

European Sports Law and Policy Bulletin

INTERNATIONAL
AND COMPARATIVE
SPORTS JUSTICE

Michele Colucci and Karen L. Jones eds.

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NOTE ON THE AUTHORS

Susan Ahern, Irish Barrister and Head of Legal and Legislative Affairs for the International Rugby Board (IRB).

Saleh Alobeidli, Senior Associate and member of the Sports Law Practice at Al Tamimi & Co. He is a licensed Advocate to appear before all UAE courts including the High Court, the DIFC courts, as well as all the sport dispute resolution bodies.

Loïc Alves, Legal Officer of the European Handball Federation, Graduate in Sports and European Law.

Anil Gürsoy Artan, LL.M, Sports Lawyer, Partner of Yogurtcuoglu & Gursoy Attorneys at Law, Ankara, Turkey.

Murat Artan, General Manager of Caykur Rizespor A.S (Turkish Super League Club).

Rui Botica Santos, Partner at CRA - Coelho Ribeiro e Associados (a Portuguese law firm) and founder of CRATimor Leste. Licensed lawyer in Portugal, Brazil, Timor-Leste and Macau. Judge at the FIA International Court of Appeal and Arbitrator at the Court of Arbitration for Sport. Master Honoris Causa from the ISDE (Spain).

Eduardo Carlezzo, Partner of Carlezzo Advogados. President of the South American Association of Football Lawyers. General Secretary of the Sports Law Commission of the Federal Board of Brazilian Bar Association. Professor of post-graduation course in Sports Law organized by the Brazilian Bar Association (São Paulo).

Marc Cavaliero, Head of Disciplinary and Governance in FIFA's Division for Legal Affairs.

Massimo Coccia, CAS Arbitrator, Professor of International Law, Partner at Coccia De Angelis Pardo & Associati Law Firm in Rome, Italy.

Martin Cockburn, Lawyer specialized in international sports law. Upon completion of the '*Master in International Sports Law*' at the Instituto Superior de Derecho y Economía in Madrid (Spain) and admission to the lawyer's bar in Munich (Germany), he joined the Legal Department of the Qatar Football Association in March 2009.

Michele Colucci, Attorney, Professor of International and European Sports Law at Sports Law and Policy Centre, European College of Parma, ISDE Madrid, former member of the FIFA Dispute Resolution Chamber and Arbitrator at the ECA of the European Handball Federation.

Juan de Dios Crespo Pérez, Sports Lawyer, Director of Ruiz-Huerta & Crespo Sports Lawyers in Valencia (Spain). Professor at Masters, including FIFA-CIES, MESGO, ISDE, etc. Arbitrator at the ECA of the European Handball Federation. Author of several books and more than 100 articles on Sports Law.

Javier H. Delfino, LL.M., Lawyer and Associate Professor of Labour and Social Security Law at Universidad de Buenos Aires, Facultad de Derecho, Argentina.

Sven Demeulemeester, Partner at ALTIUS law firm in Belgium where he (co-) heads the Sports law and Employment law department.

Jens Evald, Professor, dr.jur., Aarhus University, teaches among other subjects Danish and International Sports Law. His works include books and articles on private law issues, legal history, legal philosophy, biographies and sports law. He was chairman of Anti Doping Denmark (2006-2012) and editor of *Idraetsjuristen* (The Sports Lawyer), yearbook of the Danish Sports Law Association.

Monika Flixeder, Legal and Euro Event Senior Manager of the European Handball Federation, Lecturer in Sport Management and Law at Vienna University, AUT.

Tomáš Gábriš, Attorney-at-law and Assistant Professor at the Comenius University in Bratislava, Faculty of Law, Slovak Republic. Member of the Legislative Commission of the Slovak Football Association, member of the Scientific Committee of the think tank Sport and Citizenship (France), member of the International Association of Sports Law.

Mario Gallavotti, Italian lawyer at Gallavotti Honorati de Marco & Partners, FIGC Legal Counsel, member of FIFA Dispute Resolution Chamber and UEFA Appeals Body.

Marketa Haindlova, attorney-at-law specialized on sports law, chairperson of the Czech Association of Football Players, vice chairperson of the Czech Association of Ice-hockey Players, extern lecturer at the Law School of Charles University in Prague.

Karen L. Jones, JD, MA, Academic Programme Coordinator, Managing Editor of the International Sports Law Journal (ISLJ) and Researcher at T.M.C. Asser Instituut, Asser International Sports Law Centre. Lecturer in legal aspects of sports management (sports law), Hogeschool van Amsterdam, Amsterdam University. Adjunct faculty, International and Comparative Sports Law, John Marshall Law School (Chicago, IL). Owner & Managing Director, Mission2Transition (www.Mission2Transition.com).

Stefano La Porta, Italian lawyer at Gallavotti Honorati de Marco & Partners.

Wouter Lambrecht, LL.M. is Legal Manager of the European Club Association (ECA) and former associate at ALTIUS law firm.

Felix Majani, LLM in international sports law, consultant at Coelho Ribeiro e Associados law firm (Portugal) and co-Founder of the African Sports Law and business journal.

Jean-Michel Marmayou, Professor at Aix-Marseille University, Director of studies for the professional Master in Sports Law, Director of Les Cahiers de droit du sport, Co-Director of Sports law Centre of Aix-Marseille (Business law Centre: EA 4224). He is also affiliate Professor at Kedge Business School and holds the Chair for Sports Law and Event Marketing - Kedge Business School/Aix-Marseille University.

Rodrigo Marrubia Pereira, Attorney at law. Partner of Carlezzo Advogados. Post graduate in Sports Law by the Brazilian Sports Law Institute.

