

The role of the International Sport Federations in the enforcement of the arbitral awards

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I. Preamble

Arbitration is, maybe, the most popular alternative to litigation process of resolving disputes covering issues of any kind. Unlike, however, mediation, conciliation and other ADR¹ Methods, arbitration has a fundamental characteristic same with the role of the Court. Both the Arbitrator and the Judge are there to make a binding decision².

As a result, the “winner” expects the immediate performance of the arbitral award against the “loser” in the same way that he would expect the performance of a Court decision. Even if an express term is not incorporated in the arbitration agreement, it is generally accepted³ that it is an implied term of every arbitration agreement that the parties will carry it out. However, as it is also true with the Court decisions, the “loser” might not voluntarily comply with the award.

Aim of this paper, is to examine the role of the International Sport Federations in the enforcement of the sporting arbitral awards and in particular the arbitral awards issued by the CAS as a court of the last instance.

II. Enforcement of arbitral awards in general

The “winner” has, generally, two options⁴: either to seek enforcement by Court proceedings, or to put any kind of (legal) pressure to the opposite party that will actually force it to comply with the award.

In order, however, for the latter option to be effective, it is necessary that the other party has something at stake. In other words that the consequences of non-compliance are greater than compliance itself. For example the GAFTA⁵ Arbitration Rules expressly provide⁶ that “*In the event of any party to an arbitration or an appeal held under these Rules neglecting or refusing to carry out or abide by a final award of the tribunal or board of appeal made under these Rules, the Council of GAFTA may post on the GAFTA Notice Board, Web-site, and/or circulate amongst Members in any way thought fit*”

¹ Acronym for “Alternative Dispute Resolution”.

² See A. Redfern and M. 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.

³ See A. Redfern and M. Hunter, *op. cit* 10-01, with further reference to Mustill & Boyd, *Commercial Arbitration* (2nd ed.), p. 47. Expert report of Dr Lewis, *Esso/BHP v. Plowman*, 11 *Arbitration International* 282-296.

⁴ See A. Redfern and M. Hunter, *op. cit* 10-06.

⁵ The “Grain and Feed Trade Association” originated from the London Corn Trade Association since 1878, see for further information <http://www.gafta.com/>

⁶ See GAFTA No. 125 Arbitration Rules (version of 2006: effective for contracts dated since 1 July 2006, but also version of 1997: effective for contracts dated since 1 July 1997), art. 22 par. 1 and 23 par. 1 respectively.

notification to that effect. The parties to any such arbitration or appeal shall be deemed to have consented to the Council taking such action as aforesaid”.

If, however, the only way to execute the award is by enforcing it by court proceedings things might become quite complicated. Even though in case of international disputes, it is generally accepted⁷ that it is easier to enforce an international arbitral award than to enforce a foreign court decision, thanks to the network of the relevant treaties⁸, the winner will have to overcome all the “manoeuvre” of the opposite party in his attempt to avoid the execution of the award.

To that end, the winner will have to identify the applicable law, i.e. whether he should apply e.g. the New York Convention⁹ or the Model Law¹⁰, or even the relevant provisions of the law at the place of the enforcement; he might need to consider going for the so-called “forum shopping”¹¹ i.e. to choose the country in which he will proceed with the enforcement of the award, following any necessary procedure¹², in order to attain the quickest and most efficient results; and of course he should take legal advice from experienced practitioners so as to take the right decision.

III. Arbitration and Sports

Arbitration sounds as an ideal solution for resolving sport related disputes, because it fits to the specificity of sport. As it is generally accepted¹³ two are the main needs related to sport disputes that led to the choice arbitration: the fact that sport disputes must, for obvious reasons, be solved quickly, and the fact that sport activity has a transnational character, is based on a non – national system of rules, known as the “*Lex Sportiva*”¹⁴, and therefore must be dealt in a transnational way. The Athletes, the Coaches and generally anyone related to sports activities are supposed to behave in the same way and follow the same rules irrespectively of the place of the venue. Such

⁷ See A. Redfern and M. Hunter. op. cit 10-15.

