FIFA®

REPORT

CAS & FOOTBALL ANNUAL REPORT 2022

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FOREWORD

Dear readers,

It is our pleasure to present the 1ST edition of the CAS & Football Annual Report, covering the period from 1 January 2022 to 31 December 2022.

Following FIFA's agreement in 2003 to submit appeals against its decisions to the jurisdiction of the Court of Arbitration for Sport (CAS) and to recognize the general competence of this court to deal with disputes involving its stakeholders, the number of football-related cases in CAS has exponentially grown each year.

As a result, CAS jurisprudence has allowed not only to ensure a harmonized approach to the different football-related disputes worldwide, but also to allow FIFA and its stakeholders to adapt their regulatory framework to reflect the ever-evolving legal approaches within the sport.

This CAS & Football Annual Report is the reflection of the work carried out in relation to appeals filed against football-related decisions in 2022. It intends not only to show the main activities of the FIFA Legal & Compliance Division or the general global figures of football cases in CAS throughout the year, but also to provide stakeholders and legal practitioners with an overview of the most relevant CAS case law received during that period.

We trust that this will be of assistance for all persons involved in CAS proceedings.

Yours faithfully,

Emilio García Silvero
Chief Legal & Compliance Officer

Miguel Liétard Fernández-Palacios
Director of Litigation

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OVERVIEW

The FIFA Legal & Compliance Division holds a key role, as it not only the main point of contact between FIFA and CAS, but its work (through the Litigation department) is precisely focused on representing FIFA before CAS in appeals against decisions issued by FIFA's different bodies.

In this respect, Article 57 of the FIFA Statutes recognizes the jurisdiction of CAS to deal with appeals against final decisions passed by FIFA's legal bodies. The FIFA Legal & Compliance Division therefore deals with a large number of cases each year, on a variety of topics which reflect the work of the different FIFA legal bodies throughout the year.

The **CAS & Football Annual Report 2022** aims to provide an overview of the CAS appeals against FIFA decisions as well as of other important issues related to CAS for the period between 1 January 2022 and 31 December 2022.

The document refers to the numerous appeals that the different stakeholders filed before CAS against FIFA decisions. In 2022, CAS has notified 360 appeals to FIFA, which had been filed against the latter's decisions.

Of course, FIFA does not have a legal interest in all disputes, as many of the cases appealed to CAS (in particular from the Football Tribunal) do not involve FIFA's prerogatives or disciplinary powers, meaning that FIFA does not have anything directly at stake in such cases. For this reason a further analysis is made to distinguish between (i) cases in which FIFA was not called as a party, (ii) cases in which FIFA (successfully) requested to be excluded from the proceedings, and (iii) cases in which FIFA was a party.

This document also provides a detailed overview of the outcome of cases involving FIFA whose awards were received in 2022. In particular, a total of 62 CAS awards in which FIFA had been a party were notified in the period under scrutiny. Since not all cases result in an award on the merits being issued, a distinction is made between those awards and Awards on Costs/Termination Orders/Consent Awards.

In the majority of CAS proceedings in which FIFA is a party, the FIFA appealed decision is either fully confirmed (i.e. the appeal is entirely dismissed) or confirmed on the merits but with amendments made for reasons of proportionality (i.e. the appeal is partially upheld). Of the awards received in 2022, 49 (80%) confirmed the FIFA decisions on the merits and dismissed (or partially upheld) the appeal, 8 (13%) annulled the appealed decision or sent the case back to the relevant FIFA body and 4 (7%) declared the appeal inadmissible.

Likewise, the present document shows the global statistics of football cases in CAS or, in other words, the cases that are related to football but not only directly to FIFA.

The CAS & Football Annual Report also provides a summary of the most relevant awards notified in 2022, divided by topics, among them:

- **Football Tribunal**
- **Judicial Bodies**
  - **The Disciplinary Committee and Appeal Committee**
  - **Ethics Committee**
- **Other decisions**
- **Orders of provisional measures**

In the same vein, this Report analyses how many CAS Awards related to Football were appealed before the Swiss Federal Tribunal (SFT) in 2022, and provides a short summary of the leading cases.

Furthermore, as a matter of its continued transparency, FIFA discloses the name of the arbitrators that it has appointed in proceedings before CAS throughout 2022.

Lastly, the most relevant regulatory changes in CAS over the last year are also presented, as CAS has recently amended the Code of Sports-related Arbitration with effect from 1 November 2022. A short summary of these amendments is provided in the present document.


82
TOTAL
NUMBER
OF APPEALS
Tribunal
TAS
Arbitral
CAS
Court of Arbitratio

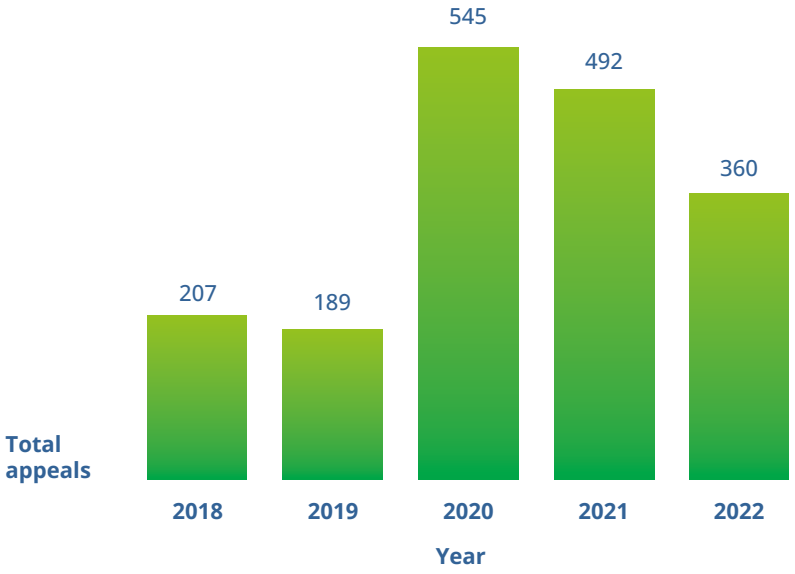
2.1 Overall appeals

From 1 January 2022 until 31 December 2022, the Football Tribunal and Judicial Bodies alone issued more than 15,000[1] decisions.

In turn, during the same period, 360 appeals were filed before CAS against such decisions, as well as against decisions from other FIFA bodies (e.g. the Bureau of the FIFA Council).

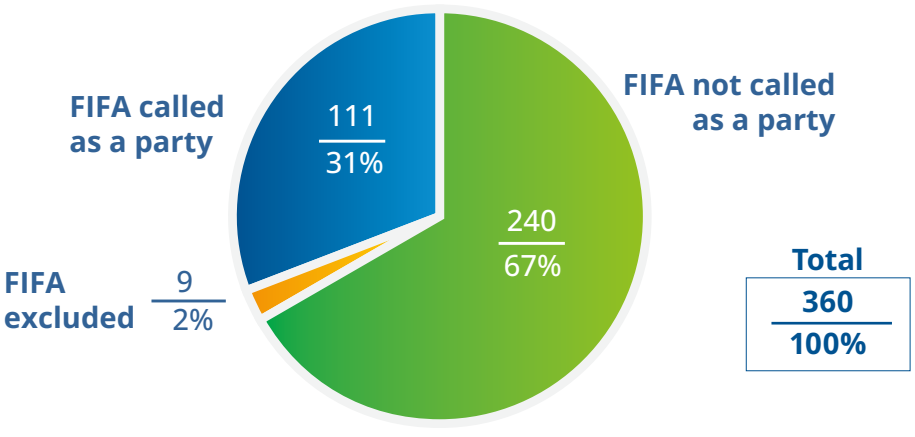
Appeals at CAS against FIFA decisions in 2022

360



Of the appeals filed against FIFA decisions in 2022, FIFA has been a party in 111 (31%) of cases, whereas it was not a party in 249 (69%) appeals, including 9 (2%) in which FIFA had originally been named as a respondent and then been withdrawn).

Total Appeals before CAS



1 Including Clearing House decisions, Confirmation Letters, Minor applications, Application for Change of Association, etc.

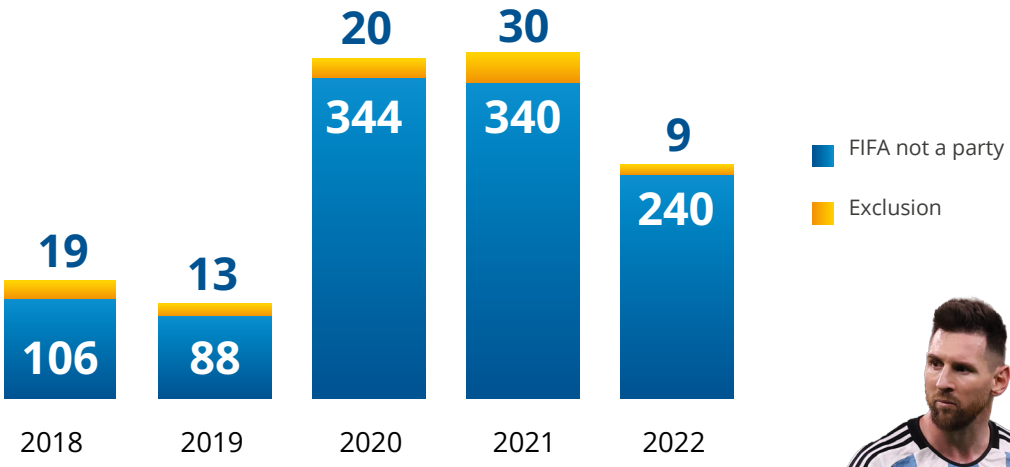
2.2 Appeals where FIFA is Not a Party and FIFA's exclusion

Although FIFA bodies issue a substantial number of decisions each year, the majority of the decisions taken by the Football Tribunal relate to contractual disputes between clubs, players and/or coaches, in which FIFA merely acts as the deciding body.

In light of FIFA's lack of standing in such 'horizontal' disputes, the majority of appeals against decisions issued by the Football Tribunal are not directed against FIFA, but only at the counterparty to the relevant contract on which the dispute is based. Despite this fact, FIFA is occasionally called as a respondent despite lacking any standing to be sued, in which case it requests the exclusion from the proceedings. Only when the Appellant expressly agrees to withdraw its appeal against FIFA, the latter is excluded and the case continues between the parties to the disputed contract.

As a result of the foregoing, FIFA's involvement in appeals against decisions of the Football Tribunal has remained low over the years, with the number of cases in which it was not called as a respondent constituting between 66% and 75% of appeals.

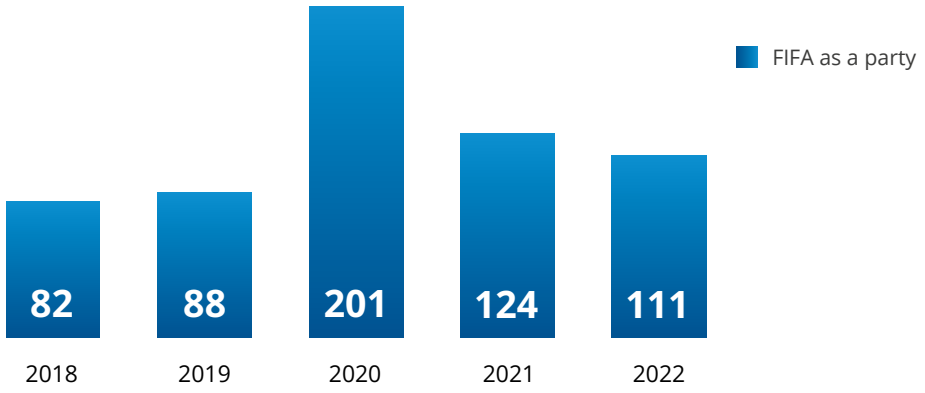
The table below shows the evolution of cases in which FIFA was either not summoned as a party to the appeal proceedings or was eventually excluded from the proceedings by the appellant. This evolution further reflects the increase in appeals against FIFA decisions over the last three years.



2.3 Appeals where FIFA is a Party

As a result of the full backlog of cases pending before the Football Tribunal being cleared in 2020, a logical spike in the number of appeals involving FIFA ensued, with the latter being a respondent in 201 cases.

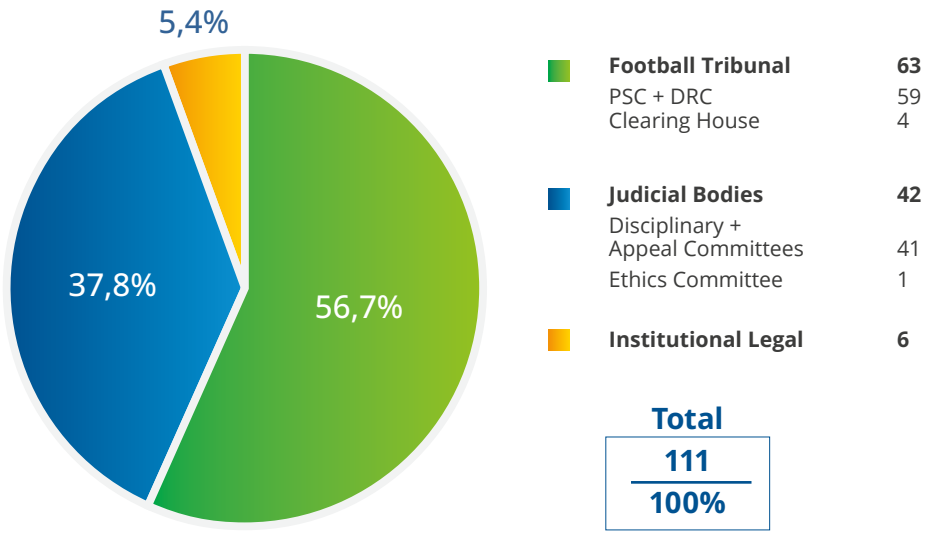
Since then, with the steady resolution of contractual disputes and cases before the Judicial Bodies, the number of cases has decreased, yet still remains above the pre-COVID era numbers, with 111 appeals with FIFA as a respondent being filed in 2022.



2.4 Appeals by FIFA legal body

As is generally the case, the vast majority of appeals to CAS against FIFA decisions relate to those issued by the Football Tribunal.

In 2022, the appeals in which FIFA was a party were filed against decisions issued by the following FIFA legal bodies[2]:



2 The 249 cases in which FIFA was not a party relate to appeals against decision of the Football Tribunal.

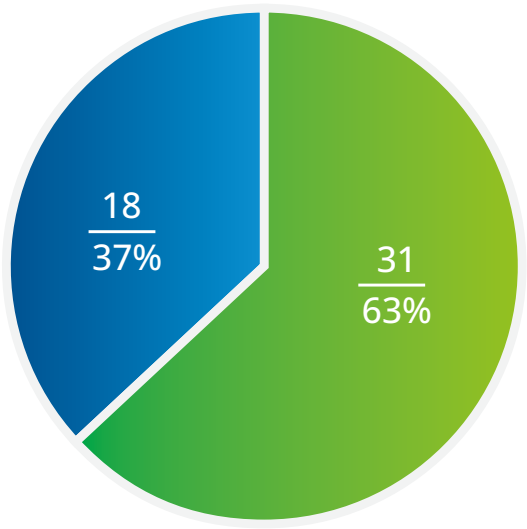
83

CAS HEARINGS IN 2022

03. CAS HEARINGS IN 2022

Although CAS hearings held (partially or totally) by videoconference – although rare – have taken place beforehand, the onset of COVID-19 in 2020 has led to the quasi-normalization of such hearings, as well as the specific introduction of this modality in the CAS Code as from 1 July 2020.

In fact, as can be seen below, of the 49 hearings involving FIFA in 2022, around one third (18) were held in person at the CAS Court Office or other location designated by the relevant panels, whereas the vast majority took place by videoconference.



Type of hearing	Number
Virtual	31
In-person	18

Total

49

100%

40

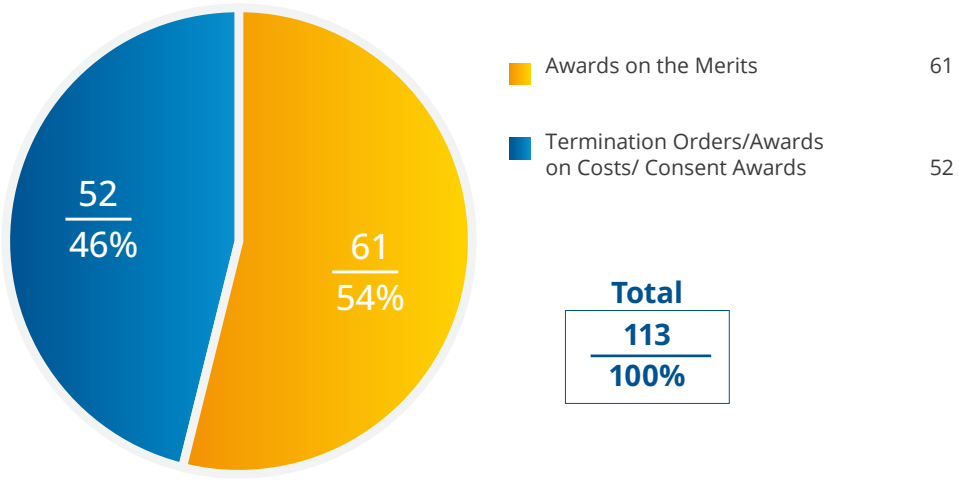
CAS AWARDS INVOLVING FIFA IN 2022

4.1 Introduction

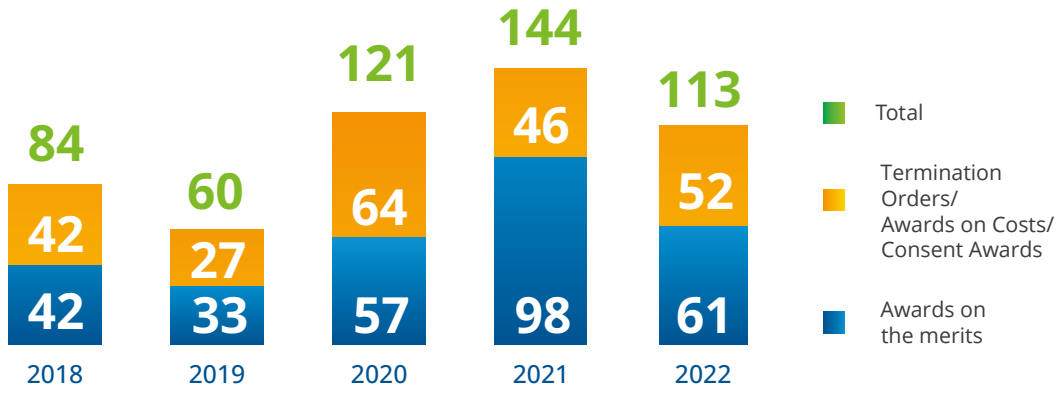
From 1 January 2022 until 31 December 2022, FIFA received 113 decisions from CAS in cases in which it was involved as a party.

Not all cases result in an Award on the merits being rendered. A large number of cases are resolved through Termination Orders, Awards on Costs or Consent Awards, due to the appeals being withdrawn or the cases being settled by the parties to the relevant dispute.

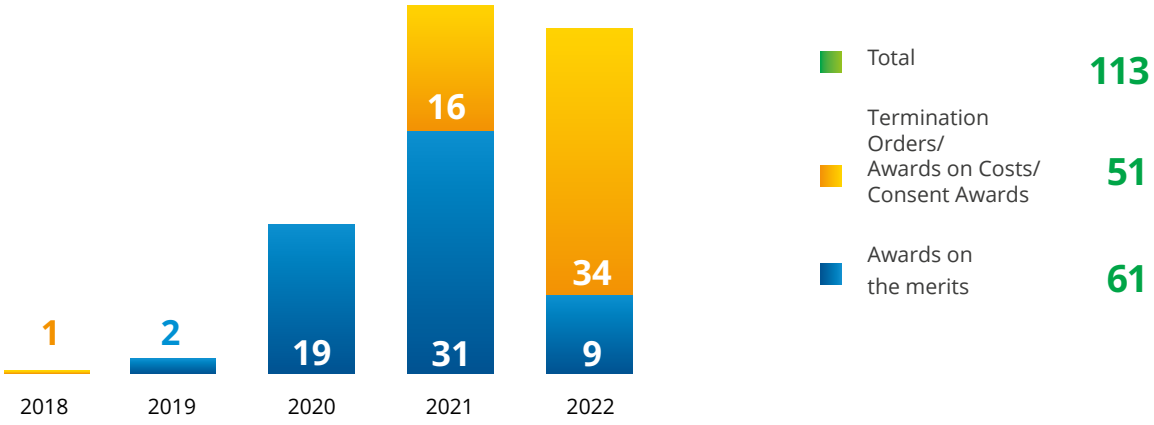
Bearing the above in mind, the CAS decisions received by FIFA in 2022 can be divided as follows:



The following table shows the increase in the number of CAS decisions received since 2018, noting that 2021 was a rather exceptional year due to the large number of CAS appeals that had been filed the previous year (201 cases in 2020 in which FIFA was a party).



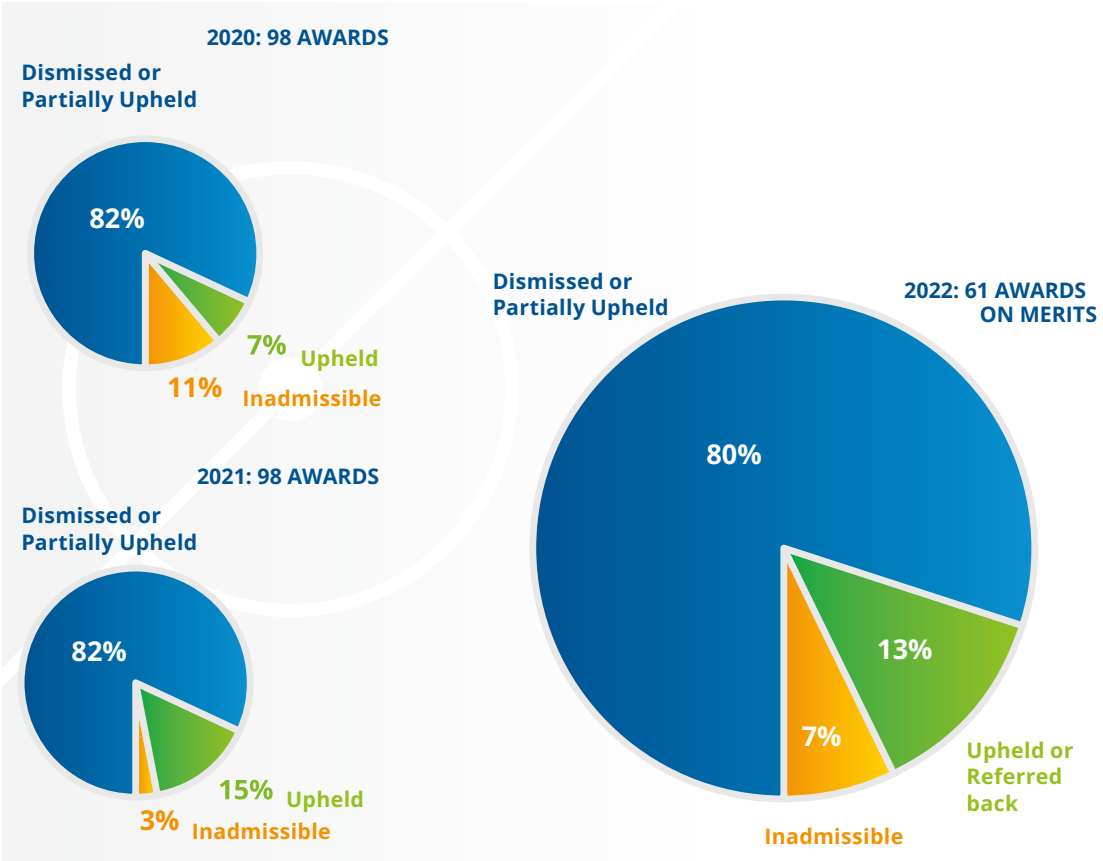
Although we refer to awards that were received in 2022, it is worth noting that many of those relate to proceedings which began as far as 2019. In this sense, the appeals in 1 of the cases had been filed in 2018, 2 were filed in 2019, 19 of these started in 2020, 47 in 2021, and, finally, 44 were resolved throughout 2022, as can be seen in the following graph.