Achilleas Mavromatis, PhD in Sports Law, Attorney at Law, Mavromatis Lawyers, Thessaloniki, Greece. He is President of the Hellenic Volleyball Federation and Board Member, European Volleyball Confederation (CEV). He is also Secretary of the FIVB Legal Commission (2006-2012) and member of the FIVB Finance Commission (2012).

Ettore Mazzilli, Qualified lawyer specialized in sports law registered by the Bar Association of Bari (Italy) as well as an European Lawyer registered by the SRA of England and Wales. Among others, he has been working as Legal Advisor for the Qatar Football Association since 2005.

José Manuel Meirim, Sports Law Professor at NOVA Faculty of Law, Catholic Law Faculty (School of Lisbon), and Faculty of Human Kinetics. Founder and director of *Desporto & Direito*. Of-counsel at ABBC law firm (practice area of Sports Law).

Omar Ongaro, Head of Players' Status and Governance in FIFA's Division for Legal Affairs.

Thilo Pachmann, Ph.D., Partner of the Swiss law firm of Pachmann.

Richard Parrish, Professor of Sports Law and Director of the Centre for Sports Law Research, Edge Hill University, UK.

Adam Pendlebury, Senior Lecturer in Law at Edge Hill University, UK.

Katherine Porter, Staff Attorney in the Litigation and International Arbitration practice groups at Skadden, Arps, Slate, Meagher & Flom LLP in New York. She holds an J.D. from Villanova University School of Law, LL.M. from the Instituto Superior de Derecho y Economía (ISDE), and B.A. (Communications, Spanish) from Wake Forest University.

Olga Rymkevich, Senior researcher in Labour Law, Marco Biagi Foundation, University of Modena and Reggio Emilia, Modena, Italy.

Jan Sienicki, German-Polish Sports Lawyer, LL.M. International Sports Law, resident and practicing in Berlin, Germany.

Vanja Smokvina, PhD, Senior Research Assistant at the Faculty of Law, University of Rijeka, Croatia, and Visiting Research Associate at the Edge Hill University, Centre for Sports Law Research, UK.

Geanina Tatu, Romanian & French Sports Lawyer, LL.M. International Sports Law (ISDE-Madrid), Master II Droit du Sport (Aix-Marseille University).

Wil Van Megen, Head of FIFPro's Legal Department and attorney-at-law with Berkouwer & Zwiers advocaten.

Lucien W. Valloni, Ph.D., Partner at the Swiss law firm of Froriep in Zurich and head of its litigation & arbitration as well as sports law practice group.

Takuya Yamazaki, Japanese Attorney-at-Law, is the founder and Managing Partner of Field-R Law Offices, a niche sports and entertainment legal practice based in Tokyo. Takuya has vast legal and business experience in sports both in Japan and internationally. He is a member of the FIFA Dispute Resolution Chamber, a position held since 2009. In 2011 he became the Deputy Chairman of FIFPro Division Asia/Oceania. Takuya is also a member of various committees for the Japan Sports Arbitration Agency as well as a board member of the Japan Sports Law Association.

Andreas Zagklis, Attorney at Law (Greece), LL.M.; Martens Rechtsanwälte, Munich, Germany.

INTRODUCTION

Sports justice is of paramount importance for any club, athlete, and any other person registered with a sports association. They all have rights and obligations that are peculiar in the sense that they are proper to the context of sport, and therefore are most appropriately granted or supervised by sports justice within an autonomous system.

In the name of their autonomy and the specificity of sport many associations around the world developed their own justice bodies. Some of them seem to be more effective than others but all share the same goal: to settle disputes, to mediate and to guarantee the correct interpretation of sporting rules and regulations.

This is not a simple task since the scope of sports justice is not always easy to describe. In fact ordinary justice maintains its role in granting and supervising certain rights and obligations that are not so different from those protected by sports justice.

The lines of distinction become even more blurred when issues of individual or fundamental rights come into play.

This has become an interesting paradox, because sports justice and ordinary justice are not always discernible. One possible explanation may be found in the reality of certain countries where the two systems tend to converge.

This book is unique in that, for the first time, ever the Court of Arbitration for Sport, the sports justice systems of six international federations and twenty-three national federations as well as their relationship with ordinary justice, have been closely analysed.

The authors are all eminent scholars, sports lawyers and arbitrators who provide in-depth review and personal insights into the complexities of the topic.

The book is divided into three parts. The first covers the major international associations in football, volleyball, basketball, handball, and Formula 1.

The second part focuses on the national sports justice systems and, in particular, on the general principles of sports justice as defined by the national Olympic Committees and by the football federations. Proper attention is given to the rules and procedures of the sports judicial bodies and to the relevant case law.

The last part gives an overview of all justice systems covered in order to identify the critical issues and relevant trends.

The aim is to provide all stakeholders with selected and detailed information in view of raising awareness of existing practices all over the world.

Brussels - The Hague, 30 September 2013

Michele Colucci Karen L. Jones

PART I

INTERNATIONAL SPORTS JUSTICE

INTERNATIONAL SPORTS JUSTICE: THE COURT OF ARBITRATION FOR SPORT

by *Massimo Coccia**

SUMMARY: 1. The Creation and History of the CAS – 2. The Organization of the CAS – 3. Jurisdictional and Admissibility Issues – 4. Appointment and Challenge of Arbitrators – 5. Joinder, Intervention and Other Forms of Third Parties' Participation – 6. Provisional and Conservatory Measures – 7. Evidentiary Issues – 8. Applicable Law – 9. Appeals Against CAS Awards – 10. Concluding Remarks

Abstract:

This article examines the Court of Arbitration for Sport (CAS), dealing first with its history and its organization and then with the most relevant procedural issues that are encountered in CAS arbitration proceedings. In particular, this article explores some of the features which characterize and distinguish the CAS ordinary arbitration procedure, the CAS appeals arbitration procedure and the CAS Olympic arbitration procedure. Important procedural topics such as jurisdictional and admissibility issues, the appointment and challenge of arbitrators, the participation of third parties in CAS proceedings and the granting of interim measures are analyzed in depth. Evidentiary issues are also examined in detail, with particular reference to burden of proof, witness statements and discovery. Finally, the article examines the appeals to the Federal Tribunal against CAS awards and the various grounds for annulment provided by Swiss law.