⁸ a fact that it is actually considered as one of the advantages of arbitration.

⁹ The “Convention on the Recognition and Enforcement of Foreign Arbitral Awards” was adopted by diplomatic conference on 10 June 1958 and entered into force on 7 June 1959, available at http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention.html.

¹⁰ The UNCITRAL (United Nations Commission on International Trade Law) “Model Law on International Commercial Arbitration” was adopted on 1985 and amended on 7 July 2006, available at http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration.html.

According to the UNCITRAL, “the Model Law is designed to assist States in reforming and modernizing their laws on arbitral procedure so as to take into account the particular features and needs of international commercial arbitration. It covers all stages of the arbitral process from the arbitration agreement, the composition and jurisdiction of the arbitral tribunal and the extent of court intervention through to the recognition and enforcement of the arbitral award. It reflects worldwide consensus on key aspects of international arbitration practice having been accepted by States of all regions and the different legal or economic systems of the world”.

¹¹ See A. Redfern and M. Hunter, op. cit 10-14 and 10-71

¹² See, e.g. Decision 3944/2010 of the Athens Court of First Instance, which pursuant to the New York Convention 1958 and the Greek Law declared as enforceable (in Greece) the decision 5/2008 of the FAT.

¹³ See, inter alia, A. Rigozzi *L’arbitrage international en matiere de sport*, HELBING & LICHTENHANH (2005), par. 8 and 330.

¹⁴ For a detailed analysis of the meaning of *Lex Sportiva* see, inter alia, D. Panagiotopoulos *Sports Law I*, Nomiki Bibliothiki (2005) pag. 85 et seq.

a uniformity cannot be accomplished by State Courts simply, because, the rules of different States tend to be different; in some cases slightly different, but still different.

a. The Court of Arbitration for Sport (CAS)

Therefore, it is not surprising that arbitration already being a “*generally accepted method of resolving international business disputes*” it also became the choice of the 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 in 1984¹⁵, which after the 1994 reform¹⁶ is placed under the administrative and financial authority of the International Council of Arbitration for Sport (ICAS). CAS’s aim is, as pointed out in article S12 of its Statutes¹⁷, to provide “*for the resolution by arbitration and/or mediation of disputes arising within the field of sport*”.

b. The FIBA Arbitral Tribunal (FAT)

Furthermore, it is not surprising that some of the International Sporting Federations apart from their Judicial Bodies of first and second instance, decided to create Arbitral Tribunals to deal with certain disputes mostly of labour nature. In May 2007, FIBA established¹⁸ FAT¹⁹, an independent Arbitral Tribunal in an attempt for “*the simple, quick and inexpensive resolution of disputes arising within the world of basketball in which FIBA, its Zones, or their respective divisions are not directly involved and with respect to which the parties to the dispute have agreed in writing to submit the same to the FAT*”²⁰. FAT decisions can be appealed to CAS, who acts as the last instance arbitral tribunal.

c. The UIPM Court of Arbitration

The International Union of Modern Pentathlon created the UIPM Court of Arbitration²¹ as an independent institution, seated and operating in Monaco and applying the rules and regulations of UIPM and, as subsidiary law, this of Monaco. It is constituted by three arbitrators, at least one of which (the chairperson) must have the qualification of a Judge or similar legal experience. The UIPM Court of Arbitration is responsible a) to arbitrate controversies between the UIPM and its

¹⁵ For the history of CAS see <http://www.tas-cas.org/history>

¹⁶ 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 Tribunal’s message was perfectly clear: the CAS had to be made more independent of the IOC both organisationally and financially*”

¹⁷ “*of the bodies working for the settlement of sports – related disputes*”, available at <http://www.tas-cas.org/statutes>

¹⁸ For further information on FAT visit

<http://www.fiba.com/pages/eng/fc/expe/fat/p/openNodeIDs/16809/selectNodeID/16809/pres.html>

¹⁹ The seat of FAT is Lausanne, Switzerland and therefore based on Swiss Law and in particular Chapter 12 of the LDIP.

