

# SPORTS ARBITRATION IN JAPAN

*Dai Yokomizo*\*

## ABSTRACT

*As the internationalization and commercialization of sports further develop, disputes with regard to sports are increasing in number worldwide, and Japan is not an exception to this trend. To deal with sports disputes, the JSAA was established in 2003. From a comparative viewpoint, since sports arbitration systems differ from country to country, there are certain advantages in introducing the Japanese sports arbitration system. Thus, in the first part of this paper, the general features of the JSAA will be described.*

*There are institutions other than the JSAA for resolving sports disputes: national courts and dispute resolution bodies within sports associations. In particular, there should be a certain tension between national courts and the JSAA in the sense that an arbitration agreement prevents an athlete from bringing an action before a court. With regard to this issue, it is sometimes claimed in Japan that sports disputes such as the selection of delegates are not considered “legal disputes” on which courts should adjudicate, and arbitration at the JSAA is the only means for athletes to receive remedies. According to them, therefore, there should be no tension between courts and the JSAA. However, is that truly the case? In the second*

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\* Professor of law at Nagoya University. E-mail: daiyoko@law.nagoya-u.ac.jp. This article is based on my presentation at 2014 Taipei International Conference on Arbitration and Mediation (August 30-31, 2014, Chinese Arbitration Association, Taipei Conference Room), hosted by Chinese Arbitration Association, Taipei/Asian Center for WTO & International Health Law and Policy, College of Law, National Taiwan University/Chinese Taipei APEC Engineer Monitoring Committee. Also, this article is an outcome of the Grants-in-aid for Scientific Research (the Japanese Society for the Promotion of Science, Scientific Research (B)) project: “Redefining the Theoretical Grounds for the Collaboration between Public Law and Private Law in the Era of Globalization”.

*part of this paper, case decisions in national courts with regard to disputes between an athlete and a sports association will be analyzed, and confirmed that courts have often considered a dispute with regard to decisions by an association as a legal dispute, and that it cannot be said that national courts are closed for an athlete to seek the nullification of a decision by a sports association.*

**KEYWORDS:** *sports Arbitration, Japan, JSAA*

## I. INTRODUCTION

The purpose of this paper is to describe sports arbitration in Japan and to reflect on the relation between the Japan Sports Arbitration Agency (JSAA) and national courts, with a focus on arguments about legal disputes.

As the internationalization and commercialization of sports further develop, disputes with regard to sports are increasing in number worldwide, and Japan is not an exception to this trend. To deal with sports disputes, the JSAA was established in 2003. From a comparative viewpoint, since sports arbitration systems differ from country to country, there are certain advantages in introducing the Japanese sports arbitration system. Thus, in the first part of this paper, the general features of the JSAA will be described (II).

There are institutions other than the JSAA for resolving sports disputes: national courts and dispute resolution bodies within sports associations. In particular, there should be a certain tension between national courts and the JSAA in the sense that an arbitration agreement prevents an athlete from bringing an action before a court.<sup>1</sup> With regards to this issue, it is sometimes claimed in Japan that sports disputes such as the selection of delegates are not considered “legal disputes” on which courts should adjudicate,<sup>2</sup> and arbitration at the JSAA is the only means for athletes to receive remedies.<sup>3</sup> According to them, therefore, there should be no tension between courts and the JSAA. However, is that truly the case? In the second part of this paper, the relation between national courts and the JSAA will be examined (III).

## II. DISPUTE RESOLUTION BY THE JSAA<sup>4</sup>

In 1998, a report entitled “Wagakuni niokeru Anchi Dopingu Taisei ni Tsuite”[On the Anti-Doping System in Japan] was published by a committee jointly established by the Japan Olympic Committee (JOC) and

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<sup>1</sup> THE APPEAL OF SPORTS LAW, <http://www.irut.jura.uni-erlangen.de/Forschung/Veroeffentlichungen/OnlineVersionFaszinationSportrecht/FaszinationSportrechtEnglisch.pdf> (last visited Nov. 2, 2014); FRANK OSCHÜTZ, SPORTSCHIEDSGERICHTSBARKEIT, 3 (2005).