1. The Creation and History of the CAS

1.1 The Early Days

The idea of an international jurisdiction specialized in sporting matters was first

* CAS Arbitrator, Professor of International Law, Partner at Coccia De Angelis Pardo & Associati Law Firm in Rome, Italy.

launched by the International Olympic Committee (IOC) at the beginning of the 1980s. During the 1981 IOC Session, held in Rome, the IOC member Judge Keba Mbaye – a high-profile jurist from Senegal, then a judge at the United Nations' International Court of Justice – chaired a working group that started drafting the statutes of an arbitral institution that soon was going to be named Court of Arbitration for Sport (CAS).¹

An important driver of the IOC's initiative probably was the wish to reduce the risk of litigation before ordinary courts. Indeed, in those years the number of international sports related disputes was increasing and sports organisations often had to defend themselves before various courts in different jurisdictions.

In 1983 the IOC adopted the first statutes of the CAS, which entered into force on 30 June 1984. Not coincidentally, given the position of Judge Keba Mbaye, the first statutes of the CAS set forth a procedural framework that was comparable to that of the International Court of Justice,² providing for (a) an arbitral jurisdiction in contentious cases, based on the acceptance of an arbitration clause by the parties to the dispute and yielding a binding decision, and (b) an advisory jurisdiction, based on a unilateral request submitted by any interested sports body and producing a non-binding advisory opinion.

For several years very few cases were litigated before the CAS, given that sports organisations were not inserting CAS arbitration clauses in their statutes or in contracts they signed. In 1986, the very first case was registered in the CAS docket; it was an entirely Swiss dispute concerning ice hockey. In 1991, the International Equestrian Federation (FEI) was the first international federation to insert in its statutes an arbitration clause accepting the jurisdiction of the CAS on any dispute arising from a decision of its disciplinary bodies. As a consequence, the first batch of disciplinary cases litigated before the CAS concerned equestrian issues, such as horses' mistreatment or equine doping.

1.2 *The Gundel Case*

In 1992, the arbitral award issued in one of those equestrian disciplinary cases was challenged by the sanctioned rider – Mr Elmar Gundel – before the Swiss Federal Tribunal, that is, the Swiss Supreme Court (hereinafter, the “Federal Tribunal”). Mr Gundel mainly claimed that the award was invalid because the CAS did not meet the requirements of independence and impartiality needed to be deemed as a proper arbitral institution. On 15 March 1993, the Federal Tribunal issued a landmark judgment that was going to revolutionize the CAS.³

¹ See M. REEB, *The Role and Functions of the Court of Arbitration for Sport (CAS)*, *The International Sports Law Journal*, 2002, n. 2, 21-23.

² Cf. J. CRAWFORD, *Brownlie's Principles of Public International Law*, 8th Edition, Oxford, Oxford University Press, 2012, 721-733.

³ ATF 119 II 271, reprinted in M. REEB (ed.), *Digest of CAS Awards 1986-1998*, Berne, Staempfli, 1998, 561. Cf. L. FUMAGALLI, *La circolazione Internazionale dei lodi sportivi: il caso del Tribunale Arbitrale dello Sport*, in *Rivista diritto sportivo*, 1994, 336.

The Federal Tribunal recognized that, as long as the CAS dealt with disputes to which the IOC was not a party, the CAS was a true and independent arbitral institution whose panels were proper arbitral tribunals issuing regular arbitral awards; so, in the Federal Tribunal's view, there was no question that the CAS was sufficiently independent to adjudicate disputes having as a party the FEI or other international federations. However, the Federal Tribunal indicated that the links with the IOC were too meaningful (particularly in terms of financing, rule-making and appointment of arbitrators to the list) to maintain the same position in the event of CAS proceedings involving the IOC itself. The Federal Tribunal thus recommended that a greater independence of the CAS be ensured vis-à-vis the IOC.⁴

1.3 *The Paris Agreement and the ICAS*

As a consequence, on 22 June 1994, the representatives of the highest sports bodies in the Olympic Movement⁵ – the IOC, the Association of the Summer Olympic International Federations (ASOIF), the Association of International Olympic Winter Sports Federations (AIOWF) and the Association of National Olympic Committees (ANOC) – signed in Paris an agreement (now known as the “Paris Agreement”) that established the International Council of Arbitration for Sport (ICAS) as an independent and autonomous foundation constituted pursuant to Article 80 *et seq.* of the Swiss Civil Code, and placed the CAS under its aegis. Since then, the ICAS has been responsible for the administration and funding of the CAS “with the aim of ensuring the protection of the rights of the parties before the CAS and the absolute independence of this institution”.⁶

The ICAS governing body is composed of twenty respected and experienced jurists (for example, judges of high courts) from different jurisdictions, who are appointed in the following manner: four members are appointed by the IOC, three by the ASOIF, one by the AIOWF and four by the ANOC; then, four members are appointed by the twelve ICAS members listed above with a view to safeguarding the interests of the athletes, and four members are chosen by the other sixteen ICAS members from among personalities independent of the above mentioned sports bodies.

