



A New Era in Cas Arbitration Proceedings – The Impact of The Court of Justice of The European Union’s Decision in The Seraing V. Fifa Case

Assoc. Prof. Dr. Fikret ERKAN

fikreterkan@hotmail.com, ORCID: 0009-0004-9462-7572

Abstract

Sports law, as one of the fields rapidly shaped by globalization, necessitates interaction not only with on-field regulations but also with international law and judicial mechanisms. The growing economic and social dimensions of professional sports have made the fair, efficient, and timely resolution of sports-related disputes indispensable. This need led to the establishment of the Court of Arbitration for Sport (CAS), whose institutional structure was strengthened by the **1984 reform** and the **1994 Paris Agreement**. Since its inception, CAS has played a central role in the internal governance of the sports ecosystem, acting as a “specialized arbitral tribunal” and becoming the final authority over the regulatory and disciplinary decisions of international sports federations.

In this context, CAS has not only resolved individual disputes between parties but has also contributed significantly to the development of **lex sportiva** — the emerging body of international sports law — through its case law. However, this influential position of CAS has sparked growing debates regarding its relationship with the legal framework of the European Union (EU). In particular, the evaluations presented in the **Court of Justice of the European Union (CJEU)** ruling in *Royal Football Club Seraing v. FIFA and Others* (“Seraing case”) have the potential to fundamentally reshape existing paradigms of sports arbitration. The core issue addressed in this dispute concerns the extent to which CAS awards can be subject to judicial review before national courts in light of the EU principle of **effective judicial protection**.

Accordingly, the Seraing case is not merely a conflict between a football club and FIFA regulations but represents a landmark decision redefining the boundaries of EU intervention in sports arbitration. The CJEU Grand Chamber’s ruling opens FIFA’s regulatory powers to EU legal scrutiny, enables national courts to review CAS decisions on substantive grounds, and challenges the traditional **res judicata** effect of arbitral awards in sports disputes. Ultimately, the Seraing case signals the potential beginning of a **new era** in sports law, with implications extending to both the international and EU levels.

Keywords: Sports law, arbitration, Court of Arbitration for Sport (CAS), European Union Law, preliminary ruling, Court of Justice of the European Union (CJEU), Seraing case, **res judicata** effect, recognition and enforcement of CAS awards

Introduction

The aim of this study is to examine the intersection between sports law and EU law and to evaluate how these interactions influence the future of international sports arbitration. In particular, the focus is on the **Grand Chamber ruling** of the CJEU in the *Seraing* case and its implications for the independence of CAS, the confidence in sports arbitration mechanisms, and the evolving role of EU law in shaping the governance of sports. Through this analysis, the study seeks to explore the legal and institutional dynamics that shape the **internationalization and institutionalization** of sports law.

First, the study reviews the international mechanisms for resolving sports disputes, tracing the evolution of CAS from its foundation to the present day. This includes a detailed analysis of the **necessity of international arbitration**, the establishment of CAS, its transformation into a neutral and independent tribunal after the 1984 reform, its institutional strengthening following the 1994 Paris Agreement, and its current operational framework.

Subsequently, the functioning of CAS arbitration proceedings and its interaction with the EU legal order are examined, particularly regarding the extent to which CAS awards are subject to judicial review before the CJEU. In this context, the study also addresses the **role of the CJEU**, the preliminary ruling mechanism, the binding nature and legal effects of preliminary rulings, and the evaluation of CAS decisions within the framework of EU law.

The central focus of this study is the *Seraing* case, including its procedural journey from the Belgian Court of Cassation to the CJEU and the legal consequences it has triggered within the EU legal order. Ultimately, the paper discusses the future of the relationship between EU law and sports arbitration, particularly concerning **independence, impartiality, and legitimacy** in sports dispute resolution.

Adopting a doctrinal approach, this study employs **comparative legal methodology** to analyze the interaction between CAS arbitral awards and EU law. The analysis integrates the *RFC Seraing* case, CJEU jurisprudence, FIFA regulations, and the CAS Code of Arbitration, providing a comprehensive understanding of the emerging legal framework governing international sports arbitration.

I. INTERNATIONAL RESOLUTION OF SPORTS DISPUTES

1. The Necessity of International Arbitration and the Emergence of the Court of Arbitration for Sport (CAS)

In the early 1980s, the growing number of international sports disputes and the absence of an independent authority with specialized expertise and the power to issue **binding decisions** prompted leading sports organizations to take action. In 1981, the **International Olympic Committee (IOC)** introduced the idea of creating a judicial body dedicated specifically to sports¹. The following year, during the IOC General Assembly held in Rome, a working group was established and tasked with drafting the statute of what would later become the **Court of Arbitration for Sport (CAS)**².

This initiative formally set in motion the creation of an arbitral jurisdiction dedicated to resolving disputes directly or indirectly related to sports. Another driving factor was the pressing need to establish a specialized authority capable of handling international disputes through a process that was **flexible, efficient, and cost-effective**.

The initial drafts of the concept envisaged an arbitral procedure that would first encourage **amicable settlements** before proceeding to formal arbitration. Moreover, it was stipulated that all operating expenses of the CAS would be fully funded by the IOC. Importantly, from the outset, CAS’s jurisdiction was designed **not to be imposed** on athletes or federations; rather, its services were intended to be **voluntarily accessible** to the parties³.

In 1983, the IOC formally approved the **Statutes of CAS**⁴, which came into effect on **30 June 1984**, officially marking the beginning of CAS’s operations.

¹ Immediately following his election as the President of the International Olympic Committee (IOC), Mr. Juan Antonio Samaranch proposed this idea.

² At that time, IOC member Mr. Justice Kéba Mbaye, who was serving as a judge at the International Court of Justice in The Hague, presided over the working group.

³ See the history of the CAS at: <https://www.tas-cas.org/en/general-information/history-of-the-cas.html>

⁴ The **Statutes** constitute a document that regulates the establishment, structure, bodies, and operational principles of the CAS, and they are considered to have the nature of a “constitution.” Within the **Code of Sports-related Arbitration**, the section on Statutes comprises approximately the first 23 articles, followed by the **Procedural Rules**. What is commonly referred to as the “CAS Statutes” actually refers to the rules contained in the **Code of Sports-related Arbitration**, which are applied together with the **Statutes of the Court of Arbitration for Sport**.

2. CAS Prior to the Establishment of the International Council of Arbitration for Sport (ICAS) – The Period Leading up to the 1994 Paris Agreement

With the entry into force of the CAS Statutes on **30 June 1984**, secondary regulations were issued to define the **composition, mandate, and procedural framework** of the tribunal⁵. These rules included the following:

a) Composition of CAS

- CAS consisted of **60 members**, appointed equally by four groups: the IOC, the International Federations (IFs), the National Olympic Committees (NOCs), and the President of the IOC (15 members each).
- The IOC President's 15 appointees were required to come from outside the other three groups, ensuring a degree of independence.
- All **operational costs** of CAS were funded by the IOC. As a rule, proceedings were free of charge except in **financial disputes** where parties could be required to share part of the costs.
- Amendments to the CAS Statutes could only be made by the **IOC Session**, upon the recommendation of the **IOC Executive Board**.

b) CAS Arbitration Procedure

- The CAS Statutes and Regulations initially envisaged a **single procedural model** for all disputes, regardless of their nature.
- A claimant would submit a request for arbitration along with an arbitration agreement, after which an **Application Committee** assessed its admissibility. The matter would then be referred to an **arbitral panel** for a final decision.
- The arbitral panel had the authority to summon the parties for a hearing and render a binding decision. Importantly, even if the Application Committee rejected a claim, parties remained **free to continue pursuing** their case.

⁵ The **CAS Statutes of 1984**, together with a series of procedural regulations issued pursuant to these statutes, were subject to minor amendments in **1990**.

- If requested by the parties or if the CAS President deemed the dispute suitable for settlement, a **conciliation process** could be initiated before arbitration began. If conciliation failed, the dispute would proceed to full arbitration.

In addition to this contentious procedure, CAS also provided an **advisory mechanism** open to sports organizations and individuals. Through this process, CAS could issue legal opinions on matters of general importance to the sports industry.

In 1991, CAS published an **arbitration guide** containing model arbitration clauses⁶ for inclusion in the statutes and regulations of sports federations and clubs. One such model clause stipulated:

“Any dispute arising from the present Statutes and Regulations of the Federation that cannot be settled amicably shall be finally resolved, to the exclusion of the ordinary courts, by a tribunal established under the Statutes and Regulations of the Court of Arbitration for Sport. The parties undertake to comply with the decision in good faith and shall in no way hinder its execution.”

Over time, both **national and international sports federations** began incorporating these clauses into their statutes⁷, significantly increasing CAS’s **case load**.

By 1991–1992, CAS was hearing a wide range of cases, including disputes concerning **athlete nationality, employment contracts, broadcasting rights, sponsorship agreements, and licensing issues**. Following the adoption of the model arbitration clause, CAS also began handling a growing number of **doping-related cases**, which ultimately influenced — and, in many ways, necessitated — structural reforms in its institutional framework.

3. The Transformation of CAS into a Neutral and Independent Tribunal – The 1994 Reform

In February 1992, German equestrian athlete **Elmar Gundel** appealed to the **Court of Arbitration for Sport (CAS)** against a disciplinary sanction imposed by the **Fédération Équestre Internationale (FEI)** for allegedly using a prohibited substance in his horse. CAS partially upheld

⁶ This provision paved the way for the subsequent establishment of specific rules (appeal procedures) for the resolution of disputes arising from decisions rendered by sports federations or associations.

⁷ The International Equestrian Federation (FEI) was the first sports organization to adopt this provision. Although not yet formally established, it served as the starting point for many subsequent appeal procedures.

the appeal, reducing the suspension from three months to **one month** and slightly lowering the monetary fine⁸.

Dissatisfied with the CAS ruling, Gundel challenged the decision before the **Swiss Federal Tribunal (SFT)**, arguing that CAS failed to meet the required standards of **impartiality and independence** to qualify as a valid arbitral tribunal. This appeal triggered a broader debate concerning CAS's institutional autonomy and impartiality within the framework of international sports dispute resolution.

In its landmark decision of **15 March 1993**⁹, the SFT recognized CAS as a “**genuine arbitral tribunal**”, affirming that CAS was not an organ of the FEI, did not act under the FEI's instructions, and maintained sufficient **personal independence** by appointing only three arbitrators from its maximum of sixty members for any given dispute¹⁰.

However, the SFT also highlighted significant **institutional links** between CAS and the **International Olympic Committee (IOC)**:

- CAS was almost **entirely funded** by the IOC;
- The IOC retained the **exclusive power** to amend the CAS Statutes;
- The IOC and its President held significant authority in appointing CAS members.

According to the SFT, such structural connections raised concerns regarding CAS's independence **if the IOC were a party to the dispute**. This ruling laid the foundation for far-reaching reforms aimed at **increasing CAS's autonomy** from the IOC, both organizationally and financially.