²⁰ See FIBA’ Internal Regulations 2008 and 2010 under L.2.1.1, available (the latter) at http://www.fiba.com/downloads/Regulations/170310_FIBA_Internal_Regulations.pdf

²¹ See Chapter XI of the UIPM Disciplinary Rules of 2009, available at <http://www.pentathlon.org/rules/disciplinary>

Member Federations and between UIPM Member Federations; b) to decide on appeals against disciplinary punishments and disciplinary measures as well as other decisions imposed by the Executive Board; c) to decide on appeals against decisions of Executive Boards of Continental Confederations; and d) to decide on controversies under UIPM contracts and agreements as well as under declarations within UIPM. UIPM Court of Arbitration decisions can be appealed to CAS, who acts as the last instance arbitral tribunal.

d. The Court of Arbitration of ICF

The International Canoe Federation created the Court of Arbitration²² consisted of three arbitrators in order to resolve disputes other than at ICF competitions where the ICF Competition rules apply. Court of Arbitration of ICF decisions can be appealed to CAS, who acts as the last instance arbitral tribunal.

e. The Arbitral Tribunal for Football (TAF)

Not all of such attempts were, however, successful. In the beginning of the previous decade²³, 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)²⁴. However, FIFA could not afford to create TAF and CIAF²⁵, 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 Statutes²⁶, 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.

IV. Enforcement of Sporting Arbitral Awards

At a certain point an arbitral award will solve, either way, the dispute. But this is not, necessarily, the end of the road. And thus, because the “*loser*” may take actions to avoid the enforcement of the award. The sporting system, aware of that, uses the “*arrows*” it has in its “*quiver*”.

²² See Chapter V, art. 44 of the 2008 Statutes of the International Canoe Federation, available at <http://www.canoeicf.com/icf/AboutICF/Rules-and-Statutes.html>

²³ On 7 July 2001, during the extraordinary FIFA Congress held in Buenos Aires.

²⁴ 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*”.

²⁵ 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 fulfill 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*”

²⁶ See art. 59 of Statutes 2004, art. 60 of Statutes 2007, art. 62 of Statutes 2008 and 2009.

a. Exclusion Agreements

One way to get “closer” to the enforcement of the award is to “eliminate” the legal obstacles that could delay its enforcement, or even lead to the annulment of the arbitral award. One such “method” is to waive in advance any right to challenge the award or to exclude certain grounds for setting it aside, provided of course, that such a waiver is allowed by the *lex arbitri*²⁷ i.e. the law governing the arbitration. This is the case with the CAS seated in Lausanne²⁸ and therefore is based on Swiss Law²⁹ and in particular Chapter 12 of the Swiss Federal Code on Private International Private Law (LDIP) of 18 December 1987.

Therefore this is the case for all sport organised with the pyramid structure in the apex of which is the relevant International Federation³⁰ which have recognised CAS

²⁷ For a detailed analysis of the *lex arbitri* see A. Redfern and M. Hunter, op.cit 2-06.

²⁸ 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.