The ICAS, among other things, elects among its members the President of the ICAS and of the CAS (who must coincide) and the Presidents of the CAS Divisions, it adopts and amends the arbitration and mediation rules, it appoints the

⁴ ATF 119 II 271, reprinted in M. REEB (ed.), *Digest of CAS Awards 1986-1998*, Berne, Staempfli, 1998, 561, at 570.

⁵ According to Rule 1 of the Olympic Charter, the Olympic Movement is under “the supreme authority and leadership of the International Olympic Committee” and “encompasses organisations, athletes and other persons who agree to be guided by the Olympic Charter”. On the legal and institutional aspects of the Olympic Movement, see A.M. MESTRE, *The Law of the Olympic Games*, The Hague, TMC Asser Press, 2009, 35 ff.

⁶ Preamble of the Paris Agreement, in M. REEB (ed.), *Digest of CAS Awards, II, 1998-2000*, The Hague, Kluwer, 2002, 883.

DISPUTE RESOLUTION AT THE FÉDÉRATION INTERNATIONALE DE FOOTBALL ASSOCIATION AND ITS JUDICIAL BODIES

by Omar Ongaro and Marc Cavaliero*

SUMMARY: I. The Dispute Resolution Chamber and the Players' Status Committee of FIFA – II. The judicial bodies of FIFA

Abstract:

FIFA defends the principle according to which, as a general rule, disputes between the members of the football movement should be dealt with and settled within the structures of organised football, i.e. by sporting decision-making bodies. Bearing this principle in mind, in the field of players' status FIFA has created and implemented a successful dispute resolution system that it puts at disposal of the various stakeholders, i.e. member associations, clubs, players, coaches as well as licensed match and players' agents, in order to deal with the various litigations that might arise amongst them, mainly of a contractual nature.

In this contribution the relevant decision-making bodies within the pertinent dispute resolution system shall be briefly introduced, as well as their respective competences. Furthermore, the presentation aims at describing FIFA's competence/jurisdiction to hear a series of specific disputes and at touching on the delimitations with regard to ordinary courts of law and possibly existing national decision-making bodies established within the framework of a member association.

FIFA has also put in place judicial bodies that are capable of imposing a wide range of sanctions in case of breach of the FIFA regulations. The scope of

* Omar Ongaro, Head of Players' Status and Governance in FIFA's Division for Legal Affairs; A similar contribution was published in French language within the scope of the "1^{ère} Journée Juris-CNOSF", organised by the C.N.O.S.F., the Centre de droit et d'économie du sport, the Juris-éditions Dalloz and the Cour de Cassation française.

Marc Cavaliero, Head of Disciplinary and Governance in FIFA's Division for Legal Affairs.

The position expressed in this short article reflects the personal opinion of the authors and does not necessarily correspond to the official position of the Fédération Internationale de Football Association (FIFA).

action of these judicial bodies is immense and covers a number of different situations. The scope of action of the FIFA judicial bodies is necessary for a proper functioning of FIFA and for its member associations and officials as well as for a correct and uniform application of the diverse regulations by stakeholders.

Thus, in the second part of the chapter, the three FIFA judicial bodies of FIFA – the FIFA Disciplinary Committee, the FIFA Appeal Committee and the FIFA Ethics Committee – will be briefly introduced, with a focus on the FIFA Disciplinary Committee and the enforcement procedure that has been implemented at FIFA level and the extension procedure of sanctions taken at national level to have worldwide effect.

I. THE DISPUTE RESOLUTION CHAMBER AND THE PLAYERS' STATUS COMMITTEE OF FIFA

1. Introduction

1.1 General remarks

For those involved in sports law and in particular, in football matters, there is most certainly no need to recall that the current dispute resolution system established within the structures of the Fédération Internationale de Football Association (FIFA) is one of the most important outcomes of the complete revision of the various rules pertaining to the international transfer of players carried out back in the year 2000, respectively early 2001. Like most of the principles currently contained in the Regulations on the Status and Transfer of Players (hereinafter: *the Regulations*),² the basis of the relevant system is to be found in the agreement reached between FIFA, Union des associations européennes de football (UEFA) and the European Commission in March 2001. Besides addressing topics of substantive nature, namely the contractual stability,³ the protection of minors,⁴ the training of young players⁵ as well as the solidarity in the football world,⁶ the said agreement also explicitly referred to the creation of a dispute resolution system. It is within the scope of this background that with the coming into force of the 2001 edition of the Regulations on 1 September 2001, FIFA laid the fundament for the implementation of a dispute resolution and arbitration system⁷ that has rapidly become more and more popular

² Available at www.fifa.com/aboutfifa/officialdocuments/doclists/laws.html: Regulations Status and Transfer 2012.

³ Cf. Chapter IV., art. 13 et seq. of the Regulations: Maintenance of contractual stability between professionals and clubs.

⁴ Cf. Chapter VI., art. 19 et seq. of the Regulations: International transfers involving minors; and also Annexe 2 to the Regulations: Procedure governing applications for first registration and international transfer of minors.

⁵ Cf. art. 20 in conjunction with Annexe 4 of the Regulations: Training compensation.

⁶ Cf. art. 21 in conjunction with Annexe 5 of the Regulations: Solidarity mechanism.

⁷ Cf. art. 42 of the 2001 edition of the Regulations.

and today enjoys a high grade of recognition, credibility and acceptance.

