



THE JURISDICTION OF THE FIFA AND THE CAS ON EMPLOYMENT-RELATED DISPUTES

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Abstract

This article addresses the issues surrounding the establishment of FIFA and the CAS jurisdiction over employment disputes involving professional football players. In addition, it deals with circumstances where a party to a dispute is unsatisfied with a decision made by one of FIFA's decision-making bodies, that party may submit an appeal with the Court of Arbitration for Sport against the decision of the aforementioned bodies, in line with Articles 23 paragraph 1 and 24 paragraph 1 of the FIFA Statutes. And on what basis does FIFA recognize CAS as a venue for resolving disputes between FIFA, members, confederations, leagues, clubs, players, officials, licenced match agents, and players' agents has also been touched up on in this paper.

Keywords: CAS-Court of Arbitration for Sport, IOC-International Olympic Committee, SFT-Swiss Federal Tribunal, FIFA, FIFA DRC, The Players' Status Chamber, The Agents Chamber.

FIFA Jurisdiction

FIFA was founded in 1904 as the international governing organization of association football. The primary objective was to achieve worldwide uniformity, equality, and certainty in football, as well as to improve the game on and off the pitch. In order to achieve its objectives, FIFA initially established the Players' Status Committee, which is one of its Standing Committees and is responsible for adjudicating all international football disputes. FIFA proposed creating the Dispute Resolution Chamber (DRC) in 2001 to take over some disputes from the Players' Status Committee (PSC) pertaining to international status and transfer of players. Its competence extends to cases concerning employment-related disputes between a club or an association and a coach of an international dimension; disputes between clubs belonging to different associations. Additionally, it handles several other cases that are unrelated to disputes between clubs and players regarding the maintenance of contractual stability, training compensation (article 20) and the solidarity mechanism (article 21) between clubs





belonging to different associations and between clubs belonging to the same association.

FIFA has recently introduced a newly formed single regulatory decision-making body, which consists of three chambers. On May 21, 2021, the 71st FIFA Congress authorized the establishment of the Football Tribunal, as well as a review of the governance structure and powers of the FIFA decision-making bodies. Essentially, the Football Tribunal brings together all of the existing FIFA decision-making bodies under one roof in order to streamline the settlement of disputes and decisions on regulatory implementation within the football governing body's regulatory framework. The Football Tribunal is divided into three particular chambers, which are as follows:

- 1) The Dispute Resolution Chamber;
- 2) The Players' Status Chamber;
- 3) The Agents Chamber.

Even though Article 59 paragraph 2 specifies that recourse to ordinary courts of law is strongly discouraged unless expressly stipulated in FIFA regulations, parties to a dispute can still be provided with the right to appeal against the FIFA DRC decisions and send their appeal to the Court of Arbitration for Sport, with headquarters in Lausanne. Whenever a party to a dispute is dissatisfied with a decision made by one of the FIFA's decision-making bodies, that party may file an appeal with the Court of Arbitration for Sport against the decision of the abovementioned bodies in accordance with Article 23 paragraph 1 and 24 paragraph 1 of the FIFA Statutes respectively. FIFA expressly recognizes CAS as a forum for resolving disputes between FIFA, members, confederations, leagues, clubs, players, officials, and licensed match agents and players' agents under Article 57 of the FIFA Statutes 2019 Edition.

Traditionally, sports disputes are settled by sports association tribunals, ordinary state courts, or arbitration. This kind of dispute resolution may be time consuming, costly, and detrimental to the parties' future collaboration. There may be a preferable alternative to the ones that have already been presented in the preceding sentence. The vast majority of people are aware of what mediation is and how it works. Whenever possible, the parties to a dispute seek the assistance of an experienced third party with suitable expertise to help them in the resolution of their conflicts. The fact that mediation is far less expensive and less risky than traditional court processes and arbitration is a significant advantage for parties. The parties, particularly in football-related disputes, less often use sport mediation but some still choose it because of the timesaving nature of the process as well as the prospect of maintaining future connections and collaborations.





There were always concerns about the CAS's independence and impartiality

Despite the fact that Swiss Supreme Court recognized the CAS as an independent arbitral tribunal in its judgment on 15 March 1993, the CAS has had some of its rulings challenged and appealed against at the Swiss Federal Court. The first prominent cases in the history of the CAS were those of a jockey, Elmar Gundel, and two Russian cross-country skiers, Larisa Lazutina and Olga Danilova, who all attempted to question the impartiality of the CAS because of the CAS's relationship with the IOC.