²⁹ See M. Vetter, 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>

³⁰ See art. 59 of the 2008 Statutes of International Boxing Association (AIBA), art. 10 of the Constitution of the Badminton World Federation (BWF), art. 35 of 2008 Statutes of the Federation Equestre Internationale (FEI), art. 26 of the 2006 – 2010 Statutes of International Basketball Association (FIBA), art. 7.2.7 of the 2009 Statutes of the Federation Internationale d' Escrime (FIE), art. 62 of the 2008 Statutes of the Federation Internationale de Football Association (FIFA), art. 36 of the 2009 Statutes of the International Federation of Associated Wrestling Styles (FILA), art. 25 of the Statutes of the Federation Internationale de Natation (FINA), art. 55 of the 2009 Statutes of the Federation Internationale des Societes d' Aviron (FISA), art. 1.30 of the 2008 Constitution of the Federation Internationale de Tir a l' Arc (FITA), art. 2.7.2 of the 2005 Constitution of the International Volleyball Federation (FIVB), only however for doping violations, art. 21 of the 2009 Statutes of the Federation Internationale de Gymnastique (FIG), art. 15 of the 2009 Statutes of the International Association of Athletics Federations (IAAF), art. 43 of the 2008 Statutes of the International Canoe Federation (ICF), art. 8 and 38 of the Legal Provisions and By-Laws respectively of the 2007 Statutes of the International Handball Federation (IHF) only, however “*in exceptional cases (problems arising in connection with doping abuse, complaints from individual athletes*”, art. 21 of the 2008 Statutes and By Laws of the International Hockey Federation (FIH), art. 29.5 of the 2009 Statutes of the International Judo Federation (IJF), only, however, until the establishment of the IGF Arbitral Tribunal, art. 80 of the 2010 Constitution of the International Sailing Federation (ISAF), only, however, in case of appeal against the decision of the Review Board and only “(a) *In any case involving accredited Olympic Competitors, in which the Court of Arbitration for Sport has properly established its jurisdiction under the Olympic Code for Sports, (b) In any other case in which a competitor consents to the jurisdiction of the Court of Arbitration for Sport in respect of the appeal*”, [It must be noted that according to art. 2.2 of the Constitution of ISAF “*Any Disputes relating to the validity or construction of the ISAF Constitution or Regulations or any other rules or regulations made there under (together, the 'ISAF Regulations')*”, and any disputes relating to the application of the ISAF Regulations or the exercise of powers there under, shall be subject to the exclusive jurisdiction of the courts of England and Wales and their principles, and shall be governed by English law, excluding English choice of law principles”], art. 1.3.16.1 of the 2009 Constitution of the International Shooting Sport Federation (ISSF), art. 33 of the 2009 Constitution of the International Tennis Federation (ITF), art. 13.3 of the 2007 Constitution of the International Triathlon Federation (ITU) in case of “*disputes between ITU and one or several of its members which are not settled by a decision of ITU*” [it must be noted that as expressly stated in the “preamble” of 13 of the Constitution “*Any dispute, any controversy or claim arising under, out of, or relating to this constitution or any subsequent amendments of or in relation to this constitution, including but not limited to, its formation, validity and binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the CAS Mediation Rules. ... Where a settlement of the dispute is not reached within 90 days of the commencement of the mediation, or if, before the expiration of the said period either party fails to participate in the mediation, the dispute shall, upon the filing of a request of Arbitration by either party, be referred to and finally settled by CAS arbitration pursuant to the Code of Sports related Arbitration. When the circumstances so require, the mediator may, at his own discretion or at the request of a*

as an independent judicial authority, as the only authority to resolve appeals, after the exhaustion of the internal appeals, against the decision of their organs, with the proviso of the specific provisions of each federation.

According to art. 192 (1) PILA: “1. If none of the parties have their domicile, their habitual residence, or a business establishment in Switzerland, they may, by an express statement in the arbitration agreement or by a subsequent written agreement, waive fully the action for annulment or they may limit it to one or several of the grounds listed in Article 190(2) [PILA]”. In order, however, for such an agreement to be considered as valid, it must be explicitly expressed in writing. According to the Swiss Supreme Court³¹, it is necessary and sufficient that the parties’ express declaration indisputably manifests their common intention to waive all future setting aside proceedings³². An exclusion “agreement” contained in the applicable arbitration rules³³, or set out in any other distinct, pre-existing document^{34,35} to which the parties may have referred in concluding the arbitration agreement, does not fulfill this requirement³⁶.

