

**Josep F. Vandellós Alamilla**

**FOOTBALL COACH-RELATED DISPUTES**

**A CRITICAL ANALYSIS OF THE FIFA PLAYERS' STATUS COMMITTEE DECISIONS AND CAS AWARDS**

This book offers a penetrating analysis of the thorny problems affecting football coaches under an employment agreement with a club or a federation. It provides a critical review of hundreds of CAS awards and FIFA decisions (some of them unpublished) and it is structured into five chapters. In the first one, the jurisdiction of the FIFA Players' Status Committee is analysed on the basis of the FIFA regulations and relevant CAS and FIFA jurisprudence. The second chapter deals with the applicable law while the third one focuses on substantial issues.

In particular, attention is given to the standing to sue, the form, the object or the duration of the contract, and the rights and obligations, like the right to be remunerated, the right to effective occupation or the obligation to train the team.

Finally, the last two chapters focus on the problem of the termination of contracts, by studying different causes for termination, as well as the legal consequences derived therefrom.

Throughout its pages, the reader, be it a club or a coach, will find the answers given by international sports judges and arbitrators on the above-mentioned issues. A priceless selection of case-law completes this outstanding work which will greatly benefit professionals as well as scholars looking for information on coach related disputes in football.

**Josep F. Vandellós** is a practicing lawyer, member of the Bar of Barcelona (Spain) and Bucharest (Romania) and Director of the *ISDE-FC Barcelona Global Master in Sports Management and Legal Skills*. He has extensive experience in appearing before both CAS and FIFA jurisdictions.

This book appears in the *International and Comparative Sports Law Bulletin* Series, SLPC, under the editorship of **Prof. Dr. Michele Colucci** (Honorary President of the Italian Association of Sports Lawyers).

*"Coaches are, undoubtedly, a key piece in the assembly of sports and for that reason this book has a great merit which shall be recognized.*

*Josep Vandellos, experimented and prominent professional, has skilfully combined in this book the theory, regulations and jurisprudence applicable to football coaches-related disputes which turns out to be a fundamental asset to the sports law world.*

*This book offers a unique opportunity to immerse in the football coaches' reality and the way the conflicts arising out from their contractual relationships with clubs or national associations are handled".*

**José Juan Pintó Sala**

President of Pintó Ruiz & Del Valle, Honorary President of Rexsport, CAS Arbitrator

*"This book has effectively dissected the profiles of the relationships between the multiple regulations and jurisdictions regarding the legal regime applicable to the disputes of coaches in football. With this work, a gap is filled in the study of the legal regime of coach disputes in football, which is worth to be praised to congratulate the author constituting a very valuable contribution to the study of Sports Law in general and the Football Law, in particular. In short, and with no doubt, the person who comes to the book, whether in the condition as a jurist, football coach, profane or simply an individual with intellectual concerns in the matter, will enjoy this content. The Author can only be congratulated for the huge effort made, placing the work as a reference book and obligatory consultation in any legal and sporting library".*

**Prof. Dr. Miguel María García Caba**

Academic of the Real Academia de Jurisprudencia y Legislación de España

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## FOREWORD

by *Michele Colucci and Frans de Weger*

*MICHELE COLUCCI*

Football coaches are leaders, mentors, and managers.

They have a tremendous responsibility in driving a team towards success. They motivate and help players to maximise their talent, they teach the football skills and refine the top-level footballers' virtuositities. They are role models and, as such, they have an important impact on the players' behaviour both on and off the pitch.

Furthermore, coaches are essential in ensuring the successful sporting results of clubs, building up their worldwide reputation and fame. Nevertheless, they are the first to be glorified when the team wins and the first to be vilified when it loses. Coaches are also professionals providing their services to clubs and/or national associations' teams. The form and content of their employment agreements may vary according to their negotiating power, which is the result of their successful careers.

Their status is quite peculiar in the context of the football world, where no specific international regulations on coaches exist.

Sports judges and arbitrators (FIFA Players' Status Committee and Court of Arbitration for Sport) take their decisions on the basis of the relevant employment contracts, the law chosen by the parties, or other "objective criteria".

Coaches do not yet enjoy the same rights of footballers as granted by the FIFA regulations on the status and transfer of players in case, for instance, of breach of contract or overdue payables.

Such regulations were drafted in 2001 after six years of negotiations with the European Commission following the *Bosman* judgement of the European Court of Justice and they are constantly under revision with the involvement of FIFPro (the International players' union organisation) in order to better represent the footballers' needs and demands.

Unfortunately, for the time being an international trade union association for coaches has not yet been created. As it happened for the players, such an association would be indispensable to legally advise the coaches or even to negotiate with FIFA the appropriate statutory rules for stabilising the coaches' employment and status.

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In his book, Josep F. Vandellós Alamilla, has succeeded in providing us with a brilliant work of in-depth analysis and remarkable synthesis.

He has built up piece by piece the elements of the coaches' legal status on the basis of a critical review of hundreds of CAS awards and FIFA decisions (some of them unpublished). It has been a tremendous work of will power and resilience.

In fact, he has brilliantly outlined the main elements of the employment agreement that coaches and their legal advisors should take into account when negotiating with a Club.

He has extensively examined the implications of all relevant contractual clauses, the interpretation given by the sports judges, and he has emphasised all risks linked to the breach of contract without just cause.

In joining together the pieces of the puzzle of the coaches' legal status, he has equally identified the deficiencies of the current regulatory system as well as the difficulties that sports judges may encounter when dealing with coaches' sports related disputes.

The readers that are willing to explore the topic further, have the possibility to exploit extensive references, case law, and a bibliography.

This book fills a gap in the arrears of sports law texts by making available the consolidated jurisprudence and will surely become a reference for practitioners, coaches, but also clubs and sports associations.

MICHELE COLUCCI

*Scientific Director of the Sports Law and Policy Centre*

Brussels, 5 February 2018

\* \* \*

*FRANS DE WEGER*

I am truly honoured to write the Foreword to this book *Football Coach-Related Disputes*. As the author of quite a similar work, *The Jurisprudence of the FIFA Dispute Resolution Chamber*, I am very well aware of how much effort and energy it costs to create such an extensive work of reference, but I am also familiar with the joy it gives, especially when the final result is in your hands.

The book is now finally there and it is praiseworthy that the author, my dear friend Josep F. Vandellós Alamilla, analysed hundreds of coach-related decisions issued at international level by the competent leading authorities, such as FIFA, CAS and the Swiss Federal Tribunal. The relevant ones are now incorporated, structured and commented on by the author in this excellent book.

It is not surprising that in the world of international football, the world's most lucrative sport, there is much to play for and that substantial numbers of disputes exist. In fact, the judicial football bodies, such as the DRC, PSC and

CAS, together deal with thousands of football disputes per year at international level. The author especially focused in this book on the international football disputes in relation to coaches and clearly shows the so-called *Lex Sportiva*, which will help to guide those with an interest in dealing with the coach-related disputes. These cases deserve to be analysed considering the serious sums of money that are often at stake and the substantial number of decisions issued by the competent leading authorities in football.

The book is unique, not only because such a specific work of reference does not exist yet, but it has a practical as well as a scientific approach, which combination is not usual per se. The book clearly reflects the experience of the author as an international sports lawyer. Many legal issues, with a clear structure of subjects, are addressed and brought to the attention of the reader. The legal issues in this book makes us aware that, as always, the devil is in the details, providing the reader with clear suggestions by showing the many legal pitfalls that are at stake.

The author, and the publisher, are warmly thanked and congratulated with this guide of reference and the access given to the leading football jurisprudence. A very clear overview of the international coach-related disputes is provided to the international football community. This book will be a valuable tool for international football lawyers, students, club's legal counsels and all those who are specifically dealing with the international coach-related disputes. It will fill a gap in international football law in relation to the coach-related disputes.

FRANS DE WEGER

*Attorney-at-Law and CAS Arbitrator*

Overveen, The Netherlands, 9 February 2018

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## ABOUT THE AUTHOR



### JOSEP F. VANDELLÓS ALAMILLA

Born in Reus (Spain) on 9 June 1978, graduated in law from the University Pompeu Fabra of Barcelona and holds a Master's Degree in International and European Union Law (Université de Paris-1 Sorbonne). He is a practicing lawyer, member of the Bar of Barcelona (Spain) and Bucharest (Romania) and fluent in Spanish, English, French, Romanian and Catalan.