Following exhaustion of all internal remedies at a national association level, parties to a dispute may file an appeal against the decision of a national football association or FIFA decision-making bodies, as appropriate. There are 2 main types of CAS arbitration procedures for resolving disputes between players and clubs: the Ordinary Arbitration Procedure and the Appeal Arbitration Procedure. CAS Code Article R27 establishes that when the parties decide to refer their case to CAS and that reference arises from an arbitration clause that has been inserted in a contract or regulations of sports associations, an ordinary arbitration procedure may be applied to those disputes. An appeal arbitration procedure will commence when the parties are set to submit an appeal against decisions taken by a sports federation, association, or any other sports body if the rules and regulations of such bodies or a specific agreement make it possible for an appeal to the CAS.

Article R47 of the CAS Code explicitly states that an appeal may be lodged with CAS against an award issued by CAS functioning as a first instance tribunal if the federation or sporting body's regulations expressly provide for such appeal. However, even when parties manage to successfully file their appeal with the CAS against the decision of the federation concerned, they might not find themselves satisfied with the decisions of CAS. In those circumstances, after appealing against the CAS decision, there is still other options available to them if they wish to go further with their disputes at hand. Swiss Federal Court had to deal with some of the disputes, which aimed to appeal against the decision of CAS. This demonstrates how all of these procedural stages must be performed in order to maintain national association sports autonomy and to comply with FIFA's and member associations' strict requirement not to bring sports disputes directly to ordinary state courts. Last but not least, any party who believes their interests were not adequately served by the prior instance would use the opportunity to appeal to the Swiss Federal Tribunal against the decision of the CAS. Francelino da Silva Matuzalem, a Brazilian football player who had his claim rejected by the Court of Arbitration for Sport (CAS), was successful in his appeal to





the Swiss Federal Tribunal against the decision of the CAS. While Swiss Federal Tribunal reviewing the Matuzalem case annulled CAS arbitral award for breach of substantive public policy. The Swiss Federal Court intervened as a last resort to settle football player disputes in this landmark case involving Brazilian player Matuzalem.

3.1. FIFA Decision making bodies

Players Status Committee

For the past few years, FIFA's Players' Status Committee has served as a standing committee, with legislative and policy-making functions (such as drafting and amending regulations) as well as decision-making function over certain types of disputes and regulatory applications, as well as oversight of DRC's work.

According to Article 22 of the RSTP, FIFA sets the extent of the PSC's competence, as specified in Article 23 of the RSTP, and the DRC's competence, as mentioned in Article 24 of the RSTP. FIFA Statutes establish that the PSC has a huge role in DRC's activity, as Article 46 paragraph 2 indicates that the PSC is responsible for the work of the Dispute Resolution Chamber in accordance with the RSTP and the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber. This implies that the PSC is in charge of overseeing the operation of the DRC in the course of its everyday operations.

Articles 22 and 23 of the RSTP outline the types of cases that the PSC is competent to handle:

- 1) Employment-related disputes between a club or an association and a coach of an international dimension;
- 2) Disputes between clubs belonging to different associations that are not connected with disputes between clubs and players in relation to the maintenance of contractual stability (articles 13-18) where there has been an itc request;
- 3) Disputes relating to training compensation (article 20) and the solidarity mechanism (article 21).

However, FIFA's practice demonstrates that there are certain occasions on which uncertainty exists over the PSC's or DRC's jurisdiction. In these kind of circumstances, the chairman of the Players' Status Committee will make the decision as to which body has jurisdiction. A similarity to the DRC may be seen in the fact that, in accordance with Article 23 para 4 (RSTP), the PSC will generally adjudicate in the presence of at least three members, including the chairman or deputy chairman, unless the matter is of a kind that can be resolved by a single judge.

Article 22 paragraph 1 (b) restricts FIFA's competence, even when the dispute has an international dimension. It has already been noted at an early stage that the PSC





committee, as defined by Articles 22 and 23 of the RSTP, has general jurisdiction in the case of employment-related disputes between a club or an association and a coach with an international dimension. However, if there is an independent arbitration tribunal at the national level that can guarantee fair proceedings while also respecting the principle of equal representation of coaches and clubs, then that national independent tribunal will be competent to decide those cases rather than PCS.

