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An Examination of the Challenges to Achieving "Procedural Justice" in Negotiation and Mediation Processes in International Sports Disputes

Mohsen. Lal Alizadeh[1*], Fatemeh. Ameri Siahooyi[1], Mohammad. Bayrampoor[2]

[1] Assistant Professor, Department of Law, Faculty of Social Sciences, Payame Noor University, Tehran, Iran
[2] PhD Student in International Law, Payame Noor University, Tehran, Iran

*** Corresponding author email address**: Mla1357@pnu.ac.ir

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EDITOR:
Richard Dodder
Emeritus Professor of Sociology and of Statistics, Oklahoma State University Stillwater, Oklahoma, USA. Email: rdodder@hotmail.com
REVIEWER 1:
Mrinalini Puranik
National Health Mission, Ministry of Health and Family Welfare, India. Email: MriPuranik@gmail.com
REVIEWER 2:
Thanuja Kulasooriya
Department Soil Science, Faculty of Agriculture, University of Ruhuna, Mapalana, Kamburupitiya, Sri Lanka. Email: thkulasooriya@soil.ruh.ac.lk

1. Round 1

1.1. Reviewer 1

Reviewer:

In Section 2.1, the paragraph beginning, "Procedural justice, as a general principle of law, constitutes a cornerstone of democratic and international legal systems," requires a sharper conceptual distinction among procedural justice, procedural fairness, due process, natural justice, and the right to a fair hearing. These concepts overlap but are not interchangeable across legal systems or institutional contexts. The authors should define each term and explain which doctrinal tradition the article adopts. This is especially important because international sports law draws simultaneously on arbitration law, administrative-law principles, contractual autonomy, human-rights norms, and lex sportiva. A conceptual matrix or a concise doctrinal taxonomy would greatly improve terminological precision and prevent the manuscript from using "procedural justice" as an umbrella term for several distinct guarantees.

The paragraph on access to legal counsel in Section 2.1, especially the statement that "a negotiation in which the parties do not possess equivalent access to legal expertise is structurally deficient in terms of procedural justice from its inception," is too categorical in its current formulation. Equality of legal expertise is not generally required in private negotiation, and procedural fairness does not necessarily demand symmetrical representation. The authors should distinguish between the right to obtain independent legal advice, actual legal representation, and equality of legal resources. The argument would be more defensible if framed around meaningful opportunity to obtain advice, informed waiver, and protection against exploitation of legal asymmetry rather than an implied requirement that both parties possess equivalent professional capacity.

In Section 2.2, the paragraph stating that "even where a settlement appears financially reasonable, the agreement may nevertheless be legally defective if 'impartiality' was not respected during the negotiation process" should be doctrinally refined. Impartiality is directly applicable to adjudicators and, depending on the mediation framework, to mediators, but it is not normally a characteristic required of negotiating parties themselves. The authors should specify whether the alleged defect concerns mediator neutrality, conflict of interest, coercion, procedural unconscionability, or lack of informed consent. It would be useful to identify the precise legal consequence associated with each defect—voidness, voidability, non-enforcement, reopening of proceedings, or review by CAS—rather than treating all procedural deficiencies as having the same effect.

The four consecutive paragraphs in Section 3.3 substantially overlap in their discussion of lack of oversight, documentation deficits, appeal waivers, and loss of institutional trust. The manuscript would benefit from analytical consolidation and clearer sequencing. I recommend reorganizing this subsection around four distinct dimensions: absence of independent supervision; evidentiary and documentation deficiencies; enforceability and waiver-of-review problems; and legitimacy or trust consequences. Each dimension should have its own legal test and proposed remedy. At present, the repetition dilutes the strength of the argument and makes it difficult to distinguish causes, legal consequences, and policy implications.

Section 4.1 is presented as a "case-based examination," but the discussion remains predominantly abstract. The paragraph beginning, "In the legal analysis of sports disputes, transfer-related disputes and disciplinary proceedings constitute two principal areas in which 'pre-adjudicatory settlements' frequently arise," does not identify specific disputes, CAS awards, FIFA decisions, anti-doping settlements, or factual case studies. This is a significant methodological weakness because the section promises case analysis. The authors should select several representative cases, state the material facts, identify the procedural defect alleged, explain the tribunal's reasoning, and show precisely how each case supports or contradicts the proposed model of procedural justice.