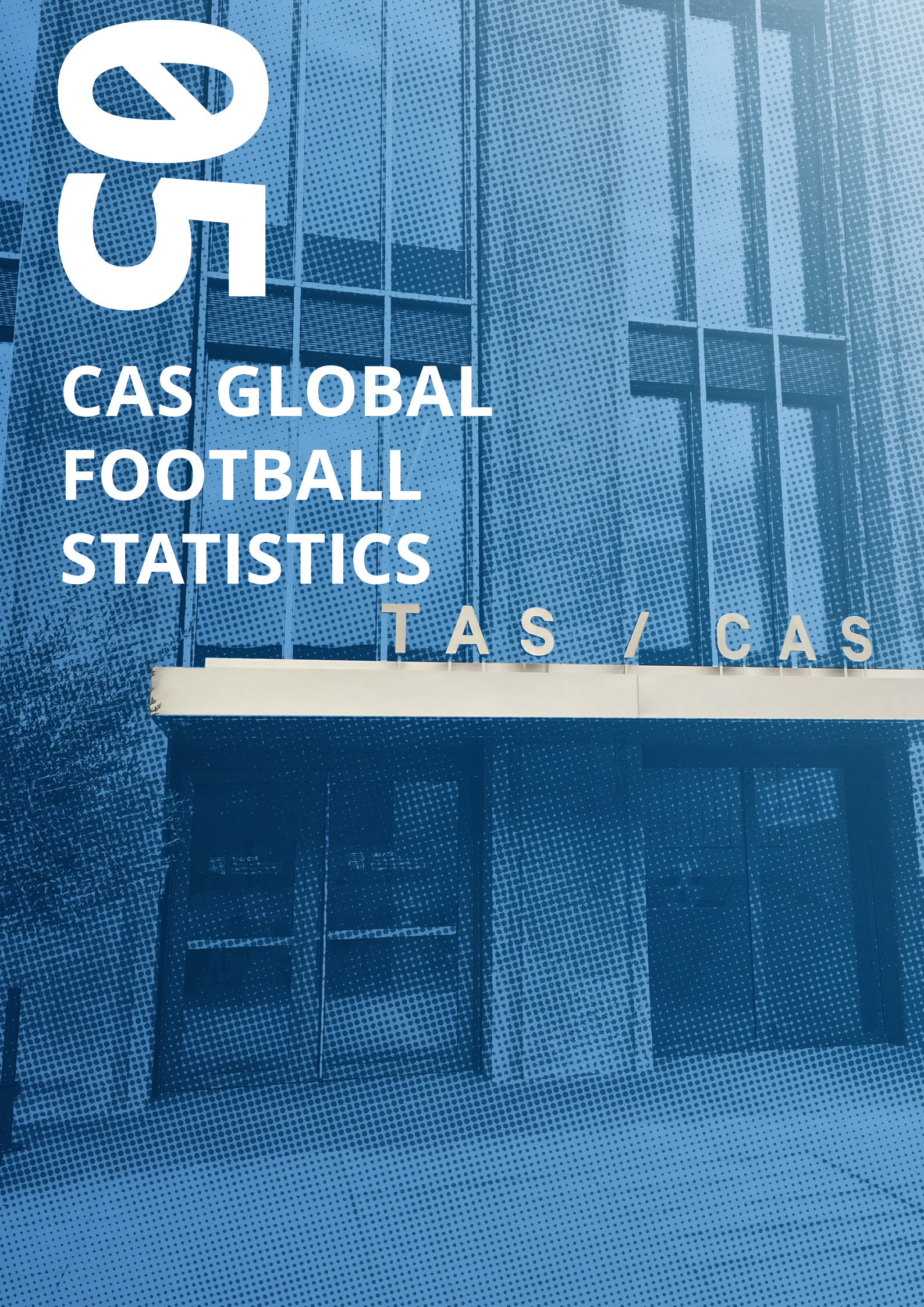
4.2 Outcome of the Awards on the Merits

Out of the 61 awards on the merits received in 2022, 49 (80%) confirmed the substance of the FIFA decisions and dismissed (or partially upheld) the appeal, 8 (13%) annulled the appealed decision or sent the case back to the relevant FIFA body and 4 (7%) declared the appeal inadmissible.

CAS awards received in 2022



CAS GLOBAL FOOTBALL STATISTICS



5.1 Introduction

The following numbers, provided by CAS, reflect the statistics of ALL the football-related cases filed to the said tribunal. In other words, these numbers comprehend not only the matters related to FIFA decisions but also those issued by national/regional associations and confederations, as well as ordinary arbitration proceedings.

5.2 Evolution of the global CAS case load

The total number of cases (all procedure types, all sports) registered in 2022 was 830 causes, slightly down on previous years.

Appeal and ordinary procedures continue to make up the majority of the case load.

Total cases (all sports) at CAS in 2022

830

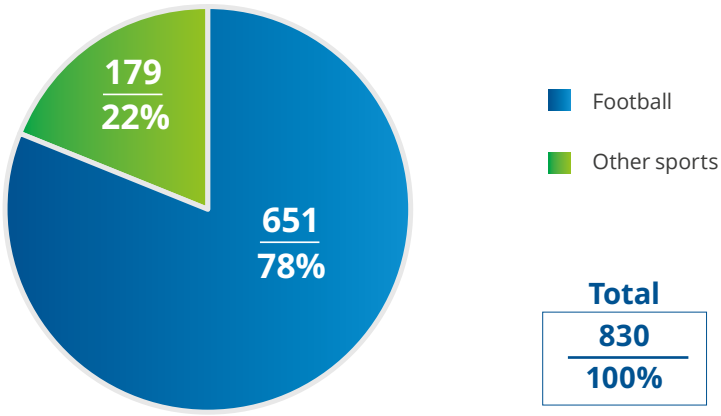
5.3 Football-related cases handled by CAS

Turning specifically to football – international, continental and national – a total of 651 football-related cases were filed before CAS.

Football-related cases at CAS in 2022

651

This means that from the total number of cases received by CAS in 2022, 78% were related to football.

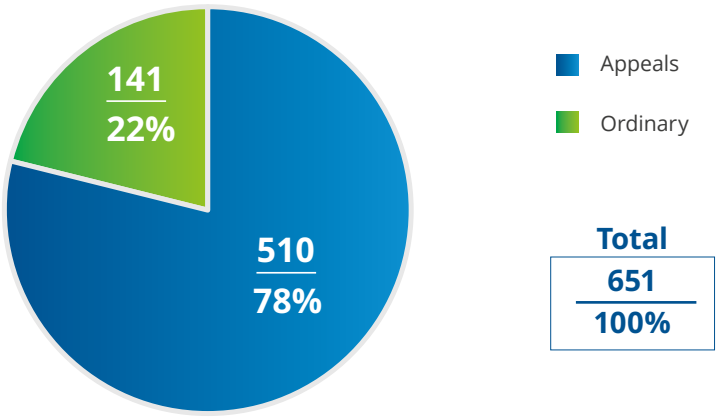


5.4 Type of procedure

As is well known, the CAS Code provides two types of procedures: the Ordinary and the Appeals proceedings.

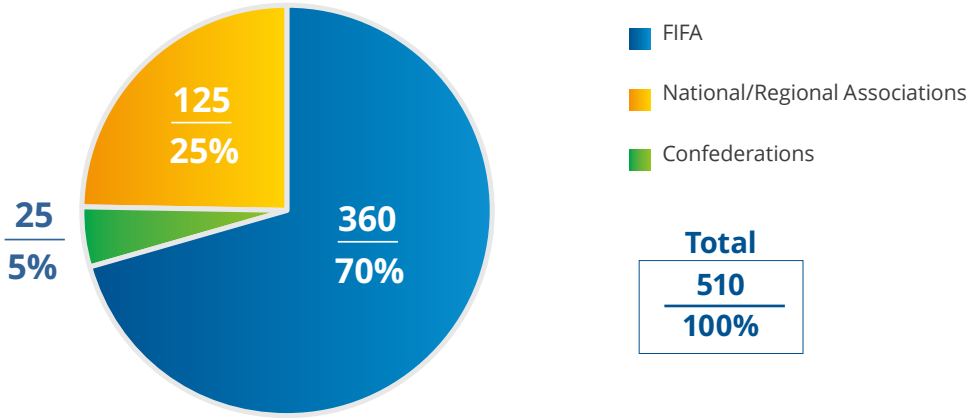
From the total number of the football-related cases (651), 141 were ordinary cases, and 510 were appeals against decisions from a football institution.

This means that 78% of the football-related proceedings before the CAS in 2022 were appeals.



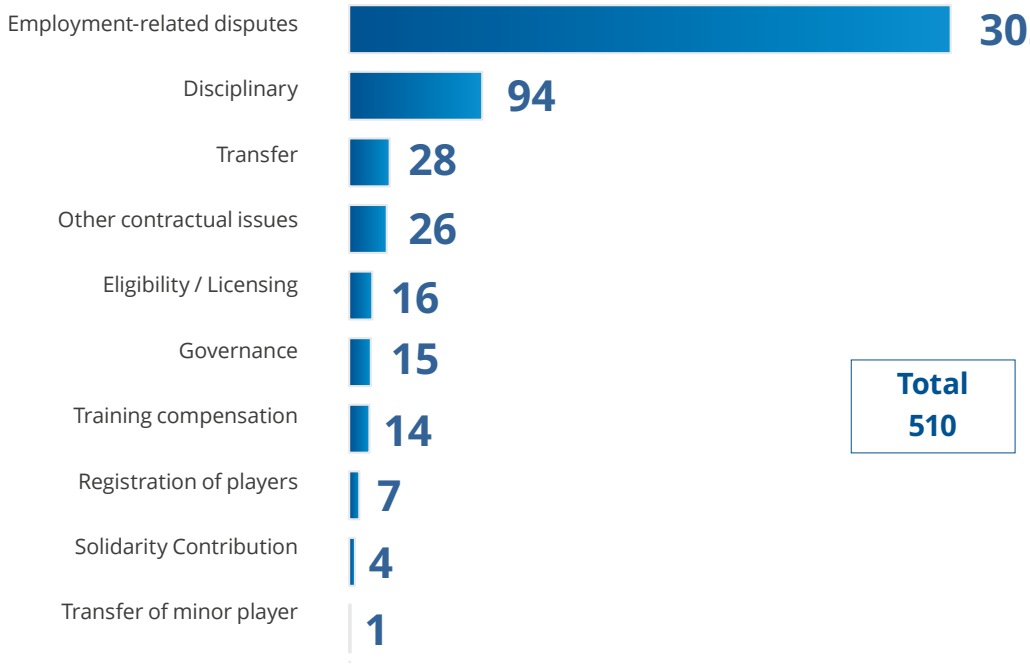
5.5 Source of the appealed decisions

Drilling down into the appeal procedures, 71% of the decisions challenged were issued by FIFA instances, 25% were issued by national or regional football associations and 5% were issued by confederations.

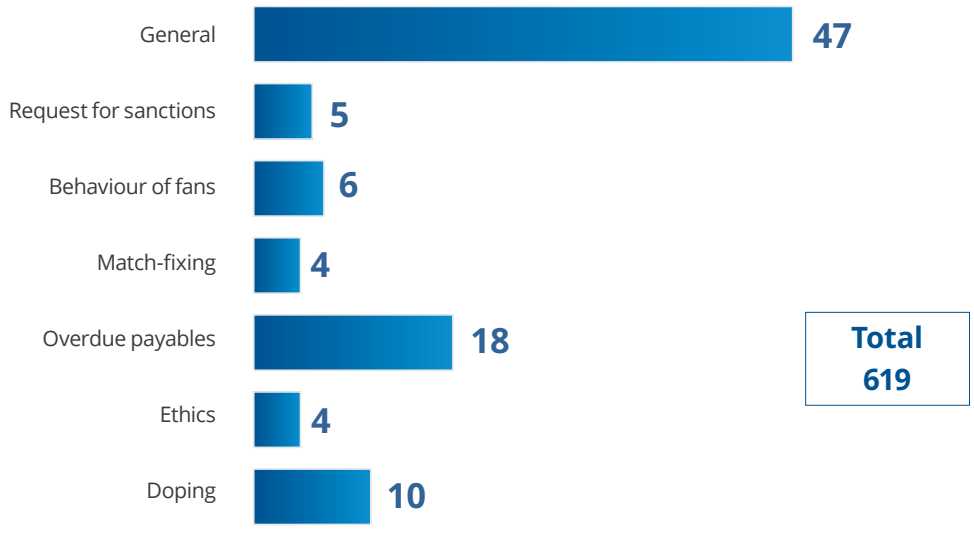


5.6 Subject of the appealed decisions

Almost two-thirds of the football-related appeal proceedings concerned employment-related disputes. Disciplinary matters were the second most frequent type of football-related appeal procedure.

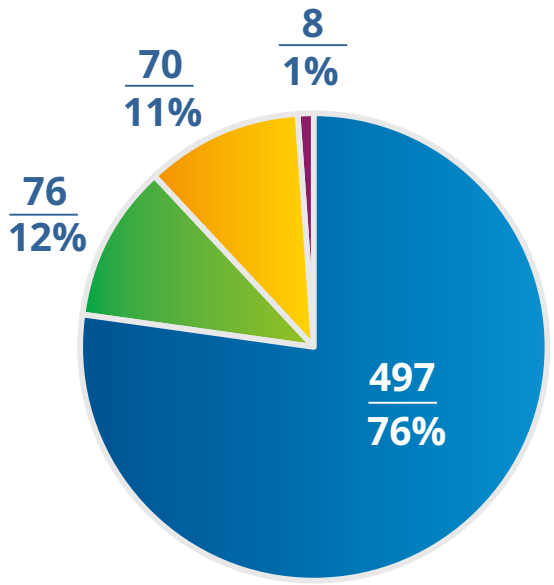


Moreover, the disciplinary matters can be broken down as follows:



5.7 Language

Regarding the language, over three-quarters of the football-related proceedings in 2022 were conducted in English. Spanish is already the second most important language at CAS.



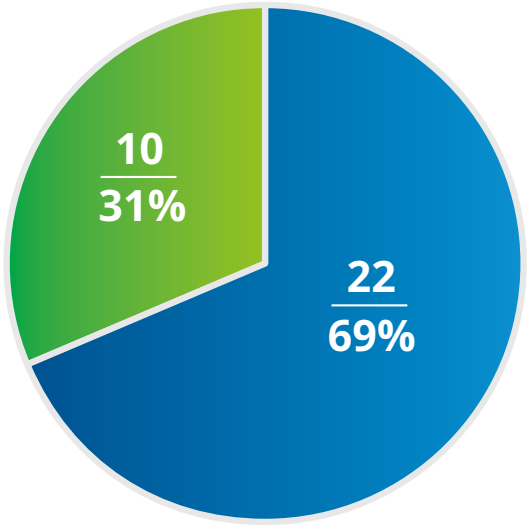
English
Spanish
French
Other*

* Italian (1), German (1), combination of languages (6)

Total
651
100%

5.8 Legal aid

Lastly, of the 32 requests for legal aid considered by the ICAS Legal Aid Commission in 2022, assistance was provided in more than two out of three cases.



Granted / Partially-Granted
Denied

Total
32
100%

90

LEADING CASES IN 2022 IN APPEALS AGAINST FIFA DECISIONS

6.1 Introduction

Although the statistics referenced in section 4 above relate principally to cases in which FIFA was a respondent in the relevant CAS proceedings, FIFA is also notified dozens of other CAS awards in contractual disputes in which it was not a party to cases relating to appeals against decisions of the Football Tribunal.

The most relevant CAS case law from 2022 is hereby summarized in the following sections, sorted by the FIFA legal body that issued the appealed decision and then by relevant topic within that body's regulatory scope of operation.

Football Tribunal

i. FIFA Jurisdiction

TAS 2019/A/6795 Gustavo Domingo Quinteros c. Federación Ecuatoriana de Futbol & FIFA (Award 10 February 2022)

This CAS appeal was filed by the coach Mr. Quinteros against a PSC Decision which considered that FIFA did not have jurisdiction to solve the dispute between the FEF and the Coach since they both agreed to submit their disputes before the Civil Courts of Guayaquil.

The Panel firstly analysed the first paragraph of Article 22 RSTP ("*Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes...*") and noted that the word "coach" was not included into the RSTP until February 2021 and only in its English (not Spanish) version. Therefore, in the Panel's opinion, it seemed that FIFA intended to prevent coaches from resorting to civil courts to solve their employment-related disputes. Nevertheless, the Panel considered that this issue was irrelevant to the matter at hand, since the sportive associations cannot validly exclude in its statutes or regulations, the right of any party to access civil courts (CAS 2013/A/3278).

The Panel further noted that the Parties agreed in their Contract to submit their disputes (i) to the CIVIL courts of Guayaquil or, (ii) alternatively, but subject to a later mutual agreement, to the Commercial Arbitral Tribunal of Guayaquil. In the Panel's view, FIFA's allegations that the Parties exclusively chose the state jurisdiction could not be sustained since they opened the possibility to other forums (i.e., the Commercial Arbitral Tribunal of Guayaquil) and, therefore, they were rejected.

Furthermore, the Panel established that, in line with the principle "Kompetenz-Kompetenz", the PSC was able to rule on its competence and it should have assessed whether the State Courts of Ecuador were competent or not to rule on the matter.

In line with this, and after examining the expert witnesses, the Panel concluded that the Contract signed between the Parties was one of a Labour nature. Regardless of the name of the contract (i.e. "*Contrato Civil de Servicios Profesionales*") the reality should prevail and it was evident that the relationship between the Coach and the FEF was a labor one, mainly because the Coach (i) provided his professional services; (ii) he was paid by the FEF for this services and (iii) it existed a subordination between the Coach and the FEF.

Considering that the Civil Courts of Guayaquil could not review an employment-related dispute, the jurisdiction clause (in favor of the Civil courts of Guayaquil) was null and, in any case, lacked effectiveness. Along the same line, the Panel concluded that the clause referring to the Commercial Arbitral Tribunal of Guayaquil was not an effective arbitral clause because it was subject to a further mutual agreement of the Parties.

Considering that both forums established in the Contract were ineffective in solving the dispute between the Parties, the PSC should have held jurisdiction in line with the principle *pro operario*.

Regarding the merits of the dispute, the Panel considered that the FEF re-assigned the Coach's position to another person and therefore, *de facto*, fired him without justification.

Thus, in the Panel's opinion, the FEF terminated the Contract without just cause and, *a priori*, it was liable to the payment of the penalty clause (USD 500.000). However, the Panel decided to reduce the penalty amount down to USD 366.000 (i.e. six months of salary) taking into account that (i) the Contract was about to expire and (ii) the Coach entered into a new employment contract only four weeks after the termination of the Contract.

CAS 2021/A/7927 Al Sailiya FC v. Gregory Diranth Gomis & FIFA (Award 24 February 2022)

In this case, the Club brought an appeal to CAS against the DRC's decision by means of which the Club was ordered to pay outstanding amounts to the Player.

In its appeal brief, the Club alleged that the DRC was incompetent to hear the case, and thus, its ruling concerning the Player's employment contract should be voided.

To determine whether the Qatar Sports Arbitration Tribunal (QSAT) was competent to hear the case instead of the FIFA DRC, the Sole Arbitrator considered the 5 cumulative criteria set out in the FIFA Circular no.1010. In particular, the Sole Arbitrator recalled that all national bodies adjudicating disputes coming under the aegis of the FIFA Statutes must observe: (i) the principle of parity when constituting the arbitration tribunal; (ii) the right to an independent and impartial tribunal; (iii) the principle of a fair hearing; (iv) the right to contentious proceedings; and (v) the principle of equal treatment.

In this respect, CAS highlighted that "*the international forum that does not meet all five criteria cannot adjudicate disputes of international dimension. In this case, the dispute can lawfully be submitted only to the default jurisdiction, as per Article 22 RSTP, namely, the DRC.*"

This considering, the Sole Arbitrator considered the QSAT Statutes, finding it "*unclear*" in regard to the principle of parity, and thereby deemed that the requirements laid down in the FIFA Circular no. 1010 had not been met. In particular, the Sole Arbitrator observed that the QSAT Statutes made no reference to

representatives of two stakeholders (players and club representatives) in the compilation of the QSAT list of arbitrators.

In view of the above, the Sole Arbitrator considered that the DRC had lawfully exercised jurisdiction and confirmed the DRC decision in its entirety.

CAS 2020/A/7382 Miguel Angel Londero v. Mons Calpe SC & FIFA (Award 29 September 2022)

The present Award confirmed a DRC decision that considered that it did not have jurisdiction to hear and decide a contractual dispute between Miguel Angel Londero and Mons Calpe SC.

In particular, the Parties agreed in the contract "*that the venue for any action brought hereunder shall be Gibraltar.*" The Sole Arbitrator confirmed that the clause was not ambiguous (as the Appellant alleged) and, concurred with FIFA that the lack of reference to a particular court in Gibraltar does not mean that the jurisdiction clause would be ineffective or inoperable.

On the contrary, once the jurisdiction clause refers to Gibraltar as the proper venue or forum for any action to be brought, the competent court, both territorial and *rationae materiae* can be easily deducted by following the rules contained in the local judicial and procedural codes.

Therefore, the Sole Arbitrator concluded that the player should have understood at the time of signing the Contract that any dispute arising out of that agreement would have to be referred to the civil courts of Gibraltar and dismissed the player's appeal accordingly.

CAS 2020/A/7382 Tamás Bódog v. Honved FC & FIFA (Award 26 April 2022)

In the award of Tamás Bódog v. Honvéd FC & FIFA, the Hungarian/German Coach and the Hungarian Club signed an employment contract, drafted in Hungarian. Clause 9 of the Contract stated that the Club has the right to terminate the current contract with immediate effect if the team is in the relegation zone for five (5) consecutive matches within one season. Furthermore, Clause 20 of the Contract stated that any matters not governed by the Contract were governed by the Hungarian Labor Code, other applicable employment laws, and the Club's current regulations and managerial choices.

The Club terminated the Contract based on Clause 9 after the team had been in the relegation zone for 9 rounds of the season.

The Coach filed a claim with the PSC claiming that the Club terminated his contract without just cause and requested to be granted certain amounts owed to him under his Contract. The PSC, on the other hand, rejected its jurisdiction on the basis that the dispute lacked an international dimension.

The Coach appealed to CAS submitting that he should no longer be considered as a Hungarian citizen as (i) he had no access to Hungarian documents for years, (ii) his last Hungarian identity card expired in 2009 and (iii) his last Hungarian passport expired in 2012. In other words, he was not Hungarian anymore because he did not have a valid Hungarian identity card or passport, nor a valid citizenship certificate or naturalization paperwork when he entered the Contract as a German citizen.

Following an examination of Hungarian law, the Sole Arbitrator concluded that Hungarian citizenship may be terminated voluntarily by resignation in writing subject to the approval of the President of the Hungarian Republic, or withdrawal subject to the final approval of the President of the Republic.

As a result, it was impossible to accept the Coach's contention that the expiration of his identity card in 2009 and passport in 2012 automatically resulted in the loss of his Hungarian citizenship. Furthermore, the Sole Arbitrator determined that the Coach failed to demonstrate that he had been engaged by the Club as a German citizen.

In sum, the Sole Arbitrator considered that the dispute lacked an international character and confirmed the Appealed Decision.

CAS 2021/A/7800 NK Inter Zapresic v. Borislav Aleksandrov Tsonev & FIFA (Award 11 April 2022)

The case NK Inter Zapresic v. Borislav Aleksandrov Tsonev & FIFA, which concerns an appeal made in response to a DRC decision on a Club's obligation to fulfill its contractual duties to pay a Player's outstanding salaries, FIFA's competence to hear the case was contested by the Club. In this case, however, FIFA's jurisdiction to rule on such matter was affirmed by CAS.

In its appeal brief, the Club claimed that it was the national Court of Arbitration of the Croatian Football Federation (CFF) that should have been the court to address the matter.

