Francelino da Silva Matuzalem v. Fédération Internationale de Football Association – FIFA, Federal Supreme Court of Switzerland, 1st Civil Law Chamber, 4A_558/20111, 27 March 2012

The Court annulled, on grounds of public policy, a CAS award affirming a FIFA decision against a professional football player. An earlier FIFA decision and CAS award directed the player to pay damages for unjustified termination of contract to his previous employer. A FIFA disciplinary decision then held that if the player failed to comply with the award of damages, he would be banned from all football-related activities. This threatened sanction was a serious infringement of the player's personal rights that was not justified by the interests that FIFA sought to enforce by this decision. Hence, the CAS award affirming it was a serious violation of personal rights and conflicted with public policy. Nor was the FIFA sanction necessary in order to enforce the award of damages, since the employer could request enforcement under the 1958 New York Convention.

SWITZERLAND

Bundesgericht, 27 March 2012, no. 4A_558/20111

Parties:	Appellant: Francelino da Silva Matuzalem (Brazil) Respondent: Fédération Internationale de Football Association – FIFA (Switzerland)
Published in:	Available online at <www.bger.ch/index/juridiction/jurisdiction-inherit...>; English translation available online at. <www.praetor.ch/arbitrage/facts-not-reviewed-by-fed...>
Subject matters:	– public policy and violation of personal rights – 1958 New York Convention

Summary

On 26 June 2004, Francelino da Silva Matuzalem, a professional football player, entered into an employment contract with FC Shakhtar Donetsk (Shakhtar), a Ukrainian football club, for a period of five year until 1 July 2009. On 2 July 2007, however, Matuzalem terminated his employment contract with Shakhtar without notice

Author

Albert Jan van den Berg

Jurisdiction

China

Court

Federal Supreme Court of Switzerland, 1st Civil Law Chamber

Case date

16 March 2012

Case number

4A_558/20111

Parties

Appellant, Francelino da Silva Matuzalem
Respondent, Fédération Internationale de Football Association – FIFA

Key words

Applicable legislation

Authoritative Publication Source

Source

Francelino da Silva Matuzalem v.

and without (sporting) just cause. On 19 July 2007, he entered into a new employment contract for three football seasons, until 30 June 2010, with Real Zaragoza SAD (Real Zaragoza), a Spanish football club. Three days *page "459"* before, on 16 July 2007, Real Zaragoza had addressed a letter to Matuzalem undertaking to hold him harmless for any possible damage claims as a consequence of his premature termination of the Shakhtar contract.

At the end of the 2007/2008 season, Real Zaragoza descended into the second football league. By an agreement of 17 July 2008, it transferred Matuzalem temporarily, for the 2008/2009 season, to an Italian football club, SS Lazio SpA in Rome (Lazio). On 22 July 2008, Matuzalem accepted this temporary transfer and entered into an employment contract with Lazio for the period between 22 July 2008 and 20 June 2011. At the end of the 2008/2009 season, Real Zaragoza returned to the Spanish first league. On 23 July 2009, it agreed to the definitive transfer of Matuzalem to Lazio against payment of a transfer fee of i 5.1 million. On the same day, 23 July 2009, Matuzalem entered into a new employment agreement with Lazio; the agreement replaced the earlier, 22 July 2008 contract and was entered into for a period of six years, until 30 June 2014. It indicated a net salary per season as well as some unspecified bonuses.

In the meantime, Shakhtar had commenced proceedings against Matuzalem in the Dispute Resolution Chamber of the Fédération Internationale de Football Association – FIFA. By a decision of 2 November 2007, the Dispute Resolution Chamber awarded Shakhtar damages in the amount of € 6.8 million, with interest at 5 percent from 30 days after the award, as a consequence of Matuzalem's termination of his employment contract. On 19 May 2009, the Court of Arbitration for Sport (CAS) modified the FIFA decision and directed Matuzalem and Real Zaragoza jointly to pay Shakhtar € 11,858,934 with interest at 5 percent from 5 July 2007. Matuzalem and Real Zaragoza filed a civil law appeal (*Beschwerde in Zivilsachen*) against the CAS award. On 2 June 2010, the Federal Supreme Court rejected the appeal. Matuzalem and Real Zaragoza were therefore finally found to be jointly liable to pay € 11,858,934 and interest thereon to Shakhtar.