He also sits as member of the Editorial Board of the magazine *Football Legal* and lectures sports law in different institutions and is the Director of the ISDE-FC Barcelona Global Master in Sports Management and Legal Skills (on-line edition).

As a lawyer, he has assisted several international coaches, players, intermediaries and clubs, before the different FIFA legal and judicial bodies as well as the Court of Arbitration for Sport (CAS). He has also extensive experience in assisting and representing athletes in other sports such as tennis, motorsport, gymnastics, judo or basketball.

His main areas of expertise are International Sports Law, Labour Law, and European Union Law.

## INTRODUCTION

This book is the result of two and a half years of gathering, reading, and studying in-depth all decisions on coach-related disputes I could put my hands on. It was no easy task, firstly, in terms of figures, there are much less disputes between clubs and coaches than between players and clubs or between clubs, and secondly because most of the CAS awards involving coaches are not public. Luckily, I could rely on the good disposition of CAS whenever I needed some additional information and it was in their hands to provide it.

From a practitioners' viewpoint, I thought the reading of the book would be much more intuitive if it respected the structure of a FIFA decision, which in the end is how cases are handled. So, the book addresses, in this order, the jurisdiction, the applicable law, issues of substantive nature, and the termination and consequences of the termination. Likewise, I decided to transcribe extracts of the relevant decisions that address these legal problems.

My aim was to give visibility to the decisions and solutions adopted as well as the reasoning behind them, in order to provide practical insight into the legal implications which can occur in employment relationships between clubs and coaches.

In this context, the first question I deal with is *the jurisdiction of the PSC and CAS* to adjudicate on coach-related disputes. Unexpectedly, this chapter turned out to be the longest of the book. The issues around competence are complex, diverse and not always apparent at first sight.

The conflict of competence between state courts and sporting legal bodies arise often times, especially when clubs attempt to escape their jurisdiction in the hope of a more favourable *forum* if they “*play home*”. The reader will see that a good drafting of a clause will play a crucial role in helping the adjudicating body to discern between accepting the case or declining jurisdiction.

The meaning of an employment-related disputes under Article 22 c) RSTP and in particular the limits of what constitutes a labour relationship, the nature of scouting agreements, tax-related claims, image rights contracts and any other disputes that might not necessarily fall under the scope of the regulations are identified and delimited in order to avoid errors both at the negotiation phase and in the case of possible litigations.

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The jurisdiction of the PSC is also tested from a subjective point of view. The understanding of what a football coach is in the eyes of FIFA and whether this extends to physical coaches, academy directors and other occupations in the structure of clubs, will also be determinative on the court's competence to ultimately settle the dispute.

The statutes of limitations, international dimension and the requirements that sporting national bodies must respect to qualify under Article 22 c) RSTP are also individually addressed through the indications given by the PSC and CAS panels. The first chapter concludes with two institutions of major importance that affect jurisdiction: *lis pendens* and *res judicata*. The correct understanding and use of procedural exceptions may impact the outcome of the case.

The second chapter analyses *the applicable law* to coach-related disputes and the court's application of the RSTP to this particular kind of dispute.

Special attention is also paid to the interplay between Article 2 of the Procedural Rules, Article 66 par. 2 FIFA Statutes, and the CAS conflict-of-law rule in the appeals proceedings in Article R58 of the CAS Code. The study of this issue reveals some divergent awards in recent years. These awards seem to have finally found a way to structure the tensions that may appear between Swiss material law and the possible different choice of law made by the parties in the employment contract.

The role of the “*business practice in football*” is also a term that appears in one recent award when discussing the applicable law that merits the attention and analysis as a possible principle of law guiding the interpretation of rules and filling possible gaps.

Through quoting FIFA, after the jurisdiction and the applicable law are clear the third chapter of the book shifts the limelight to the analysis of “*the substance of the matter*”. This is where the action happens.

Presented here in a systematic manner are the factors that decide coaching disputes. In order to have a complete vision on the different decisions adopted and the underlying circumstances that lie behind them, they are as follows: *The form* of the employment contract and whether it is possible to conclude verbal contracts or not between a club and a coach, or the legal force of pre-contracts and offers; *the object* and the extent of the obligations that are inherent to a football coach and those requests from the club that may constitute an abuse of rights; and *the duration* of the contract, probationary periods, and the options to extend contracts, have all generated multiple disputes.

The main *rights and obligations* of the parties to the contract are also mirrored and dissected through multiple decisions and awards; the obligation of the coach to train the team, the obligation of the club to pay the coach for the services rendered, and the right to effective occupation will determine the legitimate expectations of both parties and mark the limits of their conduct.

These limits, will in turn put the victim of an illegal conduct in the position to safely escape the contract or request its respect, and seek relief before the

competent bodies. FIFA constantly reminds us that *the termination of an employment contract* must be considered always as an *ultima ratio* measure. The parties will always attempt to find an amicable solution in good contractual faith and exceptionally, only severe breaches will justify the termination without previous warning. The fourth chapter therefore, structures the most common disputes between clubs and coaches aiming at identifying the terms in which a party is entitled to put an end to the employment contract.

The non-payment of salaries; abandoning the place of work, hiring a new coach; bad sporting results, the situation of the assistant coaches when the head coach is dismissed, failure to pay flight tickets, relegating a coach to administrative tasks or training the second team, failure to have a license to coach, resignation, political turmoil or the illness of the coach are only some of the factual circumstances in the cases presented in this chapter. They are balanced by the adjudicating bodies when deciding on the concurrence or not of just cause.

The decision will necessarily trigger consequences for the party at fault. The fifth and last chapter therefore, focuses on *the consequences* and attempts to facilitate the necessary tools to anticipate the potential economic and/or legal risks for the parties.

The questions that arise when calculating possible financial compensations are multiple. Article 17 RSTP will not serve for this purpose, so the PSC and CAS will have to rely on other legal grounds. Coaches on their side, will have in any case the obligation to mitigate damages. The validity of penalty and liquidated damages clauses, and the possibility of the decision-making bodies to reduce possible compensations recurring to *ex aequo et bono* criteria is also assessed through the different decisions and awards.

Following the valuable suggestions of Michele Colucci, my editor, the book ends with a selection of the most relevant case-law as well as an index that will help the reader in finding the CAS awards and PSC decisions by topic. Furthermore, references are also made to the relevant FIFA provisions as entered into force on 1 January 2018.

I hope that you will find this book a useful tool in your daily practice and that you will also be benevolent and excuse any possible inadvertence that may inevitably come in any investigation and scientific work.

Josep Francesc Vandellós Alamilla

Valencia (Spain), 1 February 2018

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## 1. THE JURISDICTION OF THE PLAYERS' STATUS COMMITTEE

The competence of the FIFA Players' Status Committee (hereafter the "PSC") to deal with a dispute between a football coach and club is always the primal matter to determine when considering presenting a claim. The answer is not always obvious and if the PSC lacks competence to adjudicate on a certain case, the claim will be *ab initio* dismissed as being inadmissible. The claimant will then have to address the claim to the competent *forum* to pursue his rights.

For this reason, this first chapter will analyse the most common issues related to jurisdiction in its multiple facets (*ratione personae*, *ratione materiae*, and *ratione temporis*) following the different scenarios and reasoning found in the most relevant PSC and CAS jurisprudence where one of the parties involved is a professional football coach. The question of jurisdiction in coach-related disputes has indeed important specificities that need to be accounted for and that are incident only to this category of professionals. For instance, the status of physical coaches, or scouts or other football professionals are often linked to the duties of a football coach. These particularities, all of which will be presented in-depth in this first chapter can have serious implications on the competence of the PSC.

There are some important aspects to take into account such as delineating the jurisdiction between the PSC and state courts and/or other legal bodies existing at a national level in the relevant football association; determining the form and validity of arbitration clauses in employment contracts; establishing the limits of what can be considered an employment-related dispute as opposed to disputes of civil nature; understanding the definition of football coach in the eyes of FIFA; or knowing the requirements imposed on national federative legal bodies to allow the exclusion of the jurisdiction of the PSC. Those circumstances are all crucial to step on solid ground when raising or confronting a jurisdictional challenge.