In determining whether the DRC had proper jurisdiction over the issue, the Sole Arbitrator made several considerations. Firstly, the Sole Arbitrator noted that this matter is an employment-related dispute of international dimension, and thus, must be examined under Article 22(b) of the RSTP. While this is typically the rule, an exception allowing for an authority other than the FIFA DRC can be made if three criteria are met: (i) "*there is an independent arbitral tribunal established at the national level; (ii) the jurisdiction of this independent arbitral tribunal derives from a clear reference in the employment contract; and (iii) this independent arbitral tribunal guarantees fait proceedings and respects the principle of equal representation of players and clubs.*"

The Sole Arbitrator conducted the following analysis to decide whether the Court of Arbitration of the CFF complied with the above requirements, firstly looking at the composition of the said Arbitration Tribunal. Because the President and the Vice-President were appointed by the Executive Committee of the CFF and are not elected through a consensual agreement by the Players and Clubs from a list of at least five persons drawn up by the association's executive committee, the CFF did not respect the principle of parity as expressed in the FIFA Circular no. 1010, and thereby failed to meet the requirements set out to establish competence to hear the case in place of FIFA.

As such, the Sole Arbitrator dismissed the Club's appeal and affirmed the decision of the DRC in full, as the merits of the ruling were not challenged, and the competence of the DRC was overwhelmingly evident.

Foundationally identical facts, rules, holdings and reasonings are also found in:

CAS 2021/A/7859 NK Inter Zapresic v. Serder Serderov & FIFA

Other cases related to FIFA jurisdiction:

CAS 2022/A/7452 AEL FC v. Aleksandar Gojkovic & FIFA

CAS 2021/A/7775 Nyíregyháza Spartacus FC v. Vukašin Poleksić

CAS 2021/A/7914 Mr. Cesar Domingo Mendiondo Lopez v. Hapoel Tel Aviv FC & FIFA

CAS 2021/A/7915 Mr. Javier Gonzalez Lopez v. Hapoel Tel Aviv FC & FIFA

ii. *Lis pendens* and *res judicata*

CAS 2020/A/7054 Sporting Clube de Portugal v. Rafael Alexandre de Conceicao Leao & LOSC Lille & FIFA (Award 21 February 2022)

This case turned out the be rather complex as it involved various legal principles, such as the DRC's jurisdiction, joint liability, early termination of contract as well as *res iudicata* and *lis pendens*. The player Rafael Leao decided to terminate his contract with the club unilaterally two months after some fans attacked some Sporting Lisbon players at their training ground. He then joined LOSC Lille and finally moved to AC Milan that paid nearly EUR 30 million to the French club to acquire him.

After leaving Sporting, the Player filed a claim with the Portuguese Court of Arbitration for Sport against Sporting Lisbon. On the other

hand, the club filed a counterclaim amounting to EUR 45 million in damages for having terminated the employment contract without cause. In this dispute, the Portuguese Court of Arbitration ordered Sporting to pay the Player EUR 40,000 in compensation for harassment but also ordered the Player to pay Sporting EUR 16,500,000 in compensation for terminating his employment contract without just cause. The Player then appealed this decision before the relevant national appeal body.

In parallel, Sporting filed a claim with the FIFA DRC against both LOSC Lille and the Player in order to have them held jointly and severally responsible for a compensation payment of EUR 45 million. However, the FIFA DRC considered itself incompetent to hear the claim as there was already an ongoing procedure (*lis pendens*) in front of the Portuguese Court of Arbitration involving two of the same parties, namely the Player and Sporting, as well as the same object. In particular, the FIFA DRC considered that "*the involvement of LOSC Lille in the* [present] *proceedings does not affect the aforementioned criterion of the identity of the parties, since the alleged breach of* [LOSC Lille] *is merely accessory to an alleged breach of the player.*"

Sporting was not convinced by this reasoning and took the case to CAS arguing that when a contract is terminated without cause by the Player, the latter and his new club should be held jointly and severally liable, as stipulated in Article 17(2) RSTP.

In view of this background, the Panel started to recall that the principle of *lis pendens* mainly serves the purpose to prevent identical matters to go ahead in parallel proceedings, since this bears the danger of conflicting decisions with *res judicata* effects (*lis pendens* is the preliminary stage of *res judicata*). However, it also pointed out that as decisions of an association tribunal, such as the FIFA DRC, are not vested with *res judicata* effects, the issue as to whether the *lis pendens* principle applies to concurrent proceedings appears dubious from the outset. As final introductory remark, the Panel noted that the RSTP had no provision on *lis pendens* and it would be within FIFA's autonomy to provide such a provision in its regulations.

Notwithstanding the above, the Panel recounted that the two essential requirements for *lis pendens* are parallel proceedings that (i) share the same cause of action and (ii) involve the same parties. In this regard, it was emphasized that Article 17 (2) RSTP does not provide a graduated relationship between the liability of the player and his new club but refers to a joint and several liability. Therefore, the DRC's interpretation that LOSC Lille had an accessory liability had no legal basis and was incorrect. In this regard, the Panel clarified that in cases of joint liability, there are as many matters in dispute as couples of claimant/defendants. This means that the claim before the DRC against the player and LOSC Lille are, from a procedural point of view, different matters in dispute, i.e., the claim against the Player is procedurally distinguished from the one against LOSC Lille. As a result of the foregoing, the Panel ruled that the ongoing procedure in front of the Portuguese Court of Arbitration could not prevent Sporting from initiating a separate action against LOSC Lille before the FIFA DRC (no *lis pendens*).

The first issue resolved, the Panel then analyzed whether the DRC had jurisdiction and noted in this respect that the latter accepted its jurisdiction based on Article 22 (a) RSTP but ruled on its competence based on *lis pendens* and not on the basis of the aforementioned provision. Nevertheless, considering that LOSC Lille claimed that the DRC was not competent (or would not be competent) to hear the case due to the lack of international dimension of the dispute, CAS had to focus on this issue. In this respect, the Panel found that the initial contractual dispute between the Player and Sporting Lisbon was of national dimension but gained an international dimension upon issuance of the ITC and the transfer of the Player to LOSC Lille. Interestingly, the Panel found that even if time passed between the termination of the contract by the Player and the ITC request (about ten weeks), the matters were not segmented, but rather sequential, so that the ten weeks lapse was irrelevant. As a result, it was considered that the international transfer to the French club was the reason for the contractual dispute, rendering the FIFA DRC competent as per Article 22 (a) RSTP.

The procedural aspect clarified, the Panel (finally) entered into the merits of the case and found that it was not bound by the findings of the Portuguese Court of Arbitration, since that decision was issued between different parties. The Panel further considered that nothing in the wording of Article 17 (2) RSTP indicates that, before condemning the new club to pay compensation, an analogous determination must have been made by the DRC against the Player that terminated his contract without just cause. In other words, there is nothing in Article 17 (2) RSTP that suggests that the new club's liability stands and falls with a binding decision by FIFA holding the player liable according to Article 17 (1) RSTP. Furthermore, such requirement would be contrary to the principle of joint and several liability according to which the liability of joint debtors is on an equal footing. To the contrary, the Panel considered that for the new club to be held liable, it should be analyzed first whether the player terminated his contract with or without just cause.

In this regard – and unlike other case involving another player of Sporting Lisbon (Mr Ribeiro) – the Panel found that the Player had indeed terminated his contract WITHOUT just cause as he waited almost two months to terminate his contract after the fans stormed the training grounds. Put differently, the Player should have terminated his contract immediately or within an appropriate time window but should not have waited two months and use the aforementioned event as the reason for the early termination of his contract. As the contract was terminated without just cause, the Panel considered that the Player had to pay compensation to his former club (no further clarification provided by CAS on this issue).

Finally, the Panel stated that LOSC Lille profited from the Player's breach of contract, since it could sign him without paying a transfer fee but could subsequently transfer him to another team for a considerable sum of money. Bearing in mind that Article 17 (2) RSTP is intended to establish a passive joint liability between the author of the contractual violation and the one who benefitted from the violation, the Panel found that LOSC Lille had to be held jointly and severally liable to pay compensation. However, the Panel did not find itself in a position to determine the amount of liability and therefore decided to refer the case back to the DRC, tasking this body to determine the amount of damages owed by LOSC Lille.

Other cases related *res judicata* or *lis pendens*:

CAS 2021/A/7775 Nyíregyháza Spartacus FC v. Vukašin Poleksić

CAS 2021/A/7914 Mr. Cesar Domingo Mendiondo Lopez v. Hapoel Tel Aviv FC & FIFA

CAS 2021/A/7915 Mr. Javier Gonzalez Lopez v. Hapoel Tel Aviv FC & FIFA

iii. Validity of a Contract

CAS 2020/A/7482 Zantong Zhiyan FC v. Caracas FC (Award 27 April 2022)

This Award deals with a disagreement between two clubs over the validity of a transfer agreement. The DRC held that the pre-contract constituted a valid contract, but of course, one club, the Appellant (the club expecting to receive the Player), was not happy with the decision so an appeal was filed with CAS.

Before CAS, the Appellant argued that the transfer agreement is invalid because it was dependent on a successful Player's medical examination, which the Appellant alleged was never properly completed. In particular, it was agreed that if the Player failed the medical examination, the club expecting to receive the player could terminate the agreement.

Against this background, the Sole Arbitrator firstly pointed out that "*transfer agreements between football clubs can legitimately be made subject to a player passing his medical examination*", citing a past CAS award.

In deciding whether the Player underwent the medical examination, the Sole Arbitrator noted that the Player did go through with a medical exam deeming him fit to play professional football, but he did not pass a training exam meant to assess his levels in improvement in football skills. The Sole Arbitrator draw light to the fact that medical examinations and skillset examinations are quite different in purpose. Thus, it is concluded while the Player did not pass his skillset evaluation, that does not mean that he failed his medical examination. Further, the Appellant did not in any way discharged its burden of proof to demonstrate that the Player did not pass the medical exams as the skill tests requested by the fitness coach cannot be qualified as medical examinations.

Thus, the Appellant's appeal was dismissed, and the DRC decision was affirmed in full.

Other cases related to the player's medical examination in a transfer agreement:

CAS 2021/A/8023 Frosinone Calcio v. FC Chiasso

CAS 2020/A/7697 Girensuspor Kulubu Dernegi v. Cyriac Gohi Bi Zoro (Award 28 January 2022)

The award CAS 2021/A/7697 Giresunspor Kulubu Dernegi v. Cyriac Gohi Bi Zoro clearly illustrates that potestative clauses in contracts are unenforceable. In this case, the Player and the Club had a Private Agreement, according to which the Player's salary was variable and dependent on the Player's match performance and participation. Soon, this agreement became problematic when proper payment was withheld. Additionally, the Player claimed that the Club forged receipts of payment records to the Player.

In view of the above, the Player brought the Club to the DRC "*[which] found that [while] the [Private Agreement] did provide for payments by way of match participation, (...) such an arrangement was potestative and therefore cannot be applied due to its invalidity*". Because of this invalidity, the Player was entitled to the full payment as remuneration. However, while entitled to proper payment, the DRC found the Player as having failed to meet his burden of proof in showing that the receipts were forged. Thus, the Club was ordered to pay the full salary, less the pay listed on the payment receipts.

In response, the Club appealed to CAS where it argued that the Private Agreement was a valid contact.

On his side, the Sole Arbitrator recalled "*that a clause is to be deemed potestative if it is unilateral and for the benefit of one party only, for instance, if the contractual obligation (in the case at hand, to pay the Player) is conditional upon something which is in the unilateral control of one party (again in the case at hand, deciding whether or not to include the Player in the match squad).*" In particular, this agreement gave the Club

absolute control as to whether the Player would be paid during the time of the agreement, and it is plainly unlawful to allow for any situation in which a Player could be refused compensation for any extended period of time.

In sum, the Sole Arbitrator fully agreed with the DRC and dismissed the appeal.

Other cases related to the validity of the Contract or a clause:

CAS 2021/A/8162 Hossam Ashraf Mahmoud Elgamy v. Nkufo Academy Sports & FIFA

TAS 2021/A/8315 Club Olimpia c. Deportivo Popular Junior FC

TAS 2022/A/9095 Al Ettifaq c. Dijon

CAS 2021/A/8008 Lukas Grozurek v. Pafos FC

iv. Mutual termination of Employment Contract

CAS 2020/A/6793 Aloys Bertrand Nong v. FC Pars Jonoubi Jam (Award 17 January 2022)

In this intriguing case, the Player terminated his contract with the Club after the latter failed to pay outstanding amounts owed to him. Following that, the Player signed a Settlement Agreement with the Club and later filed a complaint with the DRC against the Club.

In particular, the Player challenged the Settlement Agreement's legitimacy, claiming he was forced to sign it to flee the country. According to the Player, after the Employment Contract expired, the Club kept his passport and forced him to sign a settlement agreement in order to leave Iran. This argumentation was however not followed by the DRC, which rejected the Player's claim.

The Player provided similar, if not identical, argumentation in front of CAS. However, the Sole Arbitrator stated that there was no mention or evidence of the contracts being signed under duress or resulting in an unfair advantage. Thus, after consulting the Swiss Civil Code, the Sole Arbitrator determined that the agreement was legitimate and binding on both parties and dismissed the appeal.

TAS 2021/A/7824 Mahamadou Traoré c. CS Constantine (Award 3 February 2022)

In the case of Mahamadou Traoré v. CS Constantine, the Player signed a contract with the Club. On the other hand, the Club's coach wrote in a report about the Player lacking the necessary skills to play for the team and recommended that he should quit his contract and sign with another club. A meeting was then set up with the Player, who was asked to sign documents that the Club later claimed were for the mutual termination of the contract whereas the Player submitted that they were for his visa renewal. Subsequently, the Player's attorney inquired about his non-invitation to the training camp and was informed that the parties had entered into a termination agreement.

In front of the DRC, the Player claimed that he had never signed the termination agreement or that his signature had been obtained fraudulently, and thus said agreement should be considered void. Nevertheless, the DRC rejected the Player's arguments and found no evidence of fraud in the agreement.

The Player appealed to CAS putting forward the same arguments and requested that the DRC decision be overturned.

The Sole Arbitrator followed the DRC's findings in relation to the conclusion of the termination agreement, i.e., that there was no evidence that the Player's signature was forged, so that the latter was bound by the terms of the agreement. However, the Sole Arbitrator recalled that considering the Swiss Federal Tribunal's jurisprudence, it is necessary to analyse whether, in the context of the signing of a termination agreement, a) the player was given a period of reflection and b) whether the agreement contained reciprocal concessions of equivalent value (the agreement includes reciprocal concessions - of comparable importance - so that it is clearly a case of settlement).

In this regard, the Sole Arbitrator considered the timeline of the events leading up to the conclusion of the termination agreement and found that there was no time for reflection by the Player before signing it. Likewise, the termination agreement did not contain reciprocal concessions of equivalent value.

As a result, the Sole Arbitrator considered the termination agreement invalid, so that the Club terminated the employment contract without just cause and had therefore to pay outstanding salaries and compensation for breach of contract to the Player.

TAS 2021/A/8335 Mohamed Keita c. AS Sale (Award 27 September 2022)

In the course of the employment relationship, the Player informed the Club on multiple occasions that the latter did not meet its financial obligations and owed him outstanding salaries. In response, the Club pointed out that the Player had signed a Settlement Agreement.

The Player eventually contested the validity of this Settlement Agreement before the DRC.

The DRC rejected the claim as it found that the parties had signed a Settlement Agreement by means of which they declared having "*settled all disputes and debts of the contract*" and terminated said employment contract. The Player disputed these findings and stated before CAS that the Settlement Agreement had been forged by the Club.

When examining the validity of this Agreement, the Sole Arbitrator first pointed out that it was up to the Player to prove that his signature was forged. However, as the latter failed to do so, the Sole Arbitrator saw no reason to depart from the findings of the DRC regarding the validity of the signature.

The Sole Arbitrator moved on and considered it necessary to analyse, in the context of the signing of the Settlement Agreement, a) whether the player was given a period of reflection, and b) whether there were reciprocal concessions of equivalent value.

As to the first point, the Sole Arbitrator deemed that he was not in a position to assess how much time the Player might have had to reflect before accepting the terms of the agreement. With respect to the second point, however, the Sole Arbitrator observed that the Club had not credibly and seriously set forth any benefit that the Player obtained in exchange for the significant concessions made by him. In other words, the Sole Arbitrator agreed with the Player that the Club made no concessions that would be of approximately the same value as the rights waived by the player.

Accordingly, the Sole Arbitrator considered that the Settlement Agreement was ineffective and awarded the Player outstanding salaries and compensation.

CAS 2020/A/7030 & 7051 Sporting Clube de Portugal v. Ruben Tiago Rodrigues Ribeiro & Al Ain FC & FIFA (Award 14 February 2022)

During the employment relationship between Sporting and the Player, some "fans" stormed the Club's training ground, attacking, and injuring Club's staff and some players. For this reason, the Player terminated his contract. However, the Player met with the Club twice after said termination in a bid to mend any problems. Unfortunately, all attempts were unsuccessful, and the Player then signed for Al Ain FC.

Sporting brought an action at the DRC against the Player for breach of contract and requested that the new club, Al Ain, be held jointly liable. Interestingly, the DRC determined that the Player did indeed have just cause to terminate his contract with the Club but due to the time he terminated his agreement, he had lost a right to claim compensation. Both, the Player and Sporting, appealed to CAS.

The Panel held that from the circumstances of the case, both parties (Sporting and Player) were responsible for the termination of the contract and as such, just cause was the result of a situation to which both parties equally contributed. Consequently, the Panel stated that no payment was to be ordered against any party as they both received what they sought.

The Panel also held that Al-Ain was not jointly liable in the present matter.

Other similar cases or related to mutual termination of contract:

CAS 2020/A/7553 Al Zawra SC v. Shadrach Kwesi Eghan

CAS 2021/A/8113 FK Crvena Zvezda v. Rajiv Ramon Van La Parra

CAS 2021/A/8359 Davide Lanzafame v. Adana Demispor Kuliibii

CAS 2020/A/8620 Beijing Guoan Football Club v. Fernando Lucas Martins

CAS 2022/A/8968 Al Hazem Sports Club v. Constantin Galea

v. Early termination of Employment Contracts (with or without just cause)

CAS 2021/A/8214 Altay SK v. Andreas Tatos (Award 27 January 2022)

In the present matter, the DRC ruled that the Player had just cause to terminate his contract when (i) the Club was withholding payments and (ii) was warned (by the player) of the legal consequence resulting thereof. Moreover, the DRC considered that the Club did not satisfy its burden of proof in showing the actual payment was made.

The Club disagreed with this decision and argued before CAS that it had acted in line with the employment law and rules, making all the payments to the Player fully and on time until the termination date. Thus, the Club submitted that the Player terminated the employment relationship without just cause.

In consideration, CAS noted that the only documentation submitted by the Club as alleged evidence of such payments was written in Turkish, which is unacceptable as evidence as Turkish is not one of the four official languages of FIFA. This was the only evidence offered by the Club, and because of its unsatisfactory character, the Club did not meet its burden of proof in showing that payments to the Player were adequately made.

Further, CAS observed that the player duly put the Club in default and allowed the proper amount of time for the Club to pay what was due. Because the Club was properly warned by means of the default notice but failed to produce acceptable evidence of payment, CAS concluded that the Player's actions were justifiable in the early termination of his contract. Thus, CAS confirmed the DRC decision in full.

CAS 2021/A/8216 Besiktas AS v. Loris Sven Karius (Award 24 January 2022)

In CAS 2021/A/8216 Besiktas AS v. Loris Sven Karius, the Player had entered an employment contract with Besiktas (the Club), on loan from another club. In March 2020, the Player sent a notice to the Club, requesting payment for outstanding salaries from November 2019 through February 2020. After no response from the Club, the Player lodged a claim before the DRC. Another notice was sent to the Club requesting further payment for the months leading up to April, and at the end of April, the Club sent payment amounting to a small portion of the total outstanding salaries. In response, the Player sent a termination letter to the Club, notifying his early termination of the Employment Contract and lodged another claim before the DRC. The Player also submitted a third claim requesting additional payment.

For all three claims, the DRC ruled in favour of the Player, and the Club was ordered to pay the salaries and other outstanding fees.

In response, the Club appealed the decision to CAS, arguing that the DRC ordered an excess in payment be made to the Player and that the unilateral termination of the Employment Contract was incompatible with art. 14bis RSTP. The Club also claimed that the Player abused his rights in submitting multiple claims to DRC, some of which included overlap in the salaries owed to the Player and finally invoked the COVID-19 pandemic as force majeure, rendering its financial obligations to the Player impossible.

The Sole Arbitrator disagreed with the Club's argument, explaining that the Club first was in breach of contract by failing to pay salaries, thereby giving just cause for the Player to terminate the contract prematurely. Additionally, the Sole Arbitrator also found that the Player did not have any abusive conduct in his procedural behaviour. Rather, he enforced his rights in reference to payments becoming due, and eventually realized the need to terminate the employment contract when it became obvious that a stable contractual relationship could no longer be expected. Further, in response to the Club's claim that it could not pay the salaries due to the pandemic, the Sole Arbitrator mentioned previous CAS cases in which the arbitrators have not found the Covid-19 pandemic to rise to the level of force majeure.

For the aforementioned reasons, the appeal was dismissed.

CAS 2021/A/7719 Club Sportif Sfaxien c. Mouhoub Nait Merabet (Award 28 January 2022)

In this case, the Appellant and the Respondent signed a contract for three seasons that stipulated that the Respondent (the Player) was expected to attend all training sessions and invitations. A copy of the Player's contract with the Appellant (the Club) was never provided to the Player, and he never received his passport after submitting it to the club to obtain a residence permit. Aside from that, the Club did not bother to invite the Player to any of their training sessions. This led to a complaint from the Player to FIFPro, who then requested that the Club return the Player's passport and begin procuring a work permit for him. The Player's request for a copy of the contract was ignored, but FIFA eventually provided one upon the Player's request. As the Club was still in possession of his passport, the Player went to the local police, who enlisted the help of the local prosecutor's office. Eventually, the Club returned the passport, but the Player decided to terminate his contract due to the Club's behavior and filed a complaint to the DRC.

The Club, being ordered to pay unpaid wages and compensation for breach of contract to the Player, contested this decision to CAS on the basis that the Player failed to show up for team training sessions in breach of his contract. In addition, the Club claimed that because of the COVID-19 pandemic, the Player should only be paid half of his salary after terminating his contract.

After reviewing the evidence, the Panel could not agree with the Appellant's arguments in the sense that the evidence presented was insufficient and, if anything, showed that the Appellant breached its contractual obligations to the Player rather than the other way around. Since the Appellant provided no legal support for a reduction in the Player's compensation, the Panel rejected that request as well.

CAS 2020/A/7221 CD Feirense v. Aly Ahmed Aly Mohamed & Larissa FC (Award 21 January 2022)

In the present case, the Player was found to have gone on an unapproved vacation, which the Club deemed as an abandonment of his contract and, as a result, terminated the employment contract. The DRC determined that the employment termination was unjustified and ordered the Club to pay compensation for breach of contract.

The Club filed an appeal with CAS, arguing, rather weakly, that the Player did not intend to return to the Club because of his various actions, and thus they were justified in terminating his agreement, even though the notice of termination was not delivered to the Player.

The Panel stated first that any party claiming a right based on an alleged fact bears the burden of proof. It noted that the Club did not discharge its burden of proof because it did not submit sufficient evidence to substantiate the Club's alleged termination with just cause.

In sum, the appeal was dismissed.

CAS 2020/A/6854 Wuhan Zall FC v. Jorge Sammir Cruz Campos (Award 26 April 2022)

In Wuhan Zall FC v. Jorge Sammir Cruz Campos, a CAS Panel reviewed the prior decision made by the DRC in favour of the Player in response to the latter's claim of premature and unjust termination of his employment contract by the Club.

Before the Panel, the Club argued that the early termination was made with just cause, as the Player arrived late to training camp as well as the fact that the Player took a two-day trip to Shanghai which was not approved by the Club.

