Journal of Arbitration Studies, Vol. 26 No. 3
September 1, 2016, pp. 93~119
http://dx.doi.org/10.16998/jas.2016.26.3.93

Received : August 5, 2016
Revised : August 24, 2016
Accepted : August 28, 2016

Park Tae-hwan v. The Korean Olympic Committee: The Breakdown of Sports Jurisprudence in Korea

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Park Tae-hwan, the Korean Olympic gold medal swimmer, was suspended for eighteen months by the International Swimming Federation (FINA) in September 2014. Park completed his suspension in March 2016, but the Korea Olympic Committee (KOC), relying on its Article 5.6, then prohibited him from joining the national team for an additional three years for the same doping violation. The KOC's penalty exceeded that provided by the World Anti-Doping Code, which governs the Olympics and most international sports federations, and contravened well-established precedent from the Court of Arbitration for Sport (CAS). The KOC, along with the Korea Swimming Federation, maintained the suspension until decisions by the Seoul Eastern District Court and CAS forced them to retract the penalty. We describe the sports regulations and arbitration decisions governing the Park case, how each side used the law to support their positions, the flaws in the KOC's legal analysis, and the case's resolutions by the Korean court and CAS. Finally, because this legal conflict has damaged the KOC's reputation, created uncertainty over the committee's doping penalties, and undercut the authority of the World Anti-Doping Code and the CAS in Korea, we recommend institutional changes in Korea's sports jurisprudence.

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Key Words : Sports Arbitration, Doping, WADA, CAS, IOC, KOC, Park Tae-hwan, Rio 2016, Seoul Eastern District Court, KSAC (Korea Sports Arbitration Committee), Osaka Rule

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Ⅰ. Introduction: *Park v. The KOC/KSF*

Doping controversies have long plagued international sports competitions, compromising the integrity of the results and challenging the resources and determination of international federations, National Olympic Committees (NOCs), the International Olympic Committee (IOC), and the World Anti-Doping Agency (WADA). As the effort to clean up international sports intensifies, new doping cases are shaping and redefining sports jurisprudence.

In the run-up to the 2016 Rio de Janeiro Olympics, WADA's July report detailed rampant, state-sponsored doping among Russian athletes, described as "a shocking and unprecedented attack on the integrity of sport and on the Olympic Games," resulting in more than one hundred athletes including the track and field team, being excluded from the 2016 games (McLaren Investigation Report).[1] Another less known, but highly consequential doping case, is the Korea Olympic Committee's (KOC)[2] suspension of Olympic gold medalist, Park Tae-hwan. Contrary to some National Olympic Committees, the KOC took an aggressive stance against Park's doping violation, standing by his suspension until Park had successfully challenged the penalty in a Korean court and seemed certain to prevail in the Court of Arbitration for Sport (CAS).

Park tested positive for testosterone on 3 September 2014 in a doping test conducted

1) *USA Today*, "Split Widens between IOC, Anti-Doping Leaders over Russia," 1 Aug. 2106; *CNN*, "Russian doping: 'An Unprecedented Attack on the Integrity of Sport & the Olympic Games,'" 21 July 2016.

2) The KOC is corporate body established by the National Sports Promotion Act, solely represents Korea in negotiations with the International Olympic Committee, and supervises sending national athletes to international sports events.

by WADA, which was created by the IOC in 1999 to lead the international effort to eliminate doping.[3] The International Swimming Federation (FINA) banned Park for eighteen months from all swimming competitions, returning him to qualification on 2 March 2016 (WADA Code [2009] Art.'s 10.2 and 10.5.2).[4] However, on 7 April 2016, the KOC applied its Article 5.6, which states that "any athlete who serves a drug-related ban is barred from national teams for [an additional] three years beginning on the day the suspension ends."[5] The KOC suspended the twenty-six year old for three more years, until 2 March 2019, excluding him from the 2016 Olympic Games in Rio de Janeiro and effectively ending his swimming career. Park's supporters argued that the penalty violated the WADA Code and Olympic Charter, and amounted to 'double jeopardy.'[6] The KOC, along with the Korea Swimming Federation (KSF) stood by the penalty, claiming that, otherwise, they would be impermissibly revising rules to accommodate one athlete.[7]

Park pleaded his case to the Korean public and KOC. He apologized, even falling to his knees to beg the KOC for 'one more chance' and Korean politicians advocated for Park.[8] But the KOC remained adamant, arguing that "competing for the country demands high moral standards."[9] With time running out for Park to finalize his Olympics entry,[10] he appealed the suspension to the CAS, the international sports arbitration tribunal. He also sought an injunction, from the Seoul Eastern District Court, ordering the KOC and the KSF to allow him to compete. The KOC stood firm, clearly

3) In July 2014, Park received the steroid Nebido through injections at a medical clinic. Swim Swam, n.d. "Park Tae Hwan Officially Ruled Out of 2016 Olympic Games," available at https://swimswam.com/park-tae-hwan-officially-ruled-out-of-2016-olympic-games/.

4) World Anti-Doping Agency, *World Anti-Doping Code*, 2009, available at http://www.intjudo.eu/editor_up/up/WADA_Anti-Doping_CODE_2009_EN.pdf. Unless otherwise stated, all references are to the 2009 WADA Code.

5) KOC, *Article of Association*, Article 5.6.

6) Park's right to appeal to the CAS is one of several matters that remain unclear in Korean jurisprudence. Arguably, he could rely on KOC Article 65.2. ("Disputes related to Olympics must be filed with [CAS].) and Article 61.2 of the IOC Charter, which the KOC must follow ("Any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport, in accordance with the Code of Sports-Related Arbitration.").

7) *Daily Herald*, "Park Tae-hwan Blocked from Competing at Olympics in Rio," 7 April 2016; *KOC News Release*, "Decision to Maintain the Existing Regulation Regarding National Athlete Selection," 16 June 2016.

8) *Korea Times*, "Floor Leader Pleads for Second Chance for Park Tai-hwan," 4 May 2016.

9) *KOC News Release*, "Decision to Maintain the Existing Regulation Regarding National Athlete Selection," 16 June 2016.

10) The final entry list for the Rio Olympics had to be submitted by 18 July 2016.

relenting only after the Korean court and CAS issued their rulings for Park.

Park's victory came after a prolonged and expensive fight with the KOC and KSF. He lost time training with the Olympic team and felt compelled to publically beg for forgiveness. For Korean society, the victory was at best pyrrhic: one of its best athletes could compete in the Olympics but Korean sports jurisprudence looked dogmatic, imperious, and incompetent.