<sup>2</sup> Article 3 (1) of the Saibansho Ho [Court Act] (Law no. 59 of 1947 and amendment act no. 36 of 2006).

<sup>3</sup> Masato Dogauchi, *Supotsu Chusai, Chotei [Sports Arbitration and Mediation]* in SUPOTSU HO HENO SHOTAI [INVITATION TO SPORTS LAW] 64 (Masato Dogauchi & Yoshihisa Hayakawa eds., 2011); Masato Dogauchi, *Supotsu Chusai wo meguru Jakkai no Renten [Some Issues concerning Sports Arbitration]*, 3 CHUSAI TO ADR [ARBITRATION AND ADR] 79, 82 (2008).

<sup>4</sup> For the details, see Masato Dogauchi, *Nihon Supotsu Chusai Kiko to sono Katsudo [The JSAA and its Activity]*, 15 NIHON SUPOTSU HO GAKKAI NENPO [ANNUAL REPORT OF THE JAPAN ASSOCIATION OF SPORTS LAW] 7 (2008). For the introduction of the JSAA in English, see TAKUYA YAMAZAKI, SPORTS LAW IN JAPAN 65-70 (2012).

the Japan Sports Association (JASA). It recommended the establishment of an institution for arbitration to resolve disputes with regard to measures such as suspension of participation in games based on the results of doping controls. Following this report, “the research group on sports arbitration” was set up in 1999 within the JOC and it examined practical issues concerning the establishment of an institution for sports arbitration. From August 2002, “the Preparatory Committee on the Establishment of the JSAA”, which included members from the JOC, the JASA and the Jana Sports Association for the Disabled (JSAD), continued to examine them. As a result, the JSAA was established on April 7, 2003 as an association without legal personality.<sup>5</sup> On April 1, 2009, it was transformed to a general incorporated foundation, and on April 1, 2013, it was recognized as a public interest incorporated foundation.<sup>6</sup>

### *A. General Features*

The objective of the JSAA is to promote the sound development of sports through the enhancement of transparency of sports law, the fermentation of understanding and trust for sports among nationals and the resolution of disputes between individual athletes and a sports association through arbitration and mediation.<sup>7</sup> To achieve that objective, the JSAA conducts the following activities: (1) to settle on the basic plan with regard to sports arbitration and mediation; (2) to establish rules for sports arbitration and mediation; (3) to manage sports arbitration and mediation; (4) to educate and promote activities concerning sports law, sports arbitration and mediation; (5) to gather and control information concerning sports law, sports arbitration and mediation; and (6) other necessary activities for fermenting an understanding and trust for sports among nationals and for the promotion of the sound development of sports.<sup>8</sup> The JSAA is administered by the JOC, the JASA, the JSAD, the Japan Anti-Doping Agency (JADA) and the Ladies Professional Golfers’ Association of Japan (JPGA).<sup>9</sup>

The three pillars of the JSAA’s activities are arbitration, mediation and the promotion of sports law. Here, the first of these will be described.

The JSAA provides three arbitration rules: *Supotsu Chusai Kisoku* [rules on sports arbitration] (adopted in 2003), *Tokutei Chusai Goi ni motozuku Supotsu Chusai Kisoku* [rules on sports arbitration based on a specific arbitration agreement] (effective since September 1, 2004), and

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<sup>5</sup> Dogauchi, *supra* note 4, at 9-10.

<sup>6</sup> See JSAA, <http://www.jsaa.jp/doc/gaiyou2.html> (last visited Nov. 2, 2014).

<sup>7</sup> Article 3 of the articles of incorporation of the JSAA.

<sup>8</sup> Article 4 (1) of the articles of incorporation of the JSAA.

<sup>9</sup> See *supra* note 6.

*Dopingu Hunso Jiken ni kansuru Chusai Kisoku* [rules on arbitration with regard to doping dispute cases] (effective since July 1, 2007). Since arbitration on doping cases has its special structure and character as an appeal of a disciplinary panel and quasi-penal proceeding, the other two “civil” proceedings will be described here.