⁸ CAS 92/63 *G. v. FEI*, *Digest of CAS Awards 1986–1998*, p. 561

⁹ Swiss Federal Tribunal. (1993, March 15). *Elmar Gundel v. Fédération Equestre Internationale (FEI)*, ATF 119 II 271. Jus Mundi. <https://jusmundi.com/en/document/decision/en-g-v-federation-equestre-internationale-fei-judgment-of-the-swiss-federal-tribunal-4p-217-1992-monday-15th-march-1993>.

¹⁰ The “**Gundel v. FEI**” decision represents a milestone in affirming the structural independence of the CAS. This case reinforced both the objectivity of the CAS and its practice of altruistic arbitration.

3.1. The 1994 Reform and the Code of Sports-related Arbitration

The **Gundel decision** led to a major institutional restructuring of CAS, culminating in the adoption of the **Code of Sports-related Arbitration**¹¹ on **22 November 1994**. This comprehensive reform introduced several significant changes:

- The **CAS Statutes and Regulations** were **completely revised**, severing CAS’s financial and administrative dependence on the IOC.
- The **International Council of Arbitration for Sport (ICAS)** was established as a new supervisory body responsible for managing CAS’s **administration, budget, and structural independence**¹².
- A **dual-chamber system** was introduced to clearly distinguish between **ordinary arbitration** (first-instance disputes) and **appeal arbitration** (disputes arising from decisions of sports governing bodies).

These institutional reforms were officially consolidated through the **Paris Agreement**, signed on **22 June 1994** by the Presidents of the **IOC**, the **Association of Summer Olympic International Federations (ASOIF)**, the **Association of International Winter Sports Federations (AIWF)**, and the **Association of National Olympic Committees (ANOC)**. The Preamble of the Agreement¹³ declared:

“In order to facilitate the resolution of disputes in the field of sport, the ‘Court of Arbitration for Sport’ (CAS) has been established. To ensure the absolute independence of CAS and to guarantee the protection of parties’ rights, the undersigned have agreed, by mutual consent, to create an

¹¹ The **CAS Code of Sports-related Arbitration** was first published in **1994** and has since been revised multiple times—in **2003, 2004, 2010, 2016, 2020, and 2023**—to reflect developments in sports law practice, principles of international arbitration law, and, in particular, the need for reforms regarding independence and impartiality. The most recent version is the **2023 edition**. *Code of Sports-related Arbitration, Edition 2023, in force as of 1 January 2023*, available at: <https://www.tas-cas.org/en/arbitration/code-procedural-rules.html> (Accessed: 7 August 2025).

¹² Both **ICAS** and **CAS** are subject to the **CAS Statutes**, and CAS procedures are set out in the **CAS Rules**. Both texts are collectively referred to as the **CAS Code of Sports-related Arbitration (CAS Code)**. Although English, French, and Spanish versions are published, the **French text shall prevail** in the event of any inconsistency between the versions.

¹³ ICAS Agreement, Preamble of the “Agreement concerning the Constitution of the International Council of Arbitration for Sport” (Paris, 22 June 1994), see: <https://arbitrationlaw.com>

independent foundation — the ‘International Council of Arbitration for Sport’ (ICAS). Henceforth, CAS shall operate under the authority of ICAS.”

These reforms significantly enhanced CAS’s **institutional independence**, streamlined its procedures, and optimized the **timeframe for dispute resolution**: ordinary cases were generally resolved within **12 to 18 months**, while appeals had to be adjudicated within **four months** of submission¹⁴.

3.2. Testing CAS’s Independence – Key Jurisprudence

Following these reforms, CAS’s independence and neutrality were first rigorously tested in the **Lazutina & Danilova v. IOC** case. In **2003**, two Russian cross-country skiers, **Larissa Lazutina** and **Olga Danilova**, challenged their disqualification from the **Salt Lake City Winter Olympics** before the SFT. The court conducted an in-depth examination of CAS’s **institutional autonomy** and concluded that **CAS and ICAS operated independently from the IOC**, even in disputes where the IOC was directly involved. As a result, CAS rulings were confirmed to have the status of “**genuine arbitral awards**”, equivalent in enforceability to state court judgments¹⁵.

More recently, the **European Court of Human Rights (ECtHR)** further assessed CAS’s institutional framework in the landmark case **Mutu and Pechstein v. Switzerland**¹⁶. German speed skater **Claudia Pechstein** had been suspended for **two years** by the **International Skating Union (ISU)** following irregularities in her blood test results during the **2009 World Championships**. Under the ISU’s anti-doping regulations, she appealed to CAS, which **upheld the sanction**¹⁷.

¹⁴ See: Shehadeh, Paul-Raphael. “*The Development and Structure of the Court of Arbitration for Sport (CAS)*.” Duane Morris International Arbitration Blog, Lexology, 6 July 2023.

¹⁵ **Swiss Federal Tribunal, Lazutina & Danilova v. IOC, Decision of 27 May 2003 (4P.267/2002 and 4P.268/2002)**. See also Matthieu Reeb (2021), *Digest of CAS Awards 1986–1998*, 2001. In this decision, the Federal Tribunal further emphasized that the widespread recognition of the CAS within the international sports community demonstrates that the CAS fulfills a genuine need.

¹⁶ Application Nos. 40575/10 and 67474/10, European Court of Human Rights, 2 October 2018.

¹⁷ (Shehadeh, 2023)

Pechstein subsequently appealed to the SFT, claiming that CAS lacked independence and impartiality. The SFT, relying on its **2003 precedent**, reaffirmed that CAS constituted a “**true arbitral tribunal**” and dismissed her annulment request (SFT, 27 May 2003, 129 III 445; SFT, 10 February 2010, 4A_612/2009).

Unsuccessful in Switzerland, Pechstein pursued litigation in Germany, seeking **damages** and a declaration of invalidity of her suspension. The **Munich Regional Court**¹⁸ accepted jurisdiction, holding that the CAS arbitration clause in the ISU regulations was **not freely negotiated** due to ISU’s monopolistic position and therefore created a **structural imbalance**. The **Munich Higher Regional Court**¹⁹ went further, ruling that the CAS arbitration clause violated **German competition law** and unlawfully restricted Pechstein’s right of access to national courts.

However, the **German Federal Court of Justice (BGH)**²⁰ overturned these findings, holding that the arbitration agreement was **validly concluded** and that CAS procedures provided sufficient **procedural safeguards** to ensure fairness.

The case eventually reached the **European Court of Human Rights**, which determined that CAS arbitration was, in practice, “**compulsory**”, thus triggering the protections of **Article 6(1) of the European Convention on Human Rights** (right to a fair trial). While the ECtHR acknowledged concerns regarding the **structural imbalance** in CAS arbitrator appointments, it found no evidence of **actual bias** and ultimately upheld CAS’s independence and impartiality.

4. CAS Arbitration After the Paris Agreement – The Contemporary Framework

Since the signing of the **Paris Agreement** in **1994**, all **Olympic International Federations** and numerous **National Olympic Committees** have formally recognized the **jurisdiction of the Court of Arbitration for Sport (CAS)** and incorporated **arbitration clauses** into their statutes, referring disputes to CAS for resolution. Following the **World Conference on Doping in Sport**

¹⁸ Munich Regional Court, Decision of 26 February 2014, Case No. 37 O 28331/12.

¹⁹ Munich Higher Regional Court, Decision of 15 January 2015, Case No. U 1110/14.

²⁰ Federal Court of Germany, Decision of 7 June 2016, Case No. KZR 6/15.

held in **March 2003**, the **Olympic Movement** and a significant number of governments adopted the **World Anti-Doping Code**, which expressly designates CAS as the **ultimate appellate body** for all international doping-related disputes.

Acknowledged as the **highest judicial authority in international sports law**, CAS has become a crucial forum for resolving disputes involving both **individual athletes** and **sports governing bodies** (Mitten & Opie, 2010, p. 288). Today, CAS has transcended its original connection to the **Olympic Movement**, emerging as the **most authoritative and widely utilized international arbitral tribunal** for disputes across **all sports disciplines**.

CAS now plays a pivotal role in the development of the so-called **lex sportiva** — a **transnational body of sports law** derived from CAS jurisprudence — shaping **global sporting norms** and serving as the most **credible and respected forum** within the international sports community.

Following the **structural reforms** that secured its **institutional independence**, CAS resolves disputes — including those related to **doping** — through panels composed of arbitrators selected from its own list²¹. These panels operate in accordance with **specialized procedural rules**, ensuring compliance with CAS's **Arbitration and Mediation Rules** while maintaining the specific needs of sports-related adjudication.

In addition to adjudicating disputes, CAS performs a crucial **harmonizing function**: it promotes **consistency** not only among the procedural rules followed by **national and international sports federations** but also in the **substantive decisions** rendered by these bodies (Erbeyin, 2024, p. 366).

²¹ Nearly **300 arbitrators** from **87 different countries** are members of the CAS. Due to their expertise in arbitration and sports law, these arbitrators are eligible to serve in CAS arbitration proceedings. Approximately **500 cases** are heard by the CAS each year. See: Simone Hofbauer, "History of Arbitration," in *Arbitration in Switzerland: The Practitioner's Guide*, ed. Manuel Arroyo, 2nd edition, Kluwer Law International, 2018, pp. 3–19.

5. CAS Arbitration Proceedings

5.1. Applicable Legal Framework in CAS Arbitration

The primary source of law governing CAS proceedings is the **Code of Sports-Related Arbitration** (“CAS Arbitration Code”). This Code, comprising **70 articles**, is divided into two main parts:

1. **Statutes of the Bodies Working for the Settlement of Sports-Related Disputes** (Articles S1–S26), and
2. **Procedural Rules** (Articles R27–R70).

Since **1999**, the CAS Code has also incorporated a set of **Mediation Rules**, providing parties with a **non-binding, informal mechanism** to negotiate a settlement with the assistance of a CAS mediator.

In addition to the Arbitration Code, CAS operates within a structured legal framework supplemented by several complementary instruments, including:

- **CAS Mediation Rules**
- **Arbitration Rules for the Olympic Games**
- **Standard Arbitration Clauses**
- **Schedule of Arbitration Costs**

Together, these documents establish a **comprehensive and coherent regulatory framework** for CAS proceedings (Erbeyin, 2024, p. 366).

Moreover, the procedural law applicable to CAS arbitrations is primarily derived from the **Swiss Private International Law Act (LDIP)**. Under this statute, its arbitration provisions apply whenever **at least one party to the arbitration agreement is domiciled or habitually resident outside Switzerland**. Given the international nature of most CAS disputes, LDIP provisions are applied in nearly all cases.

CAS also maintains permanent offices in **Sydney** and **New York**, but any awards rendered through these branches are legally deemed to have been issued in **Lausanne, Switzerland**. Consequently, the **seat of arbitration** remains **Switzerland** in all CAS cases, and any actions for annulment of CAS awards — including those originating from Sydney or New York hearings — must be filed before the **Swiss Federal Tribunal** (Dirensa, 2023, p. 683).

While CAS decisions are **final and binding**, appeals are permissible before the **Swiss Federal Supreme Court**²² only on limited **procedural grounds**. These grounds include:

- Improper appointment of arbitrators
- Denial of the right to be heard
- Failure to collect or assess relevant evidence
- Violation of **Swiss public policy** (ordre public)

Substantive review of CAS awards is generally excluded unless there is a direct breach of **public policy principles**²³.

