CAS Code, art. R59. The probable reason for the non-confidentiality of appeals procedure rulings and awards is that the appeals procedure is used to interpret the rules and regulations of sports federations and controlling bodies. These interpretations could be useful to others besides the parties to the arbitration. See CAS Code, art. S12(b).
133. CAS Code, art. R46.
judicial recourse to the Swiss Federal Tribunal is allowed on a very limited number of grounds, such as lack of jurisdiction, violation of elementary procedural rules (e.g. violation of the right to be heard) or incompatibility with public policy. 138

IV. The New York Convention

In order to provide greater support for the process of international arbitration, the United Nations Economic and Social Council drafted a multilateral convention in 1956, which was ratified in 1958. 136 This multilateral convention was designated the Convention on Recognition and Enforcement of Foreign Arbitral Awards, but it is better known as the New York Convention. 137

A. Historical Background

The New York Convention is considered the "single most important pillar on which the edifice of international arbitration rests." 138 Although the convention was created in 1958, the United States did not ratify the Convention until December 1970. 139 The United States’ delay in ratification reflects its reluctance to diminish the power of its national courts in governing international affairs. However, since ratification, the U.S. has played a vital role in promoting the development of international commercial arbitration as a method of fostering the global economy. 140

B. Scope

The New York Convention applies to both commercial and noncommercial foreign claims. Articles II and III set forth the

Guide is published by the CAS and provides a detailed explanation of the Code procedures.
135. See id.
137. See id.
ground rules for applying the Convention to the ratifying states. In part, Article II(1) states that "each contracting State shall recognize an agreement in writing . . . concerning a subject matter capable of settlement by arbitration." The most significant problem with Article II(1) appears to be its vagueness in determining which State's law should apply to the subject matter in question, when the laws of contracting states differ regarding the arbitralbility of the subject matter in question.

The present view is that the place of interpretation of an arbitral agreement and the place of enforcement of an arbitral award are irrelevant. What is critical is the National courts'

141. Articles II and III of The New York Convention read:

Article II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.
2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.
3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Article III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

The entire text of The New York Convention can be found at http://www.sice.oas.org/DISPUTE/comarb/unicitral/nycon_c.asp.

142. See supra note 139.

interpretation of the New York Convention and how that interpretation relates to enforceability of a decision.\textsuperscript{144}

V. The Tsakalidis Decision

Jeffrey Mishkin, former chief legal officer of the NBA, along with the NBA’s legal staff represented the Suns in the arbitration proceeding.\textsuperscript{145} The Suns’ argued that although it is common practice for European teams to sign underage players to so-called “amateur” contracts, and to then convert those “amateur” contracts into professional contracts when the players turn twenty-one\textsuperscript{146}, in recent years these types of arrangements have not held up legal scrutiny.\textsuperscript{147} Three players: Aleksander Radojevic, Bruno Sundov and Lazaro Borrell, who all signed “amateur” deals with European clubs while they were teenagers (just as Tsakalidis did), challenged their professional contract status and prevailed.\textsuperscript{148} In Radojevic’s and Sundov’s cases, a settlement was negotiated before the arbitration hearing.\textsuperscript{149} In the Borrell case, the NBA and European club proceeded with arbitration, and the NBA prevailed.\textsuperscript{150}

On Monday, October 2, 2000 the Arbitrator ruled that Tsakalidis was free to sign with Suns because his previous contract with AEK was voided.\textsuperscript{151} The Arbitrator determined that Tsakalidis had agreed to a new contract with AEK prior to the NBA draft, but that the contract he agreed to and the one that AEK eventually produced were markedly different in language.\textsuperscript{152} The Arbitrator ruled that the duration of the new deal was five years, which had been the maximum time in Greece a contract could run.\textsuperscript{153} But a recent change in Greek law had shortened the maximum duration of a professional basketball contract to three years, thus voiding Tsakalidis’ contract.\textsuperscript{154}

\textsuperscript{144} See id.
\textsuperscript{145} See Bob Young, Tsakalidis Arbitration Scheduled, ARIZ. REP., Sept. 8, 2000, at C11.
\textsuperscript{146} See Young, supra note 34.
\textsuperscript{147} See Young, supra note 145.
\textsuperscript{148} See Bob Young, Tsakalidis Hearing Set Thursday, Could End Same Day, ARIZ. REP., Sept. 20, 2000, at C6. See also, Young, supra note 7 (describing the customary way in which “amateur” contracts are manipulated by Greek teams).
\textsuperscript{149} See id.
\textsuperscript{150} See id.
\textsuperscript{151} See Magruder, supra note 101.
\textsuperscript{152} See id.
\textsuperscript{153} See id.
\textsuperscript{154} See Magruder, supra note 101.
The Arbitrator also ruled that the financial provisions of the “amateur” contract had also changed, therefore voiding the remainder of the “amateur” contract. AEK had inserted a clause into Tsakalidis’ contract (unbeknownst to Tsakalidis) that called for a penalty of two years’ salary if Tsakalidis did not complete his contract with the team.\textsuperscript{155}

Based on his findings, the Arbitrator ruled that Tsakalidis was not bound by either the “professional” or “amateur” contracts and was immediately free to sign with the Suns.

VI. Conclusion

Did the Suns double-cross AEK? Did AEK try to buttress its contractual hold on Tsakalidis by attempting to negotiate an under-the-table deal with the Suns? AEK must have known that the professional contract Tsakalidis signed was illegal based on the recently changed Greek law dealing with the duration of contracts.

It is my belief that AEK attempted to get as much as they could for Tsakalidis when they realized that the contract could be voided. Part of this deal was probably the attempt to scare off the other NBA clubs with the pre-draft letter explaining their hold on Tsakalidis. AEK probably believed that the Suns would allow Tsakalidis to stay in Greece for a couple of years to develop, and that they would benefit from the proposed NBA clinics, other concessions, and eventual buyout that the Suns had offered. However, when Tsakalidis informed the Suns of his eagerness to play in the NBA, the Suns assumed the role of “protector of human rights” and began to attempt to negotiate Tsakalidis’ buyout. Probably, as negotiations progressed they determined that AEK’s hold on Tsakalidis was tenuous at best. So, the Suns decided to go to binding arbitration at the CAS to settle the matter. The Suns really had nothing to lose. AEK no other choice than to submit to arbitration; otherwise, a verdict could have been issued against them in abstentia.\textsuperscript{156}

All in all, the CAS performed just as it was designed to do. As Pedro Gomez, writer for The Arizona Republic, suggested, “call it basketball in the 21st century.”\textsuperscript{157}

Jerry C. Harris

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\textsuperscript{155} See id. \\
\textsuperscript{156} See CAS Code, art. R44.5. \\
\textsuperscript{157} See Gomez, supra note 1.
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