

A Guide to FIFA; Before and After Electing Court of Arbitration for Sports  
2019-2020

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# A GUIDE TO FIFA; BEFORE AND AFTER ELECTING COURT OF ARBITRATION FOR SPORTS

## Introduction

**F**ederation Internationale de Football Association (FIFA) was founded in 1904 to supervise international football competitions, with its headquarters in Zurich. FIFA now has 211 national associations as members and is divided into regional confederations: Asia, Africa, Europe, Oceania, South America and North & Central America and the Caribbean. While FIFA funds its member nation associations financially and logistically, they in return are obliged to abide by the rules and regulations set out by FIFA to promote smooth administration of the sport. One of FIFA's main duty is to oversee the execution of different competitions, international and regional, and to promote the same. It actively runs the sport and works towards developing the game worldwide.

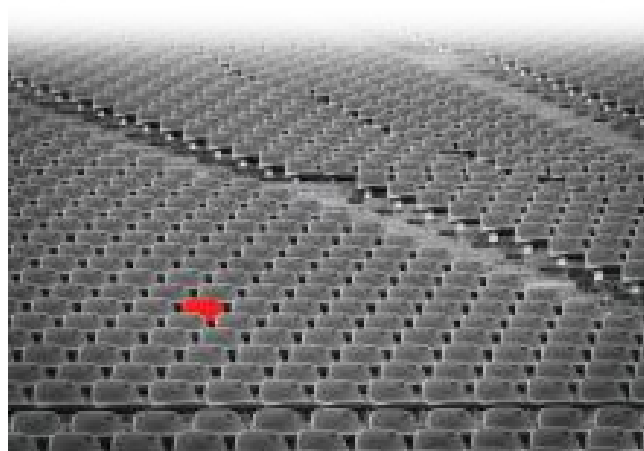
Needless to say, the commercialisation of the sport has also opened a window for a number of disputes that arise, not only between player and their countries but also disputes in each game. There was a need for a uniform set of rules and regulations governing all the national associations and hence a judicial body to attend to all the disputes that arise therein.

This guide articulates the dispute resolution method followed by FIFA. It also highlights the independence of the *Court of Arbitration for Sports (CAS)* in giving unprejudiced and unbiased decisions.

## Governing bodies of FIFA

FIFA has three judicial bodies: the Disciplinary Committee, the Appeal Committee and the Ethics Committee. Each has certain powers with limitations to govern the sport of football and all the disputes that ascend. Whether it is sanctioning serious infringements which have escaped the match officials' attention, extending the duration of a match suspension, rectifying evident mistakes or pronouncing additional sanctions like fines, the FIFA Disciplinary Committee is authorised to sanction any breach of FIFA regulations which presumably does not come under any of the other jurisdictions. The Appeal Committee essentially looks into deciding appeals against the decisions of the Disciplinary

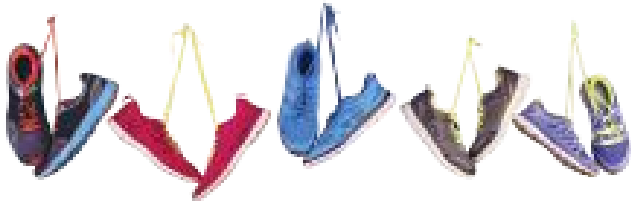
Committee. There are certain decisions of the Disciplinary Committee that are final and are not subject to appeal; except for such decisions to which an appeal is not allowed, the Appeal Committee may decide upon the merits of the case whether an appeal to a decision must be granted or not.



## FIFA recognises the jurisdiction of CAS

Initially, FIFA wished to establish a completely independent arbitration tribunal, *Arbitration Tribunal for Football (TAF)*, to settle all the football-related matters. This tribunal was uniquely meant to have its own infrastructure as well as administration, funded by FIFA. To establish TAF would have been time-consuming keeping in mind insufficient funds and hence, the lack of professional support to inculcate the FIFA regulations in it. In a following meeting, the Executive Committee of FIFA asked the President of FIFA to evaluate alternative means for quick dispute resolution arrangement that would facilitate similar results and purpose as TAF.

There were deliberations between FIFA and the *International Council of Arbitration for Sport (ICAS)*, which is the governing body of Court of Arbitration for Sports, the result of which was a formation of a list of learned arbitrators specifically for football-related matters in tune with the FIFA regulations. The agreement signed between the two established that FIFA recognised the jurisdiction of CAS in November 2002. Hence, since CAS is the official body to deal with the appeals against decisions of FIFA's judicial bodies, except the matter where the appeal was not allowed, it follows the same procedure as it does for other disputes it takes cognizance of.



