How to Deal with the FIFA Judicial Bodies and the Subsequent CAS Appeal

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Preface

Arbitration is an, alternative to litigation, process of resolving disputes[1] covering issues of any kind and becoming, day by day, more and more popular. Therefore, it is not surprising that, already being a "*generally accepted method of resolving international business disputes*"[2] it also became the choice of International Olympic Committee for resolving disputes directly or indirectly linked to sport. A choice that led to the creation of the Court of Arbitration for Sport (hereinafter CAS) in 1984[3], which after the 1994 reform[4] is placed under the administrative and financial authority of the International Council of Arbitration for Sport (ICAS).

CAS, who' aim, as pointed out in article S12 of its Statutes "*of the bodies working for the settlement of sports – related disputes*", is to provide "*for the resolution by arbitration and/or mediation of disputes arising within the field of sport*", is seated in Lausanne[5] and therefore based on Swiss Law[6] and in particular Chapter 12 of the Swiss Federal Code on Private International Private Law (LDIP) of 18 December 1987[7].

[1] It should not however been classified as a method of Alternative Dispute Resolution (ADR) since although arbitration presents an alternative to litigation, it is nonetheless fundamentally the same in that the role of both the Judge and the Arbitrator is judgmental. They both not propose or even help parties to find the best solution to their dispute, but rather make a binding decision. See Redfern and Hunter *Law and practice of International Commercial Arbitration*, Sweet & Maxwell third edition (1999) 1-51 with further reference to Carrol and Dixon, Alternative Dispute Resolution Developments in London, *The International Construction Law Review,* [1990 Pt 4] 436 at 437.

[2] Redfern and Hunter, Op. cit. 1-01.

[3] For the history of CAS see http://www.tas-cas.org/history

[4] triggered by the judgment of 15 March 1993 of the Swiss Federal Tribunal in what is known as "*The Gundel case*" (A.T.F. 119 II 271) which although recognised CAS as a true court of arbitration, drew attention to the numerous links between CAS and IOC (CAS was financed almost exclusively by the IOC; IOC was competent to modify CAS' Statute; IOC and its President had considerable power in appointing the members of the CAS). Links that could call into question the independence of the CAS in the event of the IOC's being a party to proceedings before it. As stated by CAS (see http://www.tas-cas.org/history) "*The Federal Tribulal's message was perfectly clear: the CAS had to be made more independent of the IOC both organisationally and financially*"

[5] This is also the case for the ad hoc divisions of CAS, since their rules explicitly provide that their seats and panels are always in Lausanne, even if the hearing takes place in one of the decentralised offices of CAS or elsewhere.

[6] See Vetter M. The CAS – An arbitral institution with its seat in Switzerland, *Sports Law eJournal,* Bond University (2008), available at http://epublications.bond.edu.au/slej/9

[7] The *lex arbitri* of the arbitration befora CAS. For a detailed analysis of the *lex arbitri* see Redfern and Hunter, Op.cit 2-06.

On the other hand, FIFA, i.e. the "*Fédération Internationale de Football Association* "[8], has, as pointed out in its Statutes[9], as objectives –among others–:

- "*to improve the game of football constantly and promote it globally*"
- "*to draw up regulations and provisions and ensure their enforcements*"
- "*to control every type of Association Football by taking appropriate steps to prevent infringements of the Statutes, regulations or decisions of FIFA or of the Laws of the game*"

To that end FIFA founded its own Judicial Bodies of first and second instance. Namely, it founded:
i. as a body of first instance[10]:
The "*Disciplinary Committee*", responsible to sanction any breach of FIFA regulation which does not come under the jurisdiction of another body, and the "*Ethics Committee"*[11], responsible to sanction any immoral or unethical method or practice concerning football[12].
ii. as a body of second instance[13]:
The "*Appeal Committee*", responsible for hearing appeals against decisions from the Disciplinary[14] and the Ethics Committee[15] that are not declared final by the relevant FIFA regulations[16] and also the decisions passed by the Players' Status Committee.

In the beginning of the previous decade[17], FIFA decided to create an independent arbitration tribunal, the Arbitral Tribunal for Football (TAF), and its administrative body, the International Chamber for Football Arbitration (CIAF) [18].