In cases where a national independent arbitration tribunal has been established, either by statute and regulation of the relevant member association or as a result of a collective bargaining agreement, the professional player and the club may decide to take their potential employment-related disputes to the relevant national body, even if the player has a different nationality than the club. Any such choice must be expressly stated and documented. It is possible for national decision-making bodies to be granted the authority to hear these cases, but there must be certain requirements met in order for this to be possible. National decision-making bodies will not have jurisdiction over the cases unless the club and player have included a written, explicit, and exclusive arbitration clause in the employment contract designating the national body to resolve any possible disputes. However, if the jurisdiction clause in favour of the national body is not exclusive, and especially if it specifically includes FIFA or its decision-making bodies, FIFA retains jurisdiction over any possible future disputes. This was stated quite clearly in CAS decision CAS 2014/A/3579, which included the following:

“Where an employment contract makes reference to several courts and arbitration bodies, including the FIFA DRC and CAS, the provision of the contract cannot be considered as an exclusive arbitration clause in favour of the national deciding body. The FIFA DRC is therefore competent to hear the case regarding the employment contract”.

Articles 22 and 23 of the RSTP include what types of cases that the PSC is competent to decide. Additionally, apart from the cases specified in Article 22 of the RSTP, it must be noted that the PSC may have jurisdiction over other matters:

- The written, substantiated request of a player who wishes to exercise his right to change associations;
- Any disputes concerning matters related to the protection of minors;
- The (withdrawal of a) provisional registration of a player;
- Issues in relation to the release of players;
- Any claims for recovering solidarity contribution in case of unjustified payment;
- Disputes whereby a match agent is involved.





FIFA Dispute Resolution Chamber

In this day and age, with so much money being spent on sports, especially football, it is inevitable that conflicts will arise; in fact, they are always on the rise. Football tournaments organized at the highest level provide tremendous revenue for clubs, while football players demonstrate their skills on the field as they compete for major trophies at the domestic and continental levels. Not all relationships between players and employers are smooth, as behavioural difficulties on the part of the players and club failure to meet contractual responsibilities may result in possible disputes.

A common concern among footballers is whether they can take their complaints to the appropriate decision-making bodies in football. When it comes to dealing with employment-related disputes between players, coaches, associations, and clubs, Article 22 of the FIFA Regulations on the Status and Transfer of Players sheds some light on the area of FIFA competence. The following are the circumstances over which FIFA has jurisdiction:

- 1) Disputes connected to the maintenance of contractual stability between players and clubs;
- 2) Employment-related disputes between a club and a player of an international dimension;
- 3) Disputes relating to training compensation (article 20) and the solidarity mechanism (article 21) between clubs belonging to different associations;
- 4) Disputes relating to training compensation (article 20) and the solidarity mechanism (article 21) between clubs belonging to the same association provided that the transfer of a player at the basis of the dispute occurs between clubs belonging to different associations.

As specified in Article 22 of the FIFA RSTP, FIFA DRC may resolve disputes between parties that have been completely instructed to adhere to the rules and provisions included in FIFA's statutes and regulations, as well as recognized National member associations. The FIFA RSTP indicates that FIFA DRC has jurisdiction over employment-related issues affecting players and clubs. The RSTP is the major document that outlines the principles on jurisdictional matters that attempt to govern the aforementioned issues.

Employment disputes between a club and a player are typically beyond FIFA's jurisdiction unless they have an international dimension. It is necessary to have an international element, which is sometimes referred to as an "international dimension", in order to consider FIFA competent to resolve disputes in employment-related matters involving players and clubs. That implies that one of the parties to a dispute, whether it is a player or a club, must belong to different association at the





time of the dispute. If the player in question is from a different country than the member association that holds their registration, then an international dimension is assumed to exist. For instance, if there is an employment-related dispute between an Uzbek player and an Uzbek club, the case will not generally come within the jurisdiction of FIFA. However, there are circumstances when a football player holds dual citizenship, complicating the process of determining whether a dispute between the player and the club has an international dimension. One of the well-known cases that CAS has dealt with was on Turkish player Omer Riza who held a dual nationality. Omer Riza was born in England and became a British national on November 8, 1979. On August 17, 2004, he was granted Turkish Republic citizenship by a decision of the Council of Ministries. According to the employment contract between the player and Trabzonspor, which was in force from 18 January 2006 to 30 June 2009, Omer Riza sent a notice of termination to Trabzonspor, declaring just cause based on Trabzonspor's failure to fulfill contractual commitments. On the 19th of February, 2008, the footballer filed a complaint with FIFA, accompanied by enclosures, about a conflict between him and Trabzonspor. FIFA notified the player in a letter that it is unable to intervene in disputes between parties who share the same nationality and urged him to refer the matter in question to the appropriate national association's decision-making bodies at the national level. On 8 April 2008, Omer Riza filed a claim against Trabzonspor with the TFF Dispute Resolution Board.