### 1.1 Legal sources

The PSC will examine its own competence in the light of Articles 22 and 23 of the Regulations on the Status and Transfer of Players<sup>1</sup> (Ed. 2018) (hereafter the "RSTP"):

*"Article 22 Competence of FIFA:*

<sup>1</sup> Available at [www.fifa.com/about-fifa/official-documents/law-regulations/index.html](http://www.fifa.com/about-fifa/official-documents/law-regulations/index.html) (visited on 1 February 2018).

*Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear:*

*c) employment-related disputes between a club or an association and a coach of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings exists at national level”.*

*“Article 23 Players’ Status Committee:*

*1. The Players’ Status Committee shall adjudicate on any of the cases described under article 22 c) and f) as well as on all other disputes arising from the application of these regulations, subject to article 24”.*

The above articles must be completed with Article 6 par. 1 of the FIFA Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber (Ed. 2018<sup>2</sup>) (hereafter “the Procedural Rules”) that establishes the so-called “*party requirement*” to act before the FIFA legal bodies.

*“Article 6 Parties 1. Parties are member associations of FIFA, clubs, players, coaches or licensed match agents”.*

Article 22 c) in combination with Article 23 RSTP and Article 6 par. 1 of the Procedural Rules set the parameters for the competence of the PSC. Accordingly, the PSC will have jurisdiction to deal with a case brought before it only when the following conditions concur cumulatively:

- The dispute is employment-related.
- The dispute is between a club or an association and a coach.
- The dispute has an international dimension.
- There is not an independent arbitration tribunal guaranteeing fair proceedings at a national level.

If any of the above requirements is not met the PSC will have to declare the claim inadmissible.

## *1.2 Analysis of the Regulations and relevant jurisprudence:*

### *1.2.1 Procedural moment to invoke the lack of jurisdiction of the PSC*

Any party arguing the lack of jurisdiction of the PSC to rule on a particular matter shall raise the procedural exception immediately during the proceedings before the PSC under pain to be deprived at a later stage due to their tacit acceptance. It is considered to be an act of procedural bad faith and abuse of rights, to reserve for the next instance the objection to the jurisdiction of the decision-making body when it could have been raised during the first instance proceedings.

By means of example, in CAS 2012/A/2899 *PERSPOLIS (PIROOZI) ATHLETIC & CULTURAL CLUB v. FIFA & MR. JOAO ARNALDO CORREIA CARVALHO*,<sup>3</sup> in the context of a contractual dispute between a coach and a well-known Iranian club, the latter

<sup>2</sup> Available at [www.fifa.com/about-fifa/official-documents/law-regulations/index.html](http://www.fifa.com/about-fifa/official-documents/law-regulations/index.html) (visited on 1 February 2018).

<sup>3</sup> Unpublished award.

only questioned the competence of the PSC to adjudicate during the appeal brought before the CAS.

The answer of the Sole Arbitrator confirms the importance of the procedural moment invoking the objection to jurisdiction:

*“It is undisputed between the parties and confirmed by FIFA that FIFA’s alleged lack of jurisdiction to issue the Decision was not raised by the Appellant during the proceedings in front of FIFA. This point was raised for the first time in front of CAS.*

*According to the law of the seat of the present arbitration, namely Swiss law, a plea of lack of jurisdiction must be raised prior to any defense on the merits (Article 186 para. 2 of the Swiss Federal Statutes on Private International Law). Therefore, it is not accepted that a party which did not raise any objection to the jurisdiction of FIFA while it could have done so in the course of the first instance procedure before its Players’ Status Committee, could object to the jurisdiction of FIFA in a subsequent CAS procedure. It is noted however that there is no provision in the FIFA Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber similar to Article 186 para. 2 of the Swiss Federal Statutes on Private International Law. The above-mentioned FIFA Rules provide that the FIFA Players’ Status Committee shall examine its jurisdiction “ex officio”, in the light of the relevant provisions of the RSTP. Nevertheless, a party proceeding before the FIFA Players’ Status Committee without raising any objection on the jurisdiction of FIFA must be deemed to have waived its right to challenge such jurisdiction in appeals (see CAS 2005/A/937 Györi v/ Kartelo, award of 7 April 2006).*

The CAS award is in line with Article 186(2)<sup>4</sup> of the Swiss Private International Law Act (hereafter the “PILA”) and the well-established jurisprudence of the Swiss Federal Tribunal (hereafter the “SFT”). See e.g. DECISION 4A\_428/2015, JUDGMENT OF FEBRUARY 1, 2016:<sup>5</sup>

*“3.1. The party wishing to challenge an arbitrator (see Art. 180(2)(2) PILA), or objecting to the jurisdiction of an arbitral tribunal (see Art. 186(2) PILA), or claiming to have suffered harm due to a relevant procedural error, forfeits its grievances if it does not raise them in a timely manner in the arbitration and does not undertake all reasonable efforts to remedy the error to the extent possible (BGE 130 III 66 at 4.3, p. 75; 126 III 249 at 3c, p. 253 f.; 119 II 386 at 1a, p. 388; each with references). It is contrary to good faith to raise a procedural error only in the framework of an appeal when it would have been possible to do so in the arbitration, giving the arbitral tribunal the opportunity to correct the alleged error (BGE 119 II 386 at 1a, p. 388). A*

<sup>4</sup> “The objection of lack of jurisdiction must be raised prior to any defense on the merits”.

<sup>5</sup> See e.g. Swiss Federal Tribunal decision 4A\_428/2015, Judgment of February 1, 2016, available at [www.swissarbitrationdecisions.com/sites/default/files/1%20février%202016%204A%20428%202015.pdf](http://www.swissarbitrationdecisions.com/sites/default/files/1%20février%202016%204A%20428%202015.pdf) (visited on 1 February 2018).



## 2. APPLICABLE LAW

### 2.1 Legal sources

With regard to the applicable law to employment disputes related to football coaches the following provisions of the FIFA rules apply.

First of all, article 25 “Procedural guidelines” of the REGULATIONS ON THE STATUS AND TRANSFERS OF PLAYERS (ED. 2018)<sup>1</sup> according to which:

“1. As a rule, the single judge and the DRC judge shall adjudicate within 30 days of receipt of a valid request and the Players’ Status Committee or the Dispute Resolution Chamber shall adjudicate within 60 days. The proceedings shall be governed by the Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber”.

“6. The Players’ Status Committee, the Dispute Resolution Chamber, the single judge or the DRC judge (as the case may be) shall, when taking their decisions, apply these regulations whilst taking into account all relevant arrangements, laws and/or collective bargaining agreements that exist at national level, as well as the specificity of sport [emphasis added].

7. The detailed procedure for the resolution of disputes arising from the application of these regulations shall be further outlined in the Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber.”

Then, the *Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber* (Ed. 2018)<sup>2</sup> (“the Procedural Rules”)<sup>3</sup> state:

Article 1. Scope: “1. *The procedures of the Players’ Status Committee and the Dispute Resolution Chamber (DRC) shall be conducted in accordance with these rules.*

2. *Any provisions in the FIFA Statutes or other FIFA regulations that deviate*

<sup>1</sup> Available at [www.fifa.com/about-fifa/official-documents/law-regulations/index.html#doctransfersreg](http://www.fifa.com/about-fifa/official-documents/law-regulations/index.html#doctransfersreg) (visited on 1 February 2018).

<sup>2</sup> Available at [www.fifa.com/about-fifa/official-documents/law-regulations/index.html#doctransfersreg](http://www.fifa.com/about-fifa/official-documents/law-regulations/index.html#doctransfersreg) (visited on 1 February 2018).

<sup>3</sup> To be completed with the FIFA Circular no. 1603 of 24 November 2017. Available at [http://resources.fifa.com/mm/document/affederation/administration/02/92/15/75/circularno.1603-amendmentstotherulesgoverningtheproceduresoftheplayersstatuscommitteeandthedisputeresolutionchamberandtotheregulationsonthestatusandtrans\\_neutral.pdf](http://resources.fifa.com/mm/document/affederation/administration/02/92/15/75/circularno.1603-amendmentstotherulesgoverningtheproceduresoftheplayersstatuscommitteeandthedisputeresolutionchamberandtotheregulationsonthestatusandtrans_neutral.pdf) (visited on 1 February 2018).

from these rules shall have precedence over the provisions of these rules.”  
Article 2. Applicable material law: “In their application and adjudication of law, the Players’ Status Committee and the DRC shall apply the FIFA Statutes and regulations whilst taking into account all relevant arrangements, laws and/or collective bargaining agreements that exist at national level, as well as the specificity of sport”.