²² Currently, all CAS decisions are subject to review by the **Federal Supreme Court of Switzerland (FSC)**, the highest judicial authority in Switzerland. On average, approximately **6% of CAS decisions** are appealed to the FSC each year.

²³ The **Swiss Federal Supreme Court (FSC)** generally does not accept the grounds for appeal and overturns very few decisions. A recent example concerning public policy is the **2012 decision** in which the FSC annulled a ruling by FIFA and the CAS regarding the Brazilian footballer **Matuzalem**. In 2007, the Brazilian player unilaterally terminated his contract with Shakhtar Donetsk to transfer to the Spanish club Real Zaragoza. As a result of the CAS decision in 2009, he was ordered, together with his new club, to pay compensation amounting to **€11,858,934**. FIFA indicated in August 2010 that the player would be prohibited from playing football if the compensation was not paid on time, a decision that CAS upheld. Following Matuzalem's appeal, the FSC examined the case and held that FIFA and CAS threatening the player with a **lifetime ban** constituted a violation of personal rights and that the protection of such rights falls within the scope of public policy. Consequently, the Court found it unnecessary and excessive to impose a worldwide ban on the player for the unpaid compensation and **annulled the decision**. See: Özkul Law & Consultancy, "National and International Arbitration Bodies in Sports Law," accessed at: <https://www.ozkul.av.tr/haberdetay/spor-hukukunda-ulusal-ve-uluslar-arasi-tahkim-kuruluslari>.

5.2. Languages in CAS Arbitration

According to **Article R29 of the 2023 CAS Arbitration Code**, CAS proceedings — including arbitration and mediation — may be conducted in **three official working languages: English, French, and Spanish**.

Unless the parties agree otherwise, the **President of the Panel** — or, if not yet appointed, the **President of the relevant CAS Division** — selects one of these three languages based on reasonable criteria at the start of the proceedings.

However, CAS also permits the use of **alternative languages** upon agreement between the parties and approval of the Panel. In such cases, the CAS Secretariat assesses the **translation requirements** and allocates the **associated costs** to the parties. This flexibility ensures procedural efficiency while respecting linguistic diversity.

5.3. Procedural Structure under the CAS Arbitration Code

The CAS Code provides for **four distinct procedural tracks**:

1. **Ordinary Arbitration Procedure**
2. **Appeals Arbitration Procedure**
3. **Advisory Opinions Procedure** — a non-contentious process allowing sports organizations to request legal opinions from CAS
4. **Mediation Procedure**

In general, CAS arbitration proceedings consist of **two classical stages**:

- **Written Proceedings:** The exchange of **statements of claim, defences**, and supporting evidence.
- **Oral Hearings:** Parties are typically heard by the appointed Panel at CAS headquarters in **Lausanne**, although remote hearings are increasingly common.

For mediation, the process follows the **agreement between the parties**; where no agreement exists, the **CAS mediator** determines the appropriate procedural framework to facilitate a resolution.

6. Bodies Established under the CAS Code for the Resolution of Arbitration and Mediation Disputes

Under the **CAS Code**, two bodies have been established to resolve sports-related disputes through arbitration and mediation:

- The **International Council of Arbitration for Sport (ICAS)**
- The **Court of Arbitration for Sport (CAS)**

Disputes involving a federation, association, or other sport-related organization may only be submitted to arbitration under this Code to the extent provided in the statutes or regulations of the respective organizations or in a specific agreement. Both ICAS and CAS are headquartered in **Lausanne, Switzerland**.

6.1 International Council of Arbitration for Sport (ICAS)

The **International Council of Arbitration for Sport (ICAS)** is the supreme governing body of CAS. The **President of ICAS** also serves as the President of CAS.

ICAS's primary objectives are to facilitate the resolution of sports-related disputes through arbitration or mediation and to safeguard the independence of CAS and the rights of the parties. Additionally, ICAS is responsible for the administration and financing of CAS²⁴.

ICAS consists of **22 members**, all highly qualified legal professionals with expertise in arbitration and sports law. The selection of members is as follows²⁵:

1. **Six members appointed by International Federations ("IFs")**, five by the Association of Summer Olympic International Federations (ASOIF) and one by the Association of

²⁴ Arbitration Code, Article S2.

²⁵ Arbitration Code, Article S4.

International Olympic Winter Sports Federations (AIOWF), chosen from among or outside their membership;

2. **Four members appointed by the Association of National Olympic Committees (“ANOC”)**, selected from among or outside their membership;
3. **Four members appointed by the International Olympic Committee (“IOC”)**, chosen from among or outside its membership;
4. **Four members appointed to protect the interests of athletes**, designated following appropriate consultation among the fourteen ICAS members listed above;
5. **Four members selected by the eighteen ICAS members mentioned above**, chosen from individuals independent of the bodies that appointed the other ICAS members.

ICAS members are appointed for **four-year terms**, renewable for additional periods. Appointments occur at the end of each four-year cycle.

Upon appointment, ICAS members must sign a declaration committing to perform their duties personally, with **complete impartiality and independence**. This commitment ensures that a member **cannot serve as an arbitrator or party representative in CAS proceedings under any circumstances**.

ICAS performs a range of functions, including but not limited to²⁶:

- Drafting or amending the **Code of Sports-related Arbitration**;
- Selecting the CAS President and three Vice-Presidents in consultation with the IOC, ASOIF, AIOWF, and ANOC;
- Appointing and removing arbitrators and mediators from the CAS lists upon recommendation of the **CAS Membership Commission**;
- Deciding challenges and removal requests regarding arbitrators through the **Appeals Commission**;
- Appointing the Presidents of the **Ordinary Arbitration Division**, the **Anti-Doping Division**, and the **Appeal Arbitration Division**;
- Overseeing CAS financing and financial reporting;

²⁶ Arbitration Code, Article S6.

- Approving the CAS budget and accounts;
- Appointing the CAS **Director General** and, upon recommendation of the President, terminating their appointment;
- Providing **regional or local arbitration facilities**, whether permanent or ad hoc, including alternative hearing centers;
- Establishing a **general legal aid fund** and a **football legal aid fund** to facilitate access to CAS arbitration for parties with insufficient financial resources;
- Taking any measures necessary to protect parties' rights and promote the resolution of sports-related disputes through arbitration and mediation.

These tasks are carried out either directly by ICAS or through the **Executive Board**, composed of the ICAS President, three ICAS Vice-Presidents, the President of the Ordinary Arbitration Division, and the President of the Appeal Arbitration Division.

Amendments to the **Sports Arbitration Rules** may only be adopted by a **full meeting of ICAS**, with a **two-thirds majority of its members**. In other matters, decisions may be made by **simple majority**, provided that at least **half of the ICAS members are present**.

6.2 Court of Arbitration for Sport (CAS)

6.2.1 CAS Organizational Structure and Functions

CAS performs its legally defined functions through a **court office headed by the Secretary General** and a pool of at least **150 arbitrators and mediators**. A major innovation following CAS reform was the establishment of **two divisions**: the **Ordinary Arbitration Division** for first-instance disputes submitted to CAS, and the **Appeal Arbitration Division** for disputes arising from final decisions issued by sports organizations. Each division is presided over by a President.

Pursuant to the **CAS Procedural Rules (Arts. R27 et seq.)**, CAS constitutes Panels tasked with resolving disputes arising in a sports context through arbitration and/or mediation²⁷.

²⁷ Arbitration Code, Article S12.

6.2.1.1 Functions of the Panels

To this end, CAS provides the necessary infrastructure, constitutes the Panels, and supervises the effective conduct of proceedings. The responsibilities of the Panels include, among others:

1. Resolving disputes referred to them through ordinary arbitration;
2. Resolving anti-doping matters either as the first-instance authority or as the sole competent body;
3. Resolving disputes concerning decisions of federations, associations, or other sport organizations via appeal arbitration, where such disputes are provided for in the organizations’ statutes, regulations, or a specific agreement;
4. Resolving disputes referred to them through mediation.

Division Presidents manage the initial arbitration processes before proceedings formally commence and Panels are appointed. Presidents are generally responsible for ruling on requests for **provisional measures or stays** and for overseeing the formation of arbitral Panels. Once appointed, arbitrators assume responsibility for the conduct of the proceedings.

6.2.1.2 Appointment, Duties, and Responsibilities of Arbitrators and Mediators

The CAS Code requires ICAS to appoint individuals who are **legally trained and recognized for competence in sports law**, maintaining a roster of **no fewer than 300 arbitrators and 50 mediators** (S13). In making appointments, ICAS ensures continental representation and diversity of legal cultures²⁸. CAS arbitrators are appointed by ICAS for a **renewable four-year term**.

Arbitrator appointments generally follow a process similar to that of ICAS members. ICAS appoints individuals to the CAS arbitrator list who possess recognized expertise in **sports law and/or international arbitration**, have solid general knowledge of sport, and are proficient in at least one CAS working language. Nominations may be submitted by the IOC, IFs, NOCs, and the athlete commissions of these organizations. ICAS may also designate arbitrators with **specialized expertise** for specific types of disputes²⁹. Accordingly, multiple specialized rosters exist: a general

²⁸Arbitration Code, Article S16.

²⁹ Arbitration Code, Article S14.

roster, a roster for football-related disputes, and a roster for disputes handled by the Anti-Doping Division (ADD).

Arbitrators are not tied to a specific CAS division and may serve on Panels in both first-instance and appeal proceedings. However, arbitrators listed for the **CAS Anti-Doping Division** may not act as arbitrators in procedures conducted by the **CAS Appeal Arbitration Division**³⁰.

CAS arbitrators, even if nominated by sports organizations, are required to perform their duties with **complete impartiality and independence**, and must sign a declaration to that effect upon appointment. Panels may consist of a **single arbitrator or a three-member tribunal**. All arbitrators are subject to **confidentiality obligations**, and the parties may not disclose any information regarding the dispute or the proceedings³¹.

ICAS may **temporarily or permanently remove** an arbitrator or mediator from the CAS roster if they violate any rules or engage in conduct affecting the reputation of ICAS and/or CAS.

The practice of “**double-hatting**” (acting as both arbitrator and counsel, or as an expert in different cases) is prohibited under the CAS Code. This prohibition is notable given that double-hatting persists in other areas of international arbitration and continues to provoke discussion³².

ICAS appoints individuals to the **CAS mediator roster** who have experience in mediation and possess solid general knowledge of sport.

6.2.2 CAS Divisions and Their Functions

CAS is composed of three divisions:

- **Ordinary Arbitration Division**
- **Anti-Doping Division**
- **Appeal Arbitration Division**

³⁰ Arbitration Code, Article S18.

³¹ Arbitration Code, Article S19.