*1. Rules on Sports Arbitration.* — These rules apply to an application made by an athlete as an applicant against a sports association as a respondent when the athlete has a complaint against a decision the association or its governing body has made against the athlete with regards to a sports competition or its management.<sup>10</sup>

The above-mentioned “sports association” does not mean any sports association. It refers only to the JOC, the JASA, the JSAD, regional, prefectural and city athletic associations, and sports associations under the auspices of the above-mentioned associations.<sup>11</sup> This limitation is said to be due to financial and human resources restrictions.<sup>12</sup> In contrast, what the above-mentioned “athlete” means is broad enough to cover “an athlete, manager, coach, team doctor, trainer, other supporting staffs for competition, and team constituted of these individuals in a sports competition”.<sup>13</sup>

A judgment by an umpire during a competition is excluded from definition of the “decision the association or its governing body has made”.<sup>14</sup> Otherwise, the smooth management of sports competitions would be disturbed by applications for arbitration.<sup>15</sup> What is assumed to be “the decision the association or its governing body has made” is a decision with regards to the selection of delegates for sports competitions such as the Olympic games or the National Athletic Meet, or a decision on a disciplinary measure against an athlete who has brought about a disgraceful affair.<sup>16</sup>

An agreement between an applicant and a respondent to the effect that they submit the dispute in question to the sports arbitration panel shall be necessary for arbitration by this rule.<sup>17</sup> The arbitration agreement must be made in writing or in a way that explicitly shows their intent.<sup>18</sup>

The application must arrive at the JSAA within six months after the applicant has known the decision of the sports association in question, or, if

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<sup>10</sup> Article 2 (1) of the Rules on Sports Arbitration. Of course applications for arbitration covered by Rules on Arbitration with regard to Doping Dispute Cases are excluded.

<sup>11</sup> Article 3 (1) of the Rules on Sports Arbitration.

<sup>12</sup> Dogauchi, *supra* note 4, at 18.

<sup>13</sup> Article 3 (2) of the Rules on Sports Arbitration. A council, director, staff or other individuals for management of a competition is excluded.

<sup>14</sup> Article 2 (1) of the Rules on Sports Arbitration.

<sup>15</sup> Dogauchi, *supra* note 4, at 19.

<sup>16</sup> *Id.*

<sup>17</sup> Article 2 (2) of the Rules on Sports Arbitration.

<sup>18</sup> *Id.*

he/she does not know it, within one year after the decision has been made,<sup>19</sup> unless the rules of the association stipulate otherwise or the parties agree otherwise.<sup>20</sup> The fee for the application is 50,000 yen.<sup>21</sup>

In principle, an arbitral panel consists of three arbitrators in ordinary cases.<sup>22</sup> In such cases, each party appoints one arbitrator within two weeks from the date of sending out the notice about receipt of the application for arbitration.<sup>23</sup> If a party has not appointed the arbitrator within the period, then the JSAA will appoint an arbitrator.<sup>24</sup> The two appointed arbitrators will then appoint one more arbitrator by their agreement within a period indicated by the JSAA.<sup>25</sup> Arbitrators must be independent and deal with cases fairly and promptly.<sup>26</sup> Arbitrators are appointed from a list of the candidates for sports arbitrators, which is regularly made by the JSAA.<sup>27</sup> However, the parties can appoint arbitrators as long as the JSAA acknowledges the particular reasonableness of the appointment.<sup>28</sup>

The arbitration proceeding is confidential.<sup>29</sup> The arbitral panel must, in principle, render an arbitral award within three weeks after finishing the trial.<sup>30</sup> So far 28 awards have been rendered.<sup>31</sup>

According to the arbitral awards which have been so far rendered, the arbitral panel can revoke decisions of sports associations if (1) the decision violates the rules established by the association; (2) it considerably lacks reasonableness; (3) the process that leads to the decision was defective, or (4) the rule of the association itself violates the legal order or considerably lacks reasonableness.<sup>32</sup>

For cases which require urgent resolution, an emergency arbitration proceeding is used. This proceeding is conducted when the JSAA has

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<sup>19</sup> Article 13 (1) of the Rules on Sports Arbitration.

<sup>20</sup> Article 13 (3) of the Rules on Sports Arbitration.