The matter, however, at stake is whether such an agreement to exclude, in advance, the right to challenge the award, is the result of the true will of both parties. As the Swiss Supreme Court in the *Canas* case³⁷ “The exclusion agreement, as any other contract, comes into existence only provided that the parties have expressed **their mutual intention to waive** setting aside proceedings. As a constituent element of party autonomy, freedom of

party, seek an extension of the time limit from the CAS President.”], art. 8 and 13 of the 2009 anti-doping policy of the International Weightlifting Federation (IWF), only, however for cases of doping offences and only in relation to international events or international athletes, art. 85 of the 2009 Constitution of the International Cycling Union (UCI), only, however, when the said regulation provide as such [art. 85 reads as follows: “UCI Regulations established by the Management Committee and especially Drug Test Regulations, may provide for appeal to the Court of Arbitration for Sport in Lausanne”. In must be noted that according to art. 2.2.010 bis of the Regulation no. 2 about Road Races: “in case of the Tour de France, the dispute shall be placed before the *Chambre Arbitrale du Sport (Sports Arbitration Chamber)*”], art. 9.1 of the 2009 Statutes of the Union Internationale de Pentathlon Moderne (UIPM), art. 9 of the Constitutional Rules of the International Union of Modern Pentathlon (UIPM),

³¹ See A. Rigozzi, Challenging awards of the Court of Arbitration for Sport, *Journal of International Dispute Settlement*, Vol. 1, No. 1 (2010), pp. 217-265.

³² ATF 131 III 173, at 178.

³³ as, for instance, Articles R46(2) and R59(4) of the CAS Code.

³⁴ As e.g. the “entry form” of art. 2 of the Appendix 1 entitled “Official Documents” of the 2010 FIBA Internal Regulation, which FIBA demands from all players registered by their national member federation on the player list, to duly complete and sign in order to be authorised to participate. In the “entry form” the players, among others, declare that “I agree that any dispute, controversy or claim arising out of, in connection with, or on the occasion of this FIBA competition and/or generally the FIBA Statutes and Internal Regulations, which cannot be settled amicably and which remains unsettled once the legal remedies established by the FIBA Internal Regulations have been exhausted, shall be submitted exclusively to the Court of Arbitration for Sport (CAS) for final and binding arbitration in accordance with the Statutes and Procedural Rules of the CAS. The arbitration shall be governed by Chapter 12 of the Swiss Act on Private International Law and its seat shall be in Lausanne, Switzerland. The CAS shall rule on its jurisdiction and shall have the exclusive power to order provisional and conservatory measures. **The decisions of the CAS shall be final, binding and non-appealable.** I shall not and I hereby waive my right to institute any claim, arbitration or litigation, or seek any other form of relief, in any other court or tribunal” (emphasis added).

³⁵ As also, e.g. the Statutes (2009) of IAAF, according to art. 15 par. 3 of which “The decision of CAS shall be final and binding on the parties and **no right of appeal will lie from the CAS decision**” (emphasis added).

³⁶ Decision 4P.62/2004 of 1 December 2004, at 1.2, ASA Bull (2005) 483.

³⁷ ATF 133 III 235, Swiss Int’l Arb L Rep (2007) 65, passim.

*contract requires that such a declaration should not rest on an intent which has been coerced in any way whatsoever. It is all the more important that **the intent to waive setting aside proceedings should not be tainted by any form of duress or undue influence because such waiver will deprive its author of the ability to challenge any future award, whether the award disregards fundamental principles in force in any state based on the rule of law, such as public policy, or fundamental procedural guarantees such as the proper constitution of the arbitral tribunal, arbitral jurisdiction, equal treatment for the parties as well as the parties' right to present their case before the arbitrator**" (emphasis added).*