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[8] an association registered in the Commercial Register in accordance with art. 60 ff of the Swiss Civil Code.
[9] see art. 1 "*name and headquarters*" and 2 "*objectives*" of FIFA Statutes (ed. August 2009).
[10] See art. 58 – 61 of the current FIFA' Statutes (2009) and the similar provisions of the previous Statutes.
[11] Which role is supplementary to this of the Disciplinary Committee. See art. 19 of Code of Ethics, according to which "*cases that come under the scope of this Code of Ethics and the FIFA Disciplinary Code shall be dealt primarily by the FIFA Disciplinary Committee*".
[12] According to the preamble of the Code of Ethics "*FIFA bears a responsibility to safeguard the integrity and reputation of football worldwide. FIFA is constantly striving to protect the image of football and especially that of FIFA, from jeopardy or harm as a result of immoral or unethical methods and practices*".
[13] See art. 60 of the FIFA Statutes (2009) and the similar provisions of the previous Statutes.
[14] See art. 60 of the FIFA Statutes (2009).
[15] See art. 18 of the FIFA Code of Ethics (2009).
[16] According to article 118 of the FIFA Disciplinary Code (2009) an appeal is not allowed if "*the sanction pronounced is a) a warning; b) a reprimand; c) a suspension for less than three matches or of up to two months; d) a fine of less than CHF 15,000 imposed on an association or a club or of less that CHF 7,500 in other cases; e) decisions passed in compliance with art. 64 of this code*", while according to article 18 of the FIFA Code of Ethics (2009) an appeal is not allowed if "*the sanction pronounced is a) a warning; b) a reprimand; c) a suspension for less than three matches or of up to two months; d) a fine of less than CHF 7,500*".
[17] On 7 July 2001, during the extraordinary FIFA Congress held in Buenos Aires.
[18] A relevant provision was actually incorporated in art. 63 of the 2001 Statutes providing for CIAF to "*establish and maintain the Arbitral Tribunal for Football*".

However, FIFA could not afford to create TAF and CIAF[19], but still believed in the importance of an independent arbitration tribunal. The solution could be CAS. And indeed, after deliberations with ICAS, FIFA decided to entrust CAS as the "*tribunal of last instance*" for decisions passed after 11 November 2002.
As stated in its, henceforth, Statutes[20], FIFA:

i. recognizes CAS "*to resolve disputes between FIFA, Members, Confederations, Leagues, clubs, Players, Officials and licensed match agents and players; agents*" and

ii. accepts that the proceedings will be governed by the "*provisions of CAS Code of Sports – Related Arbitration*" and that additionally to the various regulations of FIFA, which is to be applied "*primarily*", CAS will apply Swiss Law i.e. the Law of its seat.

This paper will examine some of the aspects that may arise concerning CAS' jurisdiction to rule on the appeals filed to it. It must be noted, that, pursuant to art. 186[21] of the Swiss Federal Code on Private International Law, embodying[22] the principle of *Kompetenz – Kompetenz*, namely the authority of the arbitral tribunal to decide on its own competence, it is CAS that will be faced with those aspects.

I. The agreement for arbitration – Competence of CAS

According to art. R27[23] and 47[24] of CAS Statutes and pursuant to its jurisprudence[25], in order for CAS to have jurisdiction it is required that:

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[19] See Circular no. 827/10 December 2002, by which FIFA acknowledged that "*it soon became apparent to FIFA that the finances made available to found the International Chamber for Football Arbitration (CIAF) were far from sufficient to fulfil its objectives of establishing and maintaining an independent arbitration chamber for football. Furthermore, it was acknowledged that the measures required to set up such an independent project have proved to be too time-consuming in view of the time constraints imposed by the necessity of implementing the new juridical system in accordance with the FIFA Statutes*"

[20] See art. 59 of Statutes 2004, art. 60 of Statutes 2007, art. 62 of Statutes 2008 and 2009.

[21] "*1. The arbitral tribunal shall rule on its own jurisdiction. 1bis. It shall rule on its jurisdiction irrespective of any legal action already pending before a State court or another arbitral tribunal relating to the same object between the same parties, unless noteworthy grounds require a suspension of the proceedings. 2. The objection of lack of jurisdiction must be raised prior to any defence on the merits. 3. In general, the arbitral tribunal shall rule on its jurisdiction by means of an interlocutory decision*".