In determining whether there was just cause for early termination, the Panel considered the Player's tardiness as well the arrival time of other players to the camp, but most importantly focused on the punishment given to the Player as a result of his late arrival. In response to the delay, the Club sanctioned the Player, and the latter accepted and honored the duties of the sanction. As such, the Panel determined that the issue cannot be reopened to impose harsher sanctions on the Player. Further, the Panel noted that the trip to Shanghai was not referenced as a reason for dismissal from the team; the late arrival to the training camp was the sole basis for the employment contract termination. In short, because the Club and Player had priorly agreed to and accepted a sanction for the late arrival to training camp, the Club could not (again) punish the Player through termination of contract; thereby, the early termination of the employment contract was made without just cause.

As a result, the Panel confirmed that the Club had to pay compensation for breach of contract. In this respect, the Panel took into consideration several factors, such as the salary agreements and costs of flights, as well as the days of training that the Player missed when he decided to arrive tardily.

Other similar cases or related to Early termination of Employment Contracts (with or without just cause):

CAS 2021/A/7959 MAS de Fes v. Alexis Yougouda Kada (Club's lack of interest in the Player's services)

CAS 2021/A/8253 Bismark de Araujo Ferreira v. Al Qadsiah (Player's unauthorized absence)

TAS 2021/A/8515 Mouloudia Club d'Oujda c. M. Yacouba Sylla (Player's unauthorize absence)

CAS 2020/A/7218 FC Dynamo Kiyv v. Dieudonne Mbokani (Player's unauthorized absence)

TAS 2021/A/7936 Moghreb Athletic Tatouan c. Martin Bengoa Diez (unpaid salaries)

CAS 2021/A/7815 Shiza Yahya & Simba SC v. Pharco FC

CAS 2020 A 7443 & 7446 & 7458 Mahmoud Abdelmonem Abdelhamid Soltane v. Zamalek Sporting Club

CAS 2021 A 8087 Altay SK v. Prince Segbefia

CAS 2021 A 8196 Hapoel Tel Aviv FC v. Felipe Rodriguez Valla

CAS 2021 A 8215 Altay SK v. Edin Cocalic

TAS 2021/A/7919 Club Sportif Sfaxien c. Mohamed Islam Bakir

CAS 2020/A/8221 Kayserispor KD v. Robert Prosinecki

TAS 2021/A/7686 Club Atletico Independiente v. Gaston Alexis Silva Perdomo & Sociedad Deportiva Huesca SAD

CAS 2020/A/7532 Islamic Republic of Iran Football Federation v. Marc Wilmots

CAS 2020/A/8037 Islamic Republic of Iran Football Federation v. Manuel Ferrera Caro

CAS 2021 A 8086 RKS Raków Czestochowa S.A. v. Emir Azemovic & FIFA

CAS 2020/A/6985 Ismaily SC v. Lassaad Jaziri & Al Nahda Sport Club

CAS 2021/A/8293 Al Nassr Saudi Club v. Sergio Nuno Carvalho

TAS 2021/A/7626 Elia Lina Meschack & BSC Young Boys c. Tout Puissant Mazembe

CAS 2021/A/8162 Hossam Ashraf Mahmoud Elgamy v. Nkufo Academy Sports & FIFA

CAS 2021/A/7705 & 7706 & 7707 Joao Alves De Assis Silva v. Nagoya Grampus Eight Inc

CAS 2021/A/8815 SC Chabab Mohammedia v. Ivan Markovic

CAS 2021/A/7892 Ittihad FC v. Jonas Gomes de Sousa

CAS 2021/A/7928 Esteghlal FC v. Andrea Stramaccioni

CAS 2021/A/7856 Constantin Valentin Budescu v. Al Shabab FC

CAS 2021/A/8511 Wuhan FC v. Leonardo Carrilho Baptistão

CAS 2022/A/8576 FK Kukesi v. Edis Malikji & NK Lokomotiva Zagreb

CAS 2021/A/7889 Beijing BSU FC v. Juan Luis Anangono Leon

CAS 2022/A/8621 Nikola Djurdjic v. Chengdu Rongcheng Football Club LTD

TAS 2021/A/7950 Fernando Vicente Gaibor Orellana c. Club Atletico Independiente

CAS 2021/A/8334 Puskas Futball Club Kft v Golgol Tedros Mebrahtu

CAS 2021/A/8352 Al-Raed Club v. Nemanja Nikolic

CAS 2022/A/8968 Al Hazem Sports Club v. Constantin Galea

CAS 2020/A/7216 Al-Hilal Khartoum Club v. Idris Mbombo Ilunga & Nkana FootballClub

vi. Liquidated damages clauses

CAS 2021/A/8098 Mabrouk Jendli v. Ohod FC (Award 13 April 2022)

In the present matter, the Player had a fixed-term contract with the Club which included the salary, the Club's responsibility to provide the Player with healthcare during his time on the team and a liquidated damages clause which established: "*if either party wishes to terminate the contract, the other party will be paid a monthly salary*".

During training, the Player suffered an injury to the knee, and after the injury, the Club stopped paying the Player and failed to provide him with any sort of medical care. Further, the Club notified the Player's attorney of the termination of the employment contract after the attorney notified the Club of its responsibility to swiftly pay the Player his overdue salaries.

In response, the Player brought a claim against the Club before FIFA where the DRC ordered the Club to pay the Player for overdue salaries, healthcare expenses and, as per the contract, one month of salary as compensation for the termination of the contract.

The Player appealed to CAS arguing that the liquidated damages clause set out in the contract was not applicable as long as he was injured as provided in another clause of the agreement.

In examining this issue, the Sole Arbitrator indeed noted that the agreement ultimately prohibited terminating the contract due to the Player's injury. For this reason, the Sole Arbitrator decided to apply Article 17 RSTP (instead of the liquidated damages clause) and determined that the appropriate amount of compensation due to the Player was that equal to the wages he would have earned, had the contract ended on its agreed duration.

Other cases related with a player's injury

CAS 202/A/8306 Velgata Sendai v. CSKA Moscow & FIFA.

CAS 2021/A/8334 Puskas Futball Club Kft v Golgol Tedros Mebrahtu

vii. Penalty clauses

CAS 2020/A/7529 Real Sporting de Gijón SAD v. A.C. Chievo Verona (Award 10 May 2022)

R.S. Gijon and A.C. Chievo Verona entered into a transfer agreement for a player to be paid in eight instalments. However, upon relegation of Chievo Verona, the latter defaulted in its payment obligations.

As a result, R.S. Gijon filed a complaint with the PSC requesting (i) the sixth instalment (EUR 300,000), (ii) the application of the monthly default interest rate of 3% (i.e., a total of 36% per annum) for the late payment and (iii) the penalty of EUR 500,000 as provided for in the transfer agreement.

The PSC considered that R.S. Gijon did not follow the notification procedure agreed in the transfer agreement to put Chievo Verona in default and, therefore, the default interest agreed was not enforceable. Furthermore, the PSC rejected R.S. Gijon's entitlement to the penalty amount.

R.S. Gijon appealed to CAS arguing that the club had indeed followed the stated procedure in the agreement and was therefore entitled to the default interest and the penalty clause agreed upon the transfer agreement.

The Panel agreed with Real Sporting stating that indeed it followed the proper default notice procedure as outlined in the agreement. However, the Panel considered that the interest rate agreed between the parties had to be reduced to 18% p.a., which was deemed appropriate in view of the Swiss Tribunal Federal and CAS case law. Furthermore, with regard to the penalty clause of EUR 500,000, the Panel found that this penalty was excessive and disproportionate.

The Panel took note of the fact that Chievo Verona had guaranteed 5 of the 6 instalments and considered it fair and appropriate to reduce the amount of the penalty to EUR 83,333.

Other case related to penalty clauses:

TAS 2019/A/6795 Gustavo Domingo Quinteros c. Federación Ecuatoriana de Futbol

CAS 2022/A/8650 Al Batin FC v. Club Moreirense FC

TAS 2021/A/8315 Club Olimpia c. Deportivo Popular Junior FC

TAS 2022/A/9095 Al Ettifaq c. Dijon

CAS 2022/A/8671 Al Ahli Saudi Football Club v. Alexandru Mitrita

CAS 2022/A/8702 Al Ittihad FC v. Garry Mendes Rodrigues

viii. Joint liability

CAS 2022/A/8758 & 8759 Saifedlin Malik Bakhit Maki v. Al Merreikh Sudanese SC, Pharco SC, Sudanese FA & Egyptian FA (Award 29 August 2022)

This Award revolves around the DRC's finding that the player breached Article 18(5) RSTP by entering into two professional contracts with two different clubs at the same time.

The Sole Arbitrator started by analysing whether the player was under contract with Al Merreikh SC when he signed another contract with Pharco SC. In this respect, the Sole Arbitrator pointed out that, at the hearing, the player stated that when he signed the contract "everybody knew" that the contract was invalid, because there were sporting sanctions against Al Merreikh SC. In this regard, the Sole Arbitrator considered that "[i]*t does not make sense for the Player to sign a contract that is null and void other than express his will that the agreement shall be binding despite the alleged grounds of nullity.*" The Sole Arbitrator also stressed that the player's explanations were subsequently modified by his counsel who explained that the player only realized that the contract was null and void after contacting the Sudanese Football Association. Finally, the Sole

Arbitrator noted that the player had been with Al Merreikh SC for some time, so that the latter should have known that the club was ban from registering "new players".

Consequently, the Sole Arbitrator found that the contract with Al Merreikh SC was either valid or was confirmed through the behaviour of the parties, so that when the player entered into an employment contract with Pharco SC, he breached Article 18(5) RSTP as he was already bound to Al Merreikh SC by an employment contract. In view of the breach committed by the player, the Sole Arbitrator found that Al Merreikh SC was entitled to damages and saw no reason to interfere with the calculation of the damages contained in the Appealed Decision given that the Player had not questioned the quantum of the damages mentioned therein.

Lastly, and despite Pharco SC's allegations, the Sole Arbitrator deemed that the high threshold of exceptional circumstances was not met in the case at hand. For this reason, the Sole Arbitrator upheld the finding of the Appealed Decision and held Pharco SC severally and jointly liable for the damages caused by the player to Al Merreikh SC.

CAS 2021/A/7784 CD Saprissa v. Nantong Zhiyun FC & Roman Rubilio Castillo Alvarez (Award 20 September 2022)

In the present matter, the Player was condemned to pay compensation to his previous club (Nantong Zhiyun FC) jointly and severally with his new club (CD Saprissa). The Player's new club brought the case to CAS.

Interestingly, the Sole Arbitrator noted that CD Saprissa had not been named a party before the DRC, even though the club had been invited to present its comments to the said proceedings. In other words, the Sole Arbitrator found that CD Saprissa was merely informed about the existence of the proceedings before the DRC but had not been called as a party.

Moreover, the Sole Arbitrator stressed that Nantong Zhiyung FC never asked any payment from CD Saprissa before the DRC but requested full performance from the player only and did not request any other party to be included in the proceedings. The Sole Arbitrator noted that there is no provision in the FIFA Regulations that would allow FIFA to act *ex officio* to condemn a person that has never been called as a party or to consider a so called "Intervening Party" as a party to the proceedings.

In light of the above, the Sole Arbitrator concluded that Nantong Zhiyung FC never directed its claim against CD Saprissa, which was therefore not a party to the proceedings before the FIFA DRC and the latter had no legal basis to hold CD Saprissa jointly liable for the amounts to be paid by the player to Nantong Zhiyung FC.

Consequently, the Sole Arbitrator partially modified the Appealed Decision, releasing CD Saprissa from having to pay any amount to Nantong Zhiyung FC.

Other cases related to joint liability:

CAS 2020/A/7054 Sporting Clube de Portugal v. Rafael Alexandre de Conceicao Leao & LOSC Lille & FIFA

CAS 2021/A/7815 Shiza Yahya & Simba SC v. Pharco FC

CAS 2020 A 7443 & 7446 & 7458 Mahmoud Abdelmonem Abdelhamid Soltane v. Zamalek Sporting Club

TAS 2021/A/7686 Club Atletico Independiente v. Gaston Alexis Silva Perdomo & Sociedad Deportiva Huesca SAD

CAS 2020/A/6985 Ismaily SC v. Lassaad Jaziri & Al Nahda Sport Club

CAS 2022/A/8576 FK Kukesi v. Edis Malikji & NK Lokomotiva Zagreb

ix. COVID-19 related disputes

CAS 2021/A/7816 Yeni Malatyaspor FK v. Arturo Rafael Mina Meza (Award 1 February 2022)

In the case CAS 2021/A/7816 Yeni Malatyaspor FK v. Arturo Rafael Mina Meza, the Club refused to fulfil its financial obligation towards the Player during the suspension of the football-related actives due to COVID-19. However, the DRC considered that the Pandemic does not automatically constitute a force majeure incident and therefore ordered the Club to pay the outstanding salaries of the Player.

The Club argued before CAS that when reducing and withholding Player payments, (i) it was following the rules and guidelines set out by FIFA and (ii) that the contractual breach of reduction and withholding of payment is excusable through the principle of force majeure.

The Sole Arbitrator disagreed with the Club and rather affirmed the DRC decision for several reasons. Firstly, nowhere did FIFA ever declare revenue decreases due to COVID-19 to be force majeure events. According to well-established CAS jurisprudence, external economic factors do not constitute a justification for noncompliance with financial obligations assumed by a contracting party. Secondly, the Sole Arbitrator noted that the Bureau of the FIFA Council decided the COVID-19 outbreak was not a force majeure situation and could not be used to excuse breach of contract through withholding pay.

In addition to the above, the Sole Arbitrator also noticed that article 12bis of the RSTP require clubs to "*comply with their financial obligations toward players*", and that for force majeure to exist there must be "*an objective (rather than a personal) impediment, beyond the control of the 'obliged party', that is unforeseeable, that cannot be resisted and that renders the performance of the obligation impossible*". In view of the foregoing, the Sole Arbitrator considered that the Club failed to establish that it was facing a situation of force majeure and had therefore to comply in full with its financial obligations contained in the employment contract.

Finally, the Sole Arbitrator recalled that for the good of preserving the fundamental obligation of *pacta sunt servanda*, the basis maintaining contractual stability and the legal system, this definition of force majeure must be narrowly interpreted.

Foundationally identical facts, rules, holdings and reasonings are also found in:

CAS 2021/A/7799 Yeni Malatyaspor v. Mitchell Glenn Donald

CAS 2021/A/7817 Yeni Malatyaspor FK v. Ghaylen Chaaleli

CAS 2021/A/7888 Yeni Malatyaspor FK v. Fabian Ceddy Farnolle.

CAS 2021 A 8277 Yeni Malatyaspor FK v. Remi Walter

CAS 2021 A 8321 Yeni Malatyaspor FK v. Jody Lukoki

CAS 2021/A/7955 Giresunspor Kuliibii Dernegi v. Adriano Fachini (Award 28 January 2022)

In this case, and quite interestingly, CAS creates the idea that the COVID-19 pandemic could in fact result in force majeure, but force majeure cannot be concluded if the Club fails to comply with its burden of proof in showing justification for lack of payment through documentation. Further, although continuous, much reduced payments do not establish good faith efforts satisfactory to prove force majeure. To clarify, just because the Club paid the Player something, the Club did not prove that it had no way of paying the contractually agreed-upon wages. Additionally, CAS also affirmed the DRC attention to the fact that the Club had stopped paying the Player proper wages months prior to the outbreak of COVID-19 within the Club's national borders.

Thus, CAS affirmed the DRC decision that the Club was in breach of contract and liable to pay all outstanding wages to Player.

CAS 2021/A/7878 & 7916 Naim Sliti v. Al Ettifaq Club (Award 27 April 2022)

In the award of Naim Sliti v. Al Ettifaq Club, after the outbreak of the COVID-19 Pandemic and a suspension of the football league in Saudi Arabia, the Club sent an email to the Player and his agent with a proposal titled "Covid-19 Pandemic Agreement" attached, urging the Player to sign it and, as a result, agree to a reduction in his monthly income. After receiving no response from the player's agent, the Club sent additional emails. Subsequently, the Club notified the Player and his agent through email of the Club's decision to impose a pay cut.

However, the Player's legal representative submitted a default notice to the Club requesting payment of three outstanding salary instalments and informed the Club that he had never agreed to a salary reduction and that he would not return to work until he was paid the various outstanding amounts. However, instead of paying the amounts due to the Player, the Club imposed numerous fines on him for missing training sessions, which resulted in a 5% reduction in his monthly wage. The Player's agent sent to the Club a second default notice, seeking that all outstanding salaries be paid within 15 days. The Club, on the other hand, decided to levy additional disciplinary fines, each equal to a 5% reduction in his monthly income, for his absence from training sessions. On 12 July 2020, the Player finally returned to the club's training sessions.

The Player filed a claim against the Club with the DRC, seeking payment of the amount owing to him as unpaid salaries. The DRC partially sustained the Player's claim, ruling that the latter was entitled to a wage equal to 75% of the initial wage and that some of the sanctions levied by the Club were legal. The Player challenged this decision to CAS, claiming that neither he nor his representative indicated that they would accept the reduction and that the sanctions imposed on him were void because the Club was already in breach of its contractual responsibilities when the Player decided not to join the training sessions.

First, the Panel stated that during the suspension of football activities in Saudi Arabia, the Player's obligation to provide his services was also suspended and as a result, the Club's decision to apply a reduction in the Player's salaries during the lockdown period was made in good faith and on reasonable grounds. The Panel did however point out that the salary reduction was not done with the consent of the Player and the Club had no right to unilaterally reduce the Player's salary.

Regarding the fines imposed on the Player for missing training, the Panel believed that because the Player informed the Club that he would not attend training if the Club was in default of its payment obligations, he reserved his right to terminate the Employment Contract per Article 14bis RSTP. The Panel determined that, under the circumstances, the Player's decision not to attend the training, particularly after having previously put the Club on default notice, was entirely appropriate and legitimate under Article 82 SCO, as well as in compliance with his rights under FIFA RSTP.

As a result, the Panel determined that all fines imposed on the Player for missing training sessions were null and void as the Club had no authority to offset these sums against the Player's outstanding pay. The Club was therefore ordered to pay the Player the full outstanding monthly salaries owed to the player.

CAS 2021/A/8118 Anorthosis Famagusta FC v. Ruben Rayos Serna (Award 28 March 2022)

The Player Ruben Rayos Serna lodged a claim against Anorthosis Famagusta FC for failing to pay his salaries during the early months of the COVID-19 pandemic.

The DRC, as in the previously mentioned case, ordered that the Club pay the Player all outstanding salaries and fees, despite the Club's best efforts to avoid payment through arguing force majeure due to the said pandemic.

The Club requested that CAS assess this issue, and here again, the Sole Arbitrator found the Club to be in breach of its contractual obligations toward the player in terms of salaries. Further, the Sole Arbitrator recognized the Player's efforts to uphold his end of the deal in following at-home training instructions given to the Player by the Club. Thus, the Player had just cause to terminate his contract early and was entitled to receive all outstanding salaries from the Club.

CAS 2021/A/7851 & 7905 Mohamed Naoufel Khacef & Tondela Futebol v. FIFA (Award 11 January 2022)

In this case, Mohamed Naoufel Khacef (Player) joined Tondela Futebol while still under an extended contract with an Algerian club. The Player defended his decision to join Tondela, arguing that the COVID-19 pandemic created a situation of force majeure through an "*impossibility of developing his career in Algeria due to the suspension of the competition*" and unsuitable sanitary conditions within the country's borders. Further, the Player argued that he was tricked into signing the contract extension with the Algerian club, making for an invalid contract.

In response to the Player's arguments, the DRC stated that the COVID-19 pandemic did not result in force majeure. Thus, the Player was found to be in breach of contract with the Algerian club when joining Tondela Futebol. As for the Player's argument concerning the validity of the contract, the DRC disagreed because no evidence of fraud, forgery or coercion was found. Thus, the DRC found that the Player terminated his contract with the Algerian club without just cause and ordered the Player, together with Tondela Futebol (jointly and severely liable), to pay compensation for breach of contract. The DRC also suspended the Player from participating in official matches for four months.

The only part of the DRC decision the appellants wished to appeal concerned the sporting sanction on the player. Before CAS, the appellants argued that force majeure excuses the early termination of the Player's contract because (i) the Player was unable to participate in football matches in Algeria and (ii) the Player was unable to re-enter Algeria because of the temporary travel ban. Further, they argued that the contract extension was invalid.

The Panel observed that for force majeure to exist, there must be an objective (rather than a personal) impediment, beyond the control of the obliged party, that is unforeseeable, that cannot be resisted and that renders the performance of the obligation impossible.

Thus, neither the ability to play nor the ability to enter Algeria justify the early termination of the contract.

As for the argument concerning the allegedly invalid contract extension, the Panel observed that there was no evidence on file suggesting that the Player's signature was forged, that he was tricked into signing, or that the Algerian club lied to the Player or committed fraud or exercised undue pressure on the Player. Given the specificities of the document signed and the context in which the signature occurred, an argument of trickery is implausible to the Panel.

Furthermore, the Panel found the extension to be a renewal of the Contract and concurred with FIFA that the rationale behind Article 18(2) RSTP is to limit the maximum duration of a one-off contract to five years, not to prohibit a player from extending his employment relationship during or upon expiry of this term. Hence, the Panel found that the Player's termination of the Contract without just cause clearly occurred during the "protected period" and therefore confirmed the sporting sanction imposed on the Player.

Other similar cases or related to Covid-19 issues:

CAS 2021/A/7680 Ittihad FC v. Aleksander Prijovic

CAS 2021/A/8020 Muangthong United v. Alexandre Torreira Da Gama Lima

CAS 2021/A/8021 Muangthong United v. Anderson Goncalves Nicolau.

CAS 2021/A/7738 Sociedade Esportiva Palmeiras v. Pyramids Football Club

CAS 2021/A/8113 FK Crvena Zvezda v. Rajiv Ramon Van La Parra

CAS 2021/A/7892 Ittihad FC v. Jonas Gomes de Sousa

CAS 2021/A/8319 Beşiktas AŞ v. Jeremain Marciano Lens

CAS 2021/A/8511 Wuhan FC v. Leonardo Carrilho Baptistão

CAS 2021/A/8229 Leeds United Football Club Limited v. RasenBallsport Leipzig

CAS 2021/A/8002 Ittihad FC v. Sekou Sanogo

CAS 2022/A/8658 Sport Club Corinthians Paulista v. AS Monaco Football Club SAM

CAS 2021/A/7819 Besiktas Futbol Yatirimlari v. Pedro Miguel Braga Rebocho

CAS 2022/A/8744 Al Ahli Saudi Football Club v. Ljubomir Fejsa

CAS 2022/A/8702 Al Ittihad FC v. Garry Mendes Rodrigues

CAS 2021/A/7889 Beijing BSU FC v. Juan Luis Anangono León

x. Clearing House (Solidarity Mechanism and Training Compensation)

CAS 2020/A/7281 Koninklijk Diegem Sport VZW v. Club Atletico de Madrid & Dalian Professional F.C. (Award 27 April 2022)

In this award, matters concerning the expenses of the transfer of a player were discussed. Specifically, while the transfer fee was argued to be excessively below the true value of the player, it was the Appellant's perspective – as a former club of the player – that the low rate was agreed upon to reduce the amounts due as solidarity or training compensation to the player's training clubs.

Before CAS, the Appellant argued i) that the proceedings during the DRC trial were unfair and flawed, such to the point that the appeal before CAS was necessary, ii) that the player transfer rate was unfair, and iii) that there was collusion between Atletico de Madrid and Dalian FC to transfer the player at an unjustly low rate.

When considering the procedural errors made by the DRC, the Panel recalled the de novo character of appeals brought before CAS, which cure any procedural violations that may have been made in the prior proceedings.

As CAS has complete power to review the facts and the law, the procedural deficiencies which affected the procedures before the first instance may be cured by virtue of the present arbitral proceeding.

Further, the Appellant argued that the player was transferred at an unlawful and artificially reduced transfer fee rate and that the true market value should have been determined through information published by the data analysis organization, the CIES Football Observatory in Switzerland, and honored in the actual transfer fee rate.

In this respect, the Panel explains that a player's market value is irrelevant for the purposes of solidarity contribution and draws a difference between the market value and a player's agreed price. According to the Panel, the only relevant value is that actually attributed to the player by the parties to the transfer. Further, the Panel noted CAS jurisprudence confirming that the entire price or fee must be considered for the purposes of the solidarity contribution mechanism and that the calculation basis is the total amount of compensation negotiated for the player's transfer. As such, it would be completely implausible for the Panel to potentially find any sort of nexus between the CIES Football Observatory data and the solidarity payment due to the Appellant.