³² Shehadeh, 2023

1. The **Ordinary Arbitration Division** consists of Panels responsible for resolving disputes subject to the ordinary procedure. Through its President or Deputy, it also performs all other functions related to the effective conduct of proceedings in accordance with the **Procedural Rules (Arts. R27 et seq.)**.
2. The **Anti-Doping Division** consists of Panels tasked with resolving disputes related to anti-doping matters either as the first-instance authority or the sole competent body. Through its President or Deputy, it carries out all other duties concerning the **expeditious and efficient conduct of proceedings** under the Procedural Rules (Arts. A1 et seq.).
3. The **Appeal Arbitration Division** consists of Panels responsible for resolving disputes concerning the decisions of federations, associations, or other sport-related organizations to the extent provided in their statutes, regulations, or specific agreements. Through its President or Deputy, it performs all other functions related to the effective conduct of proceedings under the Procedural Rules (Arts. R27 et seq.).

Arbitration proceedings submitted to CAS are **assigned to the relevant Division by the Court Office**. Such assignment **cannot be challenged by the parties nor invoked as a procedural defect**. Should circumstances change during the proceedings, the Court Office may reassign the arbitration to another Division in consultation with the Panel. This reassignment **does not affect the constitution of the Panel or the validity of any proceedings, decisions, or orders issued prior to reassignment**³³.

CAS mediation operates under the **CAS Mediation Rules**.

6.2.3 Establishment of Temporary and Ad Hoc Divisions for Sports Organizations

The **International Council of Arbitration for Sport (ICAS)** established **two permanent decentralized offices** in 1996—one in Sydney, Australia, and the other in Denver, United States—to ensure the **rapid, efficient, and low-cost resolution of sports disputes**. Later that year, ICAS established a **special CAS unit for the 1996 Atlanta Olympic Games**, empowered to resolve any disputes arising during the Games **within 24 hours**.

³³ Arbitration Code, Article S20.

This special unit consisted of **two co-presidents and twelve arbitrators** stationed in the host city during the Olympic Games. A **simple, flexible, and cost-free procedure** was adopted to ensure easy access for all Olympic participants, including athletes, officials, coaches, and national and international federations.

Since 1996, **similar temporary divisions have been established for each edition of the Summer and Winter Olympic Games**. This practice was subsequently extended to the **Commonwealth Games from 1998**, the **UEFA European Football Championship from 2000**, and the **FIFA World Cup from 2006**. For example, UEFA requested the establishment of a special division for the **2000 European Football Championship in Belgium and the Netherlands**, a practice that was repeated for the **2004 Portugal** and **2008 Switzerland/Austria** tournaments³⁴.

The establishment of temporary and ad hoc divisions has **significantly enhanced CAS's visibility** in the international sports community and media, marking a **critical milestone** in the institution's history.

6.2.4 Types of Disputes Submitted to CAS

Generally, a dispute may only be submitted to CAS if the parties have a **prior arbitration agreement designating CAS** as the forum. **Article R27 of the CAS Code** establishes that CAS has jurisdiction only over **sports-related disputes**.

In principle, **two types of disputes** may be submitted to CAS: **commercial disputes** and **disciplinary disputes**.

- **Commercial disputes** primarily involve issues related to **contract performance**, including sponsorship agreements, sale of broadcasting rights, organization of sporting events, player transfers, and relationships between players or coaches and clubs and/or agents (employment and agency contracts). Disputes concerning **legal liability**, such as

³⁴ For information on **decentralized CAS offices and specialized divisions**, see: <https://www.tas-cas.org/en/general-information/history-of-the-cas.html>

accidents occurring during sports events, also fall into this category. These disputes are handled by CAS as the **sole competent forum**.

- **Disciplinary disputes** represent the second category of cases submitted to CAS, with a large portion concerning **anti-doping matters**. Beyond doping, CAS also resolves various disciplinary matters, including **on-field violence** and **misconduct toward referees**. These disciplinary disputes are generally first handled by the competent sports authorities and subsequently brought to CAS on **appeal**, with CAS acting as the **court of last instance**.

6.2.5 CAS Arbitration Proceedings and Rules

Under **Article R27 of the CAS Code of Sports-Related Arbitration**, all disputes directly or indirectly related to sport may be submitted to CAS.

In order to initiate CAS arbitration, there must exist an **arbitration agreement between the parties**. Such an agreement may be concluded **separately from the main contract**, as a **clause within the principal contract**, or **pursuant to provisions of a sports organization’s regulations**. Parties may agree to submit disputes to CAS **before they arise** or, alternatively, may conclude an arbitration agreement **after the dispute has occurred** (Direnisa, 2023, p.684).

The CAS Code stipulates that **Articles R38–R46** govern the **ordinary arbitration procedure**, while **Articles R47–R59** regulate the **appeal arbitration procedure**.

- **Disputes arising from contractual or tortious obligations** are generally resolved under the **ordinary arbitration or mediation procedures**.
- **Disputes arising from decisions of sports organizations’ internal bodies** are resolved under the **appeal arbitration procedure**.

6.2.5.1 CAS Ordinary Arbitration Procedure and Rules

i. Eligible Applicants and Representation

Any natural or legal person with legal capacity may submit a dispute to CAS for resolution. Eligible parties include **athletes, footballers, sports clubs, federations, organizers of sporting events, sponsors, or broadcasters**.

Parties may be represented by **chosen representatives**, including lawyers or other authorized persons. Such representation must be **documented in writing and submitted to the CAS Court Office**³⁵.

ii. Ordinary Arbitration Procedure

The CAS ordinary arbitration procedure is conducted pursuant to the **2023 revised CAS Code of Sports-Related Arbitration**. It is designed to ensure a **fair and expeditious resolution** within the time limits set by the procedural rules. The process generally involves the following stages:

1. **Filing and Registration:** Claim and defense submissions are registered by the CAS Secretariat.
2. **Jurisdiction Determination:** CAS assesses whether it has **arbitral jurisdiction** over the dispute.
3. **Formation of the Panel:** A single arbitrator or a three-member panel is appointed.
4. **Submission of Claims and Defenses:** Parties submit written statements and supporting evidence.
5. **Hearing:** If deemed necessary, an oral hearing is conducted.
6. **Issuance of the Award:** The panel issues a binding **arbitral award** after legal and factual assessment.

Arbitration Request and Statement of Claim: According to **Article R38**, the following must be submitted to the CAS Court Office:

- Name and full address of the respondent(s)
- Brief description of facts, legal basis, and subject matter of the dispute
- Relief sought
- Copy of the arbitration agreement or other relevant documents evidencing agreement to arbitrate

³⁵ The **request for arbitration**, the **statement of appeal**, and all other written submissions—whether in printed or digital form—must be **delivered by the parties** to the CAS Court Office by courier, in as many copies as there are opposing parties and arbitrators, plus an **additional copy for the CAS**. Otherwise, the CAS shall not proceed with the case.

- Information on the number of arbitrators and their selection; if three arbitrators are stipulated, confirmation that the arbitrator chosen by the claimant is on the CAS list

The **Court Office fee** under **Article R64.1** must also be paid upon submission. If deficiencies exist, the Court Office may grant a **single short extension**; failure to correct deficiencies results in rejection of the application.

Service of Statement of Claim and Answer: The CAS Court Office initiates proceedings by **serving the request on the respondent**, seeking parties’ views on applicable law, and providing deadlines for submission of **answer and appointment of arbitrators**. The answer must include:

- Summary of defenses
- Jurisdictional objections
- Counterclaims

Formation of the Panel: Panels may consist of **one or three arbitrators**. If the arbitration agreement does not specify the number, the Division President decides, considering case circumstances. In cases of non-payment by the claimant, a **single arbitrator** may be appointed.

Appointment of Arbitrators:

- If a single arbitrator is to be appointed, parties may agree within **15 days**; otherwise, the Division President appoints.
- For three arbitrators, the claimant appoints one; failure to do so results in withdrawal. The respondent must appoint within the period; otherwise, the Division President appoints.
- Two arbitrators select a presiding arbitrator within the period set by the Court Office; disagreement is resolved by the Division President.

Procedure Before the Panel: Proceedings generally involve **written submissions**, and, if necessary, an **oral hearing**. Parties must submit all evidence in writing, including witnesses and experts. Witness statements are submitted with written submissions unless the Panel Chair decides otherwise. New claims require consent of the opposing party.

Counterclaims and Jurisdictional Objections: The Court Office grants the claimant time to respond to counterclaims or jurisdictional objections.

Hearing: If a hearing is held, the Panel Chair sets procedural directions and the date. Usually, a **single hearing** is held, where parties, witnesses, and experts are heard. Oral submissions must be concise and consistent with written statements. Hearings are **non-public unless parties agree otherwise**, and may be recorded.

Expedited Procedure: With the consent of the parties, the Division President or the Panel may apply expedited procedures and issue appropriate directions therefor³⁶.

Applicable Law on the Merits: The Panel applies the law chosen by the parties; failing that, **Swiss law** is applied. Parties may authorize the Panel to decide **ex aequo et bono** (according to fairness and equity).

6.2.5.2 CAS Appeal Arbitration Procedure and Rules

Articles R47 to R59 of the CAS Code of Sports-related Arbitration contain specific provisions governing appeal proceedings. These provisions cover the procedures and principles for appealing decisions rendered by federations, sports-related organizations, or pursuant to specific arbitration agreements between the parties before the CAS. Below, the appeal arbitration process is systematically explained in light of the relevant articles.

Conditions for Appeal: To file an appeal with the CAS, certain conditions must be met. First, the right to appeal against a decision of a federation, association, or other sports-related organization must be explicitly provided for in the statutes or regulations of the relevant organization. Alternatively, the existence of a specific arbitration agreement between the parties is sufficient. Moreover, the appellant is required to have exhausted all domestic remedies provided under the statutes or regulations of the relevant organization.

In addition, an appeal may also be filed against a decision issued by the CAS acting as a court of first instance, **only if** an appeal is expressly provided for in the applicable regulations. These

³⁶ Arbitration Code, Article R44.2.

conditions underscore the exceptional nature of the right to appeal and demonstrate that it can be exercised solely in legally authorized circumstances³⁷.

Contents of the Statement of Appeal : An appeal is initiated by submitting a **statement of appeal** to the CAS. The statement must include: the full names and addresses of the respondent(s); a copy of the decision being appealed; the relief sought; the arbitrator selected by the appellant from the CAS arbitrators list (or a request for a sole arbitrator); a request for the stay of enforcement of the decision, if applicable, together with its grounds; and the legal basis giving rise to the right of appeal (statutes, regulations, or contract). In addition, the filing fee specified in **Articles R64.1 or R65.2** must be paid together with the statement of appeal. This provision aims to ensure that submissions are complete and compliant with both procedural and substantive requirements³⁸.

Time Limit for Appeal:

- Default period: **21 days** from notification of the decision, unless otherwise stipulated.
- If the time limit is exceeded, the Division President will not initiate proceedings and will notify the applicant³⁹.

Number of Arbitrators: Pursuant to **Article R50** of the CAS Code of Sports-related Arbitration, if the parties have not agreed on a sole arbitrator, the **number of arbitrators** shall be determined by the Division President. Taking into account the nature of the case and the respondent’s prepayment of costs, the Division President may decide on a **panel composed of either a sole arbitrator or three arbitrators**. Failure by the parties to appoint an arbitrator within the prescribed time may result in the **appeal being deemed withdrawn**.