[22] See CAS 2005/A/952 with further reference to Abdulla, Z. The Arbitration Agreement, in: Kaufmann – Kohler/Stucki (eds.) *International Arbitration in Switzerland – A Handbook for practitioners,* The Hague 2004, p.29; Muller, C. *International Arbitration – A Guide to the Complete Swiss Case law,* Zurich et al. 2004, pp. 115-116; Wenger, W. n. 2 ad Article 186, in Berti, S. V. (ed.) *International Arbitration in Switzerland – An Introduction to and a Commentary on Art. 176-194 of the Swiss Private Law Statute,* Basel et al. 2000; Rigozzi, A. *L' arbitrage international en manière de sport,* Basel 2005, p. 524.

[23] "*These Procedural Rules apply whenever the parties have agreed to refer a sports-related dispute to the CAS. Such disputes may arise out of an arbitration clause inserted in a contract or regulations or of a later arbitration agreement (ordinary arbitration proceedings) or involve an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies, or a specific agreement provides for an appeal to the CAS (appeal arbitration proceedings)*".

i. either the parties have agreed on CAS acting as an Arbitration Tribunal to deal with a certain dispute[26]

ii. or the statutes or regulations of the body issuing the decision the appeal is made at, expressly recognize the CAS as such.

If neither of that is true and provided that a party disputes its jurisdiction[27], CAS will rule the said appeal as inadmissible.

That was e.g. the case in the *Besiktas case*[28]. Besiktas, a Turkish football club, filed on October 2002 an appeal against a decision of FIFA ordering it to pay compensation[29] to the player's previous club, for his transfer to Besiktas. However, at the time the appeal was filed in CAS, FIFA' Statutes provided only for the creation of the TAF, while, as was stated in that decision, neither FIFA' Statutes, nor the Regulation for the Transfer of Players recognized the jurisdiction of CAS. Such jurisdiction was –as aforementioned– recognised for decision taken from 11 November 2002 henceforth. As a result, after making clear that "*the CAS and the TAF cannot in any way be confused*"[30], Besiktas' appeal was dismissed.

In an attempt for uniformity, FIFA Statutes provide[31] that "*the Confederations, Members and Leagues shall agree to recognise CAS as an independent judicial authority and to ensure that their members, affiliated Players and Officials comply with the decisions passed by CAS*". However, as repeatedly stated by CAS the latter provision "*does not constitute per se a basis for arbitration*"[32], i.e. "*does not contain any mandatory provision that obliges a national federation or league to allow a right of appeal from its decision*"[33], they only "*constitute an instruction to introduce a regulation providing for CAS arbitration*"[34]. As a result, while examining its jurisdiction CAS "*can only take into account the regulations of the federation against which an appeal is directed*"[35]. If those regulations have implemented the above mentioned FIFA Statutes, then –and only then– CAS can be held to have jurisdiction.

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[24] "*An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body. An appeal may be filed with the CAS against an award rendered by the CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules applicable to the procedure of first instance*".

[25] CAS 2008/A/1503, CAS 2005/A/952, CAS 2004/A/676, TAS 2002/O/422 (in French), available at http://www.tas-cas.org/jurisprudence-archives

[26] As was e.g. the case in the TAS 98/185 (in French).

[27] Their silence should be deemed as consensus in favour of CAS jurisdiction.

[28] TAS 2002/O/422 (in French) op.cit.

[29] of 255,645.00 euros.

[30] "*Le TAS et le TAF ne peuvent en aucun cas être confondus*".

[31] Art. 64 of the current and the previous editions (2009 and 2008), art 62 and 61 of the 2007 and 2004 editions respectively.

[32] CAS 2004/A/676 par. 6.

[33] CAS 2005/A/952 par. 9.

[34] CAS 2004/A/676 par. 6.

[35] CAS 2008/A/1503 par. 7.

