



**TAS / CAS**

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

## **GUIDELINES**

### **for the hearing of vulnerable witnesses and testifying parties in CAS Procedures (December 2023)**

#### **A. General**

1. The present Guidelines have been issued by the International Council of Arbitration for Sport (ICAS) in order to recommend best practices for the protection of vulnerable witnesses and parties in CAS arbitrations, more specifically in relation to CAS hearings.
2. CAS Panels regularly hear witness testimony in cases before them. In a minority of cases, a witness giving testimony may be vulnerable. In such cases, special procedural safeguards are necessary so that vulnerable witnesses can deliver testimony in a safe manner, and to incentivize reluctant vulnerable witnesses to testify.
3. A witness or testifying party should be considered as vulnerable in the meaning of the present Guidelines when testifying may risk (re)traumatizing the witness, present a threat to personal safety of the witness (and possibly others) or create significant risk to reputation or of retribution. Minors and witnesses with a mental disability will also generally qualify as vulnerable witnesses. CAS Panels should have broad discretion to tailor procedural safeguards to the vulnerability of such a witness.
4. For the purpose of these Guidelines, a reference to a vulnerable witness includes a vulnerable testifying party.
5. Each CAS Panel is encouraged to take the present Guidelines into account when it faces a situation involving vulnerable witnesses, bearing in mind its duty to comply with the parties' right to a fair trial, including to be heard and to benefit from equal treatment.
6. These Guidelines are recommendations with respect to the implementation of Articles R44.2 and R57 (hearing), as well as Articles R46 and R59 (publication of award) of the Code of Sports-related Arbitration (the Code) when there is a vulnerable witness but shall not prevail over the Code. These Guidelines do not constitute mandatory procedural rules and cannot be used by parties seeking to challenge the application or non-application of these Guidelines by any CAS Panel.
7. These Guidelines are relevant for all CAS Divisions.

#### **B. Measures prior to the hearing of vulnerable witnesses**

8. When appropriate, CAS Panels should proactively notify parties and witnesses of procedural accommodations available during the proceedings to safeguard a vulnerable witness, so that the parties may seek appropriate protections for them.



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9. Procedural accommodations may either be requested by a party on behalf of their witness(es) or adopted by a CAS Panel in its discretion. A party should request procedural accommodations in their written submissions or at any reasonable time prior to the hearing. In either case, the other party or parties should have the opportunity to respond within the time period set by the CAS Panel. CAS Panels also have discretion to adopt necessary measures on their own initiative, in the event that (i) a party is not fully aware of its right to make the request, and/or (ii) certain procedural accommodations would be appropriate but were either not requested by a party or different than those that were so requested. In all such cases, the CAS Panel shall discuss these measures and their implementation in advance with the parties and possibly during a case management conference.
10. Likewise, CAS should provide the other party or parties with information about available safeguards to protect the parties' right to a fair trial, as stated at Article 15 below.
11. The CAS Court Office may inform, through parties' counsel or directly, vulnerable witnesses prior to testifying that their identity might be disclosed (directly or indirectly) to the public, including in the final award.

**C. Hearing of vulnerable witnesses**

12. CAS hearings involving vulnerable witnesses should generally be held in private, as permitted by Article 6 of the European Convention on Human Rights, and subject to exceptions provided by Articles R43 and R57 §2 of the Code.
13. CAS Panels can order one or more of the following measures, and/or other measures as appropriate under the circumstances of the case:
  - i. To permit remote or other means of providing testimony such that the witness may avoid direct contact with the adverse party;
  - ii. To permit a witness to testify anonymously, as described at Articles 14 and 15 below;
  - iii. To require advance review and approval by the CAS Panel of questions for cross-examination (to prevent identification of witnesses and/or to avoid (re)traumatizing them);
  - iv. To exercise a degree of control over the manner of questioning to avoid (re)traumatizing alleged victims of abuse, particularly with respect to highly sensitive and traumatic questions during cross-examination; and
  - v. To permit CAS Panels, rather than the adverse party, to ask certain questions to the witness, to accommodate the witness' vulnerability.
14. CAS Panels may allow anonymous witness testimony involving vulnerable witnesses, where appropriate. When determining whether anonymous testimony is appropriate in a particular instance, CAS Panels should balance the need to protect vulnerable witnesses with the rights of the parties, including the right to a fair trial. In particular, such a witness should justify their request for anonymity as to the adverse party, by sufficient proof that disclosure of the witness' identity would create a serious potential threat to the personal safety of the witness (or their relative(s)).



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15. If a CAS Panel approves the use of anonymous witness testimony, the CAS Court Office has the responsibility to arrange that: (i) the identity of such witness can be officially verified; (ii) such witness is located in a safe place together with CAS counsel, away from the CAS hearing room and from CAS arbitrators & parties; and (iii) such witness' voice and face cannot be recognized (including by utilizing encrypted communication, voice distortion, face mask, etc.). Furthermore, the CAS Panel may request the advance review and approval of the questions for cross-examination to ensure that no questions would, directly or indirectly, identify such witness. The transportation of such witness to the hearing location should also guarantee anonymity.
16. To the extent possible, it is recommended that a vulnerable witness be permitted to examine prior statements or existing relevant evidence, where available, to refresh their recollection before testifying.

### **D. Publication**

17. Once proceedings are complete, the CAS Court Office may prevent the disclosure of sensitive information, such as the identity of vulnerable witnesses, in public records.
18. If the award is published, the CAS Court Office has authority to redact sensitive information in the award, at its discretion, prior to publication of the award. In any event, prior to any publication of the award, a party may request, whether on its own initiative or following a request from a vulnerable witness, that the CAS Court Office anonymize the identity of such witness in the award (the Anonymization Request). In the event that the other party or parties object to the Anonymization Request, the CAS Court Office has authority to decide on the Anonymization Request.

### **E. Application**

19. These Guidelines are public. They reflect a continuing commitment to protect the privacy, confidentiality, and physical and mental well-being of vulnerable witnesses appearing before CAS.

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