

Pragma-Dialectical Argumentative Studies on International Court of Arbitration for Sport

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Abstract: From pragma-dialectical argumentation theory, model of critical discussion and triangle of strategic maneuvering can deal with argumentative discourse normatively and descriptively, which remains logical framework and offers effective and flexible space for strategic maneuvering. Argumentative reconstruction under pragma-dialectical perspective provides the language approach of pragmatic trace of argumentative participants to further explore interactive principles, argumentative strategies and persuasive effects of rhetorical generation mechanism of International Court of Arbitration for Sports (ICAS) judicial language, which reflects paradoxical, independent and flexible institutional features of ICAS. Further, it has been discovered that there are sub-optimal settings both in trial discourse and arbitration text. Argumentative moves in sub-optimal settings are not into reasonable judgement of pragma-dialectical argumentation theory but it is still persuasive with operation of triangle of strategic maneuvering powered by the stimulus of strategic maneuvering.

1. Introduction

The International Court of Arbitration for Sport (ICAS) has exclusive jurisdiction over the three major Olympic sports disputes of athletes' qualifications, doping, and competition results. Which is a highly-recognized organization. Current researches focus on sports, laws, translation studies, medicine on the ICAS system evaluation and practice research, the discourse research of scholars in the ICAS is court interpretation. The current international pragma-dialectical argumentation theory on argumentative reconstruction is in the stage of rhetorical expansion [1]. Scholars have long been keenly aware of the development potential of this theory. They launched a series of studies on the rhetorical criticism, fallacy, context, and argumentative reconstruction, among which there are not many studies on judicial language. Therefore, starting from a pragmatic-dialectical perspective, this study takes the court discourse and judgment text of the ICAS as the research object to explore the judicial language generation mechanism and rhetorical interaction principles, strategies and effects of the ICAS. At the same time, the case of Sun Yang that occurred in recent years belongs to the core jurisdiction of the ICAS, which reflects the paradoxical, independent and flexible institutional characteristics of the ICAS, and fully embodies the confrontation between the principle of strict

liability and the concept of human rights of athletes. It is very suitable for rational discussion and precise persuasion from a pragma-dialectical perspective.

2. Argumentative Reconstruction of ICAS Under the Pragma-Dialectical Perspective

Discursive resources and non-discursive resources enter into the four stages in the model of critical discussion. In the confrontation stage, the debater chooses the most effective potential topic, uses the divergent space in the dialectical situation, and determines the dispute point. In the opening stage, debaters need to complete the discussion on the starting point, stimulate the distribution of the burden of proof, form a consensus domain, and provide the most favorable procedural and substantive starting point in the consensus domain. Through emotional appeals such as “deliberation” [2], they turn the starting point into a commitment to acceptance by the audience. In the argumentative stage, debaters choose the argument that best suits his side in the line of defense or offense, and clearly presents all the arguments to defend his position. In the concluding stage, the debater strategically chooses the scope of the conclusion to be drawn. In the critical discussion model, the Ten Commandments are used to examine whether the arguments are reasonable, to exclude unreasonable arguments or fallacies, and to determine the specific types of fallacies [3]. The appropriate situation to help restore rational dialogue, together with the model of critical discussion, becomes the operating space of the triangle of strategic maneuvering (strategic maneuvering refers to the way debaters deal with “argumentative dilemmas”)[4].

The triangle of strategic maneuvering has switched to the microscopic perspective of observing argumentative discourse, to perceive discourse choices in “potential topics”, “audience demands” and “means of presentation”. The resulting effort is made in the debate between rationality and validity, three aspects that parallel the research interests of classical rhetoricians and modern rhetoricians [5]. The set of potential topics does not have the systematicness of “topoi”, and must be selected from relatively open and circulated categories of possibilities [6]. Classical rhetoricians once defined topics as topoi and “loci” [7]. Modern rhetoricians start from speech act conditions, conversational norms, commitment sets, etc., and expand topics to various argumentative strategies and schemas [8]. According to the purpose of persuasion, differences of opinion, and starting points, audiences were once divided into collective audiences such as “main audiences” and “secondary audiences,” “multiple audiences” and “mixed audiences” [9]. Among them, recognition and pressure are the two means to win the audience. By adjusting the emotions of the audience, the audience is allowed to join the argumentation. The style of the “means of presentation” is reflected in the grammar, syntactic and prosodic variants within the domain.

3. Argumentative Reconstruction Analysis of Trial Discourse and Arbitration Text

First, enter the model of critical discussion in argumentative reconstruction.

In the confrontation stage, the prosecution and the defense clarified their positions on disputes such as interpretation, counter-accusation, and evidence. In the opening stage, the prosecution lawyers and the prosecution witnesses reached an internal consensus, mainly discussing the common sense of the prosecution's expert witnesses, such as their own institutions and the responsibilities of the responsible persons. In the argumentative stage, the prosecution and the defense built lines of offense and defense around the disputed points. The prosecution took the initiative to connect various disputed points into a line and weave them into a network by using various argumentation methods to block all defense reasons. The defense mainly relied on the guidelines of the World Anti-Doping Agency. The prosecution believed that the International Drug Testing Standards Regulations had the top legal effect, and the prosecution and the defense focused on the legal effectiveness of the International Drug Testing Standards Regulations and the

Guidelines of the World Anti-Doping Agency. In the interpretation of Articles 5.3.3, 5.4.1(b) and 5.4.2(b) of the International Drug Inspection Standard Regulations, the defense pointed out that the plural form of pronouns and nouns indicate that the testing team need to show the qualification of each person, the prosecution believes that the semantic coherence of "/" and the context means that the testing team only needs to show the overall qualification. In the concluding stage, the prosecution brought forward the two cases of Azevedo v. FINA and Johag's decision, again clarifying and emphasizing the legal effect of the international drug testing standards regulations and guidelines.