As for the Appellant's third and final claim regarding collusion between Clubs in respect to the transfer fee, the Panel noted that the Appellant bears the burden of proof in supporting the allegations and no sort of evidence in this respect was given. Therefore, the Panel rejected not only this argument, but the entire appeal.

CAS 2021/A/8392 PFC Lviv v. AD Guarulhos (Award 25 April 2022)

In the dispute between the two clubs PFC Lviv against Guarulhos, the Sole Arbitrator addressed whether a waiver of rights was valid under the applicable provisions.

Both clubs entered into a Transfer Agreement in which Guarulhos declared that it would waive its right to receive training compensation for the registration of the player for PFC Lviv in the registration period of January 2019. The player in question however was not registered for PFC Lviv in the January 2019 registration period, but for the Slovakian football club Lokomotiva Kosice. Eventually, the player was registered for PFC Lviv in the 2019 summer registration period. Upon the completion of the registration for PFC Lviv, Guarulhos filed a request before the DRC asking to receive training compensation from PFC Lviv.

PFC Lviv argued that it was not obliged to pay training compensation to Guarulhos as the latter signed an agreement in which it waived the right to receive the said compensation. However, Guarulhos argued that the agreement was only effective during the registration period of January 2019 and could not be extended to further transfer periods. The claim was partially accepted by the DRC and PFC Lviv appealed this decision to CAS.

As a starting point, the Sole Arbitrator noted that there is no guidance in the RTSP or any other FIFA regulation on whether it is possible to waive a certain right, and therefore decided therefore to refer to Swiss Law and CAS jurisprudence. In particular, the Sole Arbitrator recalled that, in general, rights may be waived voluntarily unless the waiver is contrary to law, public policy or good morals. In addition, for a waiver to be valid, (i) the person renouncing to a right must have the capacity/authority to do so; (ii) the waiver must be clear and unequivocal; and (iii) the person has the right he is renouncing.

With the above in mind, the Sole Arbitrator concluded that the waiver fulfilled the abovementioned requirements established by Swiss Law. However, the Sole Arbitrator found that the waiver only concerned the situation where the player would have been transferred and, ultimately, registered as a professional from Guarulhos to PFC Lviv exclusively. In other words, the effect of the waiver could not be extended to future transfer windows and was therefore no longer in force at the moment of the registration of the player with PFC Lviv in July 2019.

In sum, the Sole Arbitrator found that the waiver letter was exclusively limited to the transfer period of January-February 2019 and could not be extended to further registration periods, and therefore decided to confirm the DRC Decision.

TAS 2021/A/7966 Club Social y Deportivo Colo Colo v. Club San Lorenzo de Almagro (Award 23 August 2022)

The key legal matter in Colo Colo against San Lorenzo concerned a clause whereby both clubs agreed to shift the responsibility for the payment of the solidarity compensation from the buying club (Colo Colo) to the selling club (San Lorenzo) by directly including the amount due as solidarity compensation (5%) in the transfer fee (shifting clause). In addition, the clubs agreed that the transfer fee should be paid in three instalments.

Following Colo Colo's failure to pay the second and third instalments, San Lorenzo requested the DRC to pass a decision ordering Colo Colo to comply with its financial obligations. During the DRC procedure, Colo Colo argued that, despite the shifting clause, two of the player's former clubs filed a complaint in TMS against Colo Colo, with the result that the latter had to pay the relevant amounts due as solidarity contribution. In deciding on the case, the DRC considered the shifting clause, but also noted that a certain amount had been paid by Colo Colo to two former clubs of the player under the solidarity contribution mechanism. As a result, Colo Colo was ordered to pay the two outstanding instalments, less the amounts already paid as solidarity contribution.

Colo Colo appealed against this decision, arguing that the DRC should have deducted the full amount of the solidarity contribution due (5% of the total outstanding amount) and not just part of it, namely the amounts already paid by Colo Colo to third-party clubs.

In view of the foregoing, the Sole Arbitrator first pointed out that CAS jurisprudence has confirmed that the RSTP does not preclude the parties from agreeing on a contract which could shift the financial responsibility for the payment of the solidarity contribution, i.e., from the buying club to the selling one. In addition, the Sole Arbitrator further remarked that the shifting clause did not contravene Swiss law, in particular Articles 19 and 20 SCO, given that the clause was not contrary to the law and did not violate public order, morality, or individual rights.

Having confirmed that the parties can freely agree to shift the burden of payment of the solidarity contribution, the Sole Arbitrator then examined the shifting clause in detail and found that it was evident that; (i) Colo Colo had to pay the total transfer fee to the Respondent (without deductions); and, (ii) San Lorenzo had to distribute the 5% of solidarity contribution (which were included in the transfer fee) to the player's former clubs.

In light of the above, the Sole Arbitrator was keen to emphasize that the parties' agreement to shift the financial burden of the solidarity contribution had to be respected considering the general principle of "*pacta sunt servanda*". In other words, the Sole Arbitrator found that the transfer agreement is law between the parties, and it was not possible to modify it unilaterally, as the Appellant attempted to do.

As a result, the appeal was dismissed, and the Appealed Decision was confirmed in its entirety.

CAS 2021/A/7636 Sonjerjyske Fodbol A/S v. FIFA & Dado Babes FC (Award 23 August 2022)

The CAS award revolves around an appeal against a Proposal issued by the FIFA administration following a training compensation claim. The relevant parties entered into a Transfer Agreement in which the player would be transferred from Dabo Babes to Sonderjyske. In this regard, Dabo Babes issued an invoice for the payment of EUR 7,000 for training compensation, which Sonderjyske paid. However, Dabo Babes filed

a claim before the DRC requesting a sum of EUR 186,500 as training compensation. In response, FIFA drafted a "proposal letter" in which it proposed that Sonderjyske pay EUR 243,287. Given that the latter failed to reply within the granted time limit, FIFA, through a "confirmation letter", informed both parties that the abovementioned proposal had become binding on the two clubs.

Following the appeal lodged by Sonderjyske, the Panel first addressed the admissibility of this appeal as Dabo Babes argued that Sonderjyske could not appeal the "confirmation letter", since this letter was merely informative.

The Panel disagreed with this argument and noted that a "proposal letter" cannot be seen as the same thing as a "confirmation letter". In particular, the Panel stated that for the finalisation of a "proposal letter", both parties must consent on it. Without this, a "confirmation letter" is required, as *in casu*, so that the time limit to appeal this "confirmation letter" is the date on which it was issued.

Then, the Panel dealt with the question of whether FIFA was entitled to issue the "proposal letter" and noted that according to Article 13 Procedural Rules, the FIFA administration may issue proposals in disputes related to training compensation "without complex factual or legal issues" (as confirmed by Circular 1689). The Panel agreed that the FIFA administration has ample discretion whether a case is complex or not, but such discretion shall not be arbitrary or unreasonable.

In the present case, the Panel found that the FIFA Administration went beyond its margin of ample discretion in determining the complexity of the case and appeared to have failed to conduct sufficient due diligence or investigation before deciding to issue the proposal. In particular, the Panel deemed that there was no explanation from FIFA why the case was without complex or factual or legal issues, nor was there any justification for the increase the amount or the method used to determine such amount.

As a result, the Panel concluded that the FIFA Administration was not entitled to issue the proposal and decided to refer the case back to the FIFA DRC.

CAS 2020/A/7488 PFC Slavia Sofia v. RFEF & CD Arahal Balompie (Award 4 November 2022)

The present Award set aside a DRC decision that initially considered that the RFEF (in lieu of Arahal C.F.) was entitled to receive training compensation from Slavia Sofia based on Article 3 (3) Annexe 4 RSTP.

Firstly, the Sole Arbitrator dismissed the Appellant's arguments that the Player was a professional Player when he was transferred from C.D. Alcalá. In particular, it was found that Slavia Sofia failed to discharge its burden of proof to establish that the Player was receiving more money than he was actually spending in order to perform his football activity. Therefore, the Sole Arbitrator confirmed that the Player was not a professional under the contract with CD Alcalá and that the Player signed his first professional contract with Slavia Sofia which had, in principle, to pay compensation to the training clubs.

Secondly, the Sole Arbitrator reviewed RFEF's entitlement to receive that training compensation in lieu of Arahal C.F. which was liquidated in 2013 but apparently succeeded by C.D. Arahal Balompie. Based on the available evidence, the Sole Arbitrator differed with FIFA's opinion that those two clubs were different legal entities and, on the contrary, concluded that C.D. Arahal Balompie was the sporting successor of Arahal C.F. which resumed the latter's activities and appeared to be the same club.

Given the above, the Sole Arbitrator understood that the concept of sporting successor is applicable mutatis mutandis also to the rights and not only to the obligations of a sporting successor club.

Therefore, it was concluded that the RFEF had no right to receive such compensation from Slavia Sofia, being C.D. Arahal Balompie (the sporting successor) the entitled entity to claim it.

Other Club v. Club related disputes:

TAS 2020/A/7333 Club Tigres de la UANL v. Club Atletico Belgrano

CAS 2021 A 7863 Ittihad Riadhi de Tanger v. Al Nassr Saudi Club

CAS 2020 A 7359 Football Club Noah v. Football Club Kairat

CAS 2021/A/7738 Sociedade Esportiva Palmeiras v. Pyramids Football Club

CAS 2021/A/8318 Club Deportes Tolima S.A. v. FC Honk

TAS 2022/A/8681 Club Atlético Independiente v. Club de Fútbol América, S.A. de C.V

CAS 2021/A/8229 Leeds United Football Club Limited v. RasenBallsport Leipzig

TAS 2022/A/9095 Al Ettifaq c. Dijon

CAS 2020/A/7488 PFC Slavia Sofia v. Real Federacion Espanola de Futbol, CD Arahal Balompie

CAS 2022/A/8658 Sport Club Corinthians Paulista v. AS Monaco Football Club SAM

CAS 2021/A/8377 FC RFS v. Aigle Noir FC

xi. Sell-On Clauses

CAS 2021/A/7808 Kayserispor Kulubu Dernegi v. Go Ahead Eagles BV (Award 25 March 2022)

On 27 July 2015, a transfer agreement for the player was reached between both clubs, which included a sell-on clause (participation of the former club in the subsequent transfer of the player). A new employment contract was signed between the Appellant (Kayserispor) and the player in August 2017 and in 2021, Fenerbahce SK finally acquired the player from the Appellant. The Respondent (Go Ahead Eagles) claimed that it was entitled to payment from the Appellant under the sell-on clause due to the transfer of the player to Fenerbahce SK.

The Respondent complained to the PSC and a part of its request was partially accepted by the PSC, which determined that it was entitled to the amount equivalent to the sell-on clause specified in the initial transfer agreement.

During the CAS appeal, the Appellant argued that (i) the authenticity of the transfer agreement was in doubt because the one in its possession and the one the Respondent were different (ii) because the player had signed a new employment contract with it, the sell-on clause in the previous contract was no longer valid for the new contract.

The Sole Arbitrator disagreed with the Appellant on both grounds.

First, he stated that there were no substantive differences between the two agreements signed by both parties. Second, the Sole Arbitrator noted that the sell-on clause was still in effect because the player's employment relationship with the Appellant had not been dissolved, as demonstrated by the Appellant posting on social media that the player had signed a new contract with the team. In other words, the player and the Appellant simply extended their contractual relationship by entering a new employment contract.

Consequently, the Sole Arbitrator ordered the Appellant to pay the Respondent an amount equal to the "sell-on" clause stated in the original transfer agreement.

CAS 2021/A/8345 KKS Lech Poznan S.A. v. UC Sampdoria S.p.A. (Award 28 July 2022)

In the present case, KKS Lech Poznan agreed to sell a player to UC Sampdoria S.p.A and the transfer agreement entered by the clubs

included a sell-on fee clause according to which the Italian club should pay 10% to KKS Lech Poznan of any amounts received from the future (permanent) transfer of the player to a third club. The issue arose after US Sampdoria S.p.A temporarily transferred the player against payment to the German club Fortuna Düsseldorf, a loan that was extended by another temporary transfer agreement that contained large sums of money as Loan Fee and a Buy-out obligation Clause, which was eventually triggered, once the player participated in four matches for Fortuna Düsseldorf.

KKS Lech Poznan lodged a claim before the PSC requesting several amounts derived from the sell-on clause, *inter alia*, 10% of the Loan Fee received by UC Sampdoria S.p.A. from Fortuna Düsseldorf in the scope of the second loan agreement. Some of the requested amounts were granted but the Loan Fee was not considered for the calculation of the amounts due.

As a result, KKS Lech Poznan challenged this decision and argued that the loan extension (i.e., the second loan agreement) entered into by US Sampdoria S.p.A and Fortuna Düsseldorf was a simulated contract for the purpose of hiding the full amounts involved in the transfer of the player to the German club and considered that it should be entitled to additional payment, in particular that the Loan Fee should be included in the calculation of the amounts due.

The Sole Arbitrator's main task was therefore to determine if a simulation occurred (Article 18 SCO) and he therefore carried out an interpretation of the loan extension and came to the following conclusions:

(i) Having analysed the economic value of the loan extension, the Sole Arbitrator found that "*the terms are the normal result of a negotiation process and that nothing points in a different direction*".

(ii) As to the objectives of the US Sampdoria S.p.A and Fortuna Düsseldorf, the Sole Arbitrator noted, *inter alia*, that "*while both Sampdoria and Fortuna were willing to transfer the Player, they also had the intent of reaching a contractual framework which allowed both parties to cope with their financial obligations and capabilities*". Therefore, the Loan Fee could not be taken into consideration for the purposes of the sell-on clause.

(iii) As to the conditions triggering the permanent transfer of the player (the Buy-out obligation Clause) - i.e., "*the Player's participation in 4 matches for a single minute*" - the Sole Arbitrator stated that it "*is indeed an easy to meet and suspicious condition; however, some circumstances in the case must also be considered to determine if it's possible to extract from such clause any intent [...] of partially circumventing the Sell-on Clause*". In addition, the Sole Arbitrator remarked that US Sampdoria S.p.A risked the most considering the loan extension. In this regard, he explained that since Fortuna Düsseldorf kept the freedom to make the Buy-out Clause operational, the Respondent could have ended up failing to transfer the player on a permanent basis. Therefore, the Sole Arbitrator concluded that the transfer of the player was completed only when the condition set out in the Buy-out obligation Clause was met and not when the loan extension was entered.

All in all, the Sole Arbitrator considered that the Appellant failed to demonstrate that the loan extension was a simulated contract, and that the testimony of the witness statements were also inconclusive in that regard.

Lastly, the Sole Arbitrator determined that the Appealed Decision correctly calculated the Sell-on Fee due to the Appellant and therefore confirmed the Appealed Decision in full.

Other similar cases or related to Sell-on Clauses:

TAS 2020/A/7333 Club Tigres de la UANL v. Club Atletico Belgrano

CAS 2021/A/7909 Club Osmanlispor v. Sociedad Deportiva Huesca

xii. Player's Economic Rights

- TAS 2021/A/8213 Club Tijuana Xoloitzcuintles de Caliente c. Matías Aguirregaray Guruceaga (Award 25 March 2022)

This CAS Award fully confirmed a DRC decision that ordered Tijuana to pay USD 300,000 to the Player since it was found that the latter owned 50% of his economic rights when his transfer to Al-Fateh occurred.

To annul the DRC decision, the Appellant alleged before CAS that according to the different contracts signed between the parties, (i) FIFA was not competent to decide on this issue, (ii) the relevant clause was void and contrary to the RSTP (ed. 2015) and (iii) the Player renounced to his 50% share when Al Fateh did not execute (initially) a "purchase option" for the Player's rights.

After analyzing the facts of the case, the Sole Arbitrator concluded that, according to the relevant agreement, (i) the Player always owned 50% of his economic rights and (ii) FIFA was competent to decide on this issue since no jurisdiction clause was agreed between the parties in that specific agreement.

The Sole Arbitrator also considered that the division of the economic rights between Tijuana and the Player (50%-50%) did not contravene Article 18ter RSTP and the Player could not be considered a third-party of his own economic rights. In any case, it was also confirmed that any potential violation to Article 18ter RSTP does not trigger the annulment of the relevant contract but only potential disciplinary consequences from FIFA.

Some of the Appellant's allegations were also considered against the principle of "*venire contra factum proprium*".

For these reasons the appeal was dismissed and CAS confirmed that the Player was entitled to 50% (i.e., USD 300,000) of the total transfer fee (i.e., USD 600,000) agreed between Tijuana and Al-Fateh.

Other similar cases or related to Player's economic rights:

CAS 2021/A/8229 Leeds United Football Club Limited v. RasenBallsport Leipzig

xiii. Registration and eligibility

- CAS 2020/A/7468 Sao Paulo FC v. FIFA & Federación de Fútbol de Chile & CD La Serena & Lucas Fasson Dos Santos (Award 27 April 2022)

In the complicated yet interesting award of Sao Paulo FC v. FIFA & Federacion de Fútbol de Chile & CD la Serena & Lucas Fasson Dos Santos, a decision by the PSC was disputed by a party which was not an initial party to matter brought before it.

The facts are that the Player, Lucas Dos Santos, signed a contract with Sao Paulo for three years until 7 July 2020 (First Contract). On 8 July 2020, the Player and La Serena entered into a contract that was effective from the date of execution until 1 July 2021. On 31 August 2020, Sao Paulo wrote a letter to CD La Serena in which they stated that the Player was under contract with them until 30 June 2021 and asked CD La Serena's representatives to affirm that they had not signed a contract with the said Player. On 8 September 2020, the *Federación de Fútbol de Chile* (FFCH) requested the ITC from the *Confederação Brasileira de Futebol* (CBF) in TMS to proceed with the international transfer of the Payer, from Sao Paulo FC to CD La Serena. However, the CBF denied the FFCH's ITC request because the First Contract had not expired. On the same day, CD La Serena sent a letter to the FFCH expressing its opposition to CBF's refusal and requesting a provisional ITC if the CBF continued to refuse the transfer.

As the CBF refused to issue the ITC, the FFCH brought a claim before the PSC, requesting the issuance of a provisional ITC. Said request was granted and the FFCH was authorized

to provisionally register the Player for CD La Serena. Sao Paulo FC, the Player's former club was aggrieved by this decision and appealed before CAS.

However, its capacity was immediately questioned by the Respondents who contended that Sao Paulo FC lacked standing because it was not a party in the dispute before the PSC.

The Sole Arbitrator noted that the CBF and the FFCH were the only parties involved in the procedure that resulted in the Appealed Decision. As a result, they were the only parties who had a right to appeal. The Sole Arbitrator further noted that there still exists a substantive contractual dispute between Sao Paulo FC and the Player which was a separate matter from the current one being appealed. Despite Sao Paulo FC requesting CAS to rule on the contractual relationship with the Player, this was not the right forum as even though the arguments regarding the labour relationship were raised in front of the PSC, they were never the subject of the proceedings, and the scope of the appeal cannot exceed the scope of the Appealed Decision.

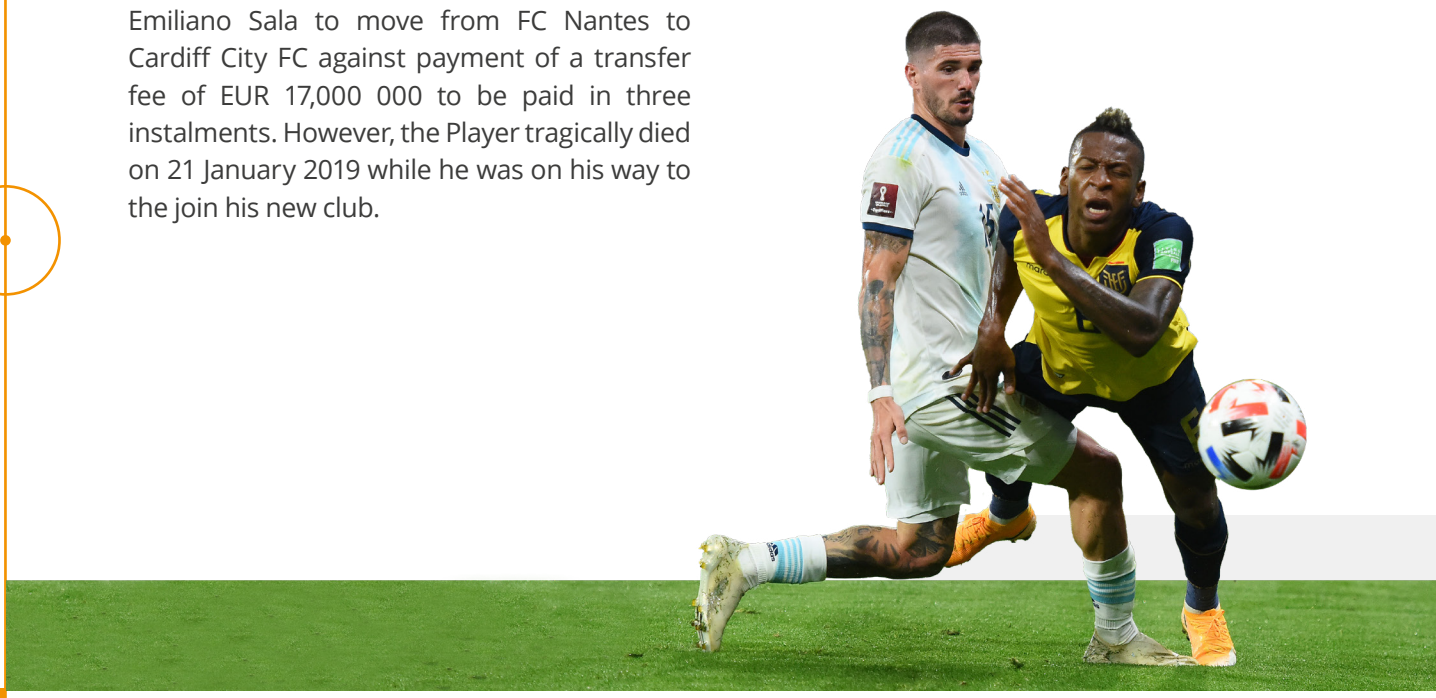
CAS 2019/A/6594 Cardiff City FC v. SASP FC Nantes (Award 26 August 2022)

In this sensitive matter, the two clubs agreed upon a Transfer Agreement about the player Emiliano Sala to move from FC Nantes to Cardiff City FC against payment of a transfer fee of EUR 17,000 000 to be paid in three instalments. However, the Player tragically died on 21 January 2019 while he was on his way to the join his new club.

As Cardiff City FC failed to pay the first instalment, FC Nantes lodged a claim before the PSC, who ordered Cardiff City to pay EUR 6,000,000 as part of the first instalment. Cardiff City FC contested this decision before CAS and requested the annulment of the Nantes' claim for the transfer fee since the Player was, allegedly, never registered for the club.

Aside some procedural issues, the main question that the Panel had to answer was whether at the time of the Player's death, the latter had been definitively transferred from FC Nantes to Cardiff City FC, so that the payment obligation provided for in the Transfer Agreement would be triggered. In particular, the Panel noted that the validity of the Transfer Agreement was conditional upon the three following condition precedents:

(i) FC Nantes and the Player agreeing all terms of mutual termination of the employment contract: the Panel referred to the similarity of the clause with Article 8(2)(3) Annex 3 RSTP and found that this condition precedent was fulfilled given that the Player and FC Nantes had reached an agreement on the mutual termination of the employment contract. Moreover, the Panel further added that it was not required to rule on the question whether the termination was validly exercised under French law - which was found to be immaterial.



(ii) The mutual termination agreement was registered by the French League: the Panel considered that it was undisputed that the termination agreement had been registered by the relevant league, so that the second precedent was satisfied.

(iii) Registration of the Player and release of his ITC: the Panel deemed that the wording of such clause was not clear and required interpretation. In this regard, the Panel considered that the parties did not deviate from the regulatory approach as per the RSTP and that the clause reflects Article 8(2)(5) of Annex 3 RSTP. The condition precedent was satisfied since the Player's ITC had been received by the new association, which had already proceeded with the registration of the Player for Cardiff City FC.

