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From Lausanne to Luxembourg: the CJEU's *Seraing* Judgment and the Boundaries of Sports Arbitration Under EU Law

In this expert analysis, Professor *Stefano Bastianon* dissects the CJEU's landmark *Seraing* ruling (Case C-600/23), which reshapes the contours of sports arbitration under EU Law. With particular focus on judicial review and EU public policy, the author explores how the Court balances the autonomy of arbitral mechanisms like CAS with the imperative of effective judicial protection – a judgment that could have far-reaching implications for the future of dispute resolution in sport.

Introduction

On 1 August 2025, the Grand Chamber of the Court of Justice of the European Union (CJEU) issued a significant ruling in *Royal Football Club Seraing v. FIFA, UEFA, URBSFA* (Case C-600/23), addressing the intersection of arbitration, sports regulation and the principle of effective judicial protection under EU Law. This judgment follows closely on the heels of the ECtHR ruling in *Semenya v. Switzerland* and, though they stem from different legal frameworks, both decisions underscore the imperative of maintaining robust judicial review over arbitral systems, especially in fields such as sports where arbitration may be mandatory and structurally embedded.

Seraing and *Semenya*: The Centrality of Judicial Protection

Although grounded in distinct legal regimes - the Charter of Fundamental Rights and Treaty of the European Union (TEU) provisions in *Seraing*, and Article 6 ECHR in *Semenya* - both Courts converge on a vital message: arbitration mechanisms, however efficient or specialized, must not supplant the rights of individuals to access judicial review when fundamental rights and or EU public policy are implicated.

In *Semenya*, the ECtHR held that the Swiss legal system failed to provide sufficient scrutiny over CAS decisions affecting fundamental rights, particularly when such arbitration is *de facto* imposed. The *Seraing* ruling resonates with this concern, emphasizing that the authority of arbitral awards, particularly those upheld in third countries (*i.e.* outside the European Union) like Switzerland, cannot undermine

effective legal protection within the EU.

The CJEU reaffirmed that Member States have an obligation under Article 19, paragraph 1 TFEU and Article 47 of the Charter to ensure effective judicial review of decisions that implicate EU public policy. The judgment makes clear that this includes the ability to scrutinize arbitral awards affecting the principles of freedom of movement under Articles 45, 56 and 63, and freedom of competition pursuant to 101 and 102 TFEU.

Alignment with the *ISU* Case-Law

The *Seraing* judgment is conceptually and doctrinally aligned with the landmark *ISU v. Commission* ruling (Case C-124/21 P). There, the Court addressed the limits of autonomy in sports governance, stating that disciplinary frameworks must not prevent effective access to legal remedies for affected parties.

Both *ISU* and *Seraing* acknowledge that uniformity and specialization in sport-related arbitration may serve legitimate objectives, such as ensuring consistency in decision-making, preserving the integrity of competitions and promoting the efficient resolution of disputes. However, both rulings make clear that these considerations - although important - cannot override or displace the fundamental requirements of EU public policy, particularly the right to effective judicial protection. The Court's observation in *Seraing* that arbitral systems must allow for judicial review of awards in light of EU fundamental freedoms and competition law mirrors the logic in *ISU*, which emphasized that arbitration cannot insulate sporting associations from accountability under EU Law.

Moreover, the Court reiterated that arbitration clauses unilaterally imposed by entities like FIFA are not genuinely voluntary. Rather, they are embedded in a system

where compliance is a precondition to participation, rendering the individual waiver of rights to judicial review ineffective.

The *Seraing* Ruling

The *Seraing* ruling is analytically bifurcated. In the first part (par. 69 to 89), the Court outlines the relevance of effective judicial protection for individuals within the European Union, including in the event of recourse to arbitration; in the second part (par. 90 to 124), the Court deals with the judicial review of awards issued by the CAS in the context of disputes relating to the pursuit of a sport as an economic activity within the territory of the European Union.

The Fundamentals of Judicial Review Under EU Law

The Court's exposition of effective judicial protection is deeply rooted in the dual guarantees of Article 47 of the Charter and Article 19, paragraph 1, TFEU.

In particular, Article 19 TFEU affirms the obligation of Member States to provide a system of legal remedies that ensures effective judicial protection in all fields covered by EU Law. In this respect, "*it requires, in particular, that those courts or tribunals be able to carry out an effective judicial review of the acts, measures or behaviour alleged, in the context of a given dispute, to have infringed the rights or freedoms which EU law confers on individuals. That requirement means, in principle, that those courts or tribunals must have the power to consider all the issues of fact and of law that are relevant for resolving that case*" (par. 75).

However, at paragraph 76, the Court highlights that Article 19 TFEU does not "*impl(y) that individuals must have a direct legal remedy the primary object of which is to*

call into question a given measure, provided that one or more legal remedies also exist, in the national judicial system concerned, enabling those individuals to obtain, indirectly, effective judicial review of that measure, thereby ensuring respect for the rights and freedoms guaranteed to those individuals by EU law".