The pertinent dispute resolution system provides the various stakeholders with efficient means suitable to settle their mainly contractual litigations within the football family without the need to seek redress before civil courts. The ever-growing popularity of the system in particular also in relation to employment-related disputes between clubs and players of an international dimension weights even more if one is to consider that, in order to satisfy corresponding requests from the European Commission and to respect constitutional rights under certain public legislations, players and clubs are not barred from referring their employment-related litigations to ordinary courts.⁸

While the first edition of the Regulations providing for such a system did not address in detail the question of jurisdiction and thus left a certain space for discussions, with the aim to ameliorate the situation in the 2005 edition of the Regulations that came into force on 1 July 2005 an entire chapter was dedicated to that specific aspect.⁹ Since then, the relevant Regulations provide for clear rules pertaining to both, i) the competence of FIFA to deal with specific disputes between players and clubs, coaches and clubs or member associations, and clubs against clubs,¹⁰ and, ii) the various competences of the different decision-making bodies within FIFA dealing with the relevant disputes, i.e. the Players' Status Committee and its Single Judge, the Dispute Resolution Chamber and the DRC judge.¹¹

The success of this dispute resolution system established within FIFA's regulatory framework can best be endorsed by some figures: during the year 2012, 1787 claims were lodged in front of the various decision-making bodies, i.e. Dispute Resolution Chamber, DRC judge, Players' Status Committee and its Single Judge. During the same period of time, around 450 decisions were passed with respect to disputes falling within the competence of the Dispute Resolution Chamber (approximately 230 by a panel of the chamber, 220 by one of the two DRC judges) and 250 matters were adjudicated with respect to disputes falling within the competence of the Players' Status Committee (approximately 40 by the plenary Committee, 210 by one of its Single Judges). In summary, the competent bodies passed decisions in around 700 litigations. This is again a new top level. Back in the years just prior to the coming into force of the 2001 edition of the Regulations the relevant FIFA services were faced with approximately 400 cases per year. Consequently, we are looking at an impressive increase by more than 400%.

These figures do not include the activity of the sub-committee of the Players' Status Committee dealing with matters pertaining to the protection of minors.¹²

The reasons for this very impressive development are manifold: the creation of the Dispute Resolution Chamber, which, not least thanks to the approach shown

⁸ Cf. art. 22 of the Regulations, as an exception to art. 68 para. 2 of the FIFA Statutes.

⁹ Cf. Chapter VII. of the 2005 edition of the Regulations and Chapter VIII. of the current 2012 edition of the Regulations.

¹⁰ Cf. art. 22 of the Regulations.

¹¹ Cf. art. 23 and 24 of the Regulations.

¹² Cf. art. 19 para. 4 and Annexe 2 of the Regulations.

FAST BREAK: AN OVERVIEW OF HOW THE FÉDÉRATION INTERNATIONALE DE BASKETBALL HANDLES DISPUTES FAIRLY, QUICKLY, AND COST-EFFICIENTLY

by *Andreas Zagklis**

SUMMARY: 1. Introduction – 2. Transfer and nationality disputes – 3. Disciplinary disputes – 4. Ad-Hoc (and technical) disputes – 5. Financial disputes – 6. Conclusion

Abstract:

The Fédération Internationale de Basketball (“FIBA”) provides both internal and external dispute resolution mechanisms, highlighted by the innovative Basketball Arbitration Tribunal (“BAT”), that allow parties a fair, quick, and cost-efficient resolution to the various types of disputes that arise in basketball.

1. Introduction

While the Court of Arbitration for Sport (“CAS”) has become the “supervisory jurisdiction over the rules and practices of international and national sport bodies”,¹ it can decide appeals only after the internal remedies of a federation have been exhausted.² Thus, the responsibility at the first level is still on the shoulders of the federations. And considering the legal, financial, political and other effects of sports disputes, together with their – at times disproportionately – extensive coverage by the Media, this is a heavy burden on large international federations like the Fédération Internationale de Basketball (“FIBA”). With this responsibility in mind, FIBA has

* Attorney at Law (Greece), LL.M.; Martens Rechtsanwälte, Munich, Germany. The author wishes to thank Mr Stephen Bock, Attorney at Law in New York, USA, for his assistance in the preparation of this article. The opinions expressed herein are those of the author and do not necessarily reflect those of Martens Rechtsanwälte, FIBA or BAT.

¹ KEN FOSTER, “*Lex Sportiva and Lex Ludica: The Court of Arbitration for Sport’s Jurisprudence*” in Blackshaw - Siekmann - Janwillem Soek, eds., *The Court of Arbitration for Sport, 1984-2004*, (The Hague, Netherlands: T.M.C. Asser Press, 2006), 420.

² See Code of Sports-related Arbitration, Article R47.

been at the forefront of developing dispute resolution mechanisms that are tailored to the needs of the specific types of disputes present in international basketball. FIBA's dispute resolution system is designed with two overarching principles in mind.

The first overarching principle is that disputes must be resolved fairly, quickly and cost-effectively. It is of paramount importance to FIBA that its dispute resolution mechanism is fair to all parties involved in the dispute. All parties must have the opportunity to be heard, explain their position and present their evidence. Even if the Code of Sports-related Arbitration ("CAS Code") provides in Article R57 for a *de novo* hearing which heals any possible procedural defects of the previous instances, it is of vital importance that national federations, clubs and players feel that they have had their "day in court" when pleading before the FIBA bodies. Furthermore, the dispute resolution process must be as quick as possible. This quickness is especially important in sports in order to allow sporting events to be conducted without any unnecessary obstacles. These mechanisms are used to determine the results of games or the status of players which cannot remain unclear for a long period of time in order for competitions to run smoothly. Finally, the disputes must be cost-efficient. Cost-efficiency is obviously important to the parties. The fact of the matter is that not all players or clubs can afford to spend a lot of money resolving a dispute. For example, a player who has not been paid by his club for four months might not have the ability to pay large fees in order to adjudicate his salary dispute precisely because he is not receiving his salary payments. It is imperative for him that the proceedings remain cost-effective so that he can exercise his rights within the dispute resolution mechanism. Moreover, the cost-efficiency of the dispute resolution mechanism does not only have the parties in mind but FIBA as well. FIBA has chosen to invest in its internal mechanisms to limit the federation's costs. Any decision made within these internal mechanisms could be the subject of an appeal to the CAS which FIBA would then have to defend. Given that most CAS proceedings are no longer free³ and that legal representation usually entails significant costs, it is in FIBA's best interest to adjudicate the dispute in such a way that the parties do not need to resort to an appeal before the CAS.