In view of the above, the Panel considered that all the condition precedents had been fulfilled prior to the Player's death, resulting in the triggering of the payment obligations as recorded in the Transfer Agreement.

The appeal was therefore dismissed, and the Appealed Decision confirmed in its entirety.

Other cases related to registration and eligibility.

CAS 2021/A/8075 Football Association of Albania (FAA) & Nedim Bajrami v. Federation Internationale de Football Association (FIFA) & Swiss Football Association (SFA)

xiv. Other cases of interest

CAS 2020/A/7442 Gil Vicente FC v. FK Rad (Award 11 January 2022)

In this interesting award, both clubs reached a player's transfer agreement from FK Rad to Gil Vicente FC that would be considered complete if (i) the Player passed his medical examination and (ii) he signed an employment contract with the new club. While the second condition was met, a medical exam two months after the Player's transfer revealed a problem with his knee. As a result, the employment contract was mutually terminated between the Player and Gil Vicente FC, and the new club deemed the transfer agreement as never having been completed. However, due to the late medical examination, the first instalment of the transfer fee had (allegedly) already been paid to FK Rad. Still, the selling club never received it due to possible email hacking and a fake invoice sent.

Following the PSC decision, by means of which Gil Vicente FC was ordered to pay the agreed-upon amount in the transfer agreement, the latter brought the case to CAS where it argued that (i) the transfer agreement was invalid because one condition was not met and (ii) the selling club should therefore refund the transfer fee already paid.

Regarding the first issue, the Sole Arbitrator, in applying Swiss Law noted that a condition is deemed fulfilled when one of the parties prevents its fulfilment by acting in bad faith, according to Article 156 SCO. This provision includes elements of obstructing fulfilment as well as acting in bad faith. As a result, he stated unequivocally that the Appellant's responsibility was to arrange and conduct the medical examinations before signing the Employment Contract and performing such a medical examination after its signature runs counter to the purpose of the condition. Hence the first condition of the agreement had to be considered met, and the transfer agreement between clubs was deemed binding.

Concerning the second issue, the Sole Arbitrator concluded that FK Rad did not receive any amount to any bank account on its behalf as a third person hacked the emails of the Clubs and sent a second invoice to Gil Vicente FC amending the original Respondent's account information. Nevertheless, the obligation to act diligently is required from the performing party, namely the Appellant, who was at risk until the money is credited to the correct account and should have therefore verify the correctness of the second invoice.

Considering the above, the Sole Arbitrator dismissed the appeal and confirmed the appealed decision.

Judicial Bodies

Disciplinary Committee and Appeal Committee

i. Article 15 FIFA Disciplinary Code – Failure to respect decisions

CAS 2021/A/8194 Wydad Athletic Club c. FIFA (Award 14 April 2022)

The main issue in the case Wydad Athletic Club c. FIFA was whether the Disciplinary Committee could sanction a debtor for not having complied with a CAS award that had been appealed to the Swiss Federal Tribunal.

In this respect, the Sole Arbitrator noted that the starting point for the calculation of the time limits was the date of notification of the award by courier. Furthermore, the Sole Arbitrator observed that according to Article 190 (1) of the Swiss Private International Law Act, an award is final as soon as it is communicated, and by corollary is enforceable as from its notification to the parties. Finally, the Sole Arbitrator recalled that an arbitral award that is the subject of an appeal to the Swiss Federal Tribunal does not suspend its enforceability under Article 103 of the Federal Tribunal Act.

In view of the above and considering that the CAS award - by which the debtor Appellant was ordered to pay a certain amount to its creditor - was notified on 30 April 2021, the Sole Arbitrator found that the said award became final and enforceable on that date, so that the Secretariat to the Disciplinary Committee correctly opened disciplinary proceedings on 14 May 2021 against the debtor, despite the fact that the CAS award to be enforced was pending appeal before the Swiss Federal Tribunal.

On a subsidiary note, the Sole Arbitrator also addressed the competence of the Disciplinary Committee to enforce a CAS award that resulted from an appeal made against a decision passed by a national decision-making body, i.e., the Moroccan FA Central Appeals Committee in the case at hand. In this respect, the Sole Arbitrator explained that Article 15 FDC does not stipulate that the non-respected CAS awards (to be enforced) must result from an appeal against a decision issued by FIFA. In other words, the Sole Arbitrator concluded that in light of Article 15 FDC, there is no need to distinguish the competence of the Disciplinary Committee over CAS awards resulting from FIFA and non-FIFA decisions.

CAS 2020/A/7259 Aris FC v. FIFA (Award 1 September 2022)

The Disciplinary Committee imposed on Aris a ban from registering new players for two entire registration periods.

The peculiarity of this case lies in the fact that, unlike the vast majority of cases revolving around a breach of Article 15 FDC, here the Appellant was not sanctioned as a direct result of disrespecting an order to comply with its financial obligations towards its creditor, but for having registered a player while already serving a ban that had been imposed on it as a consequence of the disrespect of four previous decisions (the Aris Decisions).

The Panel firstly recalled that it was not disputed between the parties that the underlying Aris Decisions were final and binding since they were not appealed by the Appellant. Put differently, the Appellant had to pay outstanding debts to four creditors and was aware that a ban from registering new players nationally and internationally would automatically be imposed on it after expiration of 30-days grace period and would be validated with the next transfer window. The Panel hence concluded that the Club could not have been reasonably unaware of being banned from effectuating transfers on national and international level.

With respect to the Appellant's argument that the registration of the player while the ban was in effect was the fault of the Hellenic Football Federation (HFF) which formally performed the registration, the Panel noted that even when the HFF erroneously proceeded with the registration of the player, that did not change the legal position of the Appellant. In fact, it was the Appellant who ignored the clear resolution of the Aris Decisions and proceeded with requesting the registration of the player, being the only party interested in such a registration.

In light of the above, the Panel concluded that the Club was in breach of Article 15 FDC and then decided to analyse whether the sanction contained in the Appealed Decision had a legal basis.

The Panel started its considerations by recalling that for a person to be found guilty of a disciplinary offence, it is necessary that the relevant disciplinary code must prescribe the misconduct. That said, the Panel agreed with FIFA that, since the registration ban had been violated, there was no retroactive way to "comply" with the ban anymore. Even if the registration of the player was cancelled, this would not eliminate or heal the violation already committed at the relevant time.

However, the Panel considered that Article 15 FDC does not foresee the possibility to apply any sanction to the Appellant in a situation like the one at stake (breach of a registration ban). In other words, there was no legal basis for a sanction to be applied to the Appellant under the specific circumstances of the case. In this respect, the Panel noted that the Appellant's case could not fall under the notion of "persistent failure to comply" with a decision.

Then, if this was a new breach, Article 15(1) was applicable, however, the Panel did not find that this article contained the sufficient legal basis for imposing an unconditional transfer ban for two consecutive registration periods on the Appellant.

All in all, the Panel concluded that – even if the Appellant was responsible for a violation of Article 15 FDC – the same provision does not provide sufficient legal basis to sanction a club in a situation like the present one, i.e., when the club is already banned and subsequently registers a player in violation of that ban.

Consequently, the Panel upheld the appeal and lifted the sanction.

Other cases related to Article 15 – Failure to respect decisions:

CAS 2021/A/8078 Huddersfield Town FC v. RCD Espanyol de Barcelona & FIFA

CAS 2021/A/8107 Al Hilal Club v. FIFA & Sergio Ricardo de Paiva Farias

TAS 2022/A/8654 François Marque c. Yverdon-Sport FC & FIFA

ii. Sporting succession, bankruptcy, and diligence of the Creditors

CAS 2020/A/7423 PFC CSKA-Sofia vs FIFA & Nilson Antonio da Veiga Barros (Award 27 January 2022)

In this case, the Player attempted to collect the amounts owed by his former (bankrupt) club by trying to register his debt in the latter's bankruptcy proceedings at national level. The local authorities only partially accepted his request by granting the outstanding remuneration but the compensation for breach of contract was rejected. However, it appears that the Player never provided the relevant authorities with his bank account in order to collect the portion of his recognized debt in the bankruptcy proceedings.

In parallel, the Player filed a complaint against a new club before the Disciplinary Committee and argued that this new club should be considered the sporting successor of the bankrupt club. Such complaint was granted by the Disciplinary Committee, which held that the new club was responsible for the old club's debts, including all payments owed to the Player by the debtor club.

The new club rejected this decision and appealed to CAS where it argued that it was not the successor of the old club since it was a completely separate entity from the former owners. Furthermore, the new club argued that any action by CAS or FIFA would be contrary to the decision of the Bulgarian authorities and that the Player did not exhaust all the legal remedies provided by Bulgarian law.

The Panel disagreed with these arguments, stating that the new club was essentially the old club as it i) purchased the assets of the old club, and ii) continued the activity previously developed by the old club. Thus, the new club had to be regarded as the old club's sporting successor.

More importantly, the Panel separately analysed the Player's diligence in collecting (i) the outstanding remuneration and (ii) the compensation for breach of contract. While it was noted that the Player had participated in the national bankruptcy proceedings, only a portion of the amounts (outstanding salaries) was accepted in the bankruptcy proceedings and that the Player had not provided his bank account. As a result, the Panel concluded that the Player had not been entirely diligent, as he had the chance to receive the outstanding remuneration if he had provided his bank details.

Concerning the amounts due as compensation for breach of contract, the Panel determined that the Player had done everything possible to recover these funds and that his diligence should thus be protected.

As a result, the Panel partially upheld the appeal, determining that the new club was liable for the compensation for breach of contract but NOT for the outstanding remuneration owed to the Player.

Similar facts, rules and reasonings are also found in:

CAS 2020/A/7505 PFC CSKA-Sofia vs FIFA & Francisco Moreno Ruano (Award 17 January 2022)

CAS 2020/A/7481 Aris FC vs FIFA (Award 27 January 2022)

In the present matter, a player claimed that an old club (PAE O Aris Thessaloniki FC) owed him money and that the new club was the latter's sporting successor. As a result, he claimed the debt owed to him by the previous club was to be borne by the new club (Aris FC). Here again, the Disciplinary Committee granted the request and held that the new club was responsible for the old club's debts, including all payments owed to the player by the former club.

The Club claimed before CAS that it was not the sporting successor of the old club and further argued that the player had not satisfied his burden of proof in showing that the Club is responsible for the outstanding payments. It further contested that the player was not diligent as he did not do enough to reclaim his debt in the insolvency proceedings.

In its answer, FIFA noted that the New Club was notified of other previous FIFA decisions regarding old club's debts and accepted them and paid them on several occasions; so the Club should be barred (estopped) from claiming that it was not the sporting successors of the old club. On his analysis, the Sole Arbitrator firstly emphasized that in CAS jurisprudence, the threshold of proof has always been "comfortable satisfaction". He then stated that, to prove that the Club was aware of earlier cases involving financial issues with the old club, FIFA was required to submit the operative section of the decisions and subsequent letters relating to payments; however, FIFA failed to do so. As a result, the Sole Arbitrator concluded that FIFA had to prove its facts to the required standard by giving and referring to evidence. As a result, estoppel was rejected.

With respect to the sporting succession, the Sole Arbitrator agreed with the Disciplinary Committee since the new club relied on the same "look and feel" as the old club in order to attract and retain the existing fanbase of the latter.

With regards to the player not being a diligent creditor, the Sole Arbitrator noted that it was undeniable that the Player left Greece prior to the bankruptcy proceedings and did not return. However, it was the Club's contention that the Player could and should have done more to recover his credit, and thus the Club bears the burden of proving so, in particular establishing that the Player was aware of the bankruptcy proceedings, which it failed to do.

The Sole Arbitrator, nonetheless, noted that the Player was adequately diligent in pursuing the debt against the Old Club by taking action with FIFA for payment. In particular, he pursued the debt from 2008 to 2016.

The appeal was therefore dismissed by CAS.

CAS 2021/A/8329 Ismael Lopez Blanco vs FIFA & SC Dinamo 1948 (Award 2 December 2022)

The present appeal was lodged against an e-mail rendered by FIFA Administration, which lifted the ban on registering new players implemented on the Club since the latter entered into insolvency proceedings.

As a new argument extemporarily posed at the CAS hearing, the Appellant stated that the email was not issued by the competent body, FIFA DRC, but by the FIFA administration, which had no right to decide whether to lift the registration ban imposed on the Club.

With regard to the question if the FIFA Administration was the competent body to lift the registration ban of the Club, the Panel agreed with the Respondents that the Appellant did not file this argument on time and in line with Article R56 CAS Code deemed it inadmissible.

The Panel moved on to decide if the Appellant had standing to sue and noted that the following must be determined: (i) the nature of the proceedings giving rise to this appeal and (ii) whether the Appellant had shown that it had sufficient legal interest in the matter appealed when the decision was issued.

Firstly, the Panel concluded that the Appealed Decision was not a disciplinary one and that the lifting of the registration ban, based on an erroneous application of the Article 55 FIFA Disciplinary Code, had influenced the Player's legal situation. Therefore, based on the first criteria (i.e., the nature of the proceedings), the Appellant would have standing to appeal.

However, as to the second point (i.e., interest in the matter being appealed), the Panel concluded that while it was true that the Player's interest was existent when the appeal was submitted in September 2021, such interest ceased to exist as soon as he accepted the terms of the restructuring plan of the Romanian Insolvency Authorities on November 2021; therefore, he waived his right to claim the amount through FIFA's execution procedures, at least for the duration of the insolvency proceedings in Romania. Moreover, the Panel noted that the Club was bound by the terms of the restructuring plan and could not refund the Player at that moment. For these reasons, the Appellant did not have the right to demand the imposition of the transfer ban on the Club.

The Panel further highlighted that, in any case, the restructuring plan provides for a full refund of his claim, and it serves to the Player's interests if the Club has access to all its means and faculties at its disposal (including hiring new players to strengthen its team).

In short, the appeal was dismissed since the Player did not have an actual interest in the outcome of the case (i.e., lack of standing to sue).

CAS 2020/A/6778, 6779, 6827, 6828, 6829, 6936, 6937, 6967, 7146 Hapoel Tel Aviv FC vs FIFA (Award 2 December 2022)

This CAS award revolves around the finding of the FIFA Disciplinary Committee that Hapoel Tel Aviv (managed by Nissanov Group – Poalei Tel Aviv) was considered the sporting successor and responsible for complying with several financial decisions passed by the FIFA bodies against the old Hapoel Tel Aviv (managed by Harel Holdings in liquidation).

The particularity of these cases relied on the fact that during all FIFA proceedings and even after the hearing at CAS, the legal entity that intervened on behalf of "Hapoel Tel Aviv FC" was Harel Holdings, not Poalei Tel Aviv.

As per the Panel, the disciplinary procedures were substantiated without the party to which they should theoretically had been directed (i.e., Poalei Tel Aviv in its capacity of owner of Hapoel Tel Aviv FC), and with a party instead (Harel Holdings -in liquidation-) that indeed was not subject to the jurisdiction of FIFA, because it did not belong to the Israeli Football Association anymore.

The Panel was of the opinion that FIFA should have opened proceedings against Poalei Tel Aviv (or to request it to join Harel Holdings - in liquidation - in the existing disciplinary proceedings), to determine Poalei's potential liability as a consequence of the non-fulfilment by Harel Holdings of the infringed decisions.

Consequently, the Panel found that the disciplinary proceedings must be annulled, and the FIFA DC shall resume these procedures from the beginning and with the right procedural party, i.e., with Poalei Tel Aviv FC.

In view of the foregoing, the Panel considered that the proper way to proceed was to annul the Appealed Decisions and, making use of the discretionary power established in Article R57 CAS Code (de novo power), to refer the nine cases back to the FIFA Disciplinary Committee for a new adjudication. In this respect, the Panel was of the view that the new disciplinary proceedings should be conducted against Poalei Tel Aviv, as the party subject to the

potential sanctions and economic obligations. Only by doing so, Poalei's right to be heard and its right of defence in relation to the matter in dispute will be properly respected.

In short, the Appellant's appeals were partially upheld, and the cases were referred back to FIFA.

Other cases related to Sporting Succession:

CAS 2020/A/7537 Francisco Jose Castro Fernandes v. Club FC Farul Constanta & FIFA

CAS 2020/A/6922 Tiago Carpes de Bail v. FIFA

CAS 2020/A/7488 PFC Slavia Sofia v. Real Federación Española de Futbol, CD Arahal Balompié

CAS 2021/A/7914 Mr. Cesar Domingo Mendiondo Lopez v. Hapoel Tel Aviv FC & FIFA

CAS 2021/A/7915 Mr. Javier Gonzalez Lopez v. Hapoel Tel Aviv FC & FIFA

iii. Discrimination (Article 13 - FDC)

TAS 2022/A/8691 Fédération Royale Marocaine de Football c. FIFA (Award 22 March 2022, with grounds 29 November 2022)

On 11 December 2021, Morocco and Algeria played against each other for the FIFA Arab Cup. During the match, some Moroccan supporters chanted a homophobic word against some Tunisian supporters who attended the Match.

Following this, the FIFA Disciplinary Committee opened a disciplinary procedure against the FRMF and imposed on it a fine of CHF 20,000 and ordered to play its next home match of the FIFA Arab Cup with a limited number of spectators for the discriminatory behavior of its supporters.

Eventually, the FIFA Appeal Committee confirmed that the word used by the Moroccan fans was homophobic, constituted an infringement of Article 13 FIFA Disciplinary Code and that that the circumstances of the case were insufficient to justify any reduction in the sanction that was given.

Before CAS, the Panel first noted that the parties did not challenge the fact that the Moroccan supporters sing the chant: "Atwansa Attaya" and that this song was directed against some Tunisian attendants seated in the stand facing them, next to the Algerian supporters.

However, the Moroccan Federation argued that the words of the chant have several meanings and that, in this case, the expression did not constitute a homophobic insult, but rather referred to the fact that the Tunisian supporters sitting in the stand next to Algeria were "sold out" to the opposing team, rather than supporting Morocco.

The Panel analyzed the Match Commissioner Report and the FARE Report and concluded that those documents did not allow for a clear determination of the meaning given to the disputed expression by a reasonable and objective observer.

After assessing the expert reports produced by the parties, the Panel concluded that there was a double meaning of the term, one offensive to human dignity and one not.

The Panel then reviewed the context and other elements of the file in which noted that the video filmed and provided by the FARE was an enlightening element to solve the case. The atmosphere was very "good-natured", as the FARE observer acknowledged at the hearing, and in no way resembled the images of hatred and vindictiveness that are sometimes observed during matches with supporters who made comments such as those reproached in this case. In fact, the opposite is true.

These images are much more in line with the word's interpretation of "sell-outs" than "passive homosexuals", and furthermore fit the context of the match and the identity of those accused of it. In the eyes of the Panel,

the video in question did not show any sign of violence or hatred by the supporters, women and men, chanting the disputed words, but on the contrary reflected a good atmosphere.

Moreover, there were no incidents noted during the match, before or after it, nor any reaction from the Tunisian supporters, which could occur in the event of a homophobic insult. Finally, it should be noted that one of the supporters chanting the disputed terms was waving a Tunisian flag; if the terms used were clearly offensive in the context of the present case, it would have been surprising if such a flag had been waived by the supporters chanting the offensive terms.

Therefore, considering all the evidence in the file, the Panel decided that the infringement of Article 13 FDC was not established in this case; thus, the sanctions imposed on the Appellant were annulled.

iv. Third party Influence (TPI)

CAS 2021/A/8076 Sport Lisboa e Benfica SAD v. FIFA (Award 10 October 2022)

This CAS Award partially confirmed an Appeal Committee's decision which considered that Clauses 2.3 and 4.4 of the Transfer Agreement signed between Benfica and Avaí FC were against Article 18bis RSTP. In its decision, FIFA imposed a CHF 40,000 fine on Benfica.

In particular, Clause 2.3 of the Transfer Agreement provided that Avaí would have to pay an additional EUR 10,000,000 if the Player were to be transferred to either FC Porto, Sporting Clube de Portugal, or Sporting Clube de Braga. On the other hand, Clause 4.4. established that Avaí was obligated to pay Benfica EUR 10,000,000 if it failed to grant the Appellant the preferential right set in Clause 4.1.

With respect to Clause 2.3, the Panel noted the financial difference between Benfica and Avaí FC, the sporting differences between these two clubs, the penalty amounts at stake and concluded that Benfica had the ability to effectively and unreasonably dissuade Avaí FC from transferring the Player to one of Benfica's rival clubs at national level. As such, this clause was in breach of Article 18bis RSTP.

Regarding Clause 4.4, the Panel considered that this clause was not against Article 18bis RSTP, since it did not provide any real ability to influence Avaí FC's independence in employment and transfer-related matters. In the Panel's opinion, Clause 4.4. only ensured the preferential right set out in Clause 4.1, which according to the Manual on TPI and TPO, is not against Article 18bis RSTP. Also, the Panel pointed out that Avaí FC could easily avoid the application of the penalty of Clause 4.4. by notifying Benfica before the termination of the Player's employment contract, so that Benfica could have the opportunity to apply his preferential right on the player. Moreover, even if Avaí FC would fail to comply with this simple formality, the only element that could be problematic is the amount of the penalty which could, in any case, be reduced and adjusted by the adjudicating body, based on Article 163 SCO.

In other interesting matters, it was considered that Article 4(3) Annexe 3 RSTP was also breached by Benfica and that this declaration in TMS facilitates the investigatory tasks of FIFA's administration that, ultimately, seeks to ensure that the transfer market continues to be as transparent as possible.

Considering that only one clause (and not two) was against Article 18bis RSTP, the Panel concluded that the fine set out in the Appealed Decision should be reduced from CHF 40,000 to CHF 20,000.

In short, the appeal was partially upheld, and the Appealed Decision was modified with respect the amount of the fine.

v. Anti-Doping cases

CAS 2021/A/8296 WADA v. FIFA & Vladimir Obukhov (Award 16 June 2022)

This CAS Award partially upheld WADA's appeal against a FIFA disciplinary decision that declared the Player guilty of an Anti-Doping rule violation (ADRV) and imposed on him only a 6-months ineligibility period after providing Substantial Assistance in terms of Article 20 FIFA Anti-Doping Rules.

The facts of the case can be summarized as follows:

i. On 11 March 2021, FIFA notified a player of a potential ADRV related to the use of a sample collected on 20 March 2013 when he was playing for FC Torpedo. FIFA explained that this sample was initially reported as "negative" in ADAMS although having resulted positive for Methandienone. This alteration was part of the cover-up scheme which existed in Russia to protect Russian Athletes.

ii. On 22 March 2021, the Player admitted the ADRV and expressed his willingness to provide Substantial Assistance.

iii. The Player provided credible evidence that the doctor of FC Torpedo provided the team members with several substances and dubious "vitamins" back in 2013.

iv. Due to this information, FIFA reduced the, a priori, applicable period of ineligibility from 2 years to 6 months.

In particular, WADA criticized FIFA's decision alleging that (i) the Player did not provide Substantial Assistance; (ii) the Disciplinary Committee erred to "reduce" the sanction of the Player, as the Substantial Assistance only allows the "suspension" of a part of the ineligibility period and (iii) the 18-month "reduction" of the, a priori, ineligibility period of 2 years was disproportionate.

The Panel firstly confirmed that the Player provided Substantial Assistance in terms of the FIFA ADR since "*it was not necessary that the information given by the Player was in itself a sufficient basis to secure a finding of an ADRV*" but "*result in discovering [it] irrespective of its subsequent establishment*". The information must be "credible" not "incontrovertible". In particular, the Panel remarked that the Player provided credible elements that were "*sufficient basis on which a case could have been brought*" against the doctor of FC Torpedo: the fact that no case was eventually brought by FUR and FIFA goes beyond the Player's control and responsibility.

Secondly, the Panel confirmed WADA's position that, according to the FIFA Anti-doping rules, the Player's sanction could not be "reduced" but only "suspended".

With regards to the proportionality of the suspension, the Panel considered that FIFA exceeded its discretion since it applied the maximum "reduction" (i.e., 18 months).

However, the Panel found that the case was not "very exceptional" and did not warrant such a "reduction".