<sup>21</sup> Article 3 of *Supotsu Chusai Ryokin Kitei* [Rules on Fees about Sports Arbitration].

<sup>22</sup> Article 21 (1) of the Rules on Sports Arbitration.

<sup>23</sup> Article 22 (1) of the Rules on Sports Arbitration.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Article 20 (1) of the Rules on Sports Arbitration.

<sup>27</sup> Article 20 (3) (4) of the Rules on Sports Arbitration.

<sup>28</sup> Article 20 (4) of the Rules on Sports Arbitration.

<sup>29</sup> Article 37 (1) of the Rules on Sports Arbitration.

<sup>30</sup> Article 42 (1) of the Rules on Sports Arbitration.

<sup>31</sup> AWARDS OF JSAA, <http://www.jsaa.jp/award/> (last visited Nov. 2, 2014).

<sup>32</sup> *X v. All Japan Taekwondo Association*, JSAA-AP-2014-003 (Apr. 25, 2014); *X v. Japan Cycling Federation*, JSAA-AP-2013-022 (Feb. 28, 2014); *X v. Ski Association of Japan*, JSAA-AP-2013-023 (Nov. 10, 2013); *X1 & X2 v. All Japan Taekwondo Association*, JSAA-AP-2013-004 (July 15, 2013); *X v. Japan Swimming Federation*, JSAA-AP-2013-003 (May 1, 2013); *X v. All Japan Archery Federation*, JSAA-AP-2011-002 (June 29, 2012); *X v. Kanto student Equestrian Association*, JSAA-AP-2011-001 (Dec. 26, 2011); *X v. P Baseball Federation*, JSAA-AP-2009-001 (July 8, 2009); *X v. Japan Equestrian Federation*, JSAA-AP-2004-001 (July 14, 2004); *X v. Japanese Para-Swimming Federation*, JSAA-AP-2003-003 (Feb. 16, 2004); *X v. Japan Weightlifting Association*, JSAA-AP-2003-001 (Aug. 4, 2003).

judged that there is a need to resolve a dispute with particular promptness considering the urgency of the situation or the nature of the case.<sup>33</sup> This proceeding is in principle conducted promptly by one arbitrator appointed by the JSAA.<sup>34</sup>

2. *Rules on Sports Arbitration based on a Specific Arbitration Agreement.* — These rules were introduced to extend the scope of disputes the JSAA deals with.<sup>35</sup> The disputes covered by these rules are typically sports business disputes such as a dispute between a sports association and a sponsor company or a dispute regarding the broadcast of a competition, a dispute between a famous athlete and a sponsor company, or a dispute between sports associations.<sup>36</sup> However, there has been no application for arbitration based on these rules so far.<sup>37</sup>

### ***B. Automatic Arbitration Acceptance Provision***

Arbitration pursuant to the Rules on Sports Arbitration based on a Specific Arbitration Agreement does not differ greatly from ordinary commercial arbitration in the sense that it is assumed that the positions of the parties are equal and that an arbitration agreement is necessary for the parties to use arbitration.<sup>38</sup> In contrast, in arbitration based on the Rules on Sports Arbitration the positions of the parties in dispute are not equal:<sup>39</sup> an applicant athlete belongs to a respondent sports association who is responsible for the decision in question. Thus, it might be difficult for an athlete to conclude individually an arbitration agreement with an association he/she belongs to and to apply for arbitration in case of a dispute if the association doesn't desire the use of sports arbitration.

Considering this difficulty, the JSAA asks the “sports associations” in the Rules on Sports Arbitration to establish and publish an automatic arbitration acceptance provision to the effect that they will always submit to arbitration when an athlete under their auspices applies for arbitration against them.<sup>40</sup> So far, the rate of adoption of the provision by the sports associations remains at 37.6%.<sup>41</sup>

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<sup>33</sup> Article 50 (1) of the Rules on Sports Arbitration.

<sup>34</sup> Article 50 (3) of the Rules on Sports Arbitration.

<sup>35</sup> Dogauchi, *supra* note 4, at 29.

<sup>36</sup> *Id.* at 30.

<sup>37</sup> *Id.*; *supra* note 31.