The second overarching principle is that the disputes should be classified based on the type of dispute to allow the dispute resolution mechanism to be crafted based on the specific intricacies of that dispute. FIBA divides its disputes into four categories, each with dispute resolution systems designed to combat the unique issues within each category. The first category of disputes is transfer and nationality disputes (*see* Section 2. *infra*). These disputes arise when a club is

³ According to the recent (March 2013) amendment of Article R65 of the CAS Code, the proceedings are free in case of "appeals against decisions which are exclusively of a disciplinary nature and which are rendered by an international federation or sports-body". However, "[i]f the circumstances so warrant, including the predominant economic nature of a disciplinary case [...] the President of the Appeals Arbitration Division may apply Article R64 to an appeals arbitration", meaning that the cost-free character of an arbitration may be lifted in such (exceptional) cases.

seeking to sign a player who last played abroad but the player's former club refuses to grant a letter of clearance⁴ or when there is a dispute over a player's nationality. The next category of disputes is disciplinary disputes (*see* Section 3. *infra*). These disputes involve FIBA sanctions applied to individuals, clubs, national member federations or Continental Confederations (which in basketball are called "Zones") for violations of the FIBA General Statutes or Internal Regulations. Doping sanctions would fall under this category of disputes. The third category is ad-hoc matters or technical disputes (*see* Section 4. *infra*). These disputes are based on the results within a basketball competition, such as a protest filed by a team over the result of a game, or disputes requiring interpretations of the Official Basketball Rules. Finally, the fourth category of disputes is financial disputes (*see* Section 5. *infra*). These disputes involve players, coaches, agents or clubs quarrelling over the interpretation and enforcement of their rights and obligations under the contracts that they have entered into.

This article will highlight the solutions that FIBA has found in order to solve disputes in a quick, fair and cost-efficient way through the prism of these four categories of disputes.

2. *Transfer and nationality disputes*

This category of disputes deals mainly with a player's eligibility to play with a certain club or national team. Generally, a player is eligible to play for a club if he is registered with the club's national federation⁵ and complies with the licensing requirements of the FIBA Internal Regulations.⁶ Likewise, in order to be eligible for a national team, a player must "hold the legal nationality of that country and have fulfilled also the conditions of eligibility according to the FIBA Internal Regulations⁷". In essence, these disputes are based on a party claiming that the player has (or has not) satisfied these eligibility requirements. While FIBA cannot force a player to represent a certain club or national team, it can prevent a player from participating with a certain club or national team.

2.1 *Transfer disputes*

Transfer disputes are rather common in professional basketball. The basic principle governing transfer disputes is the following:

⁴ In order for a player to be registered with the new club's federation, he must first obtain a letter of clearance from the former club's federation for an international transfer. This letter of clearance basically states that the player is allowed to be registered with the new federation. *See* FIBA Internal Regulations, Article 3-42.

⁵ *See* FIBA Internal Regulations, Article 3-7 which states that "[p]layers who participate in professional leagues must be registered with organisations which are affiliated to a national member federation; otherwise they will not be able to participate in the Competitions of FIBA."

⁶ For licensing restrictions, *see* FIBA Internal Regulations, Articles 3-66 through 3-71.

⁷ *See* FIBA Internal Regulations, Article 3-15.

PART II

SPORTS JUSTICE AT NATIONAL LEVEL

SPORTS JUSTICE IN ENGLAND

by Richard Parrish and Adam Pendlebury*

SUMMARY: 1. Introduction – 2. Principles of sports justice – 3. Relationship between ordinary and sports justice – 4. National Olympic Committee regulations – 5. English football regulation – 6. Rights and obligations of clubs and players – 7. Domestic sports law: sports judicial bodies, dispute settlements and procedures – 8. Arbitration – 9. Conclusions

Abstract:

This contribution highlights the complex and multi-faceted nature of sports justice in the UK, specifically in England. The key findings to emerge from this work are: (1) the state does not directly regulate sport although it does exert statutory and non-statutory influences on sport, (2) sports bodies must comply with the standards expected by ordinary courts, (3) contractual relations lie at the heart of many sporting relationships in the UK, (4) public law remedies, such as judicial review, are not available to challenge decisions of sports governing bodies but (5) the courts operate a private law supervisory jurisdiction over decisions of sports governing bodies meaning that the standards expected of sports governing bodies are very similar to those expected under judicial review, (6) in the law of tort courts have accepted that in sport a duty of care is owed by participants, match officials, governing bodies and event organisers, (7) criminal law prosecutions in sport are rare, particularly those concerning injury sustained on the field of play, (8) sports bodies are keen to insulate 'domestic sports law' from the influence of 'national sports law' and, therefore, (9) sophisticated disciplinary commissions and arbitral bodies play an essential role in resolving English sports disputes.

* Richard Parrish is Professor of Sports Law and Adam Pendlebury is Senior Lecturer in Law at Edge Hill University, UK.