Nevertheless, in line with the *ISU* case-law, the remedies available in the relevant national judicial system must be such as to allow the competent domestic court or tribunal to refer questions to the Court of Justice for a preliminary ruling on the validity or on the interpretation of EU Law, pursuant to the conditions laid down in Article 267 TFEU.

These principles apply also to arbitration. Accordingly, irrespective of the rules which may apply to the arbitration body having jurisdiction, the awards must be amenable to judicial review such as to guarantee the effective judicial protection to which the individuals concerned are entitled, pursuant to Article 47 of the Charter, and which the Member States are required to ensure in the fields covered by EU Law, in accordance with the second subparagraph of Article 19, paragraph 1 TFEU.

Although that requirement does not imply that there must necessarily be, in the European Union, one or more courts or tribunals competent to examine all questions of fact and of law relevant to the arbitral awards in question, it must, nonetheless, remain possible for the individuals concerned by such awards to seek judicial review, by a court or tribunal that meets all the requirements arising from Article 267 TFEU. Such a review must be capable of assessing whether the awards are consistent with the principles and provisions which form part of EU public policy and are relevant to the dispute.

At paragraph 86, the Court states that, "*in order to be effective, that review must be such as to ensure observance of those principles and provisions, which means that it must relate to the interpretation of those principles and provisions, the legal consequences to be attached to them as regards their application in a given case and, where appropriate, the legal classification, in the light of those principles and provisions, of the facts as established and assessed by the arbitration body*".

While the cited sentence, read in conjunction with paragraph 100, does not

explicitly define the standard of review, its wording suggests that the Court is in fact calling for an in-depth judicial review - *révision au fond* - albeit one confined to verifying compliance with those provisions of EU Law that are considered part of the Union's public policy. By requiring an assessment of the interpretation, legal consequences and classification of the facts, the Court appears to demand more than a superficial examination, indicating a thorough scrutiny of arbitral awards insofar as core EU principles are concerned.

Application to the CAS System

In the second part of the ruling, the Court scrutinized the CAS mechanism, particularly within the context of FIFA's arbitration regime. In this respect, the Court acknowledged that FIFA's arbitration system is imposed on players and clubs. Echoing its previous case-law (*European Super League Company* and *ISU*), the Court pointed out that, on one hand, the imposed recourse to arbitration may be warranted in principle, in the light of the legal autonomy enjoyed by international sports associations and having regard to their responsibilities by the pursuit of legitimate objectives, such as ensuring the uniform handling of disputes relating to the sporting discipline that is within the purview of their jurisdiction or enabling the consistent interpretation and application of the rules applicable to that discipline; on the other hand, the legal autonomy of sports federations cannot justify the exercise of the powers held by such associations having the effect of limiting the possibility for individuals to rely on the rights and freedoms conferred on them by EU Law which form part of EU public policy.

In respect of the scope of the judicial review to be effective, the Court highlights the following relevant aspect:

- Article 19, paragraph 1, TFEU does not require that individuals have direct legal remedies within the EU - such as annulment, objection or appeal - to challenge awards and obtain effective judicial review from a competent court or tribunal;
- when an award concerns a dispute involving sport as an economic activity

within the EU and no direct legal remedy exists before a Member State court, individuals must still be able - either on their own initiative or by the court's - to obtain effective judicial review from any court that may examine the award, to ensure it complies with EU public policy principles;

- courts of Member States reviewing such awards must be able to assess how EU public policy principles - especially those granting rights or freedoms - were interpreted and applied, including the legal consequences and the classification of the facts by the arbitral body;
- courts or tribunals cannot merely declare that an award conflicts, wholly or partially, with EU public policy principles or provisions. Rather, they must also be empowered - within their legal authority and under national law - to take all necessary legal steps when such a conflict is identified. This means that, when competition or free movement rules are violated, individuals must be able to ask the courts not only to confirm the infringement and award damages, but also to stop the unlawful conduct and impose interim measures to ensure the effectiveness of the final judgment - even if the court refers a question to the Court of Justice and suspends proceedings while awaiting its reply.

These findings reflect an important development in EU jurisprudence. Accordingly, national courts must disapply domestic provisions that hinder the realization of effective judicial protection, including those granting *res judicata* or probative force to foreign arbitral awards without substantive review (par. 107 and 120-121).

CAS Reaction and Institutional Implications

Following the ruling, the Court of Arbitration for Sport (CAS), through its governing

body (ICAS), issued a press release acknowledging the CJEU's findings. ICAS emphasized that the Court confirmed the enforceability of CAS awards within the EU, provided that such enforcement is compatible with EU public policy.

ICAS notably welcomed the Court's recognition that international sports arbitration plays a legitimate and vital role in maintaining consistency and uniformity in the resolution of sports disputes worldwide. At the same time, it took note that the CJEU did not follow Advocate General *Ćapeta*'s recommendation to subject CAS awards to full judicial review but opted for a more limited test based on EU public policy.