The Panel considered that the period of ineligibility to be imposed on the Player should be 2 years suspended in 12 months, taking into account that: (i) the case occurred 8 years ago, (ii) the Substantial Assistance was promptly given as soon as the player received the notification of the potential ADRV, (iii) it concerned the practice of a clubs' doctor, (iv) it exposed potential violation that could involve a number of players and individuals.

vi. Extension of disciplinary sanctions with worldwide effect (Article 66 FDC)

TAS 2021/A/7650 Club Atlético de Madrid SAD c. FIFA (Award 2 September 2022)

In July 2019 the player, Kieran Trippier, transferred from Totenham Hotspurs to Atlético de Madrid. Around that time the English FA received information from various bookmakers in which they warned of suspicious betting market movements in relation to the Player's transfer.

On 18 December 2020, after the relevant investigation and procedure, the English FA sanctioned Trippier from any football related activity for 10 weeks for violating rule E8 (l) (b) of FA Handbook. In particular, it was found that Trippier provided information to others relating to football which he obtained by virtue of his position, and which was not publicly available; the others used that information for betting purposes.

Eventually, the English FA requested FIFA to extend the sanction with worldwide effect under Article 66 FDC. Consequently, FIFA extended the sanction against the Player worldwide.

Atlético de Madrid felt affected by the FIFA decision and appealed in front of CAS.

In the Award, the Panel preliminarily found that the Appellant had standing to appeal and a legitimate interest, the presence of the Player not being necessary in the arbitral proceedings.

The Panel then proceeded to analyze FIFA's jurisdiction regarding the worldwide extension of the sanction imposed by the FA on the basis of Article 66 FDC. In order to do so, the Panel structured its analysis as follows:

A. FA's jurisdiction to impose the sanction against the Player:

The Panel proceeded to analyze the FA's jurisdiction to impose the sanction on the Player. In this respect, keeping in mind the provisions of Article 27(6) FDC, the Panel found that the FA had the power to impose a sanction against the Player for an infraction committed during the validity of his registration in that association despite the fact that, at the time of the disciplinary procedure and of the imposition of the sanction, the Player had already been transferred to the Appellant, i.e. to an affiliated club to another national association.

After having analyzed the FA's allegations, the Panel found that the FA did not acknowledge its lack of jurisdiction. As per the Panel, the FA merely recognized its lack of jurisdiction to IMPLEMENT the sanction in SPAIN, and that was the reason why the FA had to request the extension of the sanction to have a worldwide effect through Article 66 FDC.

B. Jurisdiction of the FIFA Disciplinary Committee to extend the effects of the sanction imposed by the FA:

Referring to the provisions of Article 53(1) and (2) FIFA Statutes and Article 66 FDC, the Panel confirmed that the Disciplinary Committee was perfectly empowered to extend the effects of the sanction.

In addition, the Panel further clarified that the sanction imposed by FIFA was not a "new sanction" (as the Appellant submitted), but an extension of the sanction of the FA "using a more detailed formulation, but with equivalent effect". As such, FIFA did not act "ultra vires" ('beyond the powers') when extending the effects of the sanction.

In this context, having clarified that FIFA did not impose a "new sanction", the Panel was keen to emphasize that the principle of "ne bis in idem" had been respected at all times.

C. FIFA was correct when applying Article 66 FDC:

Since the Player infringed Rule E8(1)(b) of the FA's Handbook, the Panel found that this infringement was sufficiently "serious" to extend the sanction imposed by FA so as to have worldwide effect on the basis of Article 66 FDC.

In addition, the Panel emphasized that Article 66(1) FDC expressly stipulates that the list of examples foreseen under such article is "[...] in particular but not limited to [...]". As such, the Panel deemed that the list of examples of Article 66(1) FDC is not exhaustive. The Panel further concluded that: (i) the FA's request to extend the effect of the sanction was duly submitted in accordance with the provisions of Article 66(3) FDC; (ii) the decision imposed by the FA was in compliance with the regulations of FIFA, therefore complying with Article 66 (5) (d) FDC; and (iii) extending the sanction did not conflict with public order or with accepted standards of behavior (Article 66(5)(e) FDC).

In view of the foregoing, the Panel concluded that FIFA duly considered all the requirements of Article 66 FDC and that the Appealed Decision was valid.

In short, the Appellant's appeal was dismissed and the Appealed Decision was confirmed in full.

Ethics Committee

i. Duty of loyalty

CAS 2021/A/8256 Issa Hayatou v. FIFA (Award 4 February 2022)

In the case Issa Hayatou v. FIFA, CAS examines the decision of the FIFA Ethics Committee (the Chamber) to determine what sort of activity can constitute a violation of one's fiduciary duty when in position of power at FIFA; specifically, the Chamber sought to understand whether Hayatou's actions equated to a violation of Article 15 FCE.

The Chamber determined that Mr. Hayatou's conduct was in violation of his ethical duty to CAF as president and legal representative when he accepted a deal for a significantly lower value and for a longer duration than CAF's indicated objective. Furthermore, the Chamber found Mr. Hayatou to have conducted hasty negotiations without appropriately testing the market (lack of tender bidding process), failing to properly inform and acquire express prior approval from CAF Executive Committee and ignoring warnings from Egyptian Competition Authorities which led to financial sanctions imposed on CAF. Because of these actions the Chamber imposed a 1-year sanction, thereby banning Mr. Hayatou from participating in any football related activity, as well as a fine of CHF 30,000.

In front of CAS, Mr. Hayatou argued that there is no legal basis for imposing any sanction against him. In his opinion, Article 15 (1) FCE fails the "predictability test", as the concept of "duty of loyalty" in turn refers to the vague and broad concept of "fiduciary duty". The provision is therefore not precise enough to be used as a basis for imposing sanctions. Neither the offence nor the sanctions are sufficiently determinable. Further, on a subsidiary basis, Mr. Hayatou also argued that the concept of "duty of loyalty" is to be interpreted in accordance with Swiss law and that, following such interpretation, he did not violate the FCE, as he did not pursue any "private aims or gains", as acknowledged in the Appealed Decision. He further argued that FIFA mixed up two different concepts, i.e., the "duty of loyalty" and the "duty of care".

Firstly, the Panel analysed whether Article 15(1) FCE provided a sufficiently clear legal basis. In this respect, while noticing that the wording of the provision is "*not crystal clear as to the exact conduct from which one should abstain*", the Panel finds that it does not have to make any concrete determinations as to the legal boundaries of this provision. Indeed, the Panel finds that, regardless of whether the position of the Appellant or FIFA is followed, and while the provision is sufficiently clear to potentially sanction a perpetrator of the "duty of loyalty", there is in any event insufficient evidence on file to establish that Mr. Hayatou violated Article 15 (1) FCE. Put differently, FIFA did not prove that Mr. Hayatou personally acted "*in a way that is detrimental to the interests of [CAF] or is likely to damage its reputation*" as will be considered in turn.

In order to determine whether Mr Hayatou violated Article 15(1) ECF, CAS identified four issues around which the allegations against him revolve: (i) The lack of tender bidding process, (ii) the ignorance of the offer of greater value (PS offer), (iii) the concealment of a letter from Egyptian Competition Authorities, and (iv) the exposure of CAF to the sanction imposed by national authorities.

As for the first point, CAS found that the lack of a tender or bidding process of CAF does not constitute a breach of loyalty of Mr. Hayatou vis-a-vis CAF because there is no evidence on file suggesting that it was Mr. Hayatou personally who decided not to (further) test the market. Moreover, Mr Hayatou relied on his personal market experience to make a decision.

Secondly, the Panel finds that the ignorance of the offer presented by PS does not constitute a breach of loyalty *vis-a-vis* CAF. This is because neither CAS nor the Chamber are entitled to act as "super-supervisory authorities" and assess the appropriateness of purely business decisions. In the absence of legal irregularities, the Panel considered that it ought not to substitute its own discretion for the discretion of sports officials and managers who are in the best position to make such decisions.

Thirdly, in response to the concealment of the letter, FIFA did not establish why such late reporting would be the personal fault of Mr. Hayatou. Thus, the latter cannot be held liable for the late reporting.

Fourthly and finally, the Panel asserted that the proceedings are based on the FCE and found that there must be specific conduct of Mr. Hayatou that is in violation of the FCE in order to sanction him. A legal presumption under Egyptian law that Mr. Hayatou is personally liable for competition law violations of CAF as such is not enough. Here, there is no specific conduct found that equates to violation of Article 15(1) FCE, so Mr. Hayatou cannot be found to be deserving of a sanction.

Thus, the decision of the Chamber was reversed, and the charges and sanctions set upon Hayatou were dismissed.

i. Failure to report and protect physical and mental integrity

CAS 2019/A/6669 Sayed Ali Reza Aghazada v. FIFA (Award 28 April 2022)

This case derives from the "Karim case" (CAS 2019/A/6388), in that Mr Sayed Ali Reza Aghazada – the former General Secretary of the Afghanistan Football Federation (AFF) – failed to report and protect the physical and mental integrity of women players of the Afghan national team.

In this context, several women of the national team reported to Mr. Aghazada that Mr. Karim, then president of the AFF, had harassed, abused and even raped them. However, these facts were not reported to FIFA and no measures were taken to protect the victims. For this reason, the Ethics Committee banned Mr. Aghazada from any football-related activity for five years and fined him with CHF 10,000.

Mr Aghazada filed an appeal with CAS, claiming that he was unaware of the abuses suffered by the female national team members and that since he did not know of Mr Karim's crimes, he could not protect them. During the CAS proceedings, CAS granted anonymity to the witnesses (victims) called by FIFA to testify at the hearing and other measures identical to those in Karim case were taken (witnesses in a secret location, voice scrambling, questions from Mr Aghazada filtered and verified by CAS, etc).

Upon review of the evidence on file, CAS found it difficult to accept that Mr Aghazada did not know of the numerous incidents as he claimed. The Panel considered that even when Mr Aghazada's infringements could not be established by direct evidence, the overwhelming indirect and circumstantial evidence permitted to conclude, under the standard of comfortable satisfaction, his culpability under the FCE.

The Panel considered, inter alia, the following facts as a "*coherent pieces of a puzzle which came together*" to conclude that Mr Aghazada knew of the terrible circumstances within the AFF: Witness testimonies of Players C, D and A; (ii) Close working and private relationship between Mr Karim and Aghazada; (iii) Leading management position of Mr. Aghazada; (iv) the existence of the secret rooms in the facilities of the AFF; (v) systemic and widespread abuses of female players; (vi) Mr. Aghazada's behaviour after the media publications related to the sexual abuses.

However, despite knowing about the abuses suffered by the AFF female football players, Mr. Aghazada did not inform FIFA nor did he take any action as Secretary General to start an impartial investigation, thus failing to report the above in breach of Article 17 FCE. Moreover, CAS found that instead of protecting the alleged victims,

Mr Aghazada chose to protect the perpetrator, thereby allowing Mr Karim to continue his abuses in secrecy. Such despicable attitude constituted a blunt violation of the standards of protection embodied in Article 23 FCE.

Consequently, CAS confirmed the sanctions imposed on Mr. Aghazada, but stressed that this sanction was clearly too lenient in view of the facts of the case. However, being bound by the requests filed by the parties, CAS could not increase the sanction, in particular because FIFA, as the respondent, did not request an increase of the sanction.

In light of the above, the appeal was dismissed and the sanctions against Mr Aghazada were confirmed.

ii. Bribery

CAS 2020/A/6617 Manuel Burga Seoane v. FIFA (Award 5 April 2022)

Mr. Burga Seoane – a former president of the Peruvian Football Federation and member of the CONMEBOL Executive Committee – was caught up in the FIFA Gate controversy that broke out in 2015. As a result, the Ethics Committee opened an investigation into the Appellant, who informed FIFA that he would be available to answer any questions. However, during the proceedings, the Appellant was arrested by the Peruvian police.

Following this, the secretariat to the Ethics Committee sent several e-mails to the Appellant asking him to provide his position and whether he wished a hearing to be held. After receiving no response to these emails, the Ethics Committee decided to ban the Appellant from participating in any football-related activity for the rest of his life and to fine him CHF 1,000,000 for bribery.

The Appellant brought his case before CAS primarily on the ground that his fundamental right to be heard had been violated (no access to his emails as he was jailed).

CAS agreed with the Appellant's arguments and added that FIFA must have been aware of the Appellant's circumstances and could not act as if it did not know that he had been arrested in Peru. CAS further stated that, given the seriousness of the allegations, FIFA should have exercised even greater caution and ensured that the Appellant's right to be heard and to defend himself was respected.

In particular, CAS found that FIFA should have acted with caution when it found that the Appellant had not responded to invitations to defend his position and to other communications.

Accordingly, the decision of the Ethics Committee was annulled, and the matter was referred back to FIFA for appropriate proceedings.

Other FIFA legal bodies

i. Appeals against FIFA Review Committee's decisions

TAS 2021/A/7678 Constant Omari c. FIFA (Award 11 March 2021, with grounds 27 April 2022)

The appeal of Mr Constant Omari arose from a decision of the FIFA Review Committee which decided to declare Mr Omari – who was at that time the President of the Congolese Football Federation – ineligible for re-election as a member of the FIFA Council.

The foregoing resulted from the fact that the Appellant had been investigated by the Investigatory Chamber of the FIFA Ethics Committee for possible violation of the FIFA Code of Ethics (FCE).

In its reasoning, CAS pointed out that "*a person may well fail to pass the integrity check even though not formally having been found guilty of violating the FIFA Code of Ethics*" and recalled that "*officials [...] must under any circumstance appear as completely honest and beyond any suspicion. In the absence of such clean and transparent appearance by top football officials, there would be serious doubts in the mind of the football stakeholders and of the public at large as to the rectitude and integrity of football organizations as a whole*".

That said, CAS stressed that the control carried out by the FIFA Review Committee is not of a disciplinary but an administrative nature. In other words, the purpose of the eligibility checks carried out by this Committee is not to decide whether a candidate has violated the FCE, but to determine whether the candidate has an impeccable record of integrity.

As the preliminary investigation suggested a prima facie case against the Appellant in relation to potential violation of the FCE, the FIFA Review Committee could therefore reasonably consider that the Appellant did not meet the criteria of good character for the position he sought at FIFA.

Therefore, CAS decided to confirm the decision and to reject the appeal.

CAS 2020/A/7450 Worawi Makudi v. FIFA (Award 3 October 2022)

The CAS award of Worawi Makudi v. FIFA revolves around the decision of the FIFA Compensation Sub-Committee ("FIFA CSC") "to withdraw the right of Mr Makudi to receive any pension benefits" in view of the "procedural conduct and the pronounced sanctions imposed by [CAS through its award CAS 2018/A/5769] on Mr Makudi".

First of all, the Sole Arbitrator emphasized (i) that it was "*undisputed that the Appellant was a member of the FIFA Executive Committee [...] from April 1997 to 29 May 2015*" and (ii) that "*pursuant to the Retirement Plan that was approved by the FIFA Executive Committee on its meeting of 7-8 May 2005 and that was ratified by the decision of the FIFA CSC of 3 October 2013, those members of the FIFA Executive Committee who had served therein "at least eight years" and "who retire in 2005 or thereafter" would qualify for receiving the annual retirement payment established by the Retirement Plan.*"

Pursuant to the FIFA Compensation Policy that entered into force on 1 January 2014, members of the FIFA Executive Committee that had served there for a term of eight or more years are, in principle, entitled to receive the annual payment established in FIFA's retirement plan, which calculation method does not differ from the one established in the Retirement Plan.

Consequently, given that when the Appellant ceased to be a member of the FIFA Executive Committee, he had already served therein for eighteen years (i.e., more than eight years) and he retired after 2015 (when the Retirement Plan and the FIFA Compensation Policy were still in force). Therefore, it was indisputable that, as a matter of principle, the Appellant was entitled to the annual pension payment established by section 6.12 of the FIFA Compensation Policy.

In addition, the Sole Arbitrator pointed out that the decision of the FIFA CSC to "withdraw" the Appellant's right to receive pension benefits, "*logically implies that he already held these pension rights that were acquired by him in accordance with the FIFA Compensation Policy and Retirement Plan.*"

In continuation, the Sole Arbitrator moved to analyse whether the FIFA CSC had exercised its discretionary power lawfully and remarked that as per the SFT jurisprudence, the discretionary power that the FIFA CSC holds cannot be exercised in an arbitrary manner or in a manner that would lead to an irrational, grossly unfair or shocking result.

In order to determine if the FIFA CSC had lawfully exercised its discretionary power, the Sole Arbitrator firstly noted that the reason why the Appellant was deprived from his right to pension benefits was because he had been sanctioned by the CAS for infringing Article 41 of the FIFA Code of Ethics (provision that sanctions the lack of collaboration of a party in a procedure before the investigatory or the adjudicatory chamber of the Ethics Committee). In addition, the Sole Arbitrator also took note of the fact that the Panel in the procedure CAS 2018/A/5769 had expressly stated that "*Mr Makudi in general collaborated and corresponded with the Investigatory Chamber in a timely fashion", that the violation committed was of a "relatively limited severity*", etc.

In view of the foregoing, the Sole Arbitrator found that the Appealed Decision was "c*learly disproportionate*" and that FIFA had "*misused its discretionary power*", resulting in an "*unlawful*" Appealed Decision.

The Sole Arbitrator further underlined that the contentions regarding Mr Makudi's failure to pay the fine imposed or the procedural costs of the FIFA ethics proceedings, were not relevant for the purposes of assessing the lawfulness of the exercise by the FIFA CSC of its discretionary power.

Notwithstanding the above, the Sole Arbitrator agreed with FIFA that if someone has not completely fulfilled FIFA's objectives and high values and standards and has infringed the FIFA Code of Ethics, this must have an impact in the pension and other benefits that it may have acquired for serving as a member of the FIFA Executive Committee. For this reason, the Sole Arbitrator deemed it reasonable to apply a 10% reduction on the Appellant's pension benefits.

Consequently, the appeal was partially upheld, and the Appealed Decision was set aside.

ii. Appeals against the Bureau of the FIFA Council

CAS 2022/A/8708 Football Union of Russia (FUR) v. FIFA (Award 15 July 2022, with grounds 25 November 2022)

The present award dealt with a decision taken by the Bureau of the FIFA Council which suspended the Russian national teams from participating in FIFA competitions after the Russian invasion to Ukraine.

The Panel solved particularly three questions related to (i) the nature of the Appealed Decision; (ii) the competence of the Bureau to take the Appealed Decision; and, (iii) the potential improper use of FIFA's discretionary power.

The Panel firstly found that there is no disciplinary aspect in the Appealed Decision. Rather, the Appealed Decision should be viewed upon as an administrative decision taken by FIFA Bureau to impose a measure to deal with the consequences of a military conflict for football competitions that it organizes. Therefore, fundamental principles that apply to disciplinary sanctions (e.g., right to be heard, non-discrimination, proportionality) are non-applicable.

Secondly, the majority of the Panel found that the FIFA Bureau was competent to make the decision, especially considering that: (i) the basis to exclude the Appellant from the FIFA World Cup lied in Article 31 FIFA World Cup Regulations and the notion of "force majeure"; (ii) the Russian invasion in Ukraine was seen by the majority of the Panel as an event of "force majeure"; (iii) since these extraordinary and unforeseen circumstances fell between two meetings of the FIFA Council an immediate decision was required by the Bureau.

Finally, the majority of the Panel considered that the appealed decision (i) was a reasonable one taking into account the sensitive circumstances of the matter and the overriding FIFA's interest of ensuring that its competitions run smoothly and with the necessary security (ii) it was proportionate, (iii) did not breach principle of equal treatment, (iv) did not breach personality rights or (vi) Swiss competition law.

In short, the appeal was dismissed and the Bureau decision confirmed.

Other Bureau decisions appealed before CAS:

CAS 2022/A/8907 Mahamoud Hamid Moctar v. FIFA

Orders on provisional measures

i. Registration and eligibility of players

CAS 2022/A/9199 Wilmer Erik Gustav Olofsson & AZ Alkmaar v. FIFA (Order on Provisional Measures 14 November 2022)

In this CAS Order, the President of the CAS Appeals Division rejected the request for the application for provisional measures submitted by the Applicants (Mr. Wilmer Erik Gustav Olofsson and AZ Alkmaar).

In particular, the applicants requested the immediate registration of the Player with the Club in TMS after FIFA's administration, and subsequently, the PSC decided to refuse to grant a validation exception after the closure of the registration period on the grounds that: (i) the data inserted by AZ Alkmaar in the TMS instruction was incorrect; and, (ii) consequently the requirements set out in Article 8.2 par. 1 of the Annexe 3 RSTP were not met.

The CAS firstly ruled that AZ Alkmaar did not allege suffering any risk of irreparable harm and; therefore, its application was rejected for this reason alone.

Furthermore, the CAS concluded that there was no irreparable harm to the Player since his employment contract was not at risk and, although he was in the unfortunate situation in which he would miss few official matches with the team, he still was in the position to work by training with his teammates and play friendly matches.

In any case, that unfortunate situation could be remedied soon, as the Club could register him as of January 2023.

ii. Stay of registration/transfer bans

CAS 2022/A/8720 Bucaspor 1928 v. Mohamed Dahmane & FIFA (Order on Provisional Measures 14 November 2022)

In this CAS Order, the Panel granted the Appellant's request to stay a ban from registering new players imposed by the Disciplinary Committee derived from a sporting succession decision.

The Panel was of the view that when a football club is deprived of its right to register new players for an indefinite period, there is a risk of irreparable harm. Therefore, it concluded that the ban from registering new players in the upcoming window could hit the club immediately hard and could not be repaired at a later stage if the sanction was finally lifted.

Secondly, the Panel reasoned that on a prima facie basis and without prejudice to any other findings, the club's likelihood of success on the merits could not be discounted.

Finally, the Panel stated that the balance of interests tipped in the Appellant's favor since the stay did not cause harm to the Player and FIFA could impose the ban at later stage.

As a result of the above, the Panel granted the request for a stay.

iii. Other cases of interest

CAS 2022/A/8708 Football Union of Russia v. FIFA et al. (Order on Provisional Measures 18 March 2022, with grounds 8 April 2022)

The present case dealt with a decision taken by the Bureau of the FIFA Council which suspended the Russian national teams from participating in FIFA competitions after the Russian invasion to Ukraine.

In an application for provisional measures, the FUR requested that the Russian teams be immediately reinstated to all FIFA tournaments.

Concerning the alleged "irreparable harm", the Division President noted that the sponsorship and economic opportunities that allegedly would be lost by the FUR, were purely financial and therefore by definition is never considered as irreparable because such damage may be remedied by means of financial compensation.

Moreover, she noted that neither the men's team nor women's team had yet qualified to the World Cup at the time of the suspension. Because of this, the Division President shared that the loss of the possibility to participate in a major sporting event does not represent, per se, an irreparable damage, especially when the Appellant still must complete the entire qualification process. However, there was no denial that the Appealed Decision deprived the Appellant of the opportunity of qualifying to the Men's and Women's World Cups. All in all, the Division President considered that the Appellant might suffer irreparable harm, however, this issue could be left open since the Appellant did not demonstrate that its interests prevail over the Respondents'.

Regarding the likelihood of success, the Division President noted that on a prima facie basis and without any prejudice of any future consideration of the Panel, the Appellant's likelihood of success on the merits cannot be definitely discounted as her analysis is based on the file as it stands at the moment of the present Order.

Finally, in the consideration of the balancing of interests, the Division President determined that the balance of interests test tipped decisively in favour of FIFA (and other respondents) which had (i) and overriding interest in maintaining and ensuring smooth running and integrity of its competitions, (ii) if Russia were allowed to play, as all opponents had stated they would not feature in games against them, several matches would be forfeited; (iii) security of players and staff could not be guaranteed under the given circumstances; (iv) if Russia was later suspended again by the CAS decision, the integrity of the competition could be compromised.

Thus, the application for provisional measures filed by the FUR was rejected.

CAS 2022/A/9017 Zenit et al. v. FIFA (Order on Provisional Measures 25 August 2022, with grounds 16 September 2022)

The present case dealt with a decision taken by the Bureau of the FIFA Council which extended the validity of Annexe 7 RSTP which, *inter alia*, extended the right for foreign players/coaches to suspend their employment contracts with Russian clubs, due to the Russian invasion to Ukraine.

The Appellants filed a request for a stay of the Appealed Decision which was ultimately rejected since the "irreparable harm" was not proven.