Such a danger is extremely high in the case of sport, due to its specific, highly hierarchical, structure. A structure that, actually, obliges the athletes to accept, to accede to the IF' requirements, including the "exclusion agreement"³⁸. As, also stated in the, above mentioned, *Canas* case "Vertically integrated, the relationships between athletes and organisations in charge of the various sports disciplines are distinct from the horizontal relationship represented by a contractual relationship between two parties (see the decision of this court in ATF 129 III 445 paragraph 3.3.3.2, p. 461). This structural difference between the two types of relationships is not without influence on the volitional process driving the formation of every agreement. **In principle, when two parties are on equal footing, each party expresses its intention without being dependent on the other. This is the usual structure in the case of international commercial relations. However, the situation is very different in the sports arena.** Aside from the (theoretical) case of a famous athlete who, due to his notoriety, would be in a position to dictate his requirements to the international federation in charge of the sport concerned, experience has shown that, by and large, **athletes will often not have the bargaining power required and would therefore have to submit to the federation's requirements, whether they like it or not**".

As a result, the athlete will, most likely, sign almost any agreement offered to him and then it will be up to the Court to decide whether such a waiver was based on his free will and therefore whether it would discuss the case.

b. Imposition of sanctions by the International Federations

Furthermore, following the, above mentioned, "second option" of the winning party, the International Federations have decided to "remove" non-compliance from the options of the party that lost the case, by making the consequences of non-compliance greater than compliance itself.

Given, that the basic objective of all the International Federation is to be the sole authority³⁹ for all international events related to the sport they represent (i.e. not only

³⁸ See on the general matter of the forced arbitration on sports D. Panagiotopoulos, *Sports Law II*, Nomiki Bibliothiki (2006) pag. 64 et seq. See also, A. Rigozzi, *L'arbitrage international en matiere de sport*, HELBING & LICHTENHANH (2005), par. 475 et seq. 8 and 811 et seq. See also, for a critique of the relevant Greek Law, S. Manarakis, The arbitration clause of art. 131 of the law 2725/1999, *Sports Law Review – Lex Sportiva*, Nomiki Bibliorhiki, Vol. 8 (2009), par. 50 et seq.

³⁹ Even if this objective, aim or mission is expressly declared in the "statutes", "constitution" or any other official document of the International Federation, as e.g. is the case with the Statutes of the Federation Equestre International – FEI (art. 1.1 of its Statutes of 2008), or is implied, as e.g. is the case with the Statutes of the International Basketball Association – FIBA, according to art. 4.1 of which (Statutes of 2006) FIBA's role is to "Control, regulate, supervise and direct, and to foster, encourage and advance the sport of basketball and the practice of men's and women's basketball in all its forms and in all age groups in every country worldwide"

to organise competitions, but mostly to control all and every type of associations that are under it in the pyramid of sport administration), their rules (statutes, regulations etc) contain, in their majority:

i. a direct or indirect “order” to their members, i.e. the National Association recognised by them, General provisions, to ensure both the recognition of the CAS as a competent judicial authority and the enforcement of its arbitral awards.

For example⁴⁰, according to AIBA (International Boxing Association) Statutes⁴¹ its members have the: “obligations: [...] **b) to comply fully with the Statutes, regulations, directives and decisions of the governing bodies of AIBA at any time as well as the sentences of the Court of Arbitration for Sport (CAS); c) to ensure that their own national members, clubs, officials, athletes, and any person or organization connected to the sport of boxing comply with the Statutes, regulations, directives and decisions of the governing bodies of AIBA, as well as the sentences of the CAS. This obligation will be included in the Statutes of each National Federation; [...] e) to recognize in their Statutes that they will use the Court of Arbitration for Sports (CAS) to resolve disputes and appeals related to the Statutes, regulations and decisions passed by AIBA, AIBA Confederations or AIBA Members; [...]**” (emphasis added).

and / or

ii. a provision, in case of non - compliance to CAS decisions, taken either by the Ordinary⁴² or the Appeal⁴³ Division, of sanctions against the offender, such as a fine, or a ban transfer etc.