The discussion of anti-doping settlements in Section 4.1 requires greater technical precision. The sentence referring to athletes being encouraged to accept responsibility in exchange for reduced periods of ineligibility should distinguish among results management agreements, admissions, substantial assistance, prompt admission mechanisms where applicable, case-resolution agreements, and ordinary negotiated settlements. Anti-doping law is governed by a highly structured regulatory framework, and not every reduction in sanction is a privately negotiated compromise. The authors should identify the relevant provisions of the World Anti-Doping Code and applicable International Standards and clarify when negotiated outcomes are permitted, when WADA or other bodies retain review rights, and how procedural safeguards differ from conventional mediation.

Authors revised the manuscript and uploaded the document.

1.2. Reviewer 2

Reviewer:

Section 2.3 contains the assertion that "the Court of Arbitration for Sport has repeatedly emphasized that sports organizations must observe minimum standards of fairness in all interactions with their stakeholders." This is an important doctrinal proposition and should be supported by specific CAS awards or advisory opinions rather than only secondary literature. The authors should identify representative cases, explain the factual context in which fairness obligations were recognized, and clarify whether the relevant principle applied to disciplinary proceedings, internal appeals, contractual processes, or informal settlement negotiations. The present wording risks extending principles developed for adjudicatory contexts into negotiation without demonstrating that CAS jurisprudence has actually endorsed such an extension.

The discussion of "grey areas" in Section 2.3 would be strengthened by a more rigorous treatment of waivers of appeal rights. The sentence, "agreements in which the 'right of access to justice' is prospectively bargained away are inconsistent with the public-policy foundations of sports law," appears broader than existing law may support. Waivers of appeal or recourse can be enforceable in some arbitration contexts when they are explicit, informed, and legally permitted. The authors should therefore distinguish absolute waivers of access to any independent tribunal from limited waivers of specific appellate remedies. The analysis should also address the relationship between party autonomy, arbitration agreements, CAS jurisdiction, national mandatory law, and public policy before characterizing such clauses as categorically invalid.

In Section 3.1, the paragraph beginning, "Within the structure of international sport, the 'imbalance of power' among actors is not an exception but a structural characteristic," identifies a persuasive concern but treats international federations, athletes, and clubs as relatively homogeneous categories. The authors should introduce greater institutional nuance. Elite athletes represented by experienced agents and multinational clubs may possess substantial bargaining power, while smaller federations may have limited resources. Conversely, individual athletes in anti-doping or eligibility disputes may be acutely vulnerable. The manuscript would benefit from a typology of bargaining asymmetry based on financial resources, regulatory authority, dependence on eligibility decisions, access to counsel, information asymmetry, and time sensitivity.

The proposal in Section 3.1 to apply standards analogous to "contracts of adhesion" to negotiated sports settlements requires considerably more doctrinal justification. The manuscript should explain whether this analogy is drawn from contract law, consumer-protection doctrine, employment law, arbitration law, or broader principles of inequality of bargaining power. Not every settlement concluded under unequal bargaining conditions is necessarily adhesive or legally defective. The authors should specify the doctrinal test they propose—for example, procedural unconscionability combined with substantively oppressive terms—and explain how such a test could operate in the transnational environment of sports law, where applicable law may differ according to federation rules, arbitral seat, and governing contract.

In Section 3.2, the paragraph discussing the tension between confidentiality and transparency correctly identifies an important regulatory dilemma, but the manuscript currently presents transparency predominantly as beneficial. The authors should engage more seriously with the legitimate functions of confidentiality in mediation and settlement, including candor, reputational protection, preservation of commercial relationships, data protection, and the without-prejudice character of settlement communications. The proposal for "oversight reports" or "summaries of the negotiation process" should specify what information would be recorded, who would have access to it, how confidentiality would be preserved, and whether the materials could later be used in arbitration. Without these safeguards, increased documentation could undermine the effectiveness of mediation itself.

Section 3.3 requires revision regarding the sentence, "this right is treated as a mandatory safeguard within the sports adjudicatory system," which in the original argument is associated with the characterization of access to a tribunal as a jus cogens-type norm. The manuscript should avoid using the concept of jus cogens unless the authors can establish its strict public-international-law requirements. Peremptory norms of general international law have a highly specific meaning and ordinarily concern norms accepted and recognized by the international community of states as norms from which no derogation is permitted. A right of access to CAS or another sports tribunal should not be characterized as jus cogens without compelling authority. The authors should instead consider terminology such as mandatory procedural guarantee, fundamental principle of procedural fairness, public-policy requirement, or non-waivable right where legally justified.

Authors revised the manuscript and uploaded the document.

2. Revised

Editor's decision: Accepted.
Editor in Chief's decision: Accepted.