The dispute was surprising because there was little doubt that Park had the better legal argument and would prevail. The WADA Code, Olympic Charter, and CAS precedent made clear that the KOC and KSF could not impose a second penalty for the same doping violation. Consequently, while Park's case is now resolved, unanswered questions remain about Korea's judicial mechanisms governing international sports competitions and the KOC's willingness to follow CAS precedent and the WADA Code.

This paper addresses key questions. What law governed Park's case and how did Park and KOC/KSF use this law to support their positions? How did the Korean court and CAS resolve the dispute? Why did the KOC maintain its position despite the existing jurisprudence supporting Park? How can Korean sport's jurisprudence improve to avoid the inefficient and erroneous decision-making? The paper first introduces the relevant regulations and cases.

Ⅱ. The Law: Anti-Doping Jurisprudence

The *lex sportiva* of international anti-doping jurisprudence rests on a triad of the WADA Code, the Olympic Charter, and CAS decisions. These authorities have now been integrated into a consistent position precluding penalties for doping, other than those provided in the WADA Code. These regulations are divided into those that define violations and those providing procedures for challenging penalties.

1. International Regulations - The WADA Code and the Olympic Charter

South Korea is bound by the WADA Code as a signatory, as well as by its acceptance of the Copenhagen Declaration on Anti-Doping in Sport and UNESCO's International

Convention against Doping in Sport (WADA art. 22). The code articles relevant to the Park case are Article 23.1 (Acceptance of the Code), and Articles 23.2 and 23.2.2 (Implementation of the Code). These documents bind signatories' national Olympic committees, like the KOC, and require the committees to implement code provisions and policies, "without substantive change." The KOC must accept and implement WADA articles to be in compliance (Art. 23.3.1); failure to comply with the code can result in ineligibility to bid for events, along with other penalties (Art. 23.5):[11]

> 23.1.1 The following entities shall be Signatories accepting the Code: WADA, The International Olympic Committee, International Federations, … National Olympic Committees, … Major Event Organizations, and National Anti-Doping Organizations. These entities shall accept the Code by signing a declaration of acceptance upon approval by each of their respective governing bodies.
>
> 23.2.1 The Signatories shall implement applicable Code provisions through policies, statutes, rules or regulations according to their authority and within their relevant spheres of responsibility.
>
> 23.2.2 The following Articles (and corresponding Comments), as applicable to the scope of the anti-doping activity which the Anti-Doping Organization performs, must be implemented by Signatories without substantive change….

One of the articles covered by Article 23.2.2 is Article 10.2, which, in the 2009 code applicable to Park, sets out a two-year penalty for doping:

> Article 10.2 (Ineligibility for Presence, Use or Attempted Use, or Possession of Prohibited Substances and Prohibited Methods): The period of Ineligibility imposed for a violation of Article 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), Article 2.2 (Use or Attempted Use of Prohibited Substance or Prohibited Method) … **shall be as follows, …: First violation: Two (2) years Ineligibility.** (emphasis added)[12]

11) World Anti-Doping Agency, *World Anti-Doping Code*, 2009.

12) The 2015 WADA Code amended Article 10.2 to impose a four-year penalty for intentional doping

The Olympic Charter similarly binds members to the WADA Code. Article 25.2.6 mandates that National Olympic Committees (NOCs), like the KOC, "adopt and implement the World Anti-Doping Code." Article 25 requires that the "statutes, practice and activities of the [international federations] [like the KSF] within the Olympic Movement must … [adopt] and [implement] … the World Anti-Doping Code." The WADA Code is "mandatory for the whole Olympic Movement" (Art. 43).[13]

Until 2011, uncertainty surrounded whether the IOC, NOCs, international sports federations, and other signatories could impose sanctions beyond that provided in the WADA Code. In 2011, the CAS began to resolve this uncertainty.

2. International Arbitrations – The Court of Arbitration for Sport

US Olympic Committee v. IOC (2011) is the seminal CAS case addressing the exclusivity of the WADA Code for doping. The CAS ruled that the IOC could not ban violators from competing in the next Olympic Games. The court followed this decision in 2012 when it prohibited the British Olympic Committee from imposing a lifetime ban on Olympic participation. In 2012, the CAS overturned a decision by the International Weightlifting Federation to ban a doping athlete for four years instead of the two years provided by the code.

(1) *US Olympic Committee (USOC) v. International Olympic Committee (IOC)* (2011)[14]

In June 2008, the IOC Executive Board, meeting in Osaka, enacted what came to be known as Osaka Rule:

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violations. Generally, doping violations that occurred prior to the code's effective date are governed by the substantive anti-doping rules in effect when the alleged doping violation occurred (Article 25.2). Moreover, Park was not penalized for intentional doping, rather he was sanctioned under Article 10.5.2 of the 2009 code which allowed a penalty reduction where the athlete had "no significant fault of negligence" (Swim Swam. n.d. "Park Tae-Hwan Handed 18-Month Suspension; Will Return before 2016 Olympics," available at https://swimswam.com/park-tae-hwan-handed-18-month-suspension-will-return-before-2016-olympics/). Finally, applying the current penalty runs counter to the due process right to be judge based on the law at the time of a violation and not the retroactive application of a future version of the law.

13) IOC, *Olympic Charter*, available at https://stillmed.olympic.org/Documents/olympic_charter_en.pdf. (searched on Aug. 2015).

14) CAS 2011/O/2422 (Oct. 4, 2011), available at http://jurisprudence.tas-cas.org/Shared%20Documents/2422.pdf.

> Any person who has been sanctioned with a suspension of more than six months by any anti-doping organization for any violation of any anti-doping regulations may not participate, in any capacity, in the next edition of the Games of the Olympiad and of the Olympic Winter Games following the date of expiry of such suspension (*USOC v. IOC*, pp. 2-3).

The Osaka Rule was controversial. It seemed grossly disproportionate to many doping violations, but, more importantly, a question arose whether the rule constituted an impermissible sanction beyond that allowed by the WADA code or a permissible condition of eligibility.

The controversy required resolution when a panel of the AAA/North American Court of Arbitration for Sport suspended US track and field athlete, LaShawn Merritt, for twenty-one months because he tested positive for the banned substance DHEA, a WADA violation. That suspension would end on 27 July 2011, and the panel held that the Osaka Rule could not be used to prevent Mr. Merritt from competing in the 2012 Olympic trials or London Olympics. The US Olympic Commission (USOC) and the IOC agreed that the CAS could resolve the conflict.