Among the seven confederations recognised[36] by FIFA, today only, one, the CONMEBOL does not have such an arbitral clause incorporated in its Statutes[37]. Constant to its jurisprudence, CAS dismissed an appeal against CONMEBOL's decision to allow some matches of the tournament "Copa Libertadores 2008" to be played at extreme altitude[38], i.e. over 2.750 metres above sea, for that reason only[39], even though, in the last thought of this decision, it expressed its feelings that "*the subject matter of the dispute is* important (*due to its health implications*), urgent (*given the stringent time considerations*) *and it would have been advisable that it be resolved in a neutral forum (like CAS)*".

II. Definition of the term "decision"

Having establish its competence, CAS is now entitled to rule against the "*final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues*" provided that they are not expressly excluded by FIFA' Statutes[40]. This provision, however, gives birth to another matter.

What does the term "*final decision*" stands for?

While the term "*final*" is easily interpreted, meaning the exhaustion of all legal remedies available to him prior to the appeal[41], the interpretation of the term "*decision*" cannot be regarded as straightforward.

Given that FIFA' Statutes do not provide any definition, the answer is to be find in the Swiss Law, which is applicable according to both FIFA' Statutes[42] and CAS' Code[43].

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[36] Confederatión Sudamericana de Fútbol (CONMEBOL), Asian Football Confederation (AFC), Union des associations européennes de footballo (UEFA), Confédération Africaine de Football (CAF), Confederation of North, Central American and Caribbean Association Football (CONCACAF) and Oceanian Football Confederation (OFC). Art. 20 of FIFA Statutes (2009).

[37] The UEFA' Statutes have such a provision, with, however, a slightly different wording, causing some other problems, with which we will deal later on.

[38] Opposite to the recommendations (and not decisions) of the FIFA Executive Committee of 15 December 2007, following the relevant recommendations tabled by international medical specialist on high altitude at a seminar in Zurich at the end of October 2007.

[39] Same was the reasoning in the CAS 2004/A/676 case against CAF, because at the time of the appeal, CAF' Statutes did not have an express provision recognising CAS, but a mere instruction to its associations, clubs or members that "*they shall agree to submit any such disputes to an Arbitration Tribunal appointed by common consent*" (which did not either existed).

[40] See art. 63 par. 3 (edition 2009) according which: "*CAS, however, does not deal with appeals arising from: (a) violations of the laws of the game; (b) suspension of up to four matches or up to three months (with the exception of doping decisions); (c) decisions against which an appeal to an independent and duly constituted arbitration tribunal recognised under the rules of an Association or Confederation may be made*".

[41] Or according to the wording of CAS 2007/A/1355 par. 3 "*all otherwise stages of appeal have been exhausted*".

[42] See art. 62 par. 2 according to which: "*[…] CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss Law*".

[43] See art. R58 according to which" "*The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate*".

According to Swiss Law[44] "*the decision is an act of individual sovereignty addressed to an individual, by which a relation of concrete administrative law, forming or stating a legal situation, is resolved in an obligatory and constraining manner. The effects must be directly binding both with respect to the authority as to the party who receives the decision*".

In other words as accepted by CAS in order to determine whether a decision exists or not, i.e. whether the act appealed is to be deemed as the decision of art. 63 of FIFA's Statutes, it must "*contain a ruling*"[45]. It must "*intend to affect the legal situation of the addressee of the decision or other parties*"[46]. The form, however, of that act is irrelevant. It can even have the form of a letter, as long as it communicates a ruling on the matter. On the contrary, if it only contains information addressed to that party, that information cannot be considered as a decision.
That was the case in the *Aris case*[47], in which Aris, a Greek football club, appealed against FIFA's reply to its request to enforce the decision of FIFA Disciplinary Committee against another Greek football club[48]. In that reply, FIFA announced to Aris that "*the execution of a decision taken by a FIFA body falls under the competence of the relevant member association, namely the Hellenic Football Federation*". As a result, FIFA could do nothing more than transfer (as it actually did) the matter to the Disciplinary Committee.
As CAS ruled[49] "*this letter contains no ruling that affects the legal situation of the Appellant. It only contains information as to which association / body is competent to handle the Appellant's request. In this respect, the Appellant's options to seek relief from the competent bodies remain unaffected*".
The Appeal was eventually dismissed because Aris was found not to have exhausted the legal remedies available to him prior to the appeal[50]
Before, however, reaching that conclusion, CAS examined a second important matter concerning that act (not any more considered as a "decision"). Whether, it could be deemed as a denial of justice, which, as already ruled by CAS[51], opens the way to an appeal against that absence of a decision. Namely, when a FIFA' body:

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[44] See CAS 2004/A/659 par. , see also CAS 2005/A/899 par. 10.
[45] CAS 2005/A/899 par. 11.
[46] It must be noted that the ruling contained on that decision may be either on the merits of the case, or merely on the admissibility or inadmissibility of the request.
[47] CAS 2005/A/899, a decision being acknowledged by CAS (see CAS 2007/A/1251 par. 4) as laying down the relevant criteria.
[48] According to the decision of the Disciplinary Committee the other club had to pay two of its players in a said time period, otherwise 12 points (6 for each player) would be deducted from that club. Aris was ranked 14th in the Championship with 25 points and was relegated in second division, while the other club ranked 11th with 35 points. Consequently, if that decision had been executed, Aris would stay in the division in place of the other club, which (in that case) would relegate in the second division.
[49] CAS 2005/A/899 par. 16.
[50] According to art. R47 of CAS' Statutes. As stated in that decision "*even assuming that the disputed letters of FIFA were to be considered as a decision, such decision would in any event not be final as it could still be appealed against with the FIFA Appeal Committee. It follows that CAS would not have jurisdiction to hear such a premature appeal against the "decision" at stake*".
[51] See TAS 97/196 (in French) according to which "*En tout état de cause, l'absence durable d'une prise de décision paraît condamnable en l'espèce et susceptible de constituer un déni de justice contraire aux principes généraux du droit, ce qui justifie également l'intervention du TAS en l'espèce*". ("*In any event,*

i. either delays the issuance of a decision beyond a reasonable period of time[52]
ii. or refuses without due reason to issue a decision.
The latter was the matter at stake in another case involving Aris[53]. After being obliged by a Greek Sport Court to pay a certain sum of money to one of its former players, Aris filed a claim to FIFA asking to render a new decision on the merits of that case and dismiss the claim of the player. FIFA replied by a letter, signed by its Legal Division Director and the Player's Status Committee, declaring that FIFA' "*decision – making bodies are not competent to review per se any decision passed by another competent body*". Regardless of the correctness of that statement, simply because according to its rules FIFA had to transfer the claim to the relevant body[54] (namely the Dispute Resolution Chamber – DRC), CAS ruled that that decision constituted a denial of justice. Therefore, it ordered FIFA to transfer the claim to DRC "*to make a reasoned decision on its won jurisdiction to entertain or not the employment – related dispute submitted to FIFA by Aris FC*".

Consequently, according to CAS[55] jurisprudence, in interpreting the term decision: "*what is decisive is whether there is a ruling –or in case of a denial of justice, an absence of ruling where there should have been a ruling*".

III. Definition of the term "sporting nature"
As aforementioned UEFA's Statutes recognize the jurisdiction of CAS, with certain exceptions[56], one of which is the so called "*matters related to the application of a purely sporting rule, such as the Laws of the Game or the technical modalities of a competition*"
As a result, pursuant to its jurisprudence[57], CAS has jurisdiction to deal with a case in which one of the parties is UEFA as far as that case does not fall in the exception of art. 63 of its Statutes.

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the absence of a sustainable decision seems wrong in this case and may constitute a denial of justice contrary to general principles of law, which also justifies the intervention of the CAS in this case").
[52] See CAS 2005/A/899 par. 19 in which the Panel found that in that case there was "*no undue refusal to issue a decision*" because FIFA a) did not made any decision and b) transferred the claim to the competent body (the Disciplinary Committee). It must, however, be stressed that as CAS noted (par. 28) "*the situation might be different if the Respondent* (FIFA) *had refused to transfer the matter to the Disciplinary Committee*". Such a refusal would fall in the category of denial of justice.
[53] CAS 2007/A/1251
[54] See art. 9 par. 1 of the Rules Governing the Procedures of the PSC and the DRC, according which "*Petitions shall be submitted ... via the FIFA General Secretariat*". According to CAS jurisprudence (2007/A/1251 par. 27) "*FIFA has a clear system whereby its general secretariat has no authority to decide on issues of competence but must dispatch the claims to the DRC and the PSC according to their respective scope of jurisdiction under the rules and regulations; such bodies then deciding on their own competence and the chairman of the PSC determining which of the two bodies has jurisdiction in the case of doubt*".
[55] CAS 2005/A/899
[56] See art. 63 par. 1 of UEFA's Statutes according which "The CAS is not competent to deal with: a) matters related to the application of a purely sporting rule, such as the Laws of the Game or the technical modalities of a competition; b) decisions through which a natural person is suspended for a period of up to two matches or up to one month; c) awards issued by an independent and impartial court of arbitration in a dispute of national dimension arising from the application of the statutes or regulations of an association"
[57] TAS 98/199 (in French), CAS 2004/A/676, CAS 2008/A/1503