Appeal Brief: The appellant shall submit an **appeal brief** within ten days from the expiry of the appeal period, containing the facts, legal grounds, and all evidence. In addition, the appellant must

³⁷ Arbitration Code, Article R47.

³⁸ If the above requirements are not fulfilled at the time the statement of appeal is submitted, the CAS Court Office may grant the appellant a **single short period** to complete the submission; if the statement is not completed within this period, the CAS Court Office **shall not proceed** with the case. **See:** CAS Code of Sports-related Arbitration, Article R48.

³⁹ Arbitration Code, Article R47.

provide a list of witnesses and experts along with brief summaries of their statements. Failure to submit the brief within the prescribed time shall result in the **dismissal of the appeal**. This provision ensures that the parties clarify their claims and defenses from the outset and enables the arbitral panel to manage the case effectively⁴⁰.

Initiation of Proceedings by CAS : When the conditions for filing are met, the CAS **initiates the arbitration proceedings**. The CAS Court Office transmits the statement of appeal to the respondent and begins the process of constituting the arbitral panel. Where necessary, decisions regarding requests for a stay of enforcement or provisional measures are issued immediately⁴¹.

Response and CAS Jurisdiction: Within **twenty days** from notification of the grounds of appeal, the respondent must submit a response to the CAS Court Office containing the following:

- Statement of defense;
- Objection to jurisdiction;
- References to supporting documents or other evidence;
- Names of proposed witnesses and brief summaries of their expected statements; witness statements, if available, shall be submitted together with the response unless the Panel President decides otherwise;
- Names and areas of expertise of proposed experts, as well as other evidence methods requested.

If the respondent fails to submit a response within the prescribed period, the Panel may **proceed with the arbitration and issue a decision**.

The Panel determines its **own jurisdiction**. Even if another proceeding is pending before a state court or arbitration tribunal between the same parties on the same matter, the procedure will not be suspended without substantial reasons.

⁴⁰ Arbitration Code, Article R51.

⁴¹ Arbitration Code, Article R52.

When a jurisdictional objection is raised, the CAS Court Office, or the Panel if already constituted, may request **written submissions** from the parties. The Panel may rule on jurisdiction in a **preliminary decision** or in the **final award**.

Scope of Review and Hearings : The Panel is fully competent to review both factual and legal issues. It may **annul, modify, or refer the case back** to the previous authority. Hearings may be held based on the parties’ statements and evidence; in some cases, a decision may be rendered **without a hearing**. In disciplinary cases, a hearing may be **public** at the request of a party, subject to certain limitations⁴².

Applicable Law on the Merits: The Panel primarily applies the **relevant regulations governing the dispute**; if this is not possible, it applies the law chosen by the parties, or, in the absence of such choice, the law of the country in which the deciding body is established, or other rules deemed appropriate by the Panel. This provision aims to ensure **legal certainty and predictability**⁴³.

6.2.6 Types of Decisions in CAS Arbitration

The **decision-making authority of CAS** is shaped within the framework of **Swiss law** and the **CAS Code of Sports-Related Arbitration**. CAS may issue various types of decisions in disputes submitted to it, depending on the **purpose of the arbitration** and the **nature of the dispute**.

6.2.6.1 Merits Awards

Merits awards are **final, binding decisions** that resolve the substantive aspects of a dispute. In appeals, CAS may issue the following types of merits awards:

- **New Decision on Appeal**: CAS may completely annul the challenged decision and substitute it with its own ruling.

Example: Full annulment of an athlete’s doping sanction or modification of the sanction period.

⁴² Arbitration Code, Article R57.

⁴³ Arbitration Code, Article R58.

- **Partial Uphold / Partial Set-Aside:** CAS may uphold parts of a decision while modifying others.

Example: Reducing a sanction period while confirming the existence of a violation.

- **Annul and Remand:** CAS may return the case to the previous authority (federation, disciplinary panel, etc.) for reconsideration and a new decision.

6.2.6.2 Procedural Awards

Procedural awards are issued **without resolving the merits** and primarily **regulate or terminate the proceedings**:

- **Jurisdictional Decision:** CAS may determine that it **lacks jurisdiction** over a dispute.
- **Dismissal of the Case:** CAS may dismiss a case due to **time bar, procedural deficiencies, or failure to exhaust internal remedies**.
- **Stay or Termination of Proceedings:** Decisions may be issued in the event of **settlement, withdrawal, or referral to another arbitral forum**.

6.2.6.3 Interlocutory / Interim Decisions

Interlocutory decisions are **temporary rulings issued during proceedings** prior to the final resolution of the dispute:

- **Provisional Measures:** Decisions regarding an athlete's eligibility to compete during the proceedings.
- **Stay of Execution:** Suspension of the enforcement of a prior decision until the conclusion of the proceedings.
- **Evidence and Procedural Decisions:** Rulings regarding witness summons, expert appointments, or admission of new evidence.

6.2.6.4 Consent Awards

If the parties reach a settlement during arbitration, CAS may **incorporate the agreement into an award**, making it **binding**. The award reflects the **terms agreed by the parties**.

6.2.6.5 Correction / Interpretation

Pursuant to **Article R63**, parties may request **correction or interpretation** of an award in the event of **typographical, arithmetic errors, or ambiguities**. CAS issues an additional decision **rectifying errors or clarifying uncertainties**.

6.2.7 Decision-Making Procedure and Issuance

Decisions in CAS arbitration are usually adopted **by majority**. In the absence of a majority, i.e., when arbitrators cannot reach consensus, the **presiding arbitrator** issues the decision. In single-arbitrator first-instance proceedings, the arbitrator alone decides the dispute⁴⁴.

Decisions are **reasoned in writing** and, unless the parties agree otherwise, **dated and signed**. Before signing, the award is submitted to the **CAS Secretary General** to review any **formal defects or inconsistencies with CAS principles**; the Secretary may advise the panel accordingly. Awards communicated in writing by the CAS Registry are **final and enforceable**⁴⁵.

In appeals, awards must be rendered within **four months from the date of submission of the initial statement of claim**. No specific time limit is prescribed for first-instance awards⁴⁶. Awards are communicated to the parties **within set time frames**, and failure to comply may result in **sanctions against arbitrators**.

The decision rendered at the conclusion of the first-instance proceedings shall not be disclosed to the public under the principle of confidentiality, unless its disclosure is required by the nature of the case or the parties have agreed otherwise. Conversely, the decision rendered in the appeal proceedings may be made public by the CAS, unless the parties have agreed to the contrary⁴⁷. The original decision, a summary thereof, and/or a press release announcing the outcome may be published by CAS; however, if the parties request confidentiality, no such disclosure shall be made.

⁴⁴ Arbitration Code, Article R46.

⁴⁵ Arbitration Code, Article R46.

⁴⁶ Arbitration Code, Article R46, R49.

⁴⁷ Arbitration Code, Article R46, R49.

The award rendered by the CAS is final and binding, except in circumstances where an appeal is permissible under Swiss law within thirty (30) days. If the parties do not have a domicile, habitual residence, or place of business in Switzerland, and if the right to appeal has been expressly waived either in the arbitration agreement or during the proceedings, the award cannot be challenged through an annulment action.

6.2.8 Appeals to the Swiss Federal Tribunal

All arbitration panels seated in Switzerland are **subject to review by the Swiss Federal Tribunal**, including CAS. Pursuant to **Article 190 of Switzerland's Federal Code on Private International Law (1987)**⁴⁸, CAS awards may be challenged **within 30 days on very limited grounds**, such as:

- Lack of jurisdiction
- Violation of the right to be heard
- Failure to decide on a requested claim or deciding on an unrequested matter
- Improper constitution of the arbitral panel
- Decisions contrary to **public policy**

Furthermore, parties **without domicile, habitual residence, or business in Switzerland** may, by prior agreement, exclude the review of CAS awards by the Swiss Federal Tribunal (Bozkurt, 2010, p.185).

6.2.9 Recognition and Enforcement of CAS Awards

In international law, the **recognition and enforcement of arbitral awards** constitutes a cornerstone of state cooperation and legal certainty. In particular, in areas such as **international commercial disputes** and **sports law arbitrations**, it is crucial for parties to ensure the **validity and enforceability of arbitral awards across different jurisdictions** without resorting to

⁴⁸ According to Article 190 of the Swiss Federal Code on Private International Law, dated 18 November 1987, "Arbitral awards rendered as a result of arbitration proceedings shall become final and binding upon notification to the parties. However, an arbitral award may be appealed if: (a) the arbitrator or the arbitral tribunal was constituted in an irregular manner; (b) the arbitral tribunal has wrongly declared itself competent or incompetent; (c) the arbitral tribunal has ruled on matters beyond the claims submitted to it or has failed to rule on one of the claims; (d) the principle of equality between the parties or the parties' right to be heard has been violated; or (e) the arbitral award is incompatible with Swiss public policy. Interim arbitral awards may also be appealed based on the reasons set out in paragraphs (a) and (b) above. The period for filing an appeal begins on the date the award is notified to the parties."

domestic courts. Within this framework, the concepts of **recognition** and **enforcement** represent two distinct mechanisms that produce different legal effects.

Recognition enables a foreign arbitral or judicial award to acquire **conclusive effect and evidentiary weight** within the legal system of another state. Recognition results in **legal consequences without the need for a retrial** in the foreign jurisdiction. For instance, a foreign court order correcting the date of birth or a declaratory award issued by an arbitral tribunal creates **legal effects via recognition**, as it does not have an executory impact.

Enforcement, in contrast, refers to the process by which a foreign court or arbitral award **acquires enforceability** in another jurisdiction. An award that is enforced not only has conclusive and evidentiary effects but also allows the use of **compulsory execution measures**. For example, a monetary or compensation award issued by an arbitral tribunal must be enforced in the debtor’s jurisdiction to be **effectively executed**⁴⁹.

In this context, the **1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards** constitutes the **primary reference point** for the recognition and enforcement of arbitral awards under international law. Ratified by over 170 states, the Convention ensures the **global applicability of arbitral awards**. The Convention imposes the following obligations on member states:

1. Recognize and enforce foreign arbitral awards;
2. Refuse enforcement **only in narrowly defined exceptions**, such as violation of public policy, invalidity of the arbitration agreement, or lack of tribunal competence;
3. Ensure a fair procedure in accordance with the **principle of equality of treatment of parties**.

The role of national courts in enforcing arbitral awards is primarily **procedural**, focusing on compliance with specific international and procedural requirements, rather than reexamining the merits. For example, under **Article 5 of the New York Convention**, courts may review an award

⁴⁹ For a detailed discussion on the concepts of recognition and enforcement and their impact on the effectiveness of foreign arbitral awards within national legal systems, see Born, G. B. (2021). *International Commercial Arbitration* (3rd ed., Vol. II, pp. 2175–2185), Kluwer Law International; and Redfern, A., Hunter, M., Blackaby, N., & Partasides, C. (2015). *Law and Practice of International Commercial Arbitration* (5th ed., pp. 402–412). Oxford University Press.

only with respect to **jurisdiction, procedural fairness, and public policy compliance**; a retrial of the substantive dispute is not permitted.