Finally, Article 57(2) of the FIFA STATUTES (EDITION APRIL 2016)<sup>4</sup> provides that:

“The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.

### 2.2 Analysis of the Regulations and relevant jurisprudence

Due to the differences existing between various national laws and federative regulations and further their interaction with the competent jurisdiction, the correct determination of the applicable material law is a key aspect when concluding an employment contract between a club and a coach with an international dimension.

It can often be a major challenge for practitioners and legal bodies to identify the applicable law. The choice-of-law can be explicitly stipulated in the employment contract or it can result from a tacit agreement between the parties. It can also be inferred from the conduct of the parties, or from an indirect reference in the by-laws or the regulations. However, there are occasions where the parties will omit any reference to applicable law in the contract and no implicit choice can be deducted from their actions. In such cases one will have to look for possible references in the different conflict-of-laws rules in the Procedural Rules or in the CAS Code.

As we have seen in the previous paragraph, the starting point for tackling the question of applicable law to coach-related disputes in the frame of FIFA proceedings is article 2 of the Procedural Rules which are to be interpreted in conjunction with article 25 of the RSTP.

While the determination of the *procedural law* presents no major difficulties beyond establishing the edition to refer to, and ensuring compliance with the formal aspects provided therein, the applicable *material law* has proven to be a very controversial issue often invoked by the parties before the PSC as well as before the CAS during subsequent appeal procedures.

In the author’s opinion, the source of such a problem lies largely with the confusion generated due to the fact that the competence of the PSC to rule on coach related disputes is found in the RSTP, while according to the predominant case law from CAS, these set of rules are not applicable to coach related disputes.

<sup>4</sup> Available at [www.fifa.com/about-fifa/who-we-are/the-statutes.html](http://www.fifa.com/about-fifa/who-we-are/the-statutes.html) (visited on 1 February 2018).

The FIFA Commentary on the RSTP<sup>5</sup> provides considerable leeway with regards to the decision-making process when deciding what law to apply to the substance of the matter, including the application of national laws. However, the common practice shows that both the PSC and the DRC decide the vast majority of coach-related disputes by exclusively resorting to their own regulations in a rather vague manner, rarely considering national civil or employment law despite explicit references in the contracts.

According to FIFA, Article 2 of the Procedural Rules represents a true choice-of-law between the parties according to which, upon submitting to the jurisdiction of FIFA, the parties also submit to their Statutes and regulations.

Following some CAS legal scholars,<sup>6</sup> the remission to arrangements, laws and collective bargaining agreements existing at a national level made in Article 2 of the Procedural Rules, as well as in Article 25 par. 6 of the RSTP, are to be construed simply as a “*general reminder to the decision-making bodies of FIFA that in making their decisions under the FIFA regulations they must not apply those regulations in a vacuum but must account for the applicable contractual arrangements, collective agreements and national law*”. The problem, in view of the author, is that with the lack of a specific regulation directly applicable to football coaches, the exact role of national law in Article 2 complementing the FIFA regulations, remains unknown.

The reluctant stance to apply national laws is often justified by both the PSC and the CAS panels as the need for universal rules and a uniform and consistent legal framework for the so-called “*football family*”. The interpretation adopted by FIFA has been discussed regularly in subsequent CAS appeal procedures which has led to somewhat erratic and inconsistent awards with regards to the determination of the applicable law in coach-related disputes.

This chapter will highlight the most important aspects regarding the *procedural rules*, to subsequently focus the attention on the analysis of the *material law* by looking at recent PSC case law and some of the most relevant CAS awards adopted hitherto with the aim of illustrating the difficulties existing and the different solutions adopted by the deciding panels.

### 2.2.1 *Applicable procedural rules*

As mentioned, there are no major issues with regard to the determination of the applicable procedural rules. The proceedings before the PSC are governed by the *Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber* (the Procedural Rules) as stated in article 25 of the RSTP transcribed *ut supra*.

<sup>5</sup> FIFA Commentary, 77.

<sup>6</sup> D. MAVROMATI AND M. REEB, *The Code of the Court of Arbitration for Sport Commentary, cases and materials*, Wolters Kluwer, 2015, 552.

### 3. ***SUBSTANTIAL ISSUES***

Once the jurisdiction and the applicable law are clear the parties will have to substantiate their motions on solid facts and sufficient material evidence. This third chapter gathers and systemises the most common disputes of contractual nature which have been brought before the PSC and the CAS in coach-related disputes and delves into the solutions adopted by the deciding bodies.

#### 3.1 *Disputes regarding the standing to sue/ to be sued*

It is generally admitted by legal scholars<sup>1</sup> and the CAS jurisprudence,<sup>2</sup> that the *jurisdiction* (see chapter 1) is a matter that affects the admissibility of claims, and consequently, a claim submitted before a legal body with no competence must be declared inadmissible *ab initio*. The *standing* of the party instead, regards the merits of the dispute, and consequently, a claim filed by a person with no *standing to sue*, or against a person with no *standing to be sued*, must be dismissed or rejected on the grounds.

Therefore, when entering into the merits of the dispute, one of the first issues the PSC or the CAS Panel will need to discern is whether the Claimant has *standing to sue/appeal* and, whether the Respondent has *standing to be sued*. Or otherwise said, whether the parties have a legitimate interest worth protecting in the dispute, be that as the claimant party or as the defendant party.

#### 3.1.1 *Standing to sue/appeal*

Following the CAS jurisprudence, the term “*standing to sue*” describes the entitlement of a party to avail itself of a claim.<sup>3</sup> In general, it suffices that a party invokes a right of its own, or to have a legitimate interest in the outcome of the case. The standing to sue or to appeal belongs thus, to any person having an interest worthy of protection in the matter claimed or object of appeal.

<sup>1</sup> See E. DE LA ROCHEFOUCAULT, “*Standing to sue, a procedural issue before the CAS*–CAS bulletin 1-2011, 19. Available at [www.tas-cas.org/fileadmin/user\\_upload/Bulletin\\_1\\_2011.pdf](http://www.tas-cas.org/fileadmin/user_upload/Bulletin_1_2011.pdf) (visited on 2 February 2018).

<sup>2</sup> Available at <http://jurisprudence.tas-cas.org/Shared%20Documents/4027.pdf> (visited on 2 February 2018).

<sup>3</sup> Available at <http://jurisprudence.tas-cas.org/Shared%20Documents/4162.pdf> (visited on 2 February 2018).

The institution of *standing to sue/appeal* (active legitimation) applied to coach-related disputes could for instance be questioned in a situation where the Club and the Head Coach have agreed that the remuneration paid to the latter includes also the remuneration of the assistant coaches with whom the Club has no written employment contracts. In such a hypothetical dispute the question the PSC would need to address is which party has a legitimate interest (standing to sue) in order to act against the Club, i.e. the Head Coach or the Assistant Coaches?

The answer will, as usual, depend on the specific circumstances of each case, and accordingly, it will not be the same if the assistant coaches have individual written contracts with the club indicating their remuneration, or otherwise, if their remuneration is provided in a general manner in the Head Coach contract.

In a similar factual context, the PSC accepted the claim submitted by a Head Coach for his entire coaching staff where the remuneration for all was established in the Head Coach's contract in a global manner.