The problem, however, occurs with the interpretation of the term "*purely sporting rule*". A term that, cannot be deemed as equal to the term "*laws of the game*" used in FIFA' Statutes, given the use of the wording "*such as*" which implies that the "laws of the game" and the "technical modalities of the competition" are only an example of a "*purely sporting rule*". Are therefore cases, not regulated by the "laws of the game" and the "technical modalities of the competition" that can be considered as of "*purely sporting rule*" and therefore excluded form the CAS' jurisdiction?
According to the minutes of the 8th Extraordinary Congress of UEFA[58] cases "*of a pecuniary natures, and therefore arbitrable, are those relating to contracts, torts, company law, or intellectual property and the like. By contrast, matters of a sporting nature are those relating to the preparation, organization and running of matches, tournaments and competitions, including the Laws of the Game, match-related sanctions etc.*"[59]. Such sanctions, however, can have pecuniary consequences raising the question of the interpretation of this rule in the case of those "mixed" cases, in which the nature of the dispute is contested.
In the *Celtic FC case*[60] CAS denied its jurisdiction concluding that "*in the present matter, it appears clearly that the suspension of the team manager of Celtic FC for one match is also mainly a decision of a sporting nature. Considering that no evidence of a possible financial damage has been brought by the Appellants, the direct pecuniary consequences of such suspension are not obvious, at least at this stage of the proceedings*".
In the *Real Madrid case*[61], in which the use of the Santiago Bernabeu Stadium was banned for 2 UEFA matches, CAS also denied its jurisdiction concluding that *"such decision was a sporting sanction and that the consequences of such ban were primarily of a sporting nature*", although it is clear that the ban of the use of a stadium causes pecuniary damage of a certain degree.
On the other hand, in the *Addo & van Nistelrooij case*[62] CAS accepted its jurisdiction concluding that "*although the non-qualification of two players is a decision of a sporting nature, it can be also argued that such a decision may have consequences of a pecuniary nature*"[63].
In a more recent decision[64] consering the dispute between the Football Assocation of Wales (FAW) and UEFA on whether the Wales' or the Russian' football team should compete in the last stages of Euro 2004[65], CAS found that the disputed decision was one of pecuniary nature. As accepted by the Panel in case of exclusion of the Russian team from the Euro 2004 it "*would lose a minimun prize money of CHF 7,5 million paid by the UEFA to each of the 16 finalists. Further to that it can be assumed that bonuses comparable to*

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[58] Reference taken from TAS 98/199
[59] The original text in French reads as follows : "*Sont de nature patrimoniale et peuvent donc faire l' objet d' un arbitrage les requetes découlant du droit des contrats, de la résponsabilité civile extra – contractuelle, du droits des sociétés, de droit de la personnalité, de la propriété industrielle, de la propriété intellectuelle, etc. En revanche, soot de nature sportice tous les litiges qui concernent l' interpretation et l' application des nomres qui servent à la préparation, à l' organisation et à la réalisation de matches de football, de tournoi, de compétition, etc, qu' il s' agisse de règles du jeu, de sanctions concernant le jeu etc*".
[60] Op.cit
[61] 1998/199, reference of that case found in the 2001/A/342.
[62] See 2001/A/324.
[63] Eventually, CAS denied the request of the players, but only because it concluded that theirs interests did not outweigh those of UEFA.
[64] CAS 2004/A/593
[65] the decision was in favour of the Russian team.

those of Wales would be lost (in the case of Wales more than GBP 60,000). In addition the effects of the disputed decision involve other interests beyond non-enforceable rules of play, i.e. reputation and credibility of a team, the value of the market of the players and the team etc".