Accordingly, the adoption of a **pro-arbitration approach by national courts** is crucial for maintaining **legal certainty and investment stability** at the global level.

In the field of sports law, recognition and enforcement yield **faster and more effective outcomes** compared to classical commercial arbitration, due to several factors:

- The **mandatory CAS arbitration clauses** included in contracts between athletes, clubs, FIFA, UEFA, and national federations;
- Sanctions against clubs that fail to comply with CAS awards, such as **transfer bans or point deductions** imposed by FIFA or UEFA;
- The **practical enforceability of CAS awards independent of national enforcement procedures**.

Consequently, the **New York Convention (1958)** serves as the **primary reference** for the application of CAS awards within national legal systems. Recognition and enforcement of CAS awards operate effectively under both the Convention and **international sports law mechanisms**.

However, issues such as **public policy, the right to a fair trial, and mandatory arbitration clauses** occasionally provoke debate in domestic legal systems. In this regard, the ruling of the **Court of Justice of the European Union (CJEU) Grand Chamber in Seraing vs. FIFA** has **significantly challenged the automatic recognition and enforcement** of CAS awards. The CJEU emphasized that FIFA's mandatory arbitration clause could **restrict the fair trial rights of clubs and players**, indicating that in certain instances, CAS awards may **not be automatically recognized or enforced** by member states.

As a result, a **complex and fragile balance** has emerged between **international sports arbitration practices** and the **review powers of national courts**, raising questions regarding the binding nature of CAS awards, particularly within EU member states. The following section will examine in detail the **legal background of the CJEU Grand Chamber's Seraing vs. FIFA decision** and its **impact on the recognition and enforcement of CAS awards**.

II. THE BINDING NATURE AND JUDICIAL REVIEW OF CAS AWARDS UNDER EUROPEAN UNION (EU) LAW

Under European Union law, the preliminary ruling procedure, established by **Article 267 of the Treaty on the Functioning of the European Union (TFEU)**, allows national courts to obtain binding interpretations from the **Court of Justice of the European Union (CJEU)**⁵⁰ regarding the interpretation or validity of EU law. In the field of sports law, this mechanism has become increasingly significant, particularly in examining the decisions of sports federations under EU competition law and fundamental rights frameworks (Erkan, 2009, p. 22).

On **1 August 2025**, in the **Seraing case**, the CJEU ruled that CAS awards could be subjected to in-depth review by national courts within the scope of EU law compliance. The Court emphasized that effective judicial protection must be ensured for athletes, clubs, and other stakeholders involved in economic activities connected to sports.

In response to a preliminary ruling request by the **Belgian Court of Cassation (Cour de Cassation)**, the CJEU examined the prevailing practice that effectively exempted CAS decisions from EU judicial scrutiny. The Court critically assessed the longstanding assumption that CAS arbitral awards are final and immune from review by national courts, thereby significantly challenging this presumption.

The **Seraing judgment** undoubtedly marks the beginning of a new era in CAS arbitration proceedings. To evaluate this development, the following sections outline the role and authority of the CJEU, the preliminary ruling procedure, and the implications of the Seraing decision once its binding nature has been clarified.

⁵⁰The Court is located in Luxembourg. It consists of one judge from each Member State and hears cases in panels of three, five, or fifteen judges. For detailed information on the composition, structure, and functions of the Court, see: Erkan, F. (2009), pp. 20–22.

1. The Court of Justice of the European Union (CJEU)

The **CJEU** represents the highest judicial authority on EU law. Pursuant to **Article 263 TFEU**, it is tasked with interpreting EU law and ensuring its uniform application across all Member States (Erkan, 2009, p.22).

The position of the CJEU is analogous to that of a court of appeal; however, it also functions in a manner akin to a constitutional court. The Court acts as the guarantor of the **Single European Act, the Treaty on European Union, and the Treaty of Rome as amended by subsequent treaties**. Given that these treaties constitute the fundamental structure of the European Community, they are considered constitutional documents. In this capacity, the Court interprets both EU secondary legislation and national legislation of Member States for compliance, exercising powers comparable to those of a constitutional court. Simultaneously, the CJEU operates as a court of appeal for EU law, ensuring the uniform interpretation and direct applicability of national laws enacted in accordance with EU directives. In this regard, the Court's role resembles that of an appellate court reviewing decisions of national courts⁵¹ (Vanistendael, 1996, p.116).

2. Procedure for Referring Disputes to the CJEU

A substantial majority of cases brought before the CJEU originate from national courts of EU Member States seeking a **preliminary ruling** on questions concerning the interpretation of Community law, pursuant to **Article 267 TFEU**. A smaller number of cases involve actions brought by the European Commission against a Member State for alleged violations of Community law under **Article 258 TFEU**.

Disputes generally pertain to one or more of the **fundamental freedoms guaranteed under the Treaty**, including: the free movement of persons, goods, capital, and services, as well as the freedom to choose a place of establishment for economic activities.

⁵¹ It is not possible to appeal national court decisions before the Court of Justice of the European Union (CJEU).

3. Preliminary Ruling Requests to the CJEU

When a case is heard before a national court of an EU Member State and requires a ruling on the interpretation or validity of an EU legal measure, **Article 267 TFEU** mandates that the court may, or in certain circumstances must, request a preliminary ruling from the **Court of Justice of the European Union (CJEU)** before delivering its judgment. In its preliminary ruling, the CJEU determines the interpretation or validity of the relevant legislation.

The practical effects of the preliminary ruling procedure on the development of EU law are significant, and in many instances, the preliminary ruling exerts a decisive influence on the outcome of the main proceedings. This procedure has played an undisputedly important role not only in advancing European integration generally but also in harmonizing civil law, which is particularly affected by EU regulations (Oberfeld, Ripken & Rempel, 2022, p.1).

3.1. Courts Entitled to Request a Preliminary Ruling

Under **Article 267 TFEU**, only a “court or tribunal of a Member State” may submit a request for a preliminary ruling to the CJEU⁵². National courts within ordinary judicial systems are considered courts of a Member State for the purposes of Article 267, irrespective of whether the dispute pertains to private, criminal, or administrative law⁵³.

The CJEU has accepted requests from national courts located outside the territory of a Member State, provided that the Treaties are applied fully or partially. Although the precise geographical boundaries are not strictly defined, the CJEU appears to prioritize ensuring the uniform application of EU law. This indicates that Article 267 should apply to national courts wherever the Treaties, in whole or in part, are applied, regardless of the court’s physical location⁵⁴.

⁵² Case law of the Court of Justice of the European Union (CJEU) provides detailed guidance on when a body qualifies as ‘a court or tribunal’ and when such a body qualifies as ‘a court or tribunal of a Member State’.

⁵³ By contrast, an international court does not qualify as ‘a court or tribunal of a Member State’ and, therefore, is precluded from making a reference, regardless of whether it is located within a Member State.

⁵⁴ For rules on preliminary rulings, see: Morten (2019), ‘Preliminary Ruling: European Court of Justice (ECJ).

3.2. Matters Subject to Preliminary Rulings

The CJEU has jurisdiction to issue preliminary rulings on the following matters:

1. Interpretation of the Treaties:

As a general rule, Article 267 TFEU applies to all EU law measures within the scope of the **Treaty on European Union (TEU)** and the **TFEU**⁵⁵. This term also encompasses Treaty annexes and protocols, as they are integral parts of EU law. Similarly, the **Charter of Fundamental Rights of the European Union** falls within this scope, allowing national courts to request preliminary rulings on its interpretation⁵⁶.

2. Validity and Interpretation of Acts of EU Institutions, Bodies, Offices, or Agencies:

The EU institutions are listed in **Article 15 TEU**, whereas there is no formal definition of “bodies, offices, or agencies.” The term is generally understood to cover virtually all EU entities empowered to adopt legal measures. Whenever such a question arises before any national court or tribunal of a Member State, the court may request a preliminary ruling if it considers that a decision on the question is necessary to render its judgment.

International law that binds Member States outside the framework of EU law does not fall within the CJEU’s jurisdiction under Article 267 TFEU⁵⁷.

3.3. Obligation of National Courts to Submit Preliminary Rulings

Article 267(2) TFEU provides that national courts may, in principle, decide at their discretion whether to submit a request concerning the issues listed in Article 267(1). However, courts of last instance in Member States are obliged to make a preliminary ruling request. **Article 267(3) TFEU**

⁵⁵ The term “**Treaties**” refers not only to these two treaties in their original form but also to any subsequent amendments and the various accession agreements.

⁵⁶ Agreements between the EU and third countries are considered acts of the EU institutions under **Article 267(1)(b) TFEU**. Accordingly, the CJEU may issue **preliminary rulings** on their interpretation. In line with this, the CJEU may, in a preliminary ruling, annul an EU legal act implementing such an agreement with a third country. In such a case, the international agreement would not be applied within the EU.

⁵⁷ *Boncea v. Romania, Budan v. Romania*, Preliminary Ruling, Case C-483/11, ECLI:EU:C:2011:832, 14 December 2011, Court of Justice of the European Union (CJEU); Sixth Chamber.

stipulates that a national court whose decisions are not subject to further appeal must refer a question if it arises concerning the interpretation or validity of EU law.

Failure to submit a preliminary ruling request not only constitutes a breach of EU law but may also amount to a violation of **Article 6(1) of the European Convention on Human Rights**, if a court of last instance arbitrarily refuses to request a ruling upon the request of one or all parties.

3.4. Exceptions to the Obligation to Submit Preliminary Rulings

The primary objective of Article 267 TFEU is to ensure the uniform and correct application of EU law by national courts. However, certain exceptions exist in which a court of last instance is not obliged to make a reference.

In 1982, the CJEU established the well-known “**CILFIT doctrine**”, which allows for specific exceptions to this obligation, notably the **acte clair** and **acte éclairé** doctrines⁵⁸.

- **Acte éclairé:** Even if a preliminary ruling is formally addressed solely to the referring national court, such a ruling authoritatively establishes the correct interpretation of EU law. Consequently, if another national court encounters a similar question, it may rely on the CJEU’s prior answer without making a reference. Complete identity of the questions is not required; it suffices that the CJEU has authoritatively determined the correct interpretation. The General Court of the EU may also provide precedent for assessing whether an acte éclairé situation exists⁵⁹.
- **Acte clair:** The CJEU has held that the correct application of EU law may be sufficiently clear to leave no reasonable doubt as to the resolution of the question. In such “acte clair” situations, a court of last instance is not required to refer the question⁶⁰.

⁵⁸ On the other hand, a national court of last instance is **not obliged to refer a question on the interpretation of EU law to the CJEU** if the preliminary ruling would have no bearing on the outcome of the main proceedings. Furthermore, if a national court of last instance decides the main case **without applying EU law**, it is not required to make a preliminary reference.

⁵⁹ For further details, see: Morten (2009), para. 68.

⁶⁰ It has imposed strict conditions for the application of the **acte clair** doctrine. The national court must not only be convinced that EU law has been correctly interpreted but also satisfied that “the matter is equally clear to the courts of other Member States and to the Court of Justice.” Moreover, since EU legislation is drafted in multiple official languages, the interpretation of an EU law provision often requires a **comparison of the different language versions**.