*"If it doesn't matter who wins or loses,  
then why do they keep score?"*

*– Vince Lombardi*

CAS decides the list of arbitrators to decide football-related matters and after the agreement, it decided to nominate a uniform way of electing the arbitrators. It is indubitable that CAS' jurisdiction being recognised by FIFA was a step further towards ensuring that the spirit of the sport is maintained to promote fair competition.

### **Court of Arbitration for Sport**

It is fair to presume that a specialised system for dispute resolution of every field is more reliable than a general dispute resolution system. Arbitration being an established yet developing aspect of dispute resolution is efficient, considering it is faster and the parties get to pick their arbitrators. The birth of CAS supported the same idea and it was believed that sport-related disputes needed to be handled independently to ensure specialised and accurate results in a fast track manner. To take these matters out of the national courts and bring them in front of a specialised sports tribunal proved to be a quick and reliable method of dispute resolution. Ever since CAS' inception, it has been globally regarded as the supreme body to deal with all matters related to sports. It is funded by ICAS and hence its independence from ICAS and other authorities have always remained a topic of debate. It was a historic and crucial step by FIFA to recognise this esteemed institution to hear appeals for all football-related matters.

CAS was established in 1984 and is headquartered in Lausanne, Switzerland, though it has offices in Sydney, Abu Dhabi, New York, to name a few. CAS' independence has always been in question and a landmark judgement by the Swiss Supreme Court [Arrêts du Tribunal Fédéral Suisse [ATF] 119 271 (Switz.)] established CAS' independence, largely gave a seal of approval to CAS and the attention was drawn to the disputed biased links between CAS and IOC. Consequently, the organizational structure of CAS was altered to create a governing body to maintain the internal functioning of the tribunal in a uniform manner and to amend the rules of CAS in accordance with the procedure followed. Further in 2003, CAS' independence from IOC was confirmed once again by the Swiss Federal Tribunal in [ATF]

129 445 (Switz.), where it held CAS as the "true Supreme Court of world sport" and emphasised on CAS' independence and unbiasedness from IOC, deeming it to be a court of arbitration whose decisions were regarded to be at par with that of the state court.

CAS follows a set of rules enumerated in the Code of Sports-related Arbitration and Mediation Rules like the procedure to be followed. There are different subcategories within CAS to deal with several types of sports-related issues and in this case, subcategories of issues arising in competitions organised by FIFA:

*i. Ordinary Arbitration Procedure* which takes cognizance of issues of the first instance. These are basic arbitrary issues, like those arising in broadcasting rights, licensing and sponsorship contracts.

*ii. Appeal Arbitration Procedure* which as the name suggests, governs appeals against the judgments passed by different sports bodies. Issues like player transfer, compensation or disciplinary sanctions come under this category.

*iii. The Ad hoc Division* is basically a panel of arbitrators available throughout major sporting events to quickly resolve disputes arising therein to speed up the procedure considering the length of the tournament or the games. During FIFA World Cup, or the Olympics for example, a panel of arbitrators is available on call to resolve any sports-related issues that arise during the games that can be quickly dealt with to ensure it does not hinder the game in any way, or cause any stoppage to the same.

*iv. Mediation* is another dispute resolution method that is offered to parties before they can decide whether they want to resolve the issue by arbitration or mediation.

CAS has a pool or closet of in-house arbitrators who come from culturally diverse backgrounds and countries, well versed and learned about the rules and regulations of the sporting world, which couples with the goals of CAS in the first place, to offer a specialised dispute resolution forum. The knowledge of rules and regulations is

*"There are standards of the game that FIFA governs and promises to uphold."*

*– Abby Wambach*

parallel to the knowledge of the laws needed from the judge in a state court, for example, to ensure that disputes are dealt with amicably and with the most efficiency.