<sup>38</sup> Dogauchi, *supra* note 4, at 12-14.

<sup>39</sup> *Id.* at 14.

<sup>40</sup> *Id.* The introduction of an automatic arbitration acceptance provision is supported by the government. See SUPOTSU RIKKOKU SENRYAKU [STRATEGY FOR A STRONG STATE IN SPORTS], at 17, available at [http://www.mext.go.jp/component/a\\_menu/sports/detail/\\_\\_\\_icsFiles/afieldfile/2010/09/16/1297203\\_02.pdf](http://www.mext.go.jp/component/a_menu/sports/detail/___icsFiles/afieldfile/2010/09/16/1297203_02.pdf) (2010).

<sup>41</sup> As of June 30, 2014. CHUSAI JOKO SAITAKU JOKYO [The Current Situation of Adoption of the Arbitration Clause], <http://www.jsaa.jp/doc/arbitrationclause.html> (last visited Nov. 2, 2014).

Here one question arises with regards to the automatic arbitration acceptance provision: certainly, this kind of clause might be helpful for athletes under the current situation in Japan where few sports associations have their own dispute resolution bodies.<sup>42</sup> However, would it not prevent an athlete from taking an action before a court? In other words, is it not more appropriate to open the door to courts for athletes?

As for this question, Masato Dogauchi, Representative Director of the JSAA, claims that it is only in “legal disputes” that parties can require a court to adjudicate, and that, if an athlete takes an action for the nullification of a decision by a sports association, a court might dismiss the case since the dispute in question is not one to be adjudicated with the application of law.<sup>43</sup> In that case, sports arbitration would be the only way for athletes to seek a remedy against sports associations. But is it truly the case? In the next section, judgments in courts with regard to sports disputes will be analyzed to verify this issue.

### III. DISPUTE RESOLUTION BY NATIONAL COURTS

There are a variety of cases with regards to sports disputes in Japan on which national courts have decided. Whereas the majority of the cases concern claims for damages on the ground of an accident which occurred during a sports competition or during exercise,<sup>44</sup> not a few cases have been between an athlete and a sports association with regard to a decision by the association. Among these cases, although courts have dismissed some of them they have reviewed the decision by the association in others.

<sup>42</sup> YAMAZAKI, *supra* note 4, at 64.

<sup>43</sup> Dogauchi, *supra* note 4, at 8; Dogauchi, *supra* note 3, at 64; *See also* Masato Dogauchi, *Disputes in Sports*, THE JAPAN NEWS, [http://www.yomiuri.co.jp/adv/wol/dy/opinion/sports\\_120604.html](http://www.yomiuri.co.jp/adv/wol/dy/opinion/sports_120604.html) (last visited Nov. 2, 2014).