In its recent decisions, CAS, seems to follow the direction of the 8th Extraordinary Congress of UEFA that in those cases it "*should decide, on a case-by-case basis*", applying "*art. 177.1 of the Swiss Federal Code of Private International Law (LDIP)*"[66] and coming to the conclusion[67] that "*UEFA, obviously wanted to use the Swiss understanding of the term "of a pecuniary nature", which is a wide one, in order to enable as many disputes as possible to be decided by the alternative dispute mechanism of CAS rather that by the Swiss Courts*". Therefore, after taking into account the interpretative principle of "*contra proferentem*"[68] and the relevant jurisprudence of the Swiss Federal Tribunal[69], CAS[70] drawn the conclusion that "*in cases in which it is not clear whether the sporting or the pecuniary nature of the decision is predominant, it should normally be the case that the matter will be considered to be of a pecuniary nature … As a result, a dispute is of a pecuniary nature if an interest of a pecuniary nature can be found in at least one of the parties*"[71].

Conclusion

Arbitration is, undoubtedly, the preferable method for resolving sport related disputes. Furthermore, CAS is a specialized arbitral tribunal on resolving those disputes. It is fast, it is efficient. Its awards are respected, even when –and this very important– they don't have the expected content. The reaction of FIFA in the *Webster case* is characteristic on that matter. Although –to use its own wording[72] – "*dismayed*" with this decision because "*CAS did not properly take into consideration the specificity of sport*", its reaction was to analyze and understang the decision. At no point did FIFA questioned the role of CAS

[66] According which "*all pecuniary claims may be submitted to arbitration*" (Toute cause de nature patrimoniale peut faire l' object d' un arbitrage).

[67] CAS 2004/A/593 par. 6.

[68] Also known as "*contra stipulatorem*", according which ia case of doubt, a clause ought to be interpreted against the person who drafted it and in favour of the persion who contacts the obligation.

[69] As quoted in the decision CAS 2004/A/593 par. 5 (with further reference to Patocchi/Geisinfer, Arbitrage International, Lausanne 1995, 439 f.) "*the term "nature patrimoniale", which means in English "of a pecuniary nature" is unéderstood by the Swiss Federal Tribunal as follows" 'Est de nature patrimoniale au sens de cette disposition toute prétention qui a une valeur pécuniaire pour les parties, à titre d' actif ou de passif, autrement dit tous qui présent, pour l' une au moins des parties, un intérêt pouvant être apprécié en argent' (see ATF 118 II 353, 356 = JdT 1994 I 125 as quoted by Patocchi/Geisinfer, Arbitrage International, Lausanne 1995, 439 f). The Swiss Federal Tribunal has also explicitly stated that disciplinary sanctions imposed by sports organizations are arbitrable under art. 177 par. 1 LDIP if: (i) the sanctions do not involve the rules of play* stricto sensu, *(ii) the sanctions concern the association's life or participation in competitions, and (iii) some personal and financial consequences arise for the sanctioned person or entity (see ATF 119 II 271 ff).*

[70] CAS 2004/A/593 par. 6.

[71] We should not however forget, that, as stated in TAS 98/1999 par. 20, and followed by CAS 2004/A/593 CAS does not intend "*to express a general principle for interpeting that provision*", nor that "*the arbitrators must decide which aspect is predominant*" but rather that he "*shoud take it into account*".

[72] See Media Release of 31 January 2008.

as the "*tribunal of last instance*". It is obvious that CAS has gain the most important "bet" for every arbitral tribunal: the feeling of confidence, the feeling of rapport towards it.

CAS, however, has to deal with an insuperable obstacle. The fact that it is competent to deal with a certain dispute, only, and as far as it is allowed to it by the will of the parties. If this is not the case, it is obliged to rule the case as inadmissible and dismiss the relevant claim. Otherwise, its award will be annulled by the Swiss Federal Tribunal pursuant to art. 190 par. 2b of LDIP according which its award can be attacked "*if the arbitral tribunal erroneously held that it had or did not had jurisdiction*". This, however, results, contrary to the goal of FIFA, to a lack of uniformity in resolving sport, and in particular, football – related disputes.