What is essential in being able to file an appeal against any sporting authority is that they must have expressly mentioned in the contract that disputes would be resolved by arbitration and the respective national association must recognise CAS' jurisdiction for the same. Debates ran around the concept of having a select set of arbitrators in CAS and whether players were restricted from being able to take their case to national court should they doubt the unprejudiced procedure of dispute resolution by CAS. Signing a contract with a club which in its dispute resolution mechanism recognises CAS' jurisdiction limits the option of a player being able to go to a national court, leaving him no choice but to either sign the contract with the club accepting CAS' jurisdiction without a choice, or not be able to sign with them at all. The Swiss Federal Court's take on the abovementioned statement in Apr. 18, 2011, 4A 640/2010 (Switz.) was that:

[t]he arbitration clause must meet the requirements of Art. 178 PILA. However, the Federal Tribunal reviews the agreement of the parties to call upon an arbitral tribunal in sports matters with some 'benevolence'; this is with a view to encouraging quick disposition of disputes by specialized tribunals which, like the CAS, offer adequate guarantees of independence and impartiality. The generosity which characterizes case law of the Federal Tribunal in this context appears in the assessment of the validity of arbitration clauses by reference. The Federal Tribunal has accordingly found valid at times a general reference to the arbitration clause contained in the statutes of a federation. Thus in the case of a football player who was a member of a national federation this Court considered as a legally valid reference to the arbitration clause contained in the FIFA Statutes the provision contained in the Statutes according to which the sportsmen belonging to the federation had to comply with FIFA rules.



### **The Disciplinary and the Appeal Committee**

As mentioned above, unless any other committee is authorised to sanction any breach of FIFA regulations, the Disciplinary Committee is authorised to do so. The chairman of the Disciplinary Committee may dispose of cases brought to it and may suspend, fine, pronounce, alter and annul provisional measures. According to **Article 2** of the FIFA Disciplinary Code, any decision taken by the referee during a match is final and no appeal is available to the player against it.

Except otherwise mentioned that the decision of a certain authority is final, the decisions of the Disciplinary Committee may be appealed to the Appeal Committee. The chairmen and members of this committee are legally trained and act in accordance with the FIFA Disciplinary Code. The decisions by the Appeal Committee are legally binding on all the parties involved and CAS reserves the rights to hear appeals against the decisions of the Appeal Committee.

### *The Independent Ethics Committee*

This committee is principally responsible for examining the infringements of the FIFA Code of Ethics. The investigatory chamber and adjudicatory chamber are the two sub roots to this Committee since 2012. The investigatory chamber essentially scans possible violations of the FIFA Code of Ethics whilst also being open to players, clubs or members to file a complaint about the same; the proceeding that follows thereafter, more or less, may not be challenged further. The adjudicatory chamber looks into the findings and renders decisions. These decisions may be appealed to the Appeal Committee and further to CAS unless otherwise provided that the decisions of the Ethics Committee are final.

### **The Player's Committee**

This committee decides disputes relating to employment between a club or an association and a coach unless there is an independent arbitration tribunal at a national level that safeguards the rights of the parties in giving impartial and fair trails.

Unless otherwise now allowed, decisions passed by the above judicial bodies of FIFA may be taken before the CAS.



### Dispute Resolution Chamber

After the Regulations for the Status and Transfer of Players was in place which was the regulations that determined the transfer of players between clubs and the rules therein, an arbitration commission was appointed by FIFA to monitor these regulations. The initial agreement between FIFA and *The Federation Internationale des Associations de Footballeurs Professionnels* (“FIFPro”) to clarify the standing of European Law with the football was what gave birth to the transfer regulations. Hence, the arbitration commission which is called the FIFA Dispute Resolution Chamber consisted of two representatives on behalf of the FIFPro and same from the clubs which was presided over by a chairperson appointed by FIFA.

### Evolution of EU’s Legal Framework with FIFA

Indubitably, the legal framework within which not just football, but sports in whole could fit, was ambiguous. FIFA and Union of European Football Associations (“UEFA”) were the two important governing bodies (and still are) of football. They together mounted the regulations that were to apply at the time.

One of the earliest cases that took cognizance of sports matter was the case of *Walrave & Koch v. Association Union Cycliste Internationale* [ECJ case 36/74, ECR 1405 (12 December 1974)] which said that as long as the sport rules constituted any economic activity, they would fall under the EU laws. Since it was the first sport issue that ECJ had to deal with, they needed to see how the matter of the athletes fell within the framework of EU legislation and came to the conclusion that the activities which are of the character of revenue-generating coupled with the sports’ economic gains, they came within the scope of the EU legislation. In simple words, if the sport was not of the economic landscape, it did not come within the scope of EU laws.