<sup>44</sup> For example, Sapporo Kōtō Saibansho [Sapporo High Ct.] Feb. 23, 2007, Case Number hei18 (ne) No. 12 Court in Japan, <http://www.courts.go.jp/> (boat); Tōkyō Chihō Saibansho [Tōkyō Dist. Ct.] Nov. 2, 2001, unpublished, Westlaw Japan, Ref. Number 2001WLJPCA11020003 (amateur baseball); Ōsaka Chihō Saibansho [Ōsaka Dist. Ct.] July 9, 1999, 1720 HANREI JIHŌ [HANJI] [JUDICIAL REPORTS] 161 (high school baseball); Urawa Chihō Saibansho [Urawa Dist. Ct.] Sep. 25, 1998 1673 HANREI JIHŌ 119 (darts trial); Yokohama Chihō Saibansho [Yokohama Dist. Ct.] June 22, 1999, 1007 HANREI TAIMUZU [HANTA] [JUDICIAL TIMES] 276 (duathlon); Chiba Chihō Saibansho [Chiba Dist. Ct.] Dec. 13, 1996, 1565 HANREI JIHŌ [HANJI] 144. (darts trial); Saikō Saibansho [Sup. Ct.] Mar. 10, 1996, 1526 HANREI JIHŌ [HANJI] 99 (ski); Nagano Chihō Saibansho [Nagano Dist. Ct.], Saku Branch Mar. 7, 1996, 1548 HANREI JIHŌ [HANJI] 121 (amateur softball); Tōkyō Kōtō Saibansho [Tōkyō High Ct.] May 24, 1995, 849 HANREI TAIMUZU [HANTA] 198. (baseball); Ōsaka Kōtō Saibansho [Ōsaka High Ct.] Oct. 16, 1992, 777 HANREI TAIMUZU [HANTA] 146 (Triathlon); Tōkyō Chihō Saibansho [Tōkyō Dist. Ct.] Aug. 31, 1989, 1350 HANREI JIHŌ [HANJI] 87 (baseball); Tōkyō Chihō Saibansho [Tōkyō Dist. Ct.] May 29, 1985, 562 HANREI TAIMUZU [HANTA] 111 (golf); Nagoya Kōtō Saibansho [Nagoya High Ct.] July 17, 1984, 537 HANREI TAIMUZU [HANTA] 145 (golf); Tōkyō Chihō Saibansho [Tōkyō Dist. Ct.] Feb. 27, 1970, 244 HANREI TAIMUZU [HANTA] 139. (PTA volleyball); Tōkyō Chihō Saibansho [Tōkyō Dist. Ct.] Dec. 21, 1964, 15 (12) KAKYŪ SAIBANSHO MINJISAIBAN REISHŪ [KAMINSHŪ] [LOWER COURTS REPORTS (CIVIL CASES)] [LOWER COURTS REPORTS (CIVIL CASES)] 2966 (ski).



### *A. Dismissed Cases*

There are four cases where the court dismissed the case with regard to a dispute between an athlete and an association.

First, in a case where an inspector brought a claim against the Japan Senior Golfers' Association seeking confirmation that some individuals in question were not entitled to be members of the association, the court dismissed the case holding that decisions by the association constituted interior issues in a particular society which is not directly related to the general civil legal order, although it confirmed that the issue constituted a legal dispute.<sup>45</sup> This case is unusual in the sense that the plaintiff was not the individual about whom the decisions were made but an inspector in the association. Also, it should be noted that the court confirmed that the issue constituted a legal dispute.

In the second case, an individual member who had been a famous dancer brought a claim against the Japan Ballroom Dance Association seeking confirmation that the resolution of three years' suspension of the title as member was null. The court dismissed the case holding that the court should not intervene in issues such as whether the decision was right or wrong, which should be resolved autonomously within the association.<sup>46</sup> The court emphasized the character of the association as an association with no legal personality and did not seem to apply the same holding to associations with legal personality. Also, it made a reservation that "it is possible that resolutions within an association with regard to the existence of the position as a member or the revocation of the position should be subject to the judicial review in cases where they would prevent rights in the social life considerably". From this reservation, it can be understood that the court considered such kinds of disputes to be legal disputes.

In the third case, an athlete brought a claim against the Japan Automobile Federation for the revocation of a penalty imposed by the federation for breaching race track rules. The court dismissed the case holding that "disputes with regard to the order or the priority in sports games are not subject to the judicial review when they do not directly impact on the individual's legal status" and that the dispute in question should not be considered a legal dispute.<sup>47</sup>

In the fourth case, a university brought a claim against the Intercollegiate Ski Association of Japan seeking confirmation that the resolution suspending the participation of its ski club in the association's championship was null and void, and that its club has the title as a team with the premier class. The court dismissed both claims, but with different

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<sup>45</sup> Tōkyō Chihō Saibansho [Tōkyō Dist. Ct.] Sept. 6, 1988, 691 HANREI TAIMUZU [HANTA] 236.

<sup>46</sup> Tōkyō Chihō Saibansho [Tōkyō Dist. Ct.] June 4, 1993, 807 HANREI TAIMUZU [HANTA] 244.