> The CAS panel concluded that:
> The IOC Regulation provides for an additional disciplinary sanction … after the ineligibility sanction for an anti-doping rule violation under the WADA Code has been served. **The Regulation thus provides for a period of ineligibility (non-participation) that is not provided for under Article 10 of the WADA Code. In so doing, the IOC Regulation constitutes a substantive change to the WADA Code,** which the IOC has contractually committed itself not to do and which is prohibited by Article 23.2.2 WADA Code (*USOC v. IOC*, para. 48). (emphasis added)
>
> The IOC Executive Board's June 27, 2008 decision prohibiting athletes who have been suspended for more than six months for an anti-doping rule violation from participating in the next Olympic Games following the expiration of their suspension is invalid and unenforceable (*USOC v. IOC*, p. 20).

(2) *British Olympic Association (BOA) v. World Anti-Doping Agency (WADA)* (2012)[15]

The British Olympic Organization (BOA) attempted a similar double punishment with a lifetime ban on Olympic participation for doping. The Bye-Law Relating to Anti-Doping (Rule 7.4) states that:

> Any Person who is found to have committed an Anti-Doping Rule violation will be ineligible for membership or selection to the Great Britain Olympic Team or to receive funding from or to hold any position with the BOA as determined by the Executive Board in accordance with the BOA's Bye-Law on Eligibility for future membership of the Great Britain Olympic Team (*BOA v. WADA*, p. 4).

WADA's Foundation Board concluded that the bye-law violated the CAS decision *USOC v. IOC*, striking down the Osaka Rule; the BOA appealed WADA's ruling to the CAS (*BOA v. WADA*, pp. 4-5).

> Consistent with its Osaka decision, the CAS ruled that:
> The Bye-Law renders an athlete ineligible to compete and does so on the basis of prior undesirable behaviour: the commission of a doping offence under the WADA Code … and, accordingly, [it is in] non-compliance with the WADA Code: The proportionality of sanctions for anti-doping offences shall be evaluated within the worldwide harmonized system of the WADA Code – and cannot be the object of an additional disciplinary proceedings triggered by the same offence (*BOA v. WADA*, para. 43)….

The Bye-Law has the effect of changing the sanctions and their effect under the WADA Code as set out in the above analysis. Therefore, **the BOA has breached its obligation not to add any provisions to its rules that change the effect of Article 10 WADA Code** (*BOA v. WADA*, para. 49)…. (emphasis added)

15) CAS 2011/A/2658 (Apr. 30, 2012), available at http://jurisprudence.tas-cas.org/Shared%20Documents/2658.pdf.

The Panel concludes that the Bye-Law is a doping sanction and is therefore not in compliance with the WADA Code (*BOA v. WADA*, para. 52).

(3) Liao Hui v. International Weightlifting Federation (IWF) (2012)[16]

In 2010, the International Weightlifting Federation (IWF) suspended Liao Hui, a Beijing Olympic Games weightlifting champion, for four years after his urine test revealed a prohibited substance (*Hui v. IWF*, para.'s 9 and 14). Here, again, an inconsistency arose with WADA's two-year suspension for doping. The CAS Panel upheld Hui's appeal and reduced the suspension;

> It is obvious that the wording of Art. 10.2 of the IWF ADP and Art. 10.2 of the WADC is different. A standard doping sanction of two (2) years is something – significantly – different than a standard sanction of four (4) years. Thus, the IWF ADP differs from the WADC on this point. This is all the more true, since the requirements listed in the WADC are – in principle – not only to be construed as minimum standards but also as maximum standards.… **The four year standard sanction in the IWF ADP instead of the two years period of ineligibility provided for in the WADC is, thus, a 'substantive change' in view of the Panel** (para. 90)…. (emphasis added)
>
> The Panel sees no possibility to justify the period of ineligibility imposed upon the Appellant with any other provision of the IWF ADP / WADC. The Panel, therefore, finds that the maximum period of ineligibility that can be imposed upon the Appellant on the basis of the facts adduced before it is two (2) years (para. 112).

With these three decisions, the *lex sportiva* of international anti-doping jurisprudence was clear: NOCs, international sports federations, and even the IOC could not legally impose sanctions on athletes beyond those provided in the WADA Code. Yet, that is what the KOC and KSF did in the Park Tae-hwan case.

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16) CAS 2011/A/2612 (23 July 2012), available at http://arbitrationlaw.com/files/free_pdfs/cas_2011.a.2612_liao_hui_v._international_weightlifting_federation_iwf.pdf.

3. Domestic Regulations – The KOC and KSF Charters

Article 2.3 of the KOC's charter recognizes that the committee is bound by the Olympic Charter, which, in turn, mandates that members follow the WADA Code (OC Art.'s 25.2.6 and 43):

> 2.3 The Korean Olympic Committee's Articles of Association must abide by the Olympic Charter; the Olympic Charter takes precedence when the [KOC] and Olympic Charter conflict.

Articles 2.5 of the charter states that the KOC is also bound by the WADA Code:

> The [KOC] observes the World Anti-Doping Code and the International Convention against Doping in Sport, which was ratified by Korean government on 5 February 2007.

Nonetheless, the articles of the Korean Olympic Committee and Korean Swimming Federation present the same inconsistency with the WADA code, as found in the *USOC*, *BOA*, and *Hui* cases. The KOC's Article 5 (Reason for Disqualification) states that:

> Those that received disciplinary punishment from the KOC or sports organizations for actions related to using, permitting, or encouraging prohibited drugs, and three years have not elapsed **since the date that suspension ends** [cannot be national athletes]. (emphasis added)

The KSW's Articles 12 (Duties) and Article 5 (Reason for Disqualification) similarly state the following:

> 12.1. [The KSW has a] Duty to follow [KOC's] Articles of Association and direction.
>
> 5.6. Those that received disciplinary punishment from KOC or sports organizations for actions related to using, permitting, or encouraging prohibited drugs, and three years have not elapsed **since the date that suspension ends** [cannot be national athletes]. (emphasis added)

Consequently, the KOC and KSF, like the IOC, BOA, and IWF have impermissibly added three years to the penalty under the WADA Code.[17]

Ⅲ. The Law: Procedures for Challenging the KOC/KSF Decisions

Sports disputes occur frequently and the procedures for challenging decisions by NOCs, national and international sports federations, WADA, and the IOC are well established. The IOC Charter, Article 61.2.9 (*Dispute Resolution*) mandates that:

> Any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport, in accordance with the Code of Sports-Related Arbitration.

Article 13.2.1 of the WADA Code (2015) (*Appeals Involving International-Level Athletes*) requires that "In cases arising from participation in an *International Event* or in cases involving *International-Level Athletes*, the decision may be appealed exclusively to *CAS*."