On 2 December 2008, the TFF Dispute Resolution Board dismissed the player's claim and ordered him to compensate his club Trabzonspor for unilaterally terminating an employment contract. Additionally, he was suspended for four months. Omer Riza filed an appeal with the Court of Arbitration for Sport (CAS) against the TFF Arbitration Board's decision on November 11, 2009. The CAS panel found that, Mr Riza definitely has the closest connections to Turkey in this matter, considering the facts that the Player had already established himself as a professional footballer in Turkey for three years, had acquired Turkish citizenship for nearly a year and a half, was playing under Turkish status in the Turkish Professional 1st Super League as of the 2005-2006 season, and had already represented Turkey at the 'B' level. It was the Panel's opinion that the nature of the player's dispute with the respondent club did not qualify as "international" in any respect. Specifically, the Court of Arbitration for Sport determined that "the player's nationality for the purposes of football" is the most significant aspect to bear in mind while determining any "foreign element" in this particular case.

Nevertheless, disputes may still be settled in the national associations' internal tribunals provided fair proceedings and respect for the concept of equal





representation of players and clubs are ensured at the national association's level of governance. Players and their clubs are strongly urged not to take their disputes to the national courts of the state where they reside in the event that one arises between them and their club. It is prohibited under Article 59, paragraph 2, of the FIFA Statutes to pursue legal action in ordinary courts of law unless explicitly allowed by FIFA regulations. Unless FIFA rules or obligatory legal provisions clearly permit or mandate recourse to regular courts of law, member associations of FIFA must include a clause in their statutes prohibiting its members from bringing their disputes to ordinary courts of law. To accomplish this objective, FIFA requires its member associations to impose sanctions on any party that fails to meet the aforementioned obligations. Establishing FIFA jurisdiction is indeed important as it relates to defining FIFA competence to resolve employment-related disputes between players and their clubs. To successfully refer a case to FIFA, it is extremely important that the parties to a dispute have an "international dimension" and that FIFA member associations' statutes contain mandatory clauses prohibiting their members, including players and clubs, from bringing their legal disputes to ordinary state courts.

FIFA Football Tribunal

Prior to the establishment of the Football Tribunal by FIFA, the FIFA dispute resolution system was comprised of two decision-making bodies: the Players' Status Committee and the Dispute Resolution Chamber. FIFA has introduced a newly formed single regulatory decision-making body, which consists of three chambers. On May 21, 2021, the 71st FIFA Congress authorized the establishment of the Football Tribunal, as well as a review of the governance structure and powers of the FIFA decision-making bodies. The major objective of establishing the Football Tribunal was to consolidate all of the existing FIFA decision-making bodies under one roof in order to streamline the resolution of disputes. Specifically, the Football Tribunal is divided into three chambers:

- 1) The Dispute Resolution Chamber;
- 2) The Players' Status Chamber;
- 3) The Agents Chamber.

As the FIFA jurisdiction has been established, then the next step would be what chamber of the Football Tribunal is competent to deal with the case. As soon as one of the parties complains that a dispute has been assigned to the incorrect chamber, the FIFA general secretariat will ex officio transfer the case to the proper chamber.





In the event that there is any uncertainty about which chamber of the Football Tribunal has jurisdiction to settle the dispute, the chairman of the Football Tribunal will recommend the appropriate chamber.

Applicable Law

The Football Tribunal follows the FIFA Statutes and FIFA Regulations throughout the application and adjudication processes, while also taking into consideration any applicable national arrangements, laws, and/or collective bargaining agreements, as well as the specific nature of sport. Nonetheless, the phrase "take into account" does not imply that its mandatory for the DRC and PSC to apply national laws in the dispute resolution process. The DRC and PSC have been granted considerable discretion in this matter, which they effectively exercise.

In sum, it could be concluded that the DRC and PSC of the Football Tribunal will always assess the disputes according to FIFA RSTP, FIFA Statutes and other FIFA Regulations when it is appropriate. When passing judgment, they take into consideration fundamental principles of contract law as well as Swiss law, if the situation calls for it.

Football Tribunal will take into account the special characteristics of sport, referred to as "specificity of sport," in its daily functions. It will follow as a result that the DRC or PSC will have the capacity to alter decisions and outcomes that are inconsistent with the basic principles of sport and football.

It was noted that the CAS's financial dependence on various other sports federations might possibly result in challenges that the institution would have to face in certain instances.

The Court of Arbitration for Sport has come under criticism for its lack of diversity in selecting arbitrators to resolve sports disputes. According to the report, the profiles of the 330 arbitrators reveal significant disparities in terms of gender and ethnic origin (by referring to skin colour). In another study, it was found that only 17.3% of the 330 arbitrators were non-white and just 3.6% were black, when looking at the ethnicity of those arbitrators appointed.

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