<sup>47</sup> Tōkyō Chihō Saibansho [Tōkyō Dist. Ct.] Aug. 25, 1995, 885 HANREI TAIMUZU [HANTA] 264.

reasons. About the first claim, the court held that the dispute in question was limited to an internal issue directly unrelated to the general civil legal order although it was a legal dispute. As for the second claim, it held that the claim concerned simply the existence of the title as a participating university for the championship and it cannot be considered a claim to confirm a concrete right/obligation or a concrete legal relation, and thus, it did not constitute a legal dispute.<sup>48</sup> The reason the court did not consider the second claim was its vagueness and generality and not related to the nature of the decision in question. Thus, it seems difficult to consider this case as one in which the court considered that a dispute with regard to decisions by an association does not constitute a legal dispute.

Thus, there is only one lower court case in which the court held that a dispute with regard to decisions by an association does not constitute a legal dispute. In the other cases, the court dismissed the case rather from respect for the autonomy of the association in question, with the reservation of the possibility of judicial review in cases where a decision is directly related to the general civil social order or where a decision would considerably affect rights in social life.

### ***B. Reviewed Cases***

In contrast, there are not a few cases where the court reviewed decisions made by sports associations. Whereas in some cases, the plaintiff claimed compensation or damages on the ground of the decision made by the association,<sup>49</sup> in other cases, the plaintiff sought confirmation that the decision by the association was null and void and the confirmation of their status. In both cases, the court reviewed the facts, judged the validity of the rules in question, or examined whether the application of the rules was appropriate in the concrete case.

For example, in one of many cases involving a big scandal caused by rigged sumo matches,<sup>50</sup> the court reviewed the fact finding made by the special investigation committee of the *Nihon Sumo Kyokai* [Japan Sumo Association], and affirmed<sup>51</sup> or denied it.<sup>52</sup>

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<sup>48</sup> Tōkyō Chihō Saibansho [Tōkyō Dist. Ct.] Dec. 1, 2010, 1350 HANREI TAIMUZU [HANTA] 240.

<sup>49</sup> Tōkyō Chihō Saibansho [Tōkyō Dist. Ct.] Jan. 30, 2006, 1239 HANREI TAIMUZU [HANTA] 267 (amateur boxing); Kōbe Chihō Saibansho [Kōbe Dist. Ct.] Dec. 16, 2004, Case Number hei 14 (wa) no. 2738, Court in Japan, <http://www.courts.go.jp/> (bike race); Tōkyō Chihō Saibansho [Tōkyō Dist. Ct.] Feb. 25, 1988, 663 HANREI TAIMUZU [HANTA] 243 (intercollege Judo); Tōkyō Kōtō Saibansho [Tōkyō High Ct.] Jan. 31, 1985, 1146 HANREI JIHŌ [HANJI] 62 (amateur baseball); Ōsaka Chihō Saibansho [Ōsaka Dist. Ct.] Sep. 27, 1979, 953 HANREI JIHŌ [HANJI] 100 (bike race).

<sup>50</sup> In addition to the cases in *infra* note 51 and 52, Tōkyō Chihō Saibansho [Tōkyō Dist. Ct.] Feb. 25, 2011, 1029 RŌDŌ HANREI [CASES ON EMPLOYMENT] 86; Tōkyō Chihō Saibansho [Tōkyō Dist. Ct.] Dec. 10, 2010, Case Number hei 20 (wa) no. 32316, Court in Japan, <http://www.courts.go.jp/>; Tōkyō Chihō Saibansho [Tōkyō Dist. Ct.] Apr. 19, 2010, 1346 HANREI TAIMUZU [HANTA] 164.

<sup>51</sup> Tōkyō Chihō Saibansho [Tōkyō Dist. Ct.] May 24, 2012, 1393 HANREI TAIMUZU [HANTA] 138;

Also, in a case involving an athlete's one-year suspension from an amateur baseball team's participation in the championship, the court examined relevant rules of the associations from the viewpoint of reasonableness and affirmed them.<sup>53</sup> In contrast, in a case where judokas of the All Japan University Judo Federation raised a challenge against alleged unjust qualification limits imposed by the All Japan Judo Federation, the court considered the introduction of the rule on qualification limits unreasonable and declared it null and void.<sup>54</sup> Thus, courts examine the validity of rules of sports associations from the viewpoint of reasonableness.