The next step after taking cognizance of the sports issues by ECJ was to delve deeper into the internal functioning of sports, consequent to which arose the matter of free movement to ensure competitive balance. The landmark judgement of *Union Royale*

***“Football, or soccer as it is known, is a game of two halves. It’s a game with rules and a referee. FIFA, the governing body for football, follows neither the rule of law or has the oversight of a referee.”***

**- Sharan Burrow**

*Belge des Sociétés de Football Association ASBL v. Jean-Marc Bosman* [(1995) ECLI:EU:C:1995:463] focused on the free movement of players. This case involved the transfer of Belgian footballer, Jean-Marc Bosman, whose contract ended with RC Liege, hence, he signed an agreement with Dunkerque. Liege did not give him the transfer certificate, the consequence of which was him missing out an entire season. After this judgement, players could freely move to clubs they desired to sign with once their contract concluded.

After this, FIFA drafted a new transfer system which the EU laws backed. Though it only allowed a single transfer per season, it was a step forward.

In 1997, the **Declaration on Sports** was drafted which emphasized the social aspect of the sport and how it worked in harmony when players from various parts of the world ended up playing for one club. This was followed by a **White Paper** on Sport in July 2007 which again emphasized the importance of sports in all aspects. It aimed to recognise sports more in the EU legislation to evolve the dispute resolution and administrative functions of sports to keep up with the changing time and the changing needs of the sport.

In more recent times in *Olympique Lyonnais v Olivier Bernard and Newcastle United* [ECLI:EU:C:2010:143], the Court of Justice on March 2010 clarified the limits of the justifications which the Member States could legitimately invoke regarding the free movement of young players. In this case, it was provided that if a player was trained by a club but failed to be recruited to the club once the training ended because he wanted to join another club was alright on the condition that compensation was paid so long as the club was still encouraged to provide training for budding, young players.

With the abovementioned Treaties, cases and evolution of recognition of the legal framework of FIFA, it can be seen how the EU was supportive of developing the legal aspects of the sport to find a place in the EU regulations to promote the importance of the sport, while also

**"Fifa cannot sit by and see greed rule the football world.  
Nor shall we."**

**- Sepp Blatter**

emphasising on its social and cultural aspects. Undeniably the governing system of sports has drastically developed in the last couple of years, which all began with finding a place in the legal framework of EU laws to being able to establish its own regulations and tribunals as mentioned above. UEFA works with FIFA since it has a similar internal framework of working. UEFA also has its own rules and regulations for the sport of football, now having a larger hold on it than EU laws.

### **The Relation between FIFA and CAS**

As mentioned above, in 2002, FIFA recognised CAS while realising its jurisdiction to file for appeals for all football matters. CAS could be approached to appeal the decisions of the governing judicial bodies of FIFA, unless otherwise mentioned that no appeal could be filed. An important case which demonstrates how FIFA recognises the jurisdiction of CAS was the case of *Adrian Mutu v Chelsea Football Club Limited* [CAS 2008/A/1644 (2008)], which embarks at how FIFA appealed to CAS for compensation. In this case, Adrian, who played for an Italian football club was bought by Chelsea for a sum of 22.5 million pounds on a five-year contract. Chelsea terminated his contract during his second year after he was positively tested for the consumption of cocaine. Upon termination, Mutu filed for an appeal with the board of directors of the Premier League as well as CAS, but it was dismissed. This case was then brought to the FIFA dispute resolution chamber because Chelsea wanted to be compensated for the loss they were facing. To this, the Dispute Resolution Chamber said that it cannot take cognizance of the case because it did not fall within its jurisdiction. Chelsea then approached CAS to set aside the decision, which was accepted by CAS and directed the chamber to take cognizance of the matter and decide on the merits of the case. As a result of this, Chelsea was compensated for around 17 million pounds. After this award, Mutu then appealed to CAS as well as the Swiss Federal Court, but like before, there was no joy for him because both set aside his appeal and dismissed it. This is



an example to see how the agreement to realise the jurisdiction of CAS by FIFA was a historical step, as players and clubs had a dispute resolution forum they could approach for issues which even FIFA could not take cognizance of, and at the same time, it was an extra appeal that could be filed with CAS now which is the apex arbitration tribunal in the world for sports. CAS also decentralised its power by having offices in different countries so make it easily accessible to members around.

### **Advantages of FIFA recognising the jurisdiction of CAS**

To begin with, CAS being the supreme dispute resolution body in the world for sports makes it a historical step for FIFA to recognise its jurisdiction. The judicial bodies of FIFA, are still bodies to hearing disputes at first instance, and the decisions which are given by the committees may be an appeal before CAS if the FIFA rules and regulations do not mention otherwise.