See the DECISION OF THE SINGLE JUDGE OF THE PLAYERS' STATUS COMMITTEE OF 19 MARCH 2013:<sup>4</sup>

*“13. Before establishing the amount of compensation and for the sake of good order, the Single Judge was eager to underline that although the contract provided under article 5.1 that the amount of USD 50,000 as monthly salary would be paid to the Claimant ‘for him and his three Assistant Coaches’, the contract was in fact only signed by and between the Claimant and the Respondent and it could therefore be assumed that the Claimant would then have been responsible for distributing to the members of his staff their respective salaries”.*

In CAS 2015/A/3910 *ANA KUZE V. TIANJIN TEDA FC*, AWARD OF 20 NOVEMBER 2015,<sup>5</sup> the Panel reversed the supporting FIFA decision and decided that the *standing to appeal* had to extend to the legal successor of the coach, who unfortunately passed away pending the FIFA proceedings. In view of the specific and exceptional circumstances the Panel grounded its decision on the fact that the claim was filed by the coach himself (i.e. the person complying with the prerequisites of Article 6.1 of the Procedural Rules) and therefore, the party requirement was met at the moment the claim was filed; and that the transfer of the title occurred by law (inheritance) with no active involvement of the coach and his legal successor. *“151. [In] such specific context the universal successor not only acquires the substantive claim of the defunct, but also the latter's legal position in the pending proceedings, i.e. the ability to file a claim before the FIFA instances. For the avoidance of any doubt the Panel clarifies, that it would have denied any standing to sue of the Appellant if not the defunct, but the Appellant had*

<sup>4</sup> Ref. 03132961, available at [http://resources.fifa.com/mm/document/affederation/administration/02/56/74/63/03132961\\_english.pdf](http://resources.fifa.com/mm/document/affederation/administration/02/56/74/63/03132961_english.pdf) (visited on 2 February 2018).

<sup>5</sup> Unpublished award. Full comment in Chapter 1 (Legal heirs). For a complete analysis see the presentation of W. STERNHEIMMER during the VII Congreso Internacional del Derecho del Fútbol RFEF held in Madrid during 17 and 18 November 2017: *“TAS & Fútbol. Principales laudos 2015-2107 (I)”*.

*initiated the proceedings before the FIFA instances, because with respect to the question who is entitled to initiate proceedings before the FIFA instances, Art. 6 par. 1 of the Procedural Rules is very clear and not open to interpretation by this Panel. Only with respect to the question whether or not a procedure (initiated in compliance with Art. 6 par. 1 of the Procedural Rules) may be continued by a legal successor, the Panel finds that there is a lacuna in the applicable rules that needs to be solved in the manner advocated here, i.e. that any changes of facts in the course of the procedure will not remove FIFA's competence to decide the matter. To conclude, therefore, the Panel finds that the Appellant has standing to sue”.*

### 3.1.2 Standing to be sued

The jurisprudence has remarked that the issue of *standing to be sued* is not foreseen in the FIFA Regulations nor in the CAS Code. In accordance with the case law, the defending party will have *standing to be sued* (passive legitimation) when it has some stake in the dispute, because something is sought against it and therefore is personally obliged by the disputed right at stake<sup>6</sup> or alternatively, if the party is personally affected by the appealed decision.

Addressing a claim or an appeal against a party with no standing to be sued will result in its rejection on the merits. In the DECISION OF THE SINGLE JUDGE OF THE PSC OF 5 JUNE 2013,<sup>7</sup> with the coach on the one side, and the national association and the Ministry for sport and physical education on the other, an employment contract was concluded by means of which the coach was hired by the Ministry as coach of its A national team, on recommendation of the national association.

The dispute regarded the contractual termination with just cause at the national association's initiative with the Single Judge concluding that the claim of the Coach regarding the payment of outstanding salaries against the national association had to be rejected since it could only be claimed against the Ministry. The national association in this case, had no standing to be sued.

*“21. After having deliberated on the Claimant's claim for compensation, the Single Judge went on to consider the latter's request for payment of outstanding remuneration. In doing so and first of all, the Single Judge recalled that in accordance with the contract, the salary due to the latter was payable by the Ministry and not by the Respondent. Therefore, the Single Judge established that the Claimant's claim against the Respondent related to the payment of outstanding remuneration also had to be rejected since it cannot be claimed against the Respondent.*

<sup>6</sup> D. MAVROMATI - M. REEB, *The Code of the Court of Arbitration for Sport, Commentary, cases and materials*, Kluwer Law International, 411.

<sup>7</sup> Ref. 0613546 available at [http://resources.fifa.com/mm/document/affederation/administration/02/51/99/98/0613546\\_english.pdf](http://resources.fifa.com/mm/document/affederation/administration/02/51/99/98/0613546_english.pdf) (visited on 2 February 2018).

#### 4. TERMINATION OF CONTRACT

Article 1 (“Scope”) RSTP sets global and binding rules regarding the status of players, their eligibility to participate in competitions and their transfer between clubs belonging to different associations, leaving out of its scope the employment relationships between clubs and coaches.

As seen in previous chapters, this fact implies that the dispositions of the RSTP will have a very limited impact when discussing the termination of contracts between a club and coach. Issues such as the maximum period of contracts, the protected period, the prohibition to terminate a contract during the course of the season and other principles applicable to football players’ contracts will consequently have little incidence.

The identification of the applicable law to a dispute between a coach and a club is no easy task; in that regard Article 2 of the Procedural Rules<sup>1</sup> gives a wide range of discretion to the decision-making bodies in choosing the law applicable to the substance.

The published decisions show that the PSC will follow the FIFA Statutes and regulations and, if needed take into account other relevant arrangements, laws or collective bargaining agreements existing at the national level, although very rarely citing them in a direct manner, preferring to rely on general legal principles of law such as “*pacta sunt servanda*” that imposes the obligation on the parties to respect the terms of contracts in good faith.

At a CAS level, Swiss law will also be of relevance in the termination of employment contracts with an international dimension between coaches and clubs for Article 57 para. 2 of the FIFA Statutes expressly commands the CAS to apply Swiss law in addition to the FIFA regulations:

“2. The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.

See in this regard the TAS AWARD 2004/A/587 CHRISTIAN LETARD C/ FEDERATION VIETNAMIENNE DE FOOTBALL,<sup>2</sup> where the Sole Arbitrator analysed the substantive applicable law and confirmed that “9.2. En l’occurrence, en l’absence de dispositions spécifiques ou de jurisprudence précise, il convient de se

<sup>1</sup> Available at [www.fifa.com/about-fifa/official-documents/law-regulations/index.html](http://www.fifa.com/about-fifa/official-documents/law-regulations/index.html) (visited on 2 February 2018). See also chapter II on applicable law.

<sup>2</sup> Unpublished award.

*reporter à l’examen du droit Suisse pour examiner la question du licenciement de Monsieur Christian LETARD”.*

This chapter will focus the attention on the regulation of the termination of fixed-term contracts, as it is the type of employment contract signed in the vast majority of cases between a coach and a football club.

In Swiss law, fixed-term employment contracts end without notice at the expiration of its period of duration (cf. Art. 334 para. 1 SCO). They can also be terminated by the mutual consent of the parties at any time. The termination by mutual consent of a contract does not raise substantial problems and will give the coach immediate freedom to decide on his future career and sign a new contract with any football club.

Depending on the country, there could be some sporting restrictions in the regulations to train more than one team per season, so it could be possible that the coach is required to wait until moving forward to the next team, or train in a country where such restrictions don’t exist.

Further to that, Article 337 of the SCO contemplates the possibility of any of the parties to a fixed-term employment contract to terminate it unilaterally before the expiration of the contractual period when there is just cause (“*existence of a good or just cause*”).

Good cause is defined by para. 2 of Article 337 SCO as any circumstance which renders the continuation of the employment relationship in good faith unconscionable for the party giving notice. The judge will freely appreciate whether there is just cause or not. According to Article 361 SCO, Article 337 paras. 1 and 2 are of imperative nature and thus, cannot be derogated by the parties. In other words, neither the club, nor the coach can waive their right to put an end to the contract where there is just cause. Any agreement in that sense would be considered null.

Ibarrola,<sup>3</sup> identifies the following circumstances as constitutive of just cause under Swiss law:

- a. *Refusal to perform the work or failure to respect important or specific instructions.*
- b. *Abandoning the place of work.*
- c. *Take vacations against the explicit refusal of the employer.*
- d. *Infringe the obligation to fidelity, loyalty and protection of the employer.*
- e. *Fulfil the work in such an insufficient manner that the employer is no longer able to entrust the employee the work for which he was recruited.*
- f. *Failure to pay the salaries in spite of its request by the employee.*
- g. *Behave in a dishonest or illicit fashion (forgery of documents, IT piracy etc.) even if not related to work.*

<sup>3</sup> J. IBARROLA, “La extinción del contrato del deportista en Suiza”, *La extinción del contrato del deportista en Europa y Latinoamérica* R.O. Pradillo (ed.), Chapter 7, 217.