3.5. Types of Decisions Issued by the CJEU in Response to Preliminary Rulings

Pursuant to **Article 99 of the CJEU Rules of Procedure**, where a national court submits a clear question, the CJEU provides a reasoned response, which may include:

- **Interpretation of EU Law:**

The national court asks how a specific provision of EU law should be understood. The CJEU clarifies the meaning, scope, and application of the relevant provision or rule.

- **Validity of EU Legal Acts:**

If a national court doubts the validity of an EU regulation, directive, or other secondary legislation, it may ask the CJEU to determine whether it is valid. The Court assesses whether the measure complies with the Treaties and fundamental rights.

The CJEU does not act as an appellate court regarding the facts of the case or the interpretation and application of national law before the referring court. Consequently, the Court does not rule on the concrete application of EU law to the facts of the main proceedings. Although preliminary rulings are usually issued in the form of a judgment, they are addressed solely to the referring court and are binding on that court; they do not directly apply to the parties of the main proceedings. The preliminary ruling procedure thus reflects the interaction and division of responsibilities between national courts of the Member States and the CJEU⁶¹.

3.6. Binding Nature and Effect of CJEU Preliminary Rulings

A preliminary ruling issued by the **Court of Justice of the European Union (CJEU)** is binding not only on the referring national court or appellate court but also on all courts of the Member States. National courts are obliged to adjudicate the case in accordance with the CJEU's interpretation. Should a national court act in a manner inconsistent with the preliminary ruling, it would constitute a breach of the relevant EU provision.

The interpretation provided by the CJEU in a preliminary ruling has **ex tunc** effect, meaning it applies retroactively to legal relationships established prior to the ruling. As a result, a preliminary ruling may call into question legal relationships formed in good faith. Accordingly, in exceptional

⁶¹ See: Morten (2009), para. 2.

circumstances, the CJEU may limit the temporal effects of a preliminary ruling for persons or entities not directly involved in the main proceedings, balancing this against the general principle of legal certainty inherent in the EU legal order⁶².

4. CAS Decisions and the RFC Seraing Dispute in the Context of EU Law

4.1. Parties to the Seraing Case and the Request for a Preliminary Ruling

The request for a preliminary ruling relates to the interpretation of **Article 47 of the Charter of Fundamental Rights of the European Union** (**‘Charter’**)⁶³ in conjunction with **Articles 19(1)**⁶⁴ and **267 TFEU**.

The application was made in the context of a dispute between **Royal Football Club Seraing SA** (**‘RFC Seraing’**) and the **Fédération Internationale de Football Association (FIFA)**, the **Union of European Football Associations (UEFA)**, and the **Royal Belgian Football Association (URBSFA)**. The case concerns claims by RFC Seraing for annulment, interim measures, and compensation arising from the application of rules imposed by these three bodies, which the club alleged to be invalid under EU law.

4.2. Origin and Background of the Dispute

RFC Seraing is a football club established in Belgium as a public limited company affiliated with URBSFA. On **30 January 2015**, RFC Seraing signed its first contract with **Doyen Sports Investment Ltd. (‘Doyen’)**, a Malta-based entity primarily engaged in providing financial assistance to football clubs in Europe. The contract aimed to provide a framework for future financing agreements concerning players and to transfer part of RFC Seraing’s “economic rights” over three specific players to Doyen. These economic rights reflect the financial value of the players and are linked to the club’s federative rights, such as registration or match participation

⁶² For these limitation conditions, see: Morten (2009), paras. 81–83.

⁶³ **Article 47 of the Charter of Fundamental Rights of the European Union** is entitled “Right to an effective remedy and to a fair trial.”

⁶⁴ The second paragraph of **Article 19(1) TEU** provides: “Member States shall provide remedies sufficient to ensure effective judicial protection in the fields covered by Union law.”

rights. Exercising these rights allows the club to receive compensation in cases of player loans, transfers, image rights usage, or contractual breaches.

Under the first contract, valid until **1 July 2018**, Doyen acquired **30% of the economic rights** over the three players in exchange for **EUR 300,000**, while RFC Seraing undertook not to transfer the remaining rights to any third party independently.

On **7 July 2015**, RFC Seraing and Doyen entered into a second contract (together with the first, the “contracts at issue in the main proceedings”), transferring **25% of the economic rights** over a fourth player to Doyen for **EUR 50,000**.

4.3. Disciplinary and Arbitration Proceedings in Switzerland

On **2 July 2015**, FIFA, with URBSFA’s support, initiated disciplinary proceedings against RFC Seraing, suspecting violations of **Articles 18bis (Third-Party Influence on Clubs) and 18ter (Prohibition of Third-Party Ownership of Players’ Economic Rights)** of the **FIFA Regulations on the Status and Transfer of Players (RSTP)**.

On **4 September 2015**, the FIFA Disciplinary Committee found RFC Seraing in breach of Articles 18bis and 18ter and imposed a player registration ban for four consecutive registration periods and a fine of **CHF 150,000**, payable within 30 days.

RFC Seraing appealed to the **FIFA Appeal Committee** on **30 November 2015** and requested a suspension of execution on **3 December 2015**. The committee president granted the suspension on **4 December 2015**, but on **7 January 2016**, the Appeal Committee rejected RFC Seraing’s appeal against the Disciplinary Committee decision.

On **9 March 2016**, RFC Seraing filed a request with the **Court of Arbitration for Sport (CAS)** for annulment of the FIFA Appeal Committee decision and requested a suspension of execution on **17 March 2016**, pursuant to **Article 50 of the FIFA Statutes**. CAS granted the request on **12 April 2016**.

RFC Seraing argued that the absolute prohibition in Articles 18bis and 18ter regarding “third-party influence” and “third-party ownership,” coupled with disciplinary sanctions, violated EU law.

Specifically, the club claimed these provisions infringed **freedom of movement for workers (Art. 45 TFEU)**, **freedom to provide services (Art. 56 TFEU)**, **free movement of capital (Art. 63 TFEU)**, and **competition rules (Arts. 101 and 102 TFEU)**. Alleged violations of Swiss competition law were also raised.

On **9 March 2017**, the CAS Arbitration Panel⁶⁵ rendered its award, determining that applicable law included **FIFA regulations, Swiss law, and EU law**. It recognized that, under EU law, free movement and competition rules are mandatory provisions within Swiss law and emphasized that these principles are part of **EU public policy (ordre public)**. CAS considered the connection between RSTP provisions, the consequences for club operations in EU Member States, and the effect of the FIFA Appeal Committee decision on RFC Seraing’s participation in EU club competitions.

Ultimately, CAS upheld the fine and registration ban but limited the ban to **three consecutive registration periods**⁶⁶. CAS concluded that Articles 18bis and 18ter did not violate EU or Swiss competition law and were proportionate and legitimate measures to protect the integrity of football competitions.

On 15 May 2017, **RFC Seraing** filed an appeal before the **Swiss Federal Tribunal** against the CAS award, claiming that the CAS decision violated “**substantive public policy**” under Swiss law. In this context, the club argued that the award infringed **the free movement of workers, freedom to provide services, and free movement of capital (Articles 45, 56, 63 TFEU)**, **competition rules (Articles 101, 102 TFEU)**, as well as **Swiss competition law**.

On **20 February 2018**, the SFT dismissed the appeal⁶⁷, holding that the CAS award did not violate Swiss public policy and that the alleged EU and competition law breaches were insufficiently substantiated.

⁶⁵ Award No: TAS 2016/A/4490

⁶⁶ Furthermore, taking into account the **suspension decisions** issued respectively by the FIFA Appeals Committee and by CAS itself, CAS ruled that the disciplinary sanctions would take effect **from the date of notification of the CAS award**. Consequently, it stipulated that the fine must be paid within **30 days** and that the player registration ban would apply to the **summer 2017, winter 2017/2018, and summer 2018 registration periods**.

⁶⁷ Case No.: 4A_260/2017

4.4. Proceedings in Belgium

On **3 April 2015**, before FIFA initiated disciplinary proceedings, Doyen and RFC Seraing, organized under Belgian law, filed a suit before the **Tribunal de commerce francophone de Bruxelles** against FIFA, UEFA, and URBSFA. The club argued that the third-party influence and third-party ownership prohibitions under RSTP Articles 18bis and 18ter were incompatible with EU law and requested various interim measures and compensation⁶⁸.

On **17 November 2016**, the **Belgian Commercial Court** ruled that it had no jurisdiction to examine the claims. On **19 December 2016**, after the FIFA Disciplinary Committee and Appeal Committee decisions but before the CAS award, RFC Seraing appealed to the **Brussels Court of Appeal (cour d'appel de Bruxelles)**.

On **12 December 2019**, after the CAS and Swiss Federal Tribunal decisions, the Brussels Court of Appeal held that the CAS award had **res judicata** effect between the parties and that claims based on the award were inadmissible.

4.5. Belgian Court of Cassation Proceedings and Preliminary Ruling Request to the CJEU

RFC Seraing appealed the Court of Appeal decision to the **Belgian Court of Cassation (Cour de cassation)**, contending that the lower courts erred by recognizing the CAS award as **res judicata** vis-à-vis FIFA, based on CAS's finding that RSTP Articles 18bis and 18ter were compatible with EU law.

⁶⁸ The club sought a **finding that the absolute ban was incompatible with EU law**, in particular **Articles 45, 56, 63, 101, and 102 TFEU**. Furthermore, RFC Seraing requested that all provisions establishing such an absolute ban be declared **null and void**, that a series of **interim measures** be issued against FIFA, UEFA, and URBSFA, and that a **provisional award of €500,000** be granted for various damages allegedly resulting from the application of **Articles 18bis and 18ter of the RSTP**.

The appeal raised two questions regarding the interpretation of EU law, which RFC Seraing requested to be referred to the CJEU. The club cited **Nordsee (23 March 1982)**⁶⁹, **Achmea (6 March 2018)**⁷⁰, and **Avio Lucos (C-116/20, 7 April 2022)** as precedents⁷¹.

Accordingly, the Cour de cassation stayed the proceedings and decided to refer the following questions to the CJEU:

- When read in conjunction, **Article 19(1) TEU** (duty of effective judicial protection and supremacy of EU law), **Article 267 TFEU**, and **Article 47 of the Charter of Fundamental Rights**:
 - Do national rules governing the **res judicata effect** of an arbitration award, which recognize and enforce that effect (e.g., Articles 24 and 1713(9) of the Belgian Judicial Code), **preclude its application** if the award was examined for compliance with EU law by a non-EU state court that cannot submit a preliminary ruling request?
 - Does a national law rule granting **rebuttable evidentiary value** to an arbitration award that has been examined by a non-EU state court, without the possibility of referral under Article 267 TFEU, **infringe the right to effective judicial protection** under EU law?