The Ad Hoc Division of CAS which is available on-site during the whole duration of the Olympics Games as well as other major events provided an expedited remedy to issues. Considering that certain sport tournaments run for a period of time which is usually short, there was a need for a set of arbitrators to be available throughout the games so that any dispute that may arise could be immediately dealt with so that the game can be carried on smoothly and there is no hindrance caused because of the dispute to the athlete, players, club or the committee in general. Even though arbitration is not an ideally very long procedure, the ad hoc division of CAS provides fast track decisions which works in favour of FIFA in such big tournaments now, which it lacked before and would have to wait till probably after the competition has ended before the decision for the dispute can be arrived at. An example of a case to show how fast CAS can decide cases even without the ad hoc division is the case of *Ryan Napoleon v FINA* [CAS 2010/A/2216], an Australian swimmer, who was sanctioned with a ban for a couple



*"Serious sport has nothing to do with fair play. It is bound up with hatred, jealousy, boastfulness, disregard of all rules and sadistic pleasure in witnessing violence. In other words, it is war minus the shooting."*

**- Sharan Burrow**

of months right before the Commonwealth Games which was going to be conducted in New Delhi, India in 2010. Ryan wished to participate in the games and hence filed an appeal in CAS and requested an urgent decision. FINA, which is the international federation for swimming, accepted the fast track dispute and submitted its response to Ryan about the same. A hearing was conducted immediately over video conference and the president of the panel issued an award within about just 10 days of the appeal being filed.

Another very important advantage of CAS is that cost is minimised in certain cases. It is a known fact that arbitration, honestly, is not a cheap affair. Considering arbitration these days mostly has parties of different nationalities with their matter of dispute in different countries and have the option of the seat or place or arbitration to be in a different place, the cost of financing an entire arbitration proceeding is really high. For this, in the CAS CODE, a legal aid is provided to persons who do not have sufficient financial capacity to cover the cost of an entire arbitration proceeding.

CAS awards can be imposed under the New York Convention, which means that application for the enforcement of the same can be made at the Swiss Federal Court or the national courts of the countries that have signed under the New York Convention. This provides uniformity of decisions and also ensures amenability of these awards, ensuring smooth internal functioning of the procedures.

### **Anti-Doping Policy**

FIFA and IOC have played a significant role to fight against doping in sports. FIFA introduced regular doping controls in 1970 to ensure that matches are played fairly and are not affecting the natural strength of the players. FIFA has a Medical Committee which ensures that the FIFA Anti-Doping Regulations are not violated and if they are, to test and report to the judicial body, in accordance with World Anti-Doping Agency

accepted the World Anti-Doping Code 2015 and inculcated it in its provisions.

**Article 57(1)** of the FIFA Statutes (June 2019) provides that FIFA is entitled to appeal to CAS against any of the doping-related decision passed in particular by the Confederations, Members or Leagues in accordance with the provisions set out in the FIFA Anti-Doping Regulations. In the same article, it is also mentioned that WADA is entitled to appeal to CAS against the final and internally binding doping-related decision passed by FIFA and the abovementioned bodies in accordance with the provisions set out in the FIFA Anti-Doping Regulations. In the same article, it is also mentioned that WADA is entitled to appeal to CAS against the final and internally binding doping-related decision passed by FIFA and the abovementioned bodies in accordance with the provisions set out in the FIFA Anti-Doping Regulations.

### **Conclusion**

As seen from the above, from the inception of sport issues into EU laws to having branches of its own tribunals and making rules and regulation on its own, FIFA has come a long way to build its legal framework and eventually recognising the jurisdiction of, what we call the Supreme Court, of the sporting world, CAS.

Approximately 45 per cent of the cases heard at CAS are appeals extracted from FIFA worldwide. The FIFA Dispute Resolution Chamber hears all decisions related to the players and clubs, and the appeals to the same are brought to CAS which in the expedited, unbiased and in the most efficient ways gives an award.

The evolution of the legal framework of FIFA was slow and steady; from being applied with EU laws, to Declaration on sports being signed followed by the white paper on sports, each step added an essential element to FIFA which has made it what it is today, the apex governing body of football in the world.

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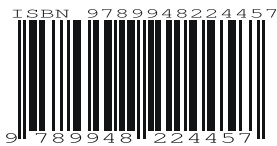
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