In the confrontation stage, the arbitration text added two main disputes including opposition to filing a case and conflict of laws. Based on the Constitution of the ICAS, the FINA Doping Control Rules and the International Drug Testing Standards Regulations, the arbitral panel rejected to choose the guidelines and CHINADA rules to interpret the legal provisions with the concept of strict responsibility system. The arbitral panel avoided the contradictions that all parties focused on but cannot be resolved from the beginning of the debate, and separated the controversial points of defense (testing whether the team violates the rights and interests of athletes) and the controversial points of interpretation (whether the anti-doping rules are effective), and conveyed the concept of human rights of athletes. In the opening stage, the arbitrator incorporated the value judgments made by all expert testimony into the arbitration decision as auxiliary evidence, including the defense expert testimony that was not convincing before. This practice broadened the consensus domain and the arbitrator chose a favorable starting point. In terms of the conflict of interests between the prosecution and the defense, the arbitral panel stated the pros and cons of the dispute through deliberation, chose a favorable starting point for the argument, and tried to evoke concessions from both the prosecution and the defense. In the argumentative stage, the arbitration panel expressed its own opinions on all disputed points, and built a line of offense and defense. In the concluding stage, the arbitration panel proved the party responsible for the failure of the test after repeated demonstrations and put forward the execution procedure.

Second, enter the strategic maneuvering analysis in argumentative reconstruction.

In the topical selection, the defense emphasized the rights and interests of athletes while the prosecution emphasized the normality of international anti-doping management under the strict liability system. The difference between the principle of strict liability system and the concept of athletes' human rights led the prosecution and defense to choose different legal basis and facts of the case. In the choice of presentation, the argumentative tone in the oral expression of the trial was suitable for proof and refutation. The prosecution used a continuous tone to argue and reason and the defense used a discontinuous tone. In adapting to the audience demands, the role of the third-party audience was heterogeneous within the arbitral panel. The secondary audience was the opponent, the jury and the general public. Both the prosecution and the defense were trying to attack and reshape the rhetorical personality of the other party in a direction that violated the general ethical cognition of the public, maintained and consolidated their own rhetorical personality in a direction that conformed to the general ethical cognition of the public[10].

The arbitral panel made full use of all available legal and social resources to meet logical rationality and conveyed the recognition of the concept of strict liability system, but it also need to show respect for the concept of human rights of athletes. First, the arbitral panel admitted that it was unreasonable for the inspection team to take pictures, and switched the topic to the emotional comparison of "sacrifice of athletes' privacy and personality rights" and the benefits of "all athletes participating in free sports at the highest level". Second, based on the provisions of Article 5.1 of the International Drug Testing Standards Regulations that "while ensuring the rights of athletes, prevent samples from being manipulated", the arbitral panel believed that the supplementary information provided by the chief prosecutor, the privacy of the login system, the short 60-minute window period, those overlapping of various factors basically avoided the appearance of a fake chief prosecutor and the possibility of sample manipulation, thus requiring athletes to cooperate in

sampling. The above showed that when faced with disputed issues, the arbitral panel had begun to introduce other topics with the concept of strict liability system to quell disputes or offset conflicts in the concept of human rights. In choice of presentation, the arbitral panel used constructive means to create various scenarios related to the case, using disputed points as clues, to coherently transition the audience's attention from one disputed point to another. Strategies of structuring, which introduced different ways of understanding the same situation, framed the parties' problems as fully as possible. As a result, the arbitral panel adopted a separate argumentative style, showing the arbitral panel's fair attitude of discussing the facts and respecting the facts. When the testimony of the prosecution's expert witnesses was more credible than that of the defense, out of the principle of politeness and the theory of face, the arbitration decision was reaffirmed. It also expounded on the testimony of defense expert witnesses. On the one hand, it built the interpersonal effect of friendship with the CHINADA organization; on the other hand, it flexibly used authoritative resources from both parties to build new credible opinions and defensible viewpoints to safeguard their own core interests. In adapting to the audience demands, the arbitration panel needs to unidirectionally persuade multiple audiences, such as WADA, FINA, athletes, etc. Both sides of the defense can also be extended to CHINADA, the Swiss Supreme Court, public hearing viewers, etc.

4. Conclusion

The argumentative reconstruction path reflects the balance and trade-off between the principle of strict liability and the concept of human rights in the ICAS, which is continuous. First, discourses are introduced into the critical discussion model, and the argumentative discourse of the trial debate and the arbitration decision is roughly divided. The biggest function is to determine the main disputes, the positions of all parties, the starting point, the way of argumentation and the solution. Based on the analysis results in the model of critical discussion, the triangle of strategic maneuvering provides a micro-perspective to switch to argumentative discourse, perceive the subtle changes in topical selection, adapt to audience demands and presentational choices and how it works in trial discourse and arbitration texts is a decisive factor affecting the effectiveness of persuasion. The judicial language research of the ICAS expands the scope of application of the pragma-dialectical argumentation theory, and at the same time draws lessons from western rhetoric theories to supplement and revise the pragmatic-dialectical theory.

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