*h. Attempting against the personality rights of the employee, in particular his right to work.*

Inevitably, the results-oriented policies in football and the role of coaches as leaders of the team determines that most coaches will have to go through a premature termination of their employment contracts at some point in their careers, be that through a termination by mutual agreement or, due to the unilateral decision of one of the parties.

The well-established jurisprudence reiterates that unilateral termination must always be a last resort (*ultima ratio*) after having attempted to solve any potential conflict in an amicable manner, for it can carry severe consequences for the party in breach.

In some cases, the contract might provide for explicit provisions entitling a party to prematurely terminate the employment relationship under certain premises or situations such as reaching sporting objectives at the end of the season. However, even in such cases, only the legality of the clauses for the termination in light of the applicable law, will eventually determine whether the parties terminated the contract with just cause or not.

The PSC has illustrated its view on the termination of employment contracts on multiple occasions.

DECISION OF THE SINGLE JUDGE OF THE PSC OF 26 AUGUST 2014:<sup>4</sup>

*“The termination of an employment contract can, as a general rule, only be considered as, an ultima ratio measure. Indeed, only a breach or misconduct which is of a certain severity justifies the termination of a contract without a prior warning. In other words, only when there are objective criteria which do not reasonably permit to expect a continuation of the employment relationship between the parties, a contract may be terminated prematurely. Hence, if there are more lenient measures which can be taken in order for an employer to assure the employee’s fulfilment of his contractual duties, such measures must be taken before terminating an employment contract”*

The FIFA approach has been endorsed by CAS in the award 2010/O/2237 *RADOMIR ANTIC V. FOOTBALL ASSOCIATION OF SERBIA* where in addition the Panel indicated that the breach must also be of a “*certain severity*” and that an early termination must always be “*restrictively admitted*”.<sup>5</sup>

The employment relationship between a coach and a club implies by definition a weaker bargaining position of the coach in relation to his employer, the club, and this factor is also accounted for by the FIFA decisions when analysing the circumstances of a contractual termination.<sup>6</sup>

This fourth chapter identifies the most recurrent reasons around the termination of employment contracts, paying special attention to the different

<sup>4</sup> Ref. 0841631, unpublished.

<sup>5</sup> Unpublished award. Reference in para. 153.

<sup>6</sup> See e.g. FIFA Decision del Juez Unico de la Comision del Estatuto del Jugador of 26 March 2012 (para. 9) <https://resources.fifa.com/mm/document/affederation/administration/coachdispute/3121588.pdf> (visited on 2 February 2018).

## 5. CONSEQUENCES OF TERMINATING AN EMPLOYMENT CONTRACT

The stakes are high in professional football and dismissing a coach without just cause can result in enormous financial liability for a club. Similarly, a coach walking away from a contract with no good reason can also have a big impact on his financial well-being and affect his entire career or reputation. Understanding the legal implications and the consequences of terminating an employment contract is essential for both the club and the coach.

As a reminder, it is necessary to recall that Chapter IV of the RSTP is limited to “*Maintenance of contractual stability between professionals and clubs*” and as such it does not expressly provide for the right of coaches to any compensation for the breach of contract.<sup>1</sup>

According to the general principle of contract law *pacta sunt servanda*, contracts are binding between the parties and must be respected in good faith. Employment contracts can only be terminated without consequence by the terminating party where there is just cause. Therefore, the point of departure for the PSC while having to determine the consequences of the termination of an employment contract where a coach is involved will be the contract itself.

As seen in the preceding chapter, when Swiss law is the subsidiary material law applicable to the dispute, the right to terminate an employment contract with just cause is enshrined in Article 337 para. 1 SCO.<sup>2</sup> Good cause, is according to para. 2 of the same article, any circumstance which renders the continuation of the employment relationship unconscionable for the party giving notice. There are multiple circumstances where the parties can invoke the existence of just cause to put an end to the contract and the decision-making body will have full discretion to decide whether the conditions concur or not.

Furthermore, according to Articles 337 c) and d) SCO, the termination of an employment contract will always bear consequences for the party at fault which will be decided individually in light of the circumstances of each case. As opposed to football player-related disputes, in coach-related disputes, the consequences of the termination of contract will be exclusively of financial nature and not of sporting nature.

<sup>1</sup> See para. 114 of the CAS 2015/A/4161 *Vladimir Sliskovic v. Qingdao Zhongneng Football Club*, award of 28 April 2016 available at <http://jurisprudence.tas-cas.org/Shared%20Documents/4161.pdf> (visited on 4 February 2018).

<sup>2</sup> [www.admin.ch/opc/en/classified-compilation/19110009/201704010000/220.pdf](http://www.admin.ch/opc/en/classified-compilation/19110009/201704010000/220.pdf) (visited on 4 February 2018).

For the coach, the primary consequence will be that he is no longer bound under the terms of the contract and thus, he will not be obliged to attend training sessions.

For the club, the primary consequence of the termination will be the obligation to pay any remaining outstanding salaries up to the moment of termination. This obligation exists no matter which party is responsible for the termination. Once the party responsible for the termination is identified, the decision-making body might also grant the victim the right to be compensated for damages. Damages will be established in view of the specific circumstances of each case. An important aspect to highlight is that the right to compensation will depend on the express request of the claimant party. Otherwise, the adjudicating body would be ruling *ultra petita*.

This chapter will delve into the financial consequences of terminating an employment contract in coach-related disputes. It will also analyse important questions such as the incidence of Article 17 RSTP in the calculation of the compensation and focus on how the FIFA decision-making bodies and the CAS evaluate the financial consequences for the party guilty of a contractual breach.

#### 5.1 *The incidence of Article 17 of the RSTP in the calculation of compensation*

One of the first questions that arise when confronting a dispute regarding the termination of an employment contract between a football coach and a club is whether the parties can resort to Article 17 RSTP and on the calculation methodology indicated therein, to determine the possible financial consequences in cases of contractual liability.

This issue has been often invoked before the PSC and the CAS and while the decisions might vary depending on the period they were adopted it is nowadays unanimously admitted by the relevant jurisprudence as detailed hereafter that Article 17 RSTP is not applicable to coach-related disputes. Some practitioners have questioned this currently predominant view in light of the direct instruction in the RSTP for the PSC to decide cases submitted before it applying “*these regulations*” (cf. in its Article 25 para. 6 RSTP) so it cannot be entirely excluded that future panels might have a different interpretation. Notably, in the CAS jurisprudence there is no principle of binding precedent (“*stare decisis*”<sup>3</sup>).

However, it should be reminded that the 2001 edition of the FIFA Statutes equated coaches with players in its Article 34 (“Players’ Status Committee”) para. 4: “*Coaches shall be classified as players as far as status is concerned*”.

<sup>3</sup> E.g. Arbitration CAS 2008/A/1545 “3. In CAS jurisprudence there is no principle of binding precedent (“*stare decisis*” or “*collateral estoppel*”). However, although a CAS panel in principle might end up deciding differently from a previous panel, it must accord to previous CAS awards a substantial precedential value and it is up to the party advocating a jurisprudential change to submit persuasive arguments and evidence to that effect”. Available at <http://jurisprudence.tas-cas.org/Shared%20Documents/1545.pdf> (last visited on 16 February 2018).

Because of the above-mentioned rule, in the matters CAS 2005/A/893 *METSU V. AL-AIN SPORTS CLUB*<sup>4</sup> and CAS 2005/A/909-912 *GIUSEPPE MATERAZZI & GIANCARLO ODDI V/ TIANJIN TEDA* the panel referred to Article 22 of the 2001 Players Regulations (equivalent today to Article 17 of the RSTP) for the analysis of the consequences of contract termination.

Later on, the question of the incidence of Article 17 RSTP was also raised in the first instance decision of the case confronting Sport Club Corinthians Paulista and Daniel Passarella (CAS 2007/A/1235 *SPORT CLUB CORINTHIANS PAULISTA V/ DANIEL PASSARELLA* AND 2007/A/1243 *DANIEL PASSARELLA V/ SPORT CLUB CORINTHIANS PAULISTA*). In this case, the Single Judge of FIFA referred to Article 17 of the FIFA RSTP to determine the consequences of the unfair termination at the club’s initiative: “18. En consecuencia luego de un exhaustivo análisis de los hechos y circunstancias de la presente disputa, el Juez Único concluyo que el contrato laboral celebrado el 7 de marzo de 2005 entre las partes había sido incumplido por parte del club Corinthians sin justa causa y en razón de ella deberá indemnizar al Sr. Passarella de conformidad con el artículo 17 del Reglamento.