On 14 July 2010, the Deputy Secretary of the Disciplinary Committee of FIFA informed Matuzalem and Real Zaragoza that disciplinary proceedings were being commenced against them because they had not complied with the CAS award of 19 May 2009 and that sanctions would be imposed pursuant to the FIFA Disciplinary Code.(1)

page "460"

On 26 July 2010, Real Zaragoza advised the Disciplinary Committee that it was in serious financial difficulties which could lead to insolvency and bankruptcy; also, there were no grounds for sanctions under Art. 64 of the FIFA Disciplinary Code, as the club was endeavoring to settle the debt. In turn, on 20 August 2010, Matuzalem sent the Disciplinary Committee a copy of a letter of 19 August 2010, in which he requested Real Zaragoza to hold him harmless for the amount to be paid to Shakhtar pursuant to Real Zaragoza's statement of 16 July 2007, which he also attached.

By a decision of 31 August 2010, the FIFA Disciplinary Committee found that Matuzalem and Real Zaragoza were in breach of their obligations under the CAS award of 19 May 2009 (Part 1 of the

Fédération Internationale de Football Association – FIFA, Federal Supreme Court of Switzerland, 1st Civil Law Chamber, 4A_558/20111, 27 March 2012 in Albert Jan van den Berg (ed), Yearbook Commercial Arbitration 2012 – Volume XXXVII, Yearbook Commercial Arbitration, Volume 37 (Kluwer Law International 2012) pp. 459 - 463

award); directed Matuzalem and Real Zaragoza, jointly, to pay a fine of CHF 30,000 pursuant to Art. 64 of the FIFA Disciplinary Code (Part 2 of the award), and set a final time limit of ninety days to pay the amount due (Part 3 of the award). Part 4 of the award provided as follows (English original):

> "4. If payment is not made by this deadline, the creditor may demand in writing from FIFA that a ban on taking part in any football related activity be imposed on the player Matuzalem Francelino da Silva and/or six (6) points be deducted from the first team of the club Real Zaragoza SAD in the domestic league championship. Once the creditor has filed this/these requests, the ban on taking part in any football-related activity will be imposed on the player Matuzalem Francelino da Silva and/or the points will be deducted automatically from the first team of the club Real Zaragoza SAD without further formal decisions having to be taken by the FIFA Disciplinary Committee. The association(s) concerned will be informed of the ban on taking part in any football-related activity. Such ban will apply until the total outstanding amount has been fully paid…."

page "461"

On 1 September 2010, Real Zaragoza paid € 500,000 into an account opened in the name of the Shakhtar. There were no further payments by either Real Zaragoza or Matuzalem.

Matuzalem and Real Zaragoza appealed the decision of the FIFA Disciplinary Committee of 31 August 2010 to the CAS. On 29 June 2011, the CAS rejected the appeal by Real Zaragoza (Sect. 1 of the award) and Matuzalem (Sect. 2 of the award); confirmed the decision of the Disciplinary Committee of FIFA of 31 August 2010 (Sect. 3 of the award); rejected all other submissions (Sect. 4 of the award) and decided on the costs of the proceedings (Sects. 5 and 6 of the award). Matuzalem filed a civil law appeal to the Federal Supreme Court, seeking annulment of the CAS award.

By the present decision, the Federal Supreme Court granted annulment. The Court first noted that the grounds for annulment raised by Matuzalem – violation of due process and violation of public policy – were both admissible, as such grounds are listed among the only grounds on which annulment of an award may be sought under the Swiss Private International Law Act (PILA).

Matuzalem's first ground, that he was denied due process in the FIFA proceedings and that this defect could not be cured on appeal in the CAS proceedings, was unsuccessful. The Court found that this contention was not persuasive in light of the provision in the CAS Code that the CAS arbitral tribunal has full power to review the facts and the law of the case on appeal.

The Federal Supreme Court granted Matuzalem's second ground, based on a violation of public policy in the FIFA decision confirmed by the CAS award.

There is a violation of substantive public policy if not only the reasons for but also the outcome of the award are at odds with those "essential, generally recognized values that, according to the

opinion prevailing in Switzerland, should be the basis of any legal order". Under Swiss law, there are limits to the extent to which a person can waive his freedom, and personal rights are protected. Sanctions imposed by a sport federation or association that seriously harm "the economic development of individuals who practice that sport as a profession" are allowed only if the interests of the federation justify the infringement of those individuals' personal rights.