1. Introduction

The United Kingdom of Great Britain and Northern Ireland is a constitutional monarchy operating a bi-cameral parliamentary system. The UK comprises England, Scotland, Wales and Northern Ireland, although since 1998 the latter three countries have certain devolved decision making powers. Whilst this chapter has sports justice in England as its focus, UK law, UK sports policy and the rules of the British Olympic Association apply to all four countries. Only English football regulations - located in Football Association, Premier League and Football League handbooks - are examined in this chapter.

2. Principles of sports justice

The UK operates a non-interventionist and non-consolidated sports model.¹ This model implies an 'arms-length' role for the state in sport in which sports are organized by the sporting associations themselves rather than through state legislation and the National Olympic Committee and the National Sports Federation are not combined. This model reflects the prevailing view in UK politics that sport is essentially a private pursuit to be organised and promoted by private interests. Nevertheless, the state has recognised that as sport performs some public and quasi-public functions, it should retain an interest in the sector, although this interest is generally elaborated through arm's length / semi-governmental organisations such the Sports Councils. Consequently, in theory at least, sports bodies in the UK retain autonomy to determine their own organisational and regulatory choices free from state interference. In practice, these choices are restricted by three considerations: (1) direct statutory influences (2) indirect statutory influences and (3) non-statutory influences.

2.1 Direct statutory influences on sport: illustrative examples

Sports clubs and governing bodies in the UK are not statutory bodies requiring state authorization and there is no statutory requirement that they take any particular legal form.² Traditionally, many sports bodies took the form of *unincorporated associations*, although this form is now rare in professional sport and confined largely to amateur sports bodies. These bodies have no legal personality and therefore cannot sue or be sued in its own right with legal action having to be brought against or defended by its members. The relationship between the members of the association is a contractual one based on the rules of the association. Unincorporated associations are still subject to wider legal control when their activities engage ordinary statutory provisions, such as licensing laws regulating the sale of alcohol, health and safety laws, general employment

¹ See CHAKER, A.N. (1999), *Study of National Sports Legislations in Europe*, Strasbourg: Council of Europe.

² For a full discussion see LEWIS, A. & TAYLOR, J. (2008), *Sport: Law and Practice*, Tottel Publishing, 1014-1027 and BELOFF, ET AL., (2012), *Sports Law*, Oxford: Hart, 23-28.

laws and tax laws. Most famously in Britain, the Marylebone Cricket Club (MCC) operated as an unincorporated association until it changed its status in 2013 to that of a body incorporated by *Royal Charter*. This procedure required petition to the Privy Council, a body that advises the Sovereign on the exercise of Royal Prerogative. Incorporation is usually granted for a body that works in the public interest. It enables the sports club to hold assets in its own name, rather than through a custodian trustee, and it removes any potential liability of individual members. Royal Charter sports bodies are rare, although the Jockey Club was established in this way. The MCC case is reflective of the trend, encouraged by the commercialization of sport, which has seen many unincorporated associations changing their status and assuming *corporate* structures of which there are several forms. This includes those *private companies limited by guarantee* (such as many governing bodies), those *private or public companies limited by shares* (such as the Football Association and some football clubs) and 'co-operative' style sports bodies established as *Industrial and Provident Societies* (such as the Rugby Football Union). Limited companies limit the liability of its members, has the ability to hold property in its own name and can sue and be sued in its own name. Sports bodies assuming the status of a limited company must fulfill the rules which apply to all companies, such as registration and the filing of accounts and reports. UK company law also imposes certain duties on the directors of the company.

A particularly pronounced direct statutory influence on sport stems from the requirement that sports bodies must be compliant with the statutory framework covering safety at sports grounds. This statutory framework has itself been influenced by a number of serious safety lapses at sports grounds and by the findings of the subsequent inquiries, such as the Taylor Inquiry into deaths of 96 spectators at the Hillsborough stadium in Sheffield in 1989. These inquiries have influenced the statutory standards regulating safety at sports grounds. In addition to actions brought under tort, organisers of sporting events have been statutorily liable for injuries caused to spectators or participants since the Occupiers' Liability Act 1957 which imposes a duty of care on the organisers / clubs to ensure the safety of lawful visitors and the Occupiers' Liability Act 1984, which provides limited protection for trespassers. In addition, the Health and Safety at Work etc Act 1974 imposes a duty on the event organiser for protecting the health, safety and welfare of everyone working at, or attending, the event. The Safety of Sports Grounds Act 1975 provides for licensing of sports grounds and the Fire Safety and Safety of Places of Sport Act 1987 provides for a system of safety certification by local authorities for certain covered stands at sports grounds. The Football Spectators Act 1989 (s8) established the Football Licensing Authority (now Sports Ground Safety Authority) which is required to operate a licensing scheme to regulate the spectator viewing accommodation at Premier and Football League Grounds plus Wembley and the Millennium Stadium in Cardiff. The Sports Ground Safety Authority is also required to keep under review how local authorities discharge their functions under the Safety of Sports Grounds Act 1975 at those grounds.

Although sometimes confused in the popular press, the issue of regulating

SPORTS JUSTICE IN FRANCE

by Jean-Michel Marmayou*

SUMMARY: 1. Principles of French Sports justice – 2. Relationship between ordinary and Sports justice – 3. Relevant NOCs regulations – 4. Relevant football regulations – 5. The sports judicial bodies – 6. The procedure – 7. Dispute settlements – 8. ADR and interim relief – 9. Sanctions on clubs and players – 10. Implementation of decisions and awards

Abstract:

This article aims at providing an overview of sports justice in France with its main principles and its most important legal institutions. It sets out the basic principles in which sports justice in France operates, provides input as to the interaction between sports justice and ordinary justice and deals with the main judicial bodies operating within the sports justice system.