“19. En este estado, el Juez Único se focalizo en el análisis de los criterios enunciados en el artículo 17 par. 1 del Reglamento. En particular el Juez Único manifestó que si bien el contrato laboral celebrado entre ambas partes preveía en su clausula 16 una indemnización a favour del entrenador en caso de ruptura unilateral sin justa causa por parte del club equivalente al tiempo remanente de contrato, no consideraba razonable aplicarla plenamente en el asunto de marras. Asimismo el Juez Único considero que había que tener en cuenta las circunstancias específicas del caso”.<sup>5</sup>

The matter was later addressed by the CAS in the subsequent appeal. Eventually, the CAS panel resorted to Article 337b SCO without mentioning or inquiring into the reasons as to why it disregarded the application of Article 17 and fell back to the contractual clause providing for the consequences of the termination of contract (“*the outstanding salaries until the expiration date*”).

In recent times, the CAS panels and the PSC have adopted a common approach to this issue, which consists of refusing the application of Article 17 to coach-related disputes. The question was clarified in the CAS award 2008/A/1464 & 1467 *FUTBOL CLUBE DO PORTO V. JACOBUS ADRIAANSE & JACOBUS ADRIAANSE V. FUTBOL CLUBE DO PORTO*<sup>6</sup> where the panel confirmed that Article 17 RSTP was not applicable to coach-related disputes and explained it in a very comprehensive manner:

“68. FC Porto argues that the measure of compensation for breach in this case should be determined in accordance with Article 17 of the FIFA Regulations. The Panel is far from certain that this is true; Article 1 of the

<sup>4</sup> Unpublished award.

<sup>5</sup> Extract from para. 19 of the CAS award, that partially transcribes the PSC decision of 26 September 2006.

<sup>6</sup> Unpublished award.

**SELECTED BIBLIOGRAPHY**

Arroyo M., *Arbitration in Switzerland: The practitioner's guide*, Wolters Kluwer International BV, 2013, 977.

Bêlohlávek A.J., “Law Applicable to the Merits of International Arbitration and Current Developments in European Private International Law: Conflicts-of-law Rules and the Applicability of the Rome Convention, Rome I Regulation and Other Law Standards” in *International Arbitration 2010, Czech Yearbook of International Law*, 25-46.  
Available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1723715](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1723715) (visited on 2 February 2018).

CC&CO Annotés, 8e Edition, Helbing Lichtenhahn, 2008, 107.

Colucci M., “Sport in the EU Treaty: in the name of Specificity and Autonomy”, *The Future of Sports Law in the European Union*, R. Blanpain, M. Colucci, F. Hendrickx eds., Kluwer Law International, 2008, 21-35.

De la Rochefoucauld E., “Standing to sue, a procedural issue before the CAS”, *CAS Bulletin* 1/2011. Available at [www.tas-cas.org](http://www.tas-cas.org).

De Weger F., *The jurisprudence of the FIFA Dispute Resolution Chamber*, 2<sup>nd</sup> Edition. The Netherlands. Ed. Asser International Sports Law Series, Springer, 2016.

De Weger F. and Kroesse T., “The unilateral extension option through the eyes of FIFA DRC and CAS”.  
Excerpt available at [www.drcdatabase.com/newsletterarticles/feb11/casanddrejurisprudence.aspx](http://www.drcdatabase.com/newsletterarticles/feb11/casanddrejurisprudence.aspx) (visited on 2 February 2018).

Greenberg, M.J. and Paul, D., *Coaches' Contracts: Terminating A Coach without Cause and the obligation to Mitigate Damages*. Volume 23, *Marquette Sports Law Review*, Rev. 339, 2013.  
Available at <http://scholarship.law.marquette.edu/sportslaw/>.

Haas U., “Applicable law in football related disputes – The relationship between the CAS Code, the FIFA Statutes and the agreement of the parties on the application of national law”, *CAS Bulletin* 2015/2, 12-1. Available at [www.tas-cas.org](http://www.tas-cas.org).

Ibarrola J., “La extinción del contrato del deportista en Suiza”, *La extinción del contrato del deportista en Europa y Latinoamérica* R. O. Pradillo.(ed.), Chapter 7.

Ionescu B., “Dreptul la propria imagine”, *Colectia NCC.*, H. Beverley-Smith, a. Ohly, A. Lucas-Schloetter, 2013, 37 and 41.

Kharitonchuk A., “Football v. war” in *Football Legal* no. 2, December 2014.

Krechetov E., “The Single Judge of the Players' Status Committee ruled that Payments in another Currency cannot influence the Basic amount that was stipulated by the contract”, *Football Legal* 8, December 2017, 135.

Lopez Batet J. and Vazquez Moraga Y., “The treatment of the penalty clauses in the Court of Arbitration for Sport (CAS) jurisprudence on football”, *Revista Aranzadi de Derecho de Deporte y Entretenimiento* 49, 2015, 179 – 198.

Mavromati D., “Excessive contractual penalties in football”.  
Excerpt available at <https://ssrn.com/abstract=2872151> (visited on 4 February 2018).

Mavromati D. and Reeb M., “The Code of the Court of Arbitration for Sport Commentary, cases and material” Wolters Kluwer, 2015.

Mehrzad J., *Introducing “Moral Damages” for terminating a football player's contract* Available at [www.littletonchambers.com/introducing-”moral-damages”-for-terminating-a-football-player’s-contract-877](http://www.littletonchambers.com/introducing-”moral-damages”-for-terminating-a-football-player’s-contract-877) (visited on 4 February 2018).

Ongaro O. and Cavaliero M., “Dispute Resolution at Fédération Internationale de Football Association and its Judicial Bodies”, *Football Legal*, 4 of November 2015, 51 and 55.

Palomar Olmeda A., “Regimen Juridico del Deportista Profesional”. Ed. Thomson Reuters, April 2016, 36.

Portmann W., “Unilateral option clauses in footballers' contracts of employment: an assessment from the perspective of international sports arbitration”, 2007, *I.S.L.R.*

Thevenoz L. and Werro F., *Commentaire Romand - Code des Obligations I* (art. 1 – 529 CO), Helbing Lichtenhahn, 2012, 2065.

Vandellós Alamilla J.F. “Legal Heirs in FIFA proceedings”, *Football Legal* no. 5, June 2016.

Vandellós Alamilla J.F. “Forgery in football-related disputes”, *Football Legal* no. 2, December 2014.

Wild A., *CAS and Football: Landmark Cases*, 1<sup>st</sup> Edition. The Netherlands. Ed. Asser International Sports Law Series, Springer, 2012.

Wylter R., *Droit du Travail*, Staempfli Editions SA – Berne, 2002, 323.

### SELECTED CASE LAW

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#### Chapter 1 THE JURISDICTION OF THE PLAYERS' STATUS COMMITTEE

- *Arbitration clause by reference:*
  - o TAS award 2016/A/4778 *Mohamed Ali Maalej c. SAFF*, award of 6 April 2017.<sup>1</sup>
  - o CAS 2005/A/937 *Gyori Eto FC Kft. v. Mr. Marko Kartelo*, award of 7 April 2006.<sup>2</sup>
- *Civil courts/national arbitration tribunal v. PSC:*
  - o CAS 2014/A/3682 *Lamontville Golden Arrows Football FC v. Kurt Kowarz & FIFA*, award of 14 July 2015.<sup>3</sup>
- *Non-exclusive jurisdictional clauses:*
  - o Decision of the Single Judge of the PSC of 25 February 2014.<sup>4</sup>
- *Image rights agreements:*
  - o Decision of the PSC of 18 March 2013.<sup>5</sup>

<sup>1</sup> Available at <http://jurisprudence.tas-cas.org/Shared%20Documents/4778.pdf> (visited on 12 February 2018).

<sup>2</sup> Unpublished award.

<sup>3</sup> Available at <http://jurisprudence.tas-cas.org/Shared%20Documents/3682.pdf> (last visited on 20 February 2018).

<sup>4</sup> Ref. 02141990, available at [http://resources.fifa.com/mm/document/affederation/administration/02/52/34/61/02141990\\_english.pdf](http://resources.fifa.com/mm/document/affederation/administration/02/52/34/61/02141990_english.pdf) (last visited on 20 February 2018).