For example⁴⁴, according to FIFA (International Boxing Association) Disciplinary Code⁴⁵: “**1. Anyone who fails to pay another person (such as a player, a coach or a club) or**

⁴⁰ See, also, art. 33 of the BWF according which its members [...] recognise and accept “33.6.7. *The CAS in Lausanne, as the only competent judicial authority external to the Federation, to the exclusion of any ordinary court of law, any civil judicial authority of any country and any other arbitration body; [...] 33.6.9. the requirement to abide by the decisions of the Federation and/or CAS without attempting to hinder their application*”, art 68 of the FIFA Statutes of 2008 according which “*The Confederations, Members and Leagues shall agree to recognize CAS as an independent judicial authority and to ensure that their members, affiliated Players and Officials comply with the decisions passed by CAS. The same obligation shall apply to licensed match and players’ agents*”, art 36 of the FILA Constitution of 2009 its members “*must be willing to conform exclusively to the CAS Constitution and Regulations and to the decision it makes*”, art. 55 of the FISA Statutes of 2009 according which its members recognise and accept “*vi) the final and without appeal status of the decisions made by the CAS; vii) the requirement to abide by the decisions of FISA and CAS without attempting to hinder their application;*”, art. 15.3 of the IAAF Constitution of 2009 according which “*The decision of CAS shall be final and binding on the parties and no right of appeal will lie from the CAS decision. The decision shall have immediate effect and all Members shall take all necessary action to ensure that it is effective*”,

⁴¹ Art. 12 of the 2008 edition, available at <http://www.aiba.org/default.aspx?pld=3565#>

⁴² According to art. S20 a of the CAS Statutes “*the Ordinary Arbitration Division constitutes Panels, whose task is to resolve disputes submitted to the ordinary procedure, and performs, through the intermediary of its President or his deputy, all other functions in relation to the smooth running of the proceedings conferred upon it by the Procedural Rules (Articles R27 et seq.)*”.

⁴³ According to art. S20 b of the CAS Statutes “*the Appeals Arbitration Division constitutes Panels, whose task is to resolve disputes concerning the decisions of federations, associations or other sports related bodies insofar as the statutes or regulations of the said sports-related bodies or a specific agreement so provide. It performs, through the intermediary of its President or his deputy, all other functions in relation to the smooth running of the proceedings conferred upon it by the Procedural Rules (Articles R27 et seq.)*”.

⁴⁴ See, also, art. 46 of the AIBA Disciplinary Code of 2008 according which “*anyone who fails to respect enforceable decisions of a body or Commission of AIBA, its Confederations or Members, will be fined CHF 3'000.--*

FIFA a sum of money in full or part, **even though instructed to do so by a body, a committee or an instance of FIFA or CAS (financial decision), or anyone who fails to comply with another decision (nonfinancial decision) passed by a body, a committee or an instance of FIFA or CAS:**

- a) will be fined** at least CHF 5,000 for failing to comply with a decision;
 - b) will be granted a final deadline** by the judicial bodies of FIFA in which to pay the amount due or to comply with the (non-financial) decision;
 - c) (only for clubs:) will be warned and notified** that, in the case of default or failure to comply with a decision within the period stipulated, points will be deducted or demotion to a lower division ordered. **A transfer ban may also be pronounced.**
2. If the club disregards the final time limit, the relevant association shall be requested to implement the sanctions threatened.
 3. If points are deducted, they shall be proportionate to the amount owed.
 4. A ban on any football-related activity may also be imposed against natural persons.
 5. Any appeal against a decision passed in accordance with this article shall immediately be lodged with CAS" (emphasis added).

Finally, the last, but, in fact, the most powerful, the most intimidated measure an International Federation can use in order to "persuade" a National Federation to abide by its rules, i.e. to "persuade" a National Federation to enforce the arbitral awards, is its ability to expel a member in case of violation (according to the opinion of the competent body of the Federation) of its Statutes, Constitution, rules, regulations etc.