This article presents the rights and obligations of the main actors in sports, the penalty system, the procedure applicable by the disciplinary commissions in solving technical, disciplinary or economic litigations.

It presents the french specificity of collaboration between the State administration and sports bodies who had obtained the State's recognition, public subsidies and special regulatory powers.

1. Principles of French Sports justice

There is no doubt that sport requires a system of justice that is adapted to its own

* Professor at Aix-Marseille University, Director of studies for the professional Master in Sports Law, Director of Les Cahiers de droit du sport, Co-Director of Sports law Centre of Aix-Marseille (Business law Centre: EA 4224). He is also affiliate Professor at Kedge Business School and holds the Chair for Sports Law and Event Marketing - Kedge Business School/Aix-Marseille University. www.centrede droitidusport.fr.

specific needs: that is to say rapidity of intervention so as to meet the specific time demands encountered in sport; a system that overcomes state boundaries and better accommodates the global nature of sport; and finally, a system that is close to the needs of the participants in a sport.

Unlike certain foreign systems, and despite certain proposals that have been put forward in this respect,¹ the French legal system has chosen not to answer these needs by creating a specific jurisdiction capable of dealing with all sport-related disputes. That is to say that, even though sporting activities encompass a certain number of specificities, justice in sporting matters still comes under jurisdiction of the ordinary legal system.

Hence, as is perfectly normal, sport is subject to public justice. Even so, it is also, to a large extent, governed by private justice.

Within every social organisation, the natural reflex is to seek to ensure that disputes are settled “in-house”, at least initially. The world of sport is no exception. First of all, conflicts often tend to be settled internally through a spontaneously established system of justice. The law itself then encourages the development of an alternative system of justice by providing that certain disputes shall be submitted to mandatory preliminary conciliation hearings brought before the CNOSF [National Committee for French and Olympic Sports]. Finally, arbitration has become a particularly favoured route for resolving disputes in sporting matters.

Many disputes in the world of sport tend not to be brought before the state courts due to the existence of an effective filter in the form of a dispute settlement system set up within the national sports associations themselves. Of course, this internal system of dispute settlement is not unique to sport since other social groups also self-regulate their disputes. But none has created an organisation that has the complexity and sophistication of the national sports federations.

In France, national sports federations are free to set up bodies to deal with disciplinary matters. However, this freedom is closely linked to the associative structure of the federations, which is very specific to France.

Although the law on associations dating from 1 July 1901 enshrines the principle of freedom of association and therefore the almost unlimited possibility of contractually setting up an internal system of dispute settlement reserved to the members of an association, it must nevertheless be immediately said that in France, national sports federations are not in practice subject to the law on associations alone. Although this may be the case, it will only arise when the federation in question has decided to do without public funding. If they wish to benefit from public subsidies and special regulatory powers, they are required to comply with the Code du Sport [codified laws on sport] which governs the State’s recognition of a certain number of obligations, thereby creating a *de jure* restriction on the original freedom of association.

In this respect, it is worth mentioning Article L131-8 of the Code du Sport that stipulates that ministerial approval can only be granted to federations that have

¹ CONSEIL D’ÉTAT, *Sports: pouvoirs et discipline*, La Documentation française, 1991.

“adopted articles of constitution containing certain mandatory provisions and disciplinary rules compliant with model regulations”.

If we add to this that Ministerial approval is the *sine qua non* condition for the delegation of a public service mission, it follows that the organisation of a national sports federation’s internal dispute settlement system is largely unified and goes beyond the specific differences of the various sporting disciplines.

Obviously, the weight of state law in the organisation of French sport explains why certain principles of justice applicable in sport are enshrined directly in the Code du Sport. They will be examined later in this paper and not in this first section.

The role played by state law also explains why the principles underlying dispute settlement in sport in France more particularly concern internal dispute settlement in the system organised by the judicial authorities.

This role also explains why the so-called sports justice is not able to deal with disputes when the substance is more financial than purely disciplinary.

2 Relationship between ordinary and sports justice

The organisation of sports justice in France is influenced by both the French legal system’s adherence to the Romano-Germanic family of continental law and the very particular model of French sports’ organisation.

The dual hierarchy (national and Olympic federations) and the global nature of modern-day sport lead to an increased generation of norms and tiers dealing with disputes. This constitutes a real headache for specialists, especially in France where the organisation of sport, although delegated to organisations established under private law (the national sports federations), is nevertheless covered by a state framework and public authority prerogatives.

In France, a sportsperson encountering legal problems is faced with a series of difficulties which seriously complicate his or her courses of action.

He/she must first seize the instance with the appropriate physical and geographical competence within his national federation. He/she must then respect the jurisdictional hierarchy of the sports federation. He/she must still further submit to prior conciliation in the form of a hearing before the CNOSF. Lastly, he/she has to decide whether the judicial or the administrative courts are competent to hear his/her case.

The dispute settlement systems within sports federations are not self-sufficient and there is no reason why they should be allowed to override the state courts.² It results from this principle in particular that “exclusion” clauses are void, and this tends to prevent members of sports federations from having recourse to the state courts.³ Moreover, these clauses contaminate the smooth running of

² F. BUY, *La justice sportive*, Cah. dr. sport n° 2, 2005, 13. J.-P. KARAQUILLO, *Un pluralisme judiciaire complémentaire original. La résolution par les institutions sportives et par les juridictions d’Etat de certains litiges sportifs*, D. 1996, 87.

³ TGI Paris, 26 January 1983, D. 1986, somm. 366, obs. G. Baron. – CE, 11 May 1984, n° 46828 et

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