<sup>5</sup> Ref. 03131463, available at [http://resources.fifa.com/mm/document/affederation/administration/02/56/74/51/03131463\\_english.pdf](http://resources.fifa.com/mm/document/affederation/administration/02/56/74/51/03131463_english.pdf) (last visited on 20 February 2018).



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  - o Physical trainer:
    - CAS award 2009/A/2010 *Eduardo Julio Urtasun v. FIFA*, award of 25 August 2010.<sup>11</sup>
  - o Academy director:
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<sup>6</sup> Unpublished award.

<sup>7</sup> Available at <http://jurisprudence.tas-cas.org/Shared%20Documents/4441.pdf> (visited on 1 March 2018).

<sup>8</sup> Unpublished award.

<sup>9</sup> Ref. 07170250-e, available at <http://resources.fifa.com/mm/document/affederation/administration/02/92/08/79/07170250-e.pdf> (last visited on 20 February 2018).

<sup>10</sup> Unpublished award.

<sup>11</sup> Available at <http://jurisprudence.tas-cas.org/Shared%20Documents/2000.pdf> (last visited on 20 February 2018).

<sup>12</sup> Ref. 0315451-e, available at <http://resources.fifa.com/mm/document/affederation/administration/02/84/66/47/0315451-e.pdf> (last visited on 20 February 2018).

- o Goalkeeper coach:
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  - o Decisión del Juez Único de la Comisión del Estatuto del Jugador (PSC) of 11 May 2012.<sup>15</sup>
  - o SFT decision of 26 February 2015 no. 4A\_374/2014.<sup>16</sup>
- *Lack of jurisdiction:*
  - o CAS 2012/A/2899 *Perspolis A & C Club v. FIFA & Carvalho*, award of 31 January 2013.<sup>17</sup>
  - o SFT Decision 4A\_428/2015, Judgment of 1 February 2016.<sup>18</sup>
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- *Res judicata:*
  - o CAS 2006/O/1055 *del Bosque et al v. Besiktas*, award of 9 February 2007.<sup>21</sup>

<sup>13</sup> Ref. 0318152, available at [http://resources.fifa.com/mm/document/affederation/administration/02/71/13/27/0315182\\_english.pdf](http://resources.fifa.com/mm/document/affederation/administration/02/71/13/27/0315182_english.pdf) (last visited on 20 February 2018).

<sup>14</sup> Unpublished award.

<sup>15</sup> Ref. 05120933, available at [http://resources.fifa.com/mm/document/affederation/administration/02/29/20/37/05120933\\_english.pdf](http://resources.fifa.com/mm/document/affederation/administration/02/29/20/37/05120933_english.pdf) (last visited on 20 February 2018).

<sup>16</sup> Available at [www.swissarbitrationdecisions.com](http://www.swissarbitrationdecisions.com) (last visited on 20 February 2018).

<sup>17</sup> Unpublished award.

<sup>18</sup> Available at [www.swissarbitrationdecisions.com](http://www.swissarbitrationdecisions.com) (last visited on 20 February 2018).

<sup>19</sup> Unpublished award.

<sup>20</sup> Ref. 1171309\_56378, available at [http://resources.fifa.com/mm/document/affederation/administration/1171310\\_56378.pdf](http://resources.fifa.com/mm/document/affederation/administration/1171310_56378.pdf) (last visited on 20 February 2018).

<sup>21</sup> Available at <http://jurisprudence.tas-cas.org/Shared%20Documents/1055.pdf> (see para. 61 et seq.).

- o SFT of 26 February 2015 no. 4A\_374/2014.<sup>22</sup>
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  - o Decision of the Single Judge of the PSC of 15 August 2012.<sup>24</sup>
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  - o Decision of the Dispute Resolution Chamber of 16 October 2014.<sup>25</sup>

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<sup>22</sup> 4A\_374/2014, Judgment of February 26, 2015 First Civil Law Court. Translation available at [www.swissarbitrationdecisions.com/sites/default/files/26%20fevrier%202015%204A%20374%202014.pdf](http://www.swissarbitrationdecisions.com/sites/default/files/26%20fevrier%202015%204A%20374%202014.pdf) and original text available at [http://relevancy.bger.ch/php/aza/http/index.php?lang=fr&type=highlight\\_simple\\_query&page=1&from\\_date=&to\\_date=&sort=relevance&insertion\\_date=&top\\_subcollection\\_aza=all&query\\_words=4A\\_374/2014&rank=1&azaclir=aza&highlight\\_docid=aza%3A//26-02-2015-4A\\_374-2014&number\\_of\\_ranks=7](http://relevancy.bger.ch/php/aza/http/index.php?lang=fr&type=highlight_simple_query&page=1&from_date=&to_date=&sort=relevance&insertion_date=&top_subcollection_aza=all&query_words=4A_374/2014&rank=1&azaclir=aza&highlight_docid=aza%3A//26-02-2015-4A_374-2014&number_of_ranks=7) (last visited on 20 February 2018).

<sup>23</sup> Ref. 02142560, available at [http://resources.fifa.com/mm/document/affederation/administration/02/59/25/42/02142560\\_english.pdf](http://resources.fifa.com/mm/document/affederation/administration/02/59/25/42/02142560_english.pdf) (last visited on 20 February 2018).

<sup>24</sup> Ref. 08122106, available at [http://resources.fifa.com/mm/document/affederation/administration/02/25/90/02/08122106\\_english.pdf](http://resources.fifa.com/mm/document/affederation/administration/02/25/90/02/08122106_english.pdf) (last visited on 20 February 2018).

<sup>25</sup> Ref. 10143276, available at [http://resources.fifa.com/mm/document/affederation/administration/02/51/98/15/10143276\\_english.pdf](http://resources.fifa.com/mm/document/affederation/administration/02/51/98/15/10143276_english.pdf) (last visited on 20 February 2018).

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    - CAS 2008/A/1464 & 1467 *Futbol Clube do Porto v. Jacobus Adriaanse & Jacobus Adriaanse v. Futbol Clube do Porto*, award of 3 December 2008.<sup>30</sup>
- *RSTP (non applicable to football coaches):*
  - o CAS 2009/A/1758 *Theo Bucker v. Ismailia SC*, award of 29 October 2008.<sup>31</sup>
  - o CAS 2008/A/1464 & 1467 *Futbol Clube do Porto v. Jacobus Adriaanse & Jacobus Adriaanse v. Futbol Clube do Porto*, award of 3 December 2008.<sup>32</sup>

<sup>26</sup> Unpublished award.

<sup>27</sup> Unpublished award.

<sup>28</sup> Unpublished award. PSC Decision of 19 March 2014 ref. 13-00713, available at [http://resources.fifa.com/mm/document/affederation/administration/02/43/84/29/0314713\\_english.pdf](http://resources.fifa.com/mm/document/affederation/administration/02/43/84/29/0314713_english.pdf).

<sup>29</sup> Unpublished award.

<sup>30</sup> Available at <http://jurisprudence.tas-cas.org/sites/CaseLaw/Shared%20Documents/1464,%201467.pdf> (last visited on 20 February 2018).

<sup>31</sup> Unpublished award.

<sup>32</sup> Available at <http://jurisprudence.tas-cas.org/sites/CaseLaw/Shared%20Documents/1464,%201467.pdf> (last visited on 20 February 2018).

- *Universal application of the FIFA regulations:*
  - o Arbitrage TAS 2005/A/983 & 984 *Club Atlético Peñarol c. Carlos Heber Bueno Suarez, Cristian Gabriel Rodríguez Barroti & Paris Saint-Germain*, sentence du 12 Juillet 2006.<sup>33</sup>
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<sup>33</sup> Available at <http://jurisprudence.tas-cas.org/Shared%20Documents/983,%20984.pdf> (last visited on 20 February 2018).

<sup>34</sup> Ref. 08143177, available at [http://resources.fifa.com/mm/document/affederation/administration/02/66/51/47/08143177\\_english.pdf](http://resources.fifa.com/mm/document/affederation/administration/02/66/51/47/08143177_english.pdf) (last visited on 20 February 2018).

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**FOOTBALL COACH-RELATED DISPUTES**

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COMMITTEE DECISIONS AND CAS AWARDS**

by *Josep F. Vandellós Alamilla*

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