

# INTERNATIONAL ARBITRATION IN SPORT: THE LATEST DEVELOPMENT ON SPORTS LAW (MILAN, 8-9 JUNE 2018)

Set in the beautiful Excelsior Hotel Gallia in Milan, *Sports Law and Policy Centre* and the *Centro Scientifico di Diritto dello Sport* organised a two-day conference to provide an in-depth analysis of the latest developments in the complex field of sports arbitration.

The conference opened with speeches from Salvatore Civale, President of the *Italian Sports Lawyers Association* (AIAS), Fabio Iudica, Director of *Centro Scientifico Diritto Sport* (CSDS) and Michele Colucci, Scientific Director of the *Sports Law and Policy Centre*. Together, they set the stage for a productive discussion among many of the leading arbitrators and international sports lawyers in attendance. Over the course of the two-day conference, participants analyzed the functioning of the Court of Arbitration for Sport (CAS) and its most controversial features, along with a detailed overview of some interesting cases decided by CAS and some internal bodies of sports associations (such as the FIFA Disciplinary Commission, the FIFA Dispute Resolution Chamber and the FIFA Players' Status Committee).

The first speaker, **Michele Bernasconi**, opened the session with a stirring reminder of the utility of sports arbitration relative to State Courts. He emphasised that the former is a simple, flexible and accessible means of resolution that is better equipped to deal with sports challenges than national courts. Notably, he pointed out that sports arbitration guarantees specialisation of the arbitrators, a level playing field and a broader international context. However, he noted that all parties shall be granted the fundamental right of access to justice, and therefore, arbitration can be relied upon as an alternative dispute resolution means only so long as the arbitral tribunal can provide guarantees that are equivalent to those that one might find before national courts.

Afterwards, **Romano Subiotto** not only explained the main principles of EU competition law in general, but also discussed how they play out in the context of sport and international federations in particular. His speech focused on the recent International Skating Union case decided by the European Commission and revolved around one main question: does the ISU rule that imposes sanctions (up to a life ban) on athletes who participate in unauthorised third-party events constitute an unjustified restriction in violation of EU competition law? Subiotto provided thorough insight into the rules and principles relied upon by the EU Commission when dealing with the case, beginning with the acknowledgment of the specificity of the sport context, which, in any case, is bound by EU law, then moving to consider what restrictions may be legitimate based on sport-specific legitimate objectives.

**Ulrich Haas'** presentation focused on a thorny issue: do CAS arbitrators have to care about insolvency proceedings taking place outside of Switzerland? Notably, he detailed some themes related to the scenario in which a party to arbitration proceedings before CAS becomes insolvent. First, he noted that not all legal systems deal with insolvency proceedings in the same way, meaning that the administrator appointed in occasion of the insolvency proceedings is treated differently in the various jurisdictions. Haas then moved to consider if the effects of arbitration agreement that bound the debtor can be extended to the administrator. In this respect, he advanced the clever "footstep theory", according to which the administrator is bound by such arbitration agreement for it "steps into the debtor's shoes" and it thus takes over all his rights and obligations.

**Massimo Coccia** articulated the main features of CAS arbitration in the Olympic Games, with a detailed explanation of its ability to resolve disputes quickly – in 24 hours or less – and its efficacy as an international arbitral institution for the Games. After providing this background, Coccia focused on some of the most interesting cases decided by CAS at the Olympics and their impact. Crucially, he explained the concept *lex sportiva* and its implications for sports arbitration. He focused on its "benchmark effect", as a standard for reviewing sports institutions' behaviours and its "self-restraint effect", *i.e.* the tendency of CAS to refrain from adjudicating some kinds of dispute, in particular the so-called "field-of-play" decisions.

The next speaker was **Antonio Rigozzi**, who provided thoughtful insight on some of the most relied-upon rules of the CAS Code, how CAS Panels tend to apply them in practice, and the present issues related to such

rules. For instance, he emphasised the ongoing debate concerning the fact that CAS is seated in Lausanne, Switzerland (art. R29 CAS Code). Notably, FIFPro is requesting that the seat be moved because with the seat in Switzerland, it is possible for CAS to sidestep EU law and regulations. Moreover, he reminded the prohibition of “double-hatting” in arbitration and set out some reflections on the *de novo* nature of proceedings before the CAS Appeal Division.

Thereafter, **Salvatore Civale**, **Michele Colucci** and **Josep F. Vandellos Alamilla** analysed the most recent trends in signing both players’ and coaches’ employment contracts, and the consequences for their termination (with or without cause). In particular, Civale gave some useful tips for drafting players’ employment contracts, taking into account strengths and weaknesses of opting for indicating gross or net income. Later on, Colucci showed the latest changes in the FIFA RSTP and their impact on the hypotheses of unilateral termination of players’ employment contracts. Lastly, Aramilla shed light on a thorny issue: how can coaches be protected against clubs’ unilateral termination of their employment contract without cause, if they cannot use the remedies provided for under the FIFA RSTP?

A fancy networking drink on the Hotel’s terrace concluded the Friday session.

**Gianni Roj** opened the Saturday session, clarifying the most relevant provisions of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, on the 60th anniversary of its adoption by the United Nations. Notably, he acknowledged the fact that, even though one of the grounds for refusing recognition and enforcement of an arbitral award is the violation of “public policy” of the enforcing country, no definition of such term has ever been provided by courts and jurisprudence and, in any case, courts have the tendency to avoid non-enforcement unless on very narrow grounds.

The next speaker, **Jacopo Tognon**, outlined the present background and awareness of human rights within football bodies such as UEFA. His presentation focused on the recognition of human rights in the football context through the thought-provoking lenses of a broader socio-political approach then narrowed down to a legal one. The latter, interestingly, concentrated on art. 6 ECHR and the fundamental right to a fair trial in all its facets, including the right to an independent and impartial tribunal, the right to fair proceedings and, intriguingly, the right to obtain a decision within a reasonable time.

**Jacques Blondin** brilliantly described some of the most interesting decisions rendered by the FIFA Disciplinary Committee in the context of the 2018 FIFA World Cup qualifiers. Blondin began with a brief overview of the functioning of the FIFA DC and the possibility to appeal its decisions before CAS, then moving to the analysis of case law. The themes ranged from players’ nationality issues to cases of match-fixing involving match officials and the criteria to recognise it, concluding with some interesting cases of crowd disturbances during the matches.

Lastly, **Fabio Iudica** focused on the issues related to both national and international transfers of player and their respective features. After a brief description of the differences between “professional” and “amateur” players, Iudica provided a thoughtful insight on some intriguing CAS decisions related to the transfer of players, along with some recurring topics, such as the duration of employment contracts for players under the age of 18 or the distinction between buy out clauses and penalty clauses within employment contracts.

Overall, it was a thought-provoking discussion of salient issues in the field of sports arbitration that will undoubtedly contribute to further discussion.

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