In summary, the preliminary questions concern:

- Whether preventing the **re-examination of CAS awards** by national courts based on **res judicata** is compatible with the **right to an effective remedy** under **Article 47 of the Charter**,

⁶⁹ The **Nordsee case (Case 102/81, EU:C:1982:107)** was decided by the **Court of Justice of the European Union (CJEU)** on 23 March 1982. The ruling is particularly significant in the context of the relationship between **arbitration under EU law** and the **preliminary ruling procedure (Article 267 TFEU)**. The CJEU held that **arbitral tribunals are not entitled to refer questions for a preliminary ruling to the CJEU**.

⁷⁰ The **Achmea ruling (C-284/16, EU:C:2018:158, Slovak Republic v. Achmea BV)**, delivered by the **Court of Justice of the European Union (CJEU)** on 6 March 2018, constitutes a landmark decision with significant implications for **investment arbitration and the future of international investment agreements under EU law**.

⁷¹ According to **RFC Seraing**, under the case law established by **Nordsee (23 March 1982, 102/81, EU:C:1982:107)** and **Achmea (6 March 2018, C-284/16, EU:C:2018:158)**, the possibility for individuals to submit disputes between themselves to an arbitral tribunal must **not undermine full compliance with EU law, its consistent interpretation, or its effective application**. Moreover, this requirement ensures that **competent national courts are able to decide on matters concerning EU law** and, where necessary, **refer questions for a preliminary ruling to the Court of Justice**, thereby guaranteeing **effective judicial protection for individuals**.

- Whether recognizing a **rebuttable evidentiary effect** for an award reviewed by a non-EU state court (Swiss Federal Tribunal) that lacked the ability to seek a preliminary ruling violates the right to effective judicial protection.

4.6. Opinion of Advocate General Ćapeta

Advocate General Ćapeta provided a detailed assessment of the interaction between EU law and the CAS arbitration system in the **RFC Seraing** case⁷². By examining precedents such as **Nordsee** and **Eco Swiss**, Ćapeta emphasized that commercial arbitration principles cannot be directly equated with FIFA's mandatory arbitration system. FIFA arbitration is compulsory for players and clubs, and CAS awards are directly enforceable by FIFA, leaving little room for intervention by national courts. Consequently, AG Ćapeta noted that EU case law on commercial arbitration cannot be applied without limitation to FIFA's sports arbitration system. Similarly, the provisions on investment arbitration discussed in **Achmea** are not directly applicable, given that FIFA arbitration operates under specific organizational rules. Ćapeta also referenced the **International Skating Union (ISU)** case, highlighting that mandatory sports arbitration requires a particular approach in relation to national judicial review, and that neither CAS nor the Swiss Federal Tribunal functions as an EU court.

AG Ćapeta further considered whether CAS awards could be automatically enforced under the **New York Convention (NYC)**. Since the NYC presumes arbitration to be free and voluntary, its direct application to mandatory CAS arbitration may not be appropriate. In this context, AG Ćapeta stressed that national courts must retain the authority to review CAS awards to the extent they intersect with EU law. He proposed that national courts should ensure mechanisms allowing players and clubs to effectively challenge FIFA rules, thereby preventing CAS awards from acquiring absolute finality in a manner inconsistent with EU law. This approach seeks to maintain a delicate balance between mandatory sports arbitration and the principle of effective judicial protection under EU law.

⁷² **Case No: C-600/23; ECLI:EU:C:2025:24**. Opinion delivered on 16 January 2025. For the opinion, see: https://curia.europa.eu/juris/documents.jsf?num=C-600%2F23&utm_source.

4.7. CJEU Judgment and Reasoning

Following the preliminary ruling request by the **Belgian Court of Cassation**, the **Grand Chamber of the CJEU** delivered the **Seraing judgment**⁷³ on **1 August 2025**.

In paragraphs **90–125**, the Grand Chamber elaborated its reasoning. It emphasized that **the right to effective judicial protection under EU law (Art. 19(1) TEU; Art. 47 Charter)** and access to an **independent court** constitute fundamental principles. The Court noted that CAS is a private arbitral tribunal established in Switzerland and is not embedded within the EU legal system; access to national courts is limited, and recourse is often compulsory.

The CJEU held that for a CAS award to be granted **res judicata effect** and **probative value** vis-à-vis third parties, it must first have been subject to an **effective and independent review by the relevant Member State court**. Otherwise, the **supremacy of EU law** and individuals’ **judicial protection rights** are compromised. Since sport in the EU is treated as an economic activity, CAS awards must comply with **EU free movement and competition rules**.

Based on these considerations, the Grand Chamber of the CJEU, in its **Seraing judgment (C-741/19) of 1 August 2025**, held (paragraph 126):

- Granting **res judicata authority** to a CAS award within a Member State, in the context of a dispute between parties where the dispute relates to sport as an economic activity within the EU, and where the award has **not been subject to prior effective review** by a court or judicial authority of the Member State competent to refer questions to the CJEU; and
- Granting **probative value** to such an award in relations between the parties and third parties within that Member State,

should be interpreted, **in light of Art. 19(1) TEU, Art. 267 TFEU, and Art. 47 Charter**, as precluding the application of national rules that automatically recognize the award.

⁷³ CJEU, Case C-741/19, RFC Seraing, 1 August 2025.

This judgment establishes that CAS and similar international sports arbitration awards **cannot automatically acquire legal effect** in EU Member States; effective judicial review by national courts, and where necessary, access to the CJEU for a preliminary ruling, is **mandatory**.

4.8. Potential Implications of the Seraing Judgment

The **Grand Chamber of the CJEU's Seraing judgment** has the potential to redefine the boundaries of judicial intervention in sports arbitration under EU law. Following this decision:

- **FIFA's regulatory and disciplinary powers** will be subject to EU law scrutiny;
- **National courts** will have the authority to review the compliance of CAS awards with EU law on the merits;
- The **principle of finality** in sports arbitration will be weakened, narrowing the distinction between the "special" sports dispute resolution mechanism and the broader EU judicial sphere.

These developments may be seen as an extension of the EU's trend, initiated in the field of investment arbitration through **Achmea**, toward expanding judicial authority into sports law. Accordingly, the autonomy of private arbitration mechanisms is being reshaped in favor of the principle of **effective judicial protection**.

Following the ruling, the **International Council of Arbitration for Sport (ICAS)** announced its recognition of the CJEU's Seraing decision. The CAS Director General stated⁷⁴:

"We welcome the fact that the CJEU, while not fully adopting Advocate General Ćapeta's opinion, has ruled that the potential review of CAS awards by national courts is limited to matters of EU public policy. CAS will continue to serve the international sports community, providing rapid and expert arbitration services worldwide."

⁷⁴ ICAS, *Statement on Review of CAS Awards by European Courts for Matters of EU Public Policy* (Lausanne, 2023) <<https://www.tas-cas.org>> accessed 23 August 2025.

Comparative Analysis: AG Čápetá’s Opinion vs. CJEU Judgment

A comparative analysis between AG Čápetá’s Opinion and the CJEU’s final judgment (1 August 2025) clarifies the impact of the Seraing ruling on CAS arbitration:

Dimension	AG Čápetá’s Opinion (16 January 2025)	CJEU Judgment (1 August 2025)
Scope of Review	CAS as “mandatory sports arbitration” should be fully compliant with EU law; therefore, CAS awards should be fully open to judicial review in all areas of EU law. The effect of res judicata (finality) must not eliminate national judicial review.	CAS awards should only be reviewed by national courts concerning matters related to EU public policy—for example, competition law or free movement. Full retrial of the award is not necessary; review should focus on fundamental rights and public policy elements.
Type of Arbitration & Judicial Access	CAS arbitration is “mandatory” and “self-enforcing.” Even if parties did not choose CAS, they are required to accept it; full judicial access must be guaranteed.	The CJEU acknowledges CAS’s autonomous structure and the importance of sports arbitration but emphasizes that individuals and clubs must have access to effective judicial protection to ensure compliance with EU public policy.
Compliance with New York Convention	Due to CAS being mandatory, AG Čápetá argued that the validity of voluntary arbitration under the NYC should be questioned. Res judicata must not prevent national judicial access.	The CJEU did not decide on this point but noted that compliance with the NYC can be preserved if review is limited to matters of EU public policy.
Outcome & Effect	AG Čápetá supports limiting the finality (res judicata) of CAS awards to ensure EU law supremacy and judicial protection. Full judicial access via national courts should be guaranteed.	The CJEU adopted a more moderate approach compared to AG Čápetá. CAS autonomy is respected, but awards are subject to limited review in the context of EU public policy. Effective judicial protection is ensured, but the scope of review is confined.

Commonalities

- Both recognize the importance of judicial protection in sports arbitration;
- Both emphasize that provisions related to EU public policy (competition, free movement, fundamental rights) form the basis for critical review of arbitration awards.

Differences

- AG Čápetá advocates for full EU law review of CAS awards, asserting that res judicata effects should not prevent access to national courts;
- The CJEU adopts a balanced approach, preserving CAS autonomy while mandating limited judicial review confined to EU public policy compliance. National courts are tasked with reviewing CAS awards only for public policy conformity, not conducting full retrials.

This ruling will undoubtedly lead to a **reshaping of Sports Law at both the international and EU levels**. Allowing national courts to review CAS decisions for compliance with **EU public policy standards** has opened a new chapter for sports law systems.

Conclusion and Assessment

The **Court of Arbitration for Sport (CAS)** has long served as the primary forum for resolving legal disputes among athletes, clubs, federations, and international sports organizations. The CJEU's **RFC Seraing v. FIFA judgment**, however, marks the beginning of a new era that will significantly influence the future of CAS arbitration.

The decision allows for **broader judicial oversight** of CAS awards in the context of EU public policy and the **right to effective judicial protection**. While the CJEU continues to acknowledge CAS's role in ensuring consistency in sports law and the autonomy of its arbitration system, the ruling limits CAS's principle of absolute finality and underscores the **primacy of EU law**. This development illustrates a redefined balance between the autonomy of private arbitration mechanisms and the judicial oversight powers of national courts.

The Seraing judgment is particularly noteworthy in questioning FIFA's regulatory model and CAS's arbitral authority. The CJEU highlighted that FIFA's mandatory arbitration system differs fundamentally from voluntary arbitration, framing access to CAS as a **compulsory component of professional participation** rather than an exercise of contractual freedom. This perspective raises significant considerations for the **recognition and enforcement of CAS awards under the New York Convention**, especially where mandatory arbitration challenges the automatic enforceability of CAS awards within the EU.

Nevertheless, while the Seraing judgment permits national courts to review CAS awards for compliance with EU public policy, the scope of this review remains **limited to areas concerning EU law**. Most disputes before CAS will continue to fall outside the scope of EU law, meaning that the practical impact of the ruling is specific and circumscribed. In cases implicating EU law, selecting arbitrators with expertise in EU law is critical to ensuring that awards withstand potential judicial scrutiny.

In summary, the RFC Seraing judgment signals a **new era in sports arbitration**. CAS retains its central role in resolving international sports disputes, but national courts’ authority under EU law and public policy principles has been strengthened, rendering the autonomy of the sports arbitration system more nuanced and open to debate. This development illustrates an increasingly complex balance between **international arbitration, national judicial oversight, and the EU legal framework** in the field of sports law.

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