Advocate General Ćapeta v. The Judgment of the Court

The contrast between Advocate General *Ćapeta*'s Opinion and the Court's final ruling in *Seraing* reveals a fundamental divergence in how the two institutions understand the relationship between private arbitration and the guarantees of effective judicial protection under EU Law.

Advocate General *Tamara Ćapeta*, in her Opinion, drew a categorical distinction between voluntary commercial arbitration and mandatory sports arbitration, positing that the latter, particularly as institutionalized by bodies such as FIFA, lacks the consensual foundation characteristic of the former. In her view, whereas commercial arbitration is grounded in party autonomy and therefore justifiably subject only to limited judicial review confined to matters of public policy under the New York Convention, sports arbitration - especially when imposed as a condition of participation in a professional activity - does not rest on the same contractual basis. As such, it cannot be equated with ordinary commercial arbitration and should not benefit from the same limitations on judicial scrutiny.

AG *Ćapeta* therefore advocated for a broader and more intrusive review by national courts, encompassing the entirety of applicable EU Law, precisely because the individuals subject to such arbitration cannot meaningfully waive their rights to effective judicial protection under EU Law.

In contrast, the Court of Justice declined to adopt such a rigid binary framework. The formal characterisation of an arbitral mechanism as "*mandatory*" or "voluntary" is not, in itself, determinative for the purposes of EU Law. Instead, the decisive consideration is whether individuals affected by an arbitral award have access - either directly or indirectly - to effective judicial review by a court or tribunal of a Member State capable of ensuring compliance with principles and provisions that form part of EU public policy.

Where such review is lacking, the Member State concerned is under a duty to ensure the availability of a legal remedy that can provide the requisite level of judicial oversight, irrespective of the formal nature of the arbitration. Thus, the Court emphasized the primacy of effective judicial protection over categorical distinctions between types of arbitration, thereby adopting a more functional and context-sensitive approach than that proposed by the Advocate General.

Similarly, Advocate General *Ćapeta* adopted a firm stance in favour of broad judicial oversight of arbitral awards rendered by the Court of Arbitration for Sport (CAS), particularly where such awards are the product of mandatory arbitration procedures imposed by private regulatory bodies such as FIFA. In her analysis, the mandatory nature of such arbitration deprives affected individuals of the autonomy typically underpinning arbitral consent in commercial contexts. As a result, individuals cannot be deemed to have validly waived their fundamental right to effective judicial protection under Article 47 of the Charter of Fundamental Rights of the European Union. On that basis, the Advocate General concluded that national courts must retain the competence to review such awards against the full body of EU Law, without being limited to considerations of public policy or fundamental principles alone. In her view, the exceptional judicial restraint that characterises the review of commercial arbitral awards under the New York Convention should not apply to the same extent in the context of mandatory sports arbitration.

In contrast, the Court of Justice, whilst reaffirming the overarching principle that effective judicial protection must be ensured, adopted a more nuanced and proportionate approach. It held that arbitral awards rendered in disputes concerning the economic dimension of sport must be amenable to judicial review by the competent courts or tribunals of the Member States, albeit only to the extent that such awards implicate EU public policy provisions - notably, those governing the freedoms of movement and competition.

Nonetheless, it is evident that all cases brought - and those foreseeably brought - before the CAS have been, and are likely to continue to be, assessed primarily through the lens of these two fundamental freedoms, rather than other substantive provisions of EU Law. Accordingly, the practical reach of the judgment proves to be broader than its ostensibly narrow formulation would suggest. Put simply, while the Court's reasoning is formally confined to provisions of public policy, its implications extend *de facto* to the entire body of EU Law typically invoked in sports-related disputes.

A second consideration concerns the Court's position that such judicial review is required only where the sporting activity at issue qualifies as an economic activity. While this distinction aligns with the traditional scope of EU Law, it risks overlooking situations in which non-professional or amateur sport nonetheless engages EU fundamental freedoms. The *Biffi* case (Case C-22/18) offers a clear illustration of this point: even in the context of amateur sporting activity, issues relating to free movement and non-discrimination on the basis of nationality may arise - both of which are entrenched in the EU's public policy framework. Thus, the effective protection of such rights should not be contingent upon the economic character of the activity. In this light, the Court's reasoning could be interpreted as implicitly requiring judicial review even in the context of non-economic sport, where EU public policy principles are at stake.

Concluding Reflections

The *Seraing* judgment reflects the CJEU's increasing attention to the role of private arbitral mechanisms - such as those operating in the field of sport - and their interaction with fundamental rights and EU Law.

It affirms that, while institutions like CAS play an important role as specialized arbitral bodies, their decisions must be subject to judicial review where matters of EU public policy are concerned.

In this context, the Court has further clarified the requirements of effective judicial protection in cross-border arbitration and reinforced the role of national courts in safeguarding public policy within the EU legal framework.

Looking ahead, *Seraing* may encourage closer alignment between arbitral procedures and EU legal standards and foster reflection on how judicial review mechanisms can be effectively integrated into sports arbitration - without undermining the autonomy or efficiency of the arbitral process.

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