Although in most of the cases there is no express provision characterising non-compliance with a CAS decision a reason for expulsion, when CAS is recognised by the International Federation, non-compliance of its decision, could be considered as an infringement of the rules. And, thus, because of the general obligation of the National Federations to "comply" with the rules⁴⁶, among which is the obligation to comply with CAS awards. Therefore, a National Federation that does not take the necessary measures to enforce CAS decisions could be faced with serious problems.

after having been given a warning to respect the decision in a last delay, and may also be suspended, excluded from a competition or banned from any boxing activity for 3 months to 6 months",

⁴⁵ Art. 64 of the 2009 edition, available at

http://www.fifa.com/mm/document/affederation/administration/50/02/75/disco_2009_en.pdf

⁴⁶ See, inter alia art. 17 of the AIBA Statutes of 2008 according which "1. An excluded Member shall automatically lose its membership of AIBA. 2. The exclusion can be enforced if a Member: - seriously violates the Statutes, regulations, or decisions of AIBA; - repeatedly commits less serious violations of the Statutes, regulations, or the decisions of AIBA; [...]", art. 8.8 of the FEI Statutes of 2008 according which "the Bureau may suspend or exclude a National Federation for persistent violations of the Statutes, a Decision of the General Assembly, or other Sport Rules or General Regulations of the FEI. In cases other than Suspensions for non-payment of Financial Charges, an opportunity to be heard by the FEI Tribunal shall be afforded to the relevant National Federation, and any Exclusion shall only become effective upon ratification by the General Assembly", art. 7 of FILA Constitution of 2009 according which "FILA membership may be lost [...] as a result of [...] Refusal to comply with decisions", art. 10.3 of the FINA Statutes according which "The Bureau shall have the power to expel a Member for significant violation of the Constitution and/or Rules of FINA", art. 17 of the FISA Statutes of 2009 according which "if a member federation does not continue to fulfil the current conditions of membership of FISA and does not rectify the situation by a date fixed by the Executive Committee, or if there are other justifiable reasons, the Congress may expel that federation"

The Greek case with FIFA⁴⁷, although not directly related to the enforcement of the arbitral awards, but to the judicial system of Greek professional football in general is (irrespective of whether the opinion of the Greek side or FIFA was actually the right one) a very good example of the power of the International Federations. In that case the Greek government decided to improve, by law, the reliability of professional football, planning essential interventions in the area of refereeing and athletic justice. In essence, it was not about a dispute between the Hellenic Football Federation (the Greek football national federation) and FIFA, but rather between the legislative power of the state and the national federation, because of its obligation to participate in the international athletic federation. That dispute was, however, transformed to a dispute between HFF and FIFA and was only “solved” when the Greek government “pushed” by the HFF, which was “pushed” by FIFA, was finally obliged to conform to FIFA rules.

V. Final thoughts - Conclusion

If the render of an arbitral award (or a Court decision) could be considered as winning a battle, the war can be considered as won only when that award is enforced, i.e. when the loser complies with its content. The International Federations, private legal entities, aware of that problem, decided to bind their members by inserting the necessary clauses in their rules. Rules that their members are obliged, provided they want to be part of the “structure”, to follow. In some cases such rules (like the provision of FIFA for point deduction or even demotion to a lower division) might sound disproportional because it affects the sport future of the team (and therefore the sport future of its players, who most likely are not – personally– the offenders).

However, we should not forget that sport, even the professional one, is supposed to follow the Fundamental Principles and the Values of Olympism as set forth in the Olympic Charter, among which is the respect for universal fundamental ethical principles⁴⁸. And of course respecting the final decision of a (true) Court or a (true) Arbitral Tribunal is definitely one of the most important ethical principles.

⁴⁷ For a detailed analysis of this case, see D. Panagiotopoulos *Sports Law* Ant. N. Sakkoulas (under publication). See also D. Panagiotopoulos, I. Mournianakis (2006), Greece: Suspension of governing bodies: analysis”, in: *World Sports Law Report*, Vol. 4 : 7.

⁴⁸ See, Olympic Charter I.O.C. 2010 *Fundamental Principles of Olympism*, available at <http://www.olympic.org/en/content/Footer-Pages/Documents/Olympic-Charter/>