In the present case, the worldwide and unlimited ban that would be imposed on Matuzalem if he failed to pay under the award protected the interest of a FIFA member – Shakhtar – to the payment of damages by the employee in breach of contract and the interest of the sport federation to contractual compliance by *page "462"* football players, while constituting a serious threat to Matuzalem's economic freedom. On a balance, the interests to be protected did not justify such a serious infringement of Matuzalem's personal rights. Also, while such sanction may be appropriate to promote Matuzalem's willingness to pay, if his argument that he could not pay the whole amount was correct, the sanction's appropriateness to achieve its purpose – the payment of the damages – was questionable, because it would deprive Matuzalem of any means to earn the necessary sum. Hence, the CAS award of 29 June 2011 was "an evident and serious violation of personal rights and is in conflict with public policy".

The Federal Supreme Court added that the FIFA sanction was also not necessary in order to enforce the award of damages, as Shakhtar could request enforcement of the CAS award under the 1958 New York Convention, "to which most states, and in particular Italy", Matuzalem's present domicile, have acceded.

page "463"

Excerpt

[1] "According to Art. 54(1) of the Law on the Federal Supreme Court [*Bundesgerichtsgesetz* – BGG], the decisions of the Federal Supreme Court are issued in an official language [of Switzerland], as a rule the language of the decision under appeal. If the decision is in another language, the Federal Supreme Court applies the official language chosen by the parties. The award under appeal is in English. Since this is not an official language and the parties have used German before the Federal Supreme Court, the decision of the Federal Supreme Court shall be rendered in German.

[2] "In the field of international arbitration, a civil law appeal [*Beschwerde in Zivilsachen*] is allowed on the conditions set out in Arts. 190-192 [of the Swiss Private International Law Act – PILA] (SR 291) (Art. 77(1)(a) BGG).

[3] "The seat of the arbitral tribunal in this case is in Lausanne. At the relevant time, the appellant [Francelino da Silva Matuzalem] had his domicile outside Switzerland. As the parties did not rule out in writing the provisions of Chapter 12 PILA, [these provisions] apply (Art. 176(1)-(2) PILA).

[4] "A civil law appeal within the meaning of Art. 77(1) BGG is in principle a cassation appeal, that is, it can only lead to the annulment of the decision under appeal (see Art. 77(2) BGG, which excludes the applicability of Art. 107(2) BGG to the extent that [this

Article] empowers the Federal Supreme Court to decide on the merits of the case). The appellant only and sufficiently requests here the annulment of the impugned CAS award of 29 June 2001."

I. Grounds for Annulment

[5] "Only the grounds [for annulment] limitatively listed in Art. 190(2) PILA[(2)] are admissible (BGE 134 III 186 at 5 p. 187; 128 III 50 at 1a p. 53; 127 III 279 at 1a p. 282). Pursuant to Art. 77(3) BGG, the Federal Supreme Court reviews only the grounds that are raised and reasoned in the appeal; this is in accordance with the obligation to give reasons provided for in Art. 106(2) BGG in respect of a violation of constitutional rights and cantonal and inter-cantonal law (BGE 134 III 186 at 5 p. 187 and references therein).

[6] "The appellant argues that the award under appeal violates the right to be heard (Art. 190(2)(d) PILA) and public policy (Art. 190(2)(e) PILA), and therefore relies on admissible grounds [for appeal]. However, he does not explain to what extent a complete annulment of the impugned CAS award of 29 June 2011 would be justified (see BGE 117 II 604 at 3 p. 606). Sect. 1 of the award rejected the appeal of Real Zaragoza SAD. Nothing in the [present] appeal is aimed at Sect. 1. This appeal is therefore not admissible, to the extent that it aims at Sect. 1 of the award under appeal."

1. Violation of Due Process (Art. 190(2)(d) PILA)

[7] "The appellant claims that there was a violation of the right to be heard (Art. 190(2)(d) PILA). He only claims that there was a violation of his right to be heard in the proceedings before the FIFA Disciplinary Committee; on the contrary, he does not claim that he did not have the possibility to present