Moreover, in a case where a person ousted from an equestrian club demanded the confirmation of his claim as a member, the court invalidated the decision of the club holding that "it would be invalid when under concrete circumstances the ousting decision would objectively have no reasonable justification and would be unacceptable from the common sense".<sup>55</sup>

Thus, national courts have intervened in decisions made by associations against athletes in Japan.

### *C. Summary*

In this section, it was confirmed that whereas there are several cases in which the court dismissed the case, there are also not a few cases in which the court examined the facts, the rules of the association, and the application of these rules. There is only one case in which the court held that a dispute with regard to decisions by an association does not constitute a legal dispute. Under this situation, it cannot be said that national courts are closed for an athlete to seek the nullification of a decision by a sports association, and that sports arbitration would be the only way for athletes to seek a remedy against sports associations.

However, it is true that it is difficult to find a coherent tendency in these case decisions. From the reservation of the dismissed cases, it can at least be said that, if the decision made by an association would bring about a serious impact on the financial interests of an athlete, the athlete can expect the adjudication by a national court. Also, the court will probably adjudicate cases concerning disputes on highly popular sports

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Tōkyō Kōtō Saibansho [Tōkyō High Ct.] Oct. 24, 2012, <http://www.courts.go.jp/>.

<sup>52</sup> Tōkyō Chihō Saibansho [Tōkyō Dist. Ct.] Mar. 25, 2013, 1399 HANREI TAIMUZU [HANTA] 94.

<sup>53</sup> Tōkyō Kōtō Saibansho [Tōkyō High Ct.] Jan. 31, 1985, 1146 HANREI JIHŌ [HANJI] 62.

<sup>54</sup> Tōkyō Chihō Saibansho [Tōkyō Dist. Ct.] Feb. 25, 1988, 663 HANREI TAIMUZU [HANTA] 243.

<sup>55</sup> Yokohama Chihō Saibansho [Yokohama Dist. Ct.] Feb. 24, 1988, 671 HANREI TAIMUZU [HANTA] 140. *See also* Tōkyō Kōtō Saibansho [Tōkyō High Ct.] Jan. 31, 1985, 1146 HANREI JIHŌ [HANJI] 62; Tōkyō Chihō Saibansho [Tōkyō Dist. Ct.] May 24, 2012, 1393 HANREI TAIMUZU [HANTA] 138.

such as baseball.<sup>56</sup> Thus, it cannot be denied that, in relation to these disputes, the automatic arbitration acceptance provision introduced by an association will have the effect of preventing an athlete from taking an action before a court.

#### IV. CONCLUDING REMARKS

In this paper, after the general features of the JSAA were described, case decisions in national courts with regard to disputes between an athlete and a sports association were analyzed. It was confirmed that, contrary to the argument by Dogauchi, courts have often considered a dispute with regard to decisions by an association as a legal dispute, and that it cannot be said that national courts are closed for an athlete to seek the nullification of a decision by a sports association.

Of course, this does not mean that sports arbitration should concede its position to national litigation. Sports arbitration has many attractive advantages for athletes such as low cost, speedy proceedings and deep knowledge of arbitrators about their area of specialization.<sup>57</sup> Thus, it is significant that the JSAA promotes the use of sports arbitration. Still, it cannot be denied that the automatic arbitration acceptance provision will have the effect of preventing an athlete from taking an action before a court in particular in the above-mentioned kinds of disputes. When an athlete has raised this issue,<sup>58</sup> it will be necessary to discuss how to realize an appropriate allocation between sport arbitration and national courts.

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<sup>56</sup> For example, Tōkyō Chihō Saibansho [Tōkyō Dist. Ct.] Sep. 3, 2004, 1612 RŌDŌ HŌRITSU JUNPŌ [RŌDŌ JUNPO] [PERIODICAL REPORTS ON LABOR LAW] 24. In Japan, it is highly contestable whether the Sumo is a sport or the Shintoistic rite.

<sup>57</sup> OSCHÜTZ, *supra* note 1, at 33-37.

<sup>58</sup>*cf.* Douglas Thomson, *German Court Casts Doubt on CAS Consent*, GLOBAL ARBITRATION REVIEW, (Mar. 3, 2014), <http://globalarbitrationreview.com/news/article/32467/german-court-casts-doubt-cas-consent/>.

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