The Panel firstly noted that the Appellants did not bring elements to prove that they would sustain irreparable harm but only a vague possibility of harm in the future. Thus, the clubs' contentions appeared to consist in general and hypothetical allegations of irreparable harm.

This was also confirmed because the request for a stay was not filed with the appeal and the clubs' procedural behaviour did not reflect any urgency to solve the matter. In fact, the Panel further wonder that if the Appellants were facing irreparable harm, why they did not file the request at an earlier stage.

Considering that the Appellants failed to satisfy the criteria of irreparable harm, the relevant application was rejected.

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SWISS FEDERAL TRIBUNAL

7.1 Introduction

The final appellate instance following CAS proceedings is the Swiss Federal Tribunal ("SFT"), in accordance with Article 77(1)(a) of the Law of the SFT and Chapter 12 of the Swiss Private International Law Act ("PILA")

According to Article 190(2) PILA, an arbitral award may only be set aside:

> *"a. where the sole member of the arbitral tribunal was improperly appointed or the arbitral tribunal improperly constituted;*
>
> *b. where the arbitral tribunal wrongly accepted or declined jurisdiction;*
>
> *c. where the arbitral tribunal ruled beyond the claims submitted to it, or failed to decide one of the claims;*
>
> *d. where the principle of equal treatment of the parties or their right to be heard in an adversary procedure were violated;*
>
> *e. where the award is incompatible with public policy."*

Although not frequent, particularly in light of the large number of proceedings before CAS, it is not unusual for appeals to be filed against CAS awards before the SFT. The following subsections provide a brief overview of SFT proceedings and decisions in 2022 relating to FIFA decisions.

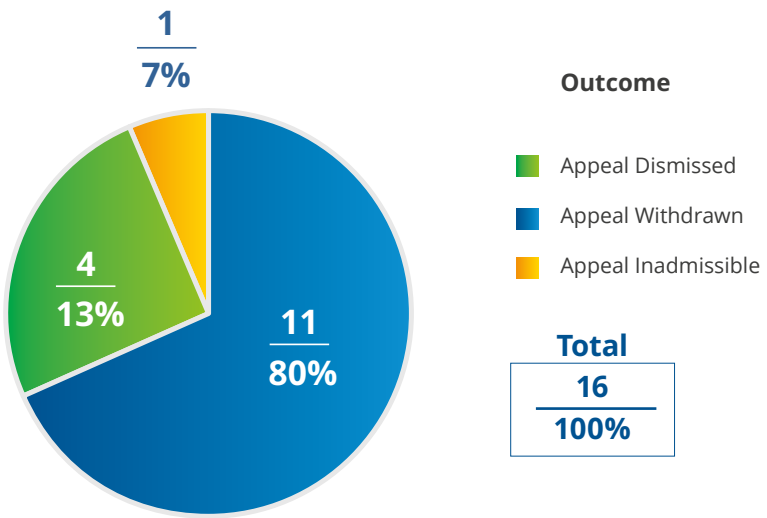
7.2 Appeals filed against CAS awards involving FIFA

In 2022, eight (8) appeals were filed to the SFT against CAS awards in cases in which FIFA was a party.

However, only two (2) of those resulted in a motivated decision of the SFT on the substance of the appeal, as five (5) of the appeals were eventually withdrawn, and one (1) case is currently ongoing.

7.3 Decisions rendered in 2022 in appeals against CAS football decisions

In 2022, sixteen decisions of the SFT in appeals against CAS awards which, in turn, related to decisions of FIFA bodies, have been either notified to FIFA or published by the SFT. None of these appeals were successful, with the vast majority (11) being dismissed, and the others having been either withdrawn (4) or declared inadmissible (16).



The most relevant SFT case law in relation to appeals concerning FIFA decisions is summarized below.

4A_520/2021

This case relates to the appeal of Mr Marco Polo del Nero (the "Appellant") against the award in CAS 2019/A/6344, which confirmed the Appellant's breaches of the FIFA Code of Ethics and imposed a twenty-year ban from football-related activities as well as the maximum applicable fine. In that particular CAS proceeding, the Appellant had requested at the end of the CAS hearing that the members of the Panel update the disclosures from their acceptance and independence forms filed one year prior. Subsequently, the Appellant filed a challenge against the President of that Panel and the ad hoc clerk, which was rejected by the ICAS Challenge Commission.

The appeal to the SFT focused mainly on the alleged improper constitution of the CAS Panel (Article 190(2)(a) PILA), as he considered that its President had purposely failed to disclose a number of other appointments in CAS proceedings involving FIFA, in particular cases that arose after the appeal had been filed and that were still ongoing. The foregoing circumstances would fall under the Orange List of the IBA Guidelines on Conflicts of Interest in International Arbitration (the "IBA Guidelines) and would, according to the Appellant, be sufficient to annul the arbitral award. The Appellant also raised the issue that neither the President of the Panel nor the ad hoc clerk had disclosed that their law firm had been engages by FIFA on a matter relating to data protection (without either of them being involved in any capacity in that specific issue).

In its decision issued on 4 March 2022, the SFT rejected the appeal, as it found that the Panel had been properly constituted.

When analysing the particular grievances raised by the Appellant, the SFT firstly found that the Appellant's challenge of the President of the Panel was time-barred, because the Appellant's counsel had been made aware of the arbitrator's appointment in the updated proceedings and of his firm's involvement in the data protection matter through a disclosure in an independent CAS proceeding that had been made eleven days before the hearing in CAS 2019/A/6344. In this respect, the SFT recalled that any information of which a party's counsel becomes aware, even if in a different proceedings involving a different client, is considered attributable also to that party. As the Appellant only requested the updates in the Panel's disclosure at the outset of the hearing (i.e. eleven days after his counsel had become aware of the circumstances that would allegedly affect its President's independence and/or impartiality), he was precluded from challenging the constitution of the Panel.

Although the foregoing conclusion was sufficient to reject the appeal, the SFT nevertheless further analysed the issue and concluded that there were simply no reasons to determine that the Panel had been improperly constituted. In this respect, the SFT found that the amount of proceedings in which that arbitrator had been involved with FIFA as a party (26 over the previous three years) was not decisive, as only those cases in which he had been appointed to the panel by FIFA (and not by a counterparty or CAS) are to be considered as situations that could give rise to doubts as to his impartiality. In addition, the SFT recalled that it is always the specific circumstances of a given case that are decisive to determine an arbitrator's lack of impartiality or independence, and that it was not important to lose sight of the particularities of sports arbitration and its closed list of arbitrators, which allow arbitrators to be nominated by a party more often than the limits set out in the IBS Guidelines.

Finally, regarding the data protection issue, the SFT found that FIFA's mandate to the arbitrator and ad hoc clerk's law firm was an isolated issue, that these individuals were neither involved nor FIFA's persons of contact in that matter, and that the fees paid to the law firm represented an extremely small amount of the firm's income, and there is therefore no reason to doubt the President of the Panel or the ad hoc clerk's independence and impartiality on that basis either.

4A_542/2021

This case relates to the appeal of Mr Ricardo Teixeira (the "Appellant") against the award in CAS 2019/A/6665, which confirmed the lifetime ban from football-related activities as well as the maximum applicable fine that had been imposed by the FIFA Ethics Committee for serious violations of the FIFA Code of Ethics relating to bribery and corruption.

In his appeal to the SFT, the Appellant firstly argued that his right to be heard had been violated (Article 190(2)(d) PILA) because CAS had failed in its duty to minimally address all of the relevant issues of his appeal. In particular, the Appellant submitted that CAS had wrongly ignored his position that he had ceased to be an official in early 2012, when finding him guilty of bribery for facts which (according to him) had occurred on 2014.

In its decision of 28 February 2022, the SFT swiftly dismissed that line of argumentation by remarking that, under the guise of an alleged violation of his right to be heard, the Appellant was truly seeking the material re-examination of the CAS Award, which is inadmissible. In addition, and for the sake of completeness, the SFT observed that the CAS Panel had indeed considered the Appellant's argument in that matter and implicitly (to say the least) rejected them.

The Appellant then argued that the disciplinary sanction (i.e. a lifetime ban from football) would be in breach of Swiss public order (Article 190(2)(e) PILA) insofar as the disproportionate sanction would affect his personality rights. This position was also dismissed by the SFT, which first and foremost noted that the Appellant had failed to even raise any objection to the proportionality of the sanction during the CAS proceedings; in fact, he had even expressly admitted at the CAS hearing that the sanction was in fact proportionate to the offences he was accused of. Therefore, the Appellant's argument was in clear violation of the doctrine of venire contra factum proprium and could only be dismissed.

In addition to the above, the SFT remarked that the Appellant had in any event not proven how the CAS Panel's conclusion would violate Swiss public order by being manifestly unjust. In particular, the tribunal noted that the Appellant had voluntarily stepped down from his position as a football official in 2012, thus tempering the alleged breach of his personality rights. In addition, the Appellant still had the possibility of exercising other lucrative activities in other sectors than football.

The SFT finally noted that the worldwide scope of the sanction was entirely legitimate and logical in the context of an international sports federation.

The appeal was thus fully rejected.

4A_564/2021

This matter at the centre of this decision started with FIFPro lodging a complaint, co-signed by Mr Simonovic and Sindikat Profesionalnih Fudbalera – Nezavsinost (the "Appellants"), with the FIFA Disciplinary Committee requesting the opening of FIFA Disciplinary Proceedings against the Football Association of Serbia (the "FAS") based on the alleged violation by the FAS National Dispute Resolution Chamber (the "FAS NDRC") of the FAS Statutes and several provisions of the FIFA Statutes.

Whereas the disciplinary proceedings were opened against the FAS as a result of the investigation conducted by FIFA into the complaint, the Appellants were not informed of the opening of the disciplinary proceedings, as they were not parties thereto. In addition, once the Appellants finally became aware of the Disciplinary Committee's decision, their requests for the relevant grounds was rejected based on their lack of standing.

Based on the above, the Appellants filed two appeals with CAS: the first one based on an alleged denial of justice by FIFA *(CAS 2020/A/6921)* and the second one against the rejection of their request for the grounds of the disciplinary decision *(CAS 2020/A/7297)*.

The two CAS proceedings were consolidated (*CAS 2020/A/6921 & CAS 2020/A/7297*) and CAS ruled that "*the Appellants did not have the standing to sue in front of the FIFA Disciplinary Proceedings and, consequently, they do not have the standing to sue in front of CAS either*" and dismissed the appeal.

The Appellants then filed a Civil Law Appeal before the SFT, decided on 2 May 2022, raising the following pleas: (i) violation of the right to be heard; (ii) violation of the procedural public policy, and (iii) the violation of the material public policy.

It is worth noting that the Appellants requested that a public hearing be held before the SFT, and that such request was rejected before entering into the respective pleas, due to the legal and highly technical issues that were to be discussed in the matter. In this respect, the SFT referred to its jurisprudence according to which the European Convention on Human Rights (ECHR) – in particular Article 6(1) to which the Appellants referred – cannot be directly applied in the context of a civil law appeal to the SFT.

Turning to the Appellants' first plea, the main point raised by the Appellants was that the CAS had disregarded their substantiated arguments regarding their legal standing and, in doing so, the arbitral tribunal violated their right to be heard. The SFT rejected these arguments, pointing out to the thorough examination of Appellants' standing to appeal by the CAS Panel. In this respect, the SFT reiterated its long-standing jurisprudence that the CAS is not obliged to explicitly address all arguments presented by the parties. Furthermore, the SFT concluded that the mere fact that the CAS did not follow the Appellants' interpretation of their alleged legal standing does not result in the violation of their right to be heard. In this sense, the SFT reiterated its jurisprudence that the SFT appeal shall not serve as a substantive revaluation of the CAS Award.

As to the second and third pleas, the SFT recalled the meaning and the scope of public policy and reiterated that it is not sufficient that a reasoning contained in an arbitral award conflict with public policy, but that result of the award must be incompatible with *ordre public*.

In this respect, the Appellants argued that the procedural public policy had been violated by the limitation concerning the legal standing foreseen in the various applicable rules of the FIFA Disciplinary Code which, *inter alia*, unlawfully limited Article 75 Swiss Civil Code ("SCC") and, therewith, the general guarantee of judicial review. In this respect, the SFT pointed out that the Appellants, *i.e.* mere complainants ("*Anzeigesteller*"), had not demonstrated such violation.

Furthermore, the Appellants were of the opinion that the FAS and FIFA had acted contrary to good faith (Article 2 SCC), and, therefore, incompatibly with material public policy. In particular, the Appellants argued that there was a legitimate expectation in certain application of FAS' and FIFA's pertinent rules and regulations, and not applying them violated Article 2 SCC. Once again, the SFT found that the Appellants' interpretation – independent from the due consideration of CAS – did not prove any violation of material public policy. The SFT noted that the Appellants were simply repeatedly criticising CAS' application of law, which is inadmissible in the scope of the review of an arbitral award before the SFT.

Finally, the SFT concluded that Appellants' criticism aimed at pointing out to alleged violations by the FAS in domestic issues, which falls outside the scope of the CAS proceedings, as these were limited to whether the Appellants had either a right to obtain the grounds of the Decision or standing to sue or appeal in the FIFA disciplinary matter.

4A_246/2022

This case relates to the appeal of Club Rapid 1923 SA (the "Appellant") against the award in CAS 2020/A/7543, which confirmed that the Appellant was the sporting successor of FC Rapid Bucaresti (the "Old Club") and, as a result, liable for the latter's debt with respect to a decision from the FIFA DRC.

In its appeal to the SFT, the Appellant firstly argued that his right to be heard had been violated (Article 190(2)(d) PILA) because CAS had not addressed a number of its arguments and evidence in connection with the principle of sporting succession and its applicability *in casu*. In partuclar, the Appellant argued that the Sole Arbitrator ignored (i) evidence that would show that it was a different club (AFC Rapid Bucaresti) that was truly the sporting successor of the Old Club, (ii) that the Romanian Football Federation (RFF) did not consider the Appellant as the Old Club's sporting successor, and (iii) the creditor had not been diligent in the recovery of the debt.

In its decision of 1 November 2022, the SFT began by remarking that, under the guise of an alleged violation of his right to be heard, the Appellant was inadmissibly seeking the material re-examination of the CAS Award. In any event, the SFT observed that the Sole Arbitrator had indeed considered the Appellant's arguments on sporting succession and rejected them, even if implicitly. In particular, the SFT noted that CAS had implicitly rejected the Appellant's theory regarding AFC Rapid Bucaresti, and it had not considered relevant the RFF's view on the sporting succession of the Old Club.

Insofar as the creditor's diligence is concerned, the SFT observed that, whether rightfully or not, the Sole Arbitrator had found that the creditor was not required to include his credit in the Old Club's bankruptcy proceedings because his claim, based on an employment contract, had to be included *ex officio* within the Old Club's debt in accordance with Romanian law.

The second argument raised by the Appellant in its challenge was that the CAS award breached material public policy (Article 190(2)(e) PILA) because the principle of sporting succession would violate a number of fundamental rights and principles.

In its reasoning to reject the Appellant's arguments, the SFT firstly recalled that the principle of autonomy of associations, guaranteed by Article 63 SCC, grants associations ample freedom to establish and apply rules governing the relationship with its members. Thus, an association may, in principle and to achieve its objectives, issue regulations providing for sanctions aiming at guaranteeing the respect of its member's obligations.

Turning to the Appellant's claim that Article 15 FDC would violate the principle of legality, the SFT recalled that it is unclear whether such criminal law principle is truly part of material public order. Nevertheless, the SFT found that the argument fails. In this respect, the SFT observed that the mechanism of sporting succession is not a sanction in itself, but rather a principle according to which the sporting successor is held responsible for the engagements and obligations of the club it has succeeded. The possibility of sanctioning a club for failure to respect a decision was already foreseen in Article 64 of the former FDC, and the principle of sporting succession codified in the 2019 edition of the FDC had already been recognized for years in CAS jurisprudence. It was therefore not unpredictable, nor could the Appellant not anticipate, that sanctions could be imposed against it.

In addition, the SFT confirmed that the CAS award was not arbitrary and did not limit the Appellant's financial freedom. The SFT noted that the Appellant retained its right to exercise economic activities with normality, and that the possibility of the CAS Award affecting the Appellant's professional future due to the perception of third-parties that it does not pay its depts did not constitute a breach of material public order.

The appeal was therefore rejected in full.

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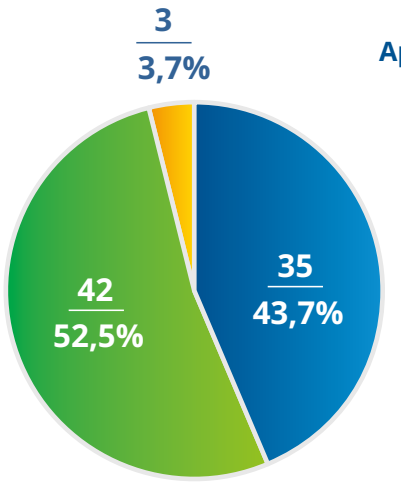
ARBITRATORS APPOINTED IN 2022

8.1. Composition of the Panels in 2022

As reflected in section 2.2 of this Report, FIFA was called as respondent or co-respondent in 111 cases during 2022.

Out of these, 31 ended by means of a Termination Order issued by the the President or the Deputy President of the Appeals Arbitration Division of CAS.

From the 80 remaining cases, 35 were/are being decided by a Sole Arbitrator[3], 42 were/are being decided by a three-member Panel and in 3 a Sole Arbitrator/Panel is pending to be appointed.



Appeals in which FIFA is a party

Total
80
100%

Concluded and ongoing cases decided by:

Sole Arbitrator	35
Three-member Panel	42
No appointment (yet)	3
Termination Orders	**31**
Total	**111**

8.2 Appointments in 2022

Of the 42 cases involving a three-member Panel, FIFA has proactively (or jointly with other co-respondents) appointed the following arbitrators in cases in which it was a party to in 2022:

Mr Andreu Camps
- CAS 2022/A/9178

Ms Anna Borduigova
- CAS 2022/A/8592
- CAS 2022/A/8692

Ms Anna Peniche
- CAS 2022/A/8967

Mr Carlos del Campo Colás
- CAS 2022/A/8960

Mr Daniel Cravo Souza
- CAS 2022/A/8805
- CAS 2022/A/9219

Mr Efraim Barak
- CAS 2022/A/9046

Mr Fabio Iudica
- CAS 2022/A/9101

Mr Jan Räker
- CAS 2022/A/8598
- CAS 2022/A/8832 & 8833

3 Unless there is an agreement between the parties, the appointment of Sole Arbitrators is made by the President of the Appeals Division of CAS in accordance with R54 of the CAS Code. Consequently, FIFA does not have any word or exert any influence in their appointment.

08. ARBITRATORS APPOINTED IN 2022

Mr Joao Nogueira da Rocha
- CAS 2022/A/8882

Mr José Juan Pintó Sala
- CAS 2022/A/8701 & 8720 & 8966
- CAS 2022/A/9165

Mr José Manuel Maza
- CAS 2022/A/9248

Mr José María Alonso
- CAS 2022/A/9175 & 9176
- TAS 2022/A/9206

Mr Kepa Larumbe
- CAS 2022/A/9221

Mr Lars Hilliger
- CAS 2022/A/8972

Mr Luigi Fumagalli
- CAS 2022/A/8600 & 8604 & 8633
- CAS 2022/A/9009
- CAS 2022/A/8596

Mr Massimo Coccia
- CAS 2022/A/8501 & 8585 & 8586
- CAS 2022/A/8807

Mr Patrick Lafranchi
- CAS 2022/A/8668
- CAS 2022/A/8737
- CAS 2022/A/8691

Mr Petros Mavroidis
- CAS 2022/A/9304

Mr Sofoklis Pilavios
- CAS 2022/A/8594
- CAS 2022/A/9345

Mr Ulrich Haas
- CAS 2022/A/9016
- CAS 2022/A/9017

Mr. Michael Beloff K.C.
- CAS 2022/A/8708

Mr Miguel Cardenal Carro
- CAS 2022/A/9126

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AMENDMENTS TO THE CAS CODE IN 2022 AND CREATION OF THE FOOTBALL LEGAL AID FUND

9.1 Introduction

As announced by CAS on 11 October 2022, the International Council of Arbitration for Sport (ICAS), recently adopted amendments to the Code of Sports-related arbitration (the "CAS Code"), which took effect from 1 November 2022. Such amendments applied to both the ICAS Statutes and the CAS procedural rules, and are summarized below.

9.2 Amendments to the ICAS Statutes

Following discussions with FIFA in the context of the renewal of the FIFA-ICAS agreement for the period 2023-2026, and in light of the significant increase of the number of arbitrations related to football conducted by CAS, as described in this Report, the number of ICAS members has been increased from 20 to 22 in order to guarantee a better representation of football stakeholders.

As a result, the following members have been appointed to ICAS for a four-year term, representing football as a whole:

- Dr Emilio GARCIA SILVERO (Spain), FIFA Chief Legal and Compliance Officer.
- Mr Dariusz MIODUSKI (Poland), Vice Chairman, European Clubs Association.
- Mr Kevin PLUMB (UK), General Counsel, Premier League.
- Mr Louis EVERARD (Netherlands), Director of the Dutch Association of Professional Football Players, Board Member of FIFPro.

Since the foundation of CAS in 1984, it is the first time that football has been represented in ICAS in view of its importance.

9.3 Amendments to the Procedural Rules

Several provisions of the procedural rules of the CAS Code have also been amended following different proposals from FIFA. Among the most relevant changes, with effect from 1 November 2022, it is worth noting:

- Introduction of the possibility to hold case management conferences between the Panel and the relevant parties after the filing of the answer to an appeal, in order to discuss procedural issues, the preparation of an eventual hearing, and any other issue(s) relating to the taking of evidence (Article R56 CAS Code).
- The deadline to communicate an award may be extended up to a maximum of four months following the closing of evidentiary proceedings. Should an award not be rendered in that extended deadline, the Panel may be removed and the arbitrators' fees may be reduced (Article R59 CAS Code).
- The final costs served upon the parties shall include a detailed breakdown of the arbitrators' costs and fees, as well as the administrative costs of the proceedings (Article R64.3 CAS Code).

9.4 The Football Legal Aid Fund

As part of the recently signed agreement between FIFA and the ICAS for the period 2023-2026, FIFA and CAS have established a specific legal aid fund for football (the FIFA-CAS Football Legal Aid Fund - FLAF), in order to provide assistance to football stakeholders appealing cases before the CAS.

09. AMENDMENTS TO THE CAS CODE IN 2022 AND CREATION OF THE FOOTBALL LEGAL AID FUND

The FLAF, which has begun operating as from 1 February 2023, is the first such fund exclusively dedicated to football-related matters, either at national or international level. It ensures that CAS proceedings involving the FLAF will:

- be available to any natural persons, including agents with a FIFA licence, without sufficient financial means to proceed at the CAS.
- be free of any Court Office Fee.
- be free of any administrative and procedural costs, including arbitrator fees.
- exceptionally and only once per calendar year, be available to football clubs affiliated to a member association of FIFA and belonging to the club category IV of the FIFA table on the categorization of clubs for training compensation.
- be decided by a Sole Arbitrator from the specialized CAS Football List, who will carry out such work on a pro bono basis.

The FLAF shall be solely funded by an annual contribution from FIFA.

The CAS Legal Aid set up also guarantees a pro bono counsel system to assist individuals in their potential CAS disputes.

The funds of the FLAF shall exclusively be used to cover the lump sum for travel and accommodation costs of the relevant party and pro bono counsel, as well as those of witnesses, experts and interpreters.

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FINAL REMARKS

10. FINAL REMARKS

The CAS & Football Annual Report 2022 is another effort of FIFA's commitment to transparency within and outside the organization.

Likewise, the present document is an additional initiative under FIFA's pledge for education with the sole aim of sharing invaluable insights (supported by practical examples from FIFA's experience in arbitration before the CAS) related to football law that crosses the premises of FIFA on a daily basis.

The CAS & Football Annual Report 2022 is not intended to be a one-time document but rather a recurrent tool for all stakeholders, legal practitioners, and people interested in *lex sportiva*.

For more information, please visit legal.fifa.com.


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