Rule 27 of the CAS' procedural code (*Application of the Rules*) permissively allows a CAS appeal:

> [A CAS appeal] may involve an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies, or a specific agreement provide for an appeal to CAS.[18]

The KOC's Article 65 (*Resolving Disputes*), at first, appears to limit CAS appeals to whether the KOC has jurisdiction over an athletic dispute, but Article 65.2 ultimately mandates that disputes over Olympic qualification must be brought to the CAS:

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17) KSF Article 5.6 should not have applied to Park, in any event, because it became effective on 6 February 2015 and governed those who had received a sanction based on a violation committed after this implementation date. Park's violation occurred in September 2014.

18) Code of Sports-related Arbitration (1 Jan. 2016), available at http://www.tas-cas.org/en/arbitration/code-procedural-rules.html.

> 65.1. Disputes must be resolved through [the KOC's] authorities or through the mediation and arbitration institution established within the [KOC].
>
> 65.2. All appeals regarding jurisdiction [of Article 65.1] must be filed with the [CAS]. However, appeals must be made within twenty-one days from the decision. **Disputes related to [the] Olympics must be filed with [the CAS].** (emphasis added)

Park's challenge to his suspension by the KOC and KSW was immediately tied to his right to qualify for Korea's 2016 Olympic team. This triggered the clauses in the Olympic Charter and KOC Article 65.2 which permit a CAS appeal. Because the suspension was a doping penalty, which conflicted with the WADA Code, Park had a second basis for CAS jurisdiction under that code's Article 13.2.1.[19] However, it was the Seoul Eastern District Court which first rendered a decision on Park's suspension.

Ⅳ. The Court Cases: The Parties' Arguments

Based on the *lex sportiva* of IOC, WADA, and KOC/KSF regulations, and CAS decisions, the parties fashioned their legal arguments. Park's brief filed with the CAS and the CAS decision resolving his case are not yet publically available, and the KOC/KSF did not file a response to his CAS appeal. However, we can understand the parties' positions through their pleadings in Park's application to the Seoul Eastern District Court, where he sought an injunction allowing him to qualify for the Korean Olympic team.

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19) Anne Amos and Saul Fridman, *Toward a Social Science of Drugs in Sport*, ed. Jason Mazanov, New York: Routledge, 2011, p.94: "Article 13.2.1 nominates the CAS as the exclusive forum for appeals involving international-level athletes."
Park April 2016 suspension was by the KOC under its articles, not by WADA under its code, but his suspension required interpreting the WADA code and this probably provided additional grounds for CAS jurisdiction. There is no doubt that WADA could have appealed the KOC/KSF decisions to the CAS. *See, e.g.*, WADA v. Int'l Gymnastics Fed'n & Melnychenko, CAS 2011/O/2422 (Oct. 6, 2011); WADA v. Jobson Leandro Pereira de Oliveira, Confederação Brasileira de Futebol (CBF) & Superior Tribunal de Justiça Desportiva de Futebol (STJD), CAS 2011/A/2403 (Aug. 25, 2011).

1. Park's Arguments

Park had two legal arguments for challenging the KOC ruling and the KSF selection criteria. The first, and most well-established, is CAS precedent which precludes the IOC, national Olympic committees, and international sports federations from penalizing a doping athlete beyond the penalty specified in the WADA Code. The KOC and KSF's decisions were patently inconsistent with that precedent. The second argument could rest on KSF Article 5.6 which, while mimicking the KOC's three-year suspension rule, limited its application to conduct occurring after 6 February 2015, while Park's doping violation occurred in September 2014.

2. The KOC/KSF's Arguments

The KOC argued in the Seoul court that, based on its Article 5.6, Park must be suspended for an additional three years; otherwise, the committee would be revising its rule to accommodate one athlete.[20] The KOC adhered to this interpretation, until the CAS decision, confirming on 16 June that the "current national athlete selection criteria will be observed as it is."[21] The KOC's position was consistent with Article 5.6, which, itself, gave the committee no discretion but to further suspend Park. The committee's mistake was in enforcing an article which obviously conflicted with the WADA Code and CAS precedent.

The KSF's legal position was less clear. Its Article 5.6 similarly meant that a further three year-suspension would begin once Park's initial suspension ended, but the article became effective on 6 February 2015 and applied only to those who received a sanction as a result of action committed after the article's implementation. Because Park's doping violation occurred on 3 September 2014, Article 5.6 did not explicitly cover it.

Adding to this ambiguity, the KSF first announced, on 25 November 2015, its guidelines for selecting national athletes to participate in the Rio Olympics. Two swimming meets would be held, a February 2016 Kimcheon swimming competition

20) *Associated Press*, "Park Tae-hwan Blocked from Competing at Olympics in Rio," 7 April 2016.

21) *KOC News Release*. 16 June 2016. "Decision to Maintain the Existing Regulation Regarding National Athlete Selection."

and an April 2016 Donga contest. The selection criteria did not mention the KOC or KSF suspension policy:

> Athletes will be selected after the two events mentioned above, based on their record. If there are two athletes that meet the OQT/A (Olympic Qualifying Time), then two will be selected. If there is only one athlete that meets the OQT/A, then only one will be selected. If no athlete meets the OQT/A, then only one athlete will be selected based on the OST/B (Olympic Selection Time).

Only later, approximately one month before Park's FINA suspension would end, and two months before the KOC would enforce its Article 5.6 penalty, did the KSF add the condition that no athlete qualified if he had been punished by a sports organization and three years had not elapsed since the date that suspension ended.

The merit of these arguments, and the validity of the KOC and KSW's three-year suspension, would be determined by the Seoul Eastern District Court and the CAS.

Ⅴ. The Court Cases: The Decisions

1. The Seoul Eastern District Court

Park filed a lawsuit against the KOC and the KSF in the Seoul Eastern District Court, seeking an injunction confirming his status as a Korean national athlete.[22] Park sought extraordinary relief because, even if his CAS appeal succeeded, that decision would likely come too late for him to join the Olympic team, causing him an irreparable injury. Moreover, the KOC and KSF claimed that the CAS would bind them only if they agreed to be bound. The court concluded that this situation could justify extraordinary relief and it proceeded to consider the merits of the case. On 1 July 2016, the three-judge panel unanimously ruled for Park and ordered the KOC and KSF to allow him to qualify for the Olympic team.

22) Seoul Eastern District Court, Case No. 2016 Ka-Hap 228: Injunction to Confirm that Reason for Disqualification as National Athlete Does Not Exist, 2016.

During the litigation, the KOC argued that its Article 65.2, along with Article 61.2 of the Olympic Charter, placed jurisdiction in the CAS, not a domestic court. Moreover, Park had submitted his dispute to the CAS, and, under CAS Rule 27, parties who have appealed to the sports arbitration panel waive recourse to a domestic court. The Seoul court rejected these jurisdictional objections.

The court held that Article 65.2 creates CAS jurisdiction over whether the KOC is the proper forum for resolving a dispute, but it does not trigger CAS jurisdiction over the substantive merits of the dispute (whether Park was qualified as a national athlete). This interpretation is problematical because Article 65.2 explicitly states that "Disputes related to [the] Olympics must be filed with [the CAS]."[23]

The court further determined that Article 61.2.9, of the Olympic Charter, did not preclude Park's lawsuit. The charter section requires that any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the CAS. The court opined that:

> This case may be Olympics-related but it is also related to self-regulation of KOC…. If the court interprets the article so that all disputes between Respondent and its members are referred to the CAS, then it will excessively restrict the disputing parties' right of access to courts….

Here, again, the court seems to have ignored clear regulatory language. The better argument is that Article 65.2 and Article 61.2.9 control because the primary reason Park sought the injunction was the impending deadline to qualify for the Olympic team. Though the articles do limit court access, that limitation is inherent in all arbitration clauses, and Park's voluntary participation in the Olympics is his agreement to arbitration, so long it was fair and impartial.[24]

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23) The KOC might have argued that Articles 65.1 gave it exclusive jurisdiction to decide Park's case, precluding an appeal to the domestic courts – a form of binding arbitration – but this appears not to have been its position.

24) Additionally, though not discussed by the parties and court, Article 13.2.1 of the WADA Code (2009 and 2015) states that cases arising from participation in an international event or involving international-level athletes may be appealed exclusively to the CAS. Because Park's case involved a doping penalty conflicting with the code, this provision could create exclusive CAS jurisdiction.

The court held that CAS Rule 27 also did not preclude Park's appeal because only Park had applied for CAS arbitration. The KOC and KSF could not rely on an arbitration that they had refused to join, they had not expressed their intent to abide by a CAS decision, and they questioned whether the CAS had authority to bind the Korean organizations. Moreover, Park sought the injunction as a "temporary preservative measure" while the CAS arbitration proceeded, not as a final resolution of his case. Finally, Rule 27 does not preclude access to courts by member countries (and, presumably, by athletes).

Turning to the merits of Park's claim, the court found that the WADA Code applied to the 2016 Rio Olympics, and the KOC/KSF were obligated to follow that code and the Olympic Charter. WADA's code requires member organizations, like the KOC/KSF, to engage in anti-doping activities without altering the code's provisions. Otherwise, WADA's goal of equitable treatment based on impartial standards is defeated. The KOC signed the Olympic Charter and WADA Code, and the KOC observes the charter in its Articles of Association. The charter takes precedence over any conflict between it and the KOC's articles; the WADA Code, which is incorporated into the charter, is given similar precedence. The court concluded that the KOC and its subsidiary organization, the KSF, are bound by the WADA Code. Rather than complying with code, the KOC and KSF's punishment for Park's doping incident conflicted. The court's analysis and conclusion are fully consistent with CAS precedent.

The court also found that the KSF impermissibly changed its criteria for selecting national athletes. Selection was originally based solely on the competitors' time; no mention was made of prior doping suspensions or other disqualifications. However, on 8 April 2016, the KSF announced altered selection criteria: "Those that do not meet Clause 5[.6] of the KSF's national athlete selection criteria [completing the three-year suspension] will be excluded from selection." Park was the only athlete to satisfy the original criteria. He competed in the Donga event, on 25-29 April, ranking first place in four competitions, and he was the only athlete to fulfill the OQT/A in the event.

The court granted Park's injunction. The next step was the CAS arbitration.[25)]

25) Because the court had already found adequate basis to grant the injunction, it did not reach Park's other claims – the freedom to select his occupation and violation of principle of proportionality.

2. The CAS Decision and the KOC/KSF

Park petitioned the CAS on 26 April 2016, to address the "decision of the KOC that rejected [revising] the three-year probation rule." Park argued that the (1) KSF and KOC's three-year probation is ineffective and (2) Park met Korea's athlete selection criteria and, so, is qualified to represent the country. On 8 July 2016, the CAS announced its decision – Park could compete in the 2016 Olympics:

> The Court of Arbitration for Sport (CAS) has upheld a request for provisional measures filed by the Korean swimmer Tae Hwan Park in the course of his arbitration procedure with the Korean Sport and Olympic Committee (KOC) and the Korea Swimming Federation (KSF). The decision issued by the President of the CAS Appeals Arbitration Division means that he is eligible to be selected to swim for the Korean team in the Rio 2016 Olympic Games.[26]

Unless Park releases his brief or pleadings supporting his CAS petition, or the CAS publically issues a full opinion, we cannot certainly know the arbitration panel's reasoning. Park's argument that the three-year probation is not "effective" appears to challenge the KOC/KSF's three-year suspension based on repeated CAS precedent striking down similar penalties that conflict with the WADA Code. However, without a clear CAS ruling that KOC Article 5 and KSF Article 5.6 contravened the WADA Code, Korean sports authorities may treat the Park case as *sui generis*, rather than grounds to review and revise their articles to ensure WADA compliance.

Another legal area left uncertain is the binding effect of a CAS decision on the KOC and Korean sports federations, like the KSF. Article 61.2.9 of the Olympic Charter appears to vest exclusive jurisdiction in the CAS when the dispute arises on the occasion of, or in connection with, the Olympic Games. Similarly, Article 13.2.1 of the WADA Code (2009 and 2015) requires that in cases arising from participation in an international event or involving international-level athletes, the decision may be appealed exclusively to the CAS.

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26) CAS, *Media Release*, "Swimming. Court of Arbitration for Sport (CAS) Rules that Tae hwan Park is Eligible for Selection for the Korean Team for the Rio 2016 Olympic Games," 8 July 2016, available at http://www.tas-cas.org/fileadmin/user_upload/Media_Release_4661_decision.pdf.

During its contest with Park, the KOC asserted that it was not bound by a CAS decision, unless it consented. William Sternheimer, the head of arbitration at the CAS, said Park is eligible to seek arbitration but the body does not have the authority to order the KOC to change its decision.[27] Adding to the uncertainty, the KOC argued that Park's petition should be dismissed because its Article 65.2, and Article 61.2 of the Olympic Charter, place jurisdiction in the CAS. The Seoul Eastern District Court, in turn, rejected that claim, essentially holding that, if the case was related to both the Olympics and self-regulation of the KOC, Article 61.2 did not preclude a domestic lawsuit.

The Sternheimer comment, and perhaps even the KOC's position, on the CAS' authority could mean only that domestic enforcement of a CAS judgment is required.[28] Enforcement proceedings, filed in domestic courts, are normally required for foreign judgments, including foreign arbitrations. The New York Arbitration Convention, to which Korea is a signatory, recognizes this:

> 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 conventions laid down in the following articles (Article III). (emphasis added)[29]

Korean courts have followed this procedure in enforcing foreign arbitration awards.[30] There are grounds for refusing to enforce a foreign arbitration award, primarily when

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27) Chosun Ilbo (English Edition), "Swimmer Park Tae-hwan Pleads for Olympics Chance."

28) Swiss Law provides for judicial enforcement under the provisions of Article 183(2) of the Swiss Private International Law Statute of December 18, 1987, which states that, if the party concerned does not comply voluntarily, "the arbitration tribunal may call upon the assistance of the competent judge." Ian Blackshaw, "ADR and Sport: Settling Disputes through the Court of Arbitration for Sport, the FIFA Dispute Resolution Chamber, and the WIPO Arbitration & Mediation Center," 24 *Marquette Sports Law Review*, 1, Fall 2013.

29) UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Arbitration Convention), available at http://www.newyorkconvention.org/new+york+convention+texts. While parties may appeal a CAS decision to the Swiss Federal Tribunal, the grounds are also generally limited to significant abuses of fairness. *See, e.g.*, Bundesgericht [BGer] [Federal Tribunal] Apr. 18, 2011, 4A_640/2010 (Switz.) (athlete claimed violation of right to be heard; appealed denied); Bundesgericht [BGer] [Federal Tribunal] Oct. 3, 2011, 4A_530/2011 (Switz.) (athlete claimed that CAS did not have jurisdiction; appeal dismissed).

30) *See, e.g.*, Seoul Central District Court, 46th Civil Division, Hyundai Motors v C.J. Jeon, 2012 Gahap 5730, 27 April 2012.

the arbitration had procedural irregularities or the decision contravenes the local jurisdiction's public policy (New York Arbitration Convention, art. V). Korean courts recognize these exceptions.[31] Recently, German Olympic gold medal speed skater, Claudia Pechstein, challenged the CAS' fairness and impartiality. In 2009, the International Speedskating Union banned her for two years because of doping (which she denied). The CAS upheld that ban, and Pechstein then appealed to a German court, arguing that the CAS was biased in favor of international sports federations and Olympic committees which predominate the list of potential arbitrators. The lower court agreed, but the German Federal Supreme Court (*Bundesgerichtshof*) overturned the lower court, finding no structural imbalance against athletes.[32]

After the Seoul Eastern District Court's decision in favor of Park and mounting public pressure, the KOC moderated and changed its position. In a board meeting held on the early morning of 8 July, the KOC decided it would respect the CAS decision, scheduled to be announced later that day:

> If the CAS accepts Park's appeal request, then KOC will acknowledge Park's temporary status as national athlete in swimming, and cooperate with KSF to send to FINA a final entry list for Rio Olympics that includes Park. If CAS rejects Park's appeal, then the KOC will not include Park in the entry list. If the CAS does not hand down its decision in time to submit the final entry list, KOC will respect the domestic court's injunction that preserves [Park's] position as a national athlete and for now submit the entry list [that includes Park] to FINA, and then deal with the case after CAS decision.[33]

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31) *See, e.g.*, Seoul District Court, Singapore Company A v Korean Pilot B ("Pilot Training Case"), 2012 Gadan 348225, 26 September 2013. Typically, domestic courts will not enforce a judgment from another jurisdiction which does not reciprocate. With arbitration, the domestic courts may require that that other jurisdiction have also signed the New York Arbitration Convention. The CAS is not a signatory, but, unlike a country, it normally would not be in a position to reciprocate by enforcing another state's arbitration rulings.

32) Zachary Zagger, "German High Court Denies Skater's Challenge to Sports Court," *Law360*, 7 June 2016, available at http://www.ft.com/cms/s/0/dc893f5a-2c87-11e6-bf8d-26294ad519fc.html#axzz4JJhiD6Ka. The lower court ruling by the Higher Regional Court of Munich poses a serious challenge to CAS jurisdiction. See Eun-Young Park and Eun-A Cho, "Sports Dispute Resolution: On the Mediating Procedure of CAS," *Korean Forum on International Trade and Business Law*, Vol. 24, No. 2, 2015, pp. 73-98.

33) *KOC News Release*, 8 July 2016 (a).

Later, after it received the CAS decision that Park can compete in the Rio Olympics, the KOC released news that it would accept CAS decision:

> The KOC, as an NOC (National Olympic Committee) of the IOC, respects the decision of the CAS. In accordance with the CAS decision, the KOC will follow suit by amending selection criteria of national athletes.[34]

The Park case has left Korean sports jurisprudence conflicted and unclear, creating uncertainly for athletes and the country's Olympic committee and sports federations.

Ⅵ. Conclusions: Filling the Gap in Korea's Sports Jurisprudence

Since Korea's first Olympic participation in 1948, immediately following its independence from Japan and establishment as a republic, Korea has taken great strides in international sports competition. During the 2012 London games, the country ranked fifth in the medal standings, and, this year in Rio, Korea finished eighth in total medals, placing in the top ten for the fourth consecutive Olympics. In contrast to its athletic performance, Korea's sports administration appears inferior to the global standard. Eventually, this will undermine the country's sports programs.

1. Institutional Deficiency

Even before the Park-KOC dispute, a series of incidents involving Korean players revealed a deficiency in Korea's understanding and handling of basic international sports rules. The most prominent incident, before Park, involved Olympic gymnast T.Y. Yang. In the all-around competition, at the 2004 Athens games, Yang finished third, after the difficulty level of his routine on the parallel bars was improperly underrated, possibly denying him a gold medal. The KOC, Yang, and his coaches protested the results; the International Gymnastics Federation (FIG) agreed that the routine had been incorrectly calculated and suspended the three responsible judges,

34) *KOC News Release*, 8 July 2016 (b).

but ruled that the results could not be changed. The challenge largely turned on when the Korean side had timely lodged its complaint. FIG rules required that any protests over scores be filed during the actual competition. Though the CAS accepted Yang's version of the facts, it dismissed his appeal because the protest was lodged after the competition concluded.[35)]

The KOC's ruling regarding Park showed a similar misunderstanding of the *lex sportiva*. The board rationalized its decision as maintaining the integrity of sports competition:

> We instituted this particular rule [Article 5.6] because competing for the country demands high moral standards. Doping runs counter to the spirit of fair play, and we felt we needed to be strict in this regard for the sake of educating young athletes.[36)]

The Korea's Clean Sports Committee (CSC),[37)] which reviews and enacts amendments to KOC rules, including the rule for selecting national athletes, stated on 7 April that "We cannot revise the rules for a single athlete" and "revising the rule for a specific person is not desirable."[38)] Given that Park had served the full WADA punishment for intentional doping, the 'moral standards' and 'equality' rationales are unconvincing legal and policy arguments.

More importantly, the KOC's decision contravened long-established, unequivocal CAS precedent. The committee then reinforced its outlier position by announcing that it was not bound by any decision from the CAS – the 'supreme court' of international sports jurisprudence. The KOC had also shown its misunderstanding of this legal area by legislating Article 5.6 in 2014 - three years after WADA asserted, and the CAS ruled, that penalties beyond that in the WADA Code are not allowed under current

35) CAS 2004/A/704 Yang Tae Young v/FIG.

36) *KOC News Release*, 16 June 2016.

37) The Clean Sports Committee (CSC) was established on 11 February 2014 by the Ministry of Culture, Sports and Tourism (MCST). The CSC is dedicated to protecting the integrity of sports and has vowed to eradicate the 'four evils' of Korean sports: "match-fixing and biased judgment," "(sexual) violence," "illicit college admissions," and "the privatization of sport federations." Anti-doping is also one of the committee's priorities.

38) *KOC News Release*, 7 April 2016.

agreements. Why would the KOC be so disconnected from prevailing legal authorities?

One excuse is that the KOC was unaware of international law, as demonstrated during the mishandling of the T.Y. Yang case during the 2004 Athens Olympics. Another explanation is that the KOC was well aware of the CAS' nullification of the Osaka Rule and similar penalties but enacted Article 5.6 as a 'Code Red' (popularized in the movie, *A Few Good Men*).[39] If this was the case, then the problem is a fundamental failure of democratic decision-making and a lack of commitment to the rule of law.

2. Institutional Reforms

What lessons can be learned from this prolonged, expensive dispute? What changes can be made in Korean sports jurisprudence to avoid this? Several models exist to reform Korea's sports jurisprudence; the most relevant is the short-lived Korea Sports Arbitration Committee (KSAC), which was abolished in 2009. The KSAC was established in May 2006 as an affiliated body of the Korea Sports Council (*Daehancheyughoe*) and tasked with arbitrating/mediating disputes between athletes and sports organizations, and developing Korean sports law. The body consisted of a nine-member committee and fifty-nine arbitrators; its jurisdiction included disputes among members over qualifications for participation, national athlete selection, and doping violations.

The KSAC was abolished in 2009, during a merger of the Korean Olympic Committee and the Korea Sports Council, which gave birth to today's KOC. The new articles of association eliminated the KSAC and its budget.[40] Three reasons are cited

39) An article on Pressian, a political news website headquartered in Seoul, developed the 'Code Red' argument. The article suggests that it was highly likely that the KOC and the Ministry of Culture, Sports, and Tourism were aware of the fact that the CAS and IOC prohibit double punishment when they introduced Article 5.6's three-year probation rule in 2014. When Park asked the sports authorities to modify this article, they perceived this as a direct challenge to their authority. The dispute then turned from a regulation issue to "one we [KOC and Ministry] could not lose." See Lee, Chong-hoon, "KOC's Doggedness: We Can't Lose to Park Tae-hwan." 9 July 2016, available at pressian.com (http://www.pressian.com/news/article.html?no=138282).

40) Kee-Young Yeun. "The Development of International Sports Arbitration Bodies and Challenges of Legislative Policy for Reestablishment of Sports Arbitration Agency in Korea," *Journal of Arbitration Studies*, Vol.23 No.3, 2013, pp.101-126.

for this revision: (1) the lack of arbitration cases (only one case went before the KSAC during its four-year existence); (2) the inefficiency of maintaining a separate secretariat; and (3) the overlap of functions with the KOC's Reward and Punishment Committee.[41)]

Without the KASC, sports disputes in Korea have been resolved through the internal Reward and Punishment Committees of various sports organizations.[42)] As a result, decisions in sports disputes tend to favor sports organizations and clubs at the expense of athletes, referees, and coaches. With biased forums, applying their own versions of sports law, athletes, such as Park, are judged by an extrajudicial standard, like 'morality.'

Had there been an arbitration committee like the KCAS, the Park case might have been resolved consistent with well-established CAS precedent. Without the KCAS, Park was forced, first, into an extra-institutional path of public apologies and political surrogates advocating on his behalf. When that failed, he had to seek relief from the domestic courts and CAS. Park's court and CAS victories, which the KOC felt compelled to accept, compromised the KOC's legitimacy and Korea's sports sovereignty.

To avoid a similar judicial failure, the KOC should reconstitute a sports arbitration committee. After the Park matter, the KOC, itself, has endorsed this new institution:

Because the sports industry will expand and disputes will grow in the future, the KOC will establish an arbitration system that will minimize cost and conflict. With regards to detailed plans, the KOC will consult the relevant government Ministries and sports organizations.[43)]

A reconstituted KASC can draw on sports arbitration institutions in other countries. One model that we propose is from a working group reporting to Canada's Secretary of State for Amateur Sports. All amateur athletes, in a dispute with a sports association, like the KSF or the KOC, would have access to mediation or arbitration. Managing these services would be a council which would select a body of mediators and arbitrators. The council would include not only representatives from the sports communities, such as former amateur athletes, coaches, and members of national

41) Dae-Hee Kim, "A Study on the Establishment of an Arbitration System for the Resolution of Domestic Sports Disputes," *Journal of Arbitration Studies*, Vol.24 No.1, 2014, pp.159-179

42) Dae-Hee Kim, 2014, p.176.

43) KOC, *News Release*, 8 July 2016(b).

sports associations, but also experts in sports law and persons from sports media, among other areas deemed relevant and representative of the sports community. The council would be independent of the KOC and all sports federations, so independent funding, such as from dues paid by sports associations and athletes, is needed. Members' terms would be limited and staggered, and listed mediators and arbitrators would be periodically reviewed for competency. A formal link with the CAS would provide expertise and access to mediators and arbitrators. (The CAS and the Australian Olympic Committee established this relationship to assist with the Australian Court of Arbitration for Sport.)

Additionally, an Ombudsperson for Amateur Sport should be institutionalized to investigate complaints over the administration of sports associations, including whether local regulations are consistent with international agreements and other international standards. The Ombudsman could be a first step for athletes complaining about treatment by the KOC and other Korean sports organizations.[44]

The impetus for change exists; the commitment to see it through remains uncertain.

References

Amos, Anne and Fridman, Saul, *Toward a Social Science of Drugs in Sport*, ed. Jason Mazanov, New York: Routledge, 2011,

Associated Press, "Park Tae-hwan Blocked from Competing at Olympics in Rio," 7 April 2016.

Blackshaw, Ian, "ADR and Sport: Settling Disputes through the Court of Arbitration for Sport, the FIFA Dispute Resolution Chamber, and the WIPO Arbitration & Mediation Center," 24 *Marquette Sports Law Review*, 1, Fall 2013.

Bundesgericht [BGer] [Federal Tribunal] Apr. 18, 2011, 4A_640/2010 (Switz.) (athlete claimed violation of right to be heard; appealed denied);

Bundesgericht [BGer] [Federal Tribunal] Oct. 3, 2011, 4A_530/2011 (Switz.) (athlete claimed that CAS did not have jurisdiction; appeal dismissed).

CAS (Court of Arbitration for Sports), *Code of Sports-related Arbitration*, 2016.

44) Report of the Work Group to the Secretary of State (Amateur Sport), "A Win-Win Solution: Creating a National Alternate Dispute Resolution System for Amateur Sport in Canada," May 2000, available at http://www.crdsc-sdrcc.ca/eng/documents/Working-Group-Report-e.pdf.

CAS, *Media Release*, "Swimming: Court of Arbitration for Sport (CAS) Rules that Tae hwan Park is Eligible for Selection for the Korean Team for the Rio 2016 Olympic Games," 8 July 2016.

CAS 2004/A/704 Yang Tae Young v/FIG.

CAS 2011/A/2403 WADA v. Jobson Leandro Pereira de Oliveira, Confederação Brasileira de Futebol (CBF) & Superior Tribunal de Justiça Desportiva de Futebol (STJD), 25, Aug. 2011.

CAS 2011/A/2658 British Olympic Association (BOA) v. World Anti-Doping Agency (WADA), 30 Apr. 2012.

CAS 2011/A/2612 Liao Hui v. International Weightlifting Federation (IWF), 23 July 2012.

CAS 2011/O/2422 US Olympic Committee (USOC) v. International Olympic Committee (IOC), 4 Oct. 2011.

CAS 2011/O/2422 WADA v. International Gymnastics Federations & Melnychenko, 6, Oct. 2011.

Daily Herald, "Park Tae-hwan Blocked from Competing at Olympics in Rio," 7 April 2016.

Chosun Ilbo (English Edition), "Swimmer Park Tae-hwan Pleads for Olympics Chance," 3 May 2016.

http://english.chosun.com/site/data/html_dir/2016/05/03/2016050301320.html (search 11 July 2016).

CNN, "Russian doping: 'An Unprecedented Attack on the Integrity of Sport & the Olympic Games,'" 21 July 2016.

IOC (International Olympic Committee), *Olympic Charter*, IOC: Lausanne, Switzerland, 2015. Available at https://stillmed.olympic.org/Documents/olympic_charter_en.pdf. (searched on Aug. 2015).

Kim, Dae-Hee, "A Study on the Establishment of an Arbitration System for the Resolution of Domestic Sports Disputes," 「Journal of Arbitration Studies」, Vol.24, No.1, 2014, pp.159-179.

Kim, Sung-Ryong and Ahn, Keon-Hyung, "A Study on the Problem and Improvement of Arbitration System for Resolution of Domestic Sports Dispute," 「The Journal of Sports and Law」, Vol. 15, No. 1, 2012, pp.71-99.

KOC (Korean Olympic Committee), 「Article of Association」.

KOC News Release, 「Revising the Selection Rule for a Specific Person Not Desirable」, dated 2016.4.07.

_____, 「Decision to Maintain the Existing Regulation Regarding National Athlete Selection」, dated 2016.6.16.

_____, 「Will Respect CAS Decision on National Athlete Selection」, dated 2016.7.08(a).

_____, 「KOC Accepts CAS Decision」, dated 2016.7.08(b).

Korea Joongang Daily, "Olympics Looking Even More Unlikely for Park," 17 June 2016. http://koreajoongangdaily.joins.com/news/article/article.aspx?aid=3020103 (search date: 2016-07-10).

Korea Times, "Floor Leader Pleads for Second Chance for Park Tai-hwan," dated 2016. 5.04. access date: 2016.7.01. http://www.koreatimes.co.kr/www/news/nation/2016/07/116_204041.html?dable=10.1.4.

Lee, Chong-hoon, "KOC's Doggedness: We Can't Lost to Park Tae-hwan," 「pressian.com」, 9 July 2016. access date: 2016.7.30. http://www.pressian.com/news/article.html?no=138282.

Lee, Han-Shin and Kim, Sung-Yong, "Cross-border Internet Dispute Resolution," *Electronic Commerce Research and Applications*, Vol.2 No.1, 2010.

New York Arbitration Convention, *UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards*,

Park, Eun-Young and Cho, Eun-A, 2015. "Sports Dispute Resolution: On the Mediating Procedure of CAS," 「Korean Forum on International Trade and Business Law」, Vol. 24, No. 2, 2015, pp. 73-98.

Report of the Work Group to the Secretary of State (Amateur Sport), "A Win-Win Solution: Creating a National Alternate Dispute Resolution System for Amateur Sport in Canada," May 2000. Available at http://www.crdsc-sdrcc.ca/eng/documents/Working-Group-Report-e.pdf.

Seoul District Court, 「Singapore Company A v Korean Pilot B ("Pilot Training Case"), 2012 Gadan 348225」, 2013.9.26.

Seoul Central District Court, 46th Civil Division, 「Hyundai Motors v C.J. Jeon, 2012 Gahap 5730」, 2012.4.27.

Seoul Eastern District Court, 21st Civil Division, Case No. 2016 「Injunction to Confirm

that Reason for Disqualification as National Athlete Does Not Exist, 2016 Kahap 228」, 2016.7.01.

Swim Swam, n.d. "Park Tae Hwan Officially Ruled Out of 2016 Olympic Games," https://swimswam.com/park-tae-hwan-officially-ruled-out-of-2016-olympic-games/.

USA Today, "Split Widens between IOC, Anti-Doping Leaders over Russia," 1 Aug. 2106.

Yeun, Kee-Young, "The Development of International Sports Arbitration Bodies and Challenges of Legislative Policy for Reestablishment of Sports Arbitration Agency in Korea," *Journal of Arbitration Studies*, Vol. 23, No. 3, 2013, pp.101-126.

WADA (World Anti-Doping Agency), *World Anti-Doping Code*, Montreal, Canada, 2009. Text available at http://www.intjudo.eu/editor_up/up/WADA_Anti-Doping_CODE_2009_EN.pdf.

Zagger, Zachary, "German High Court Denies Skater's Challenge to Sports Court," *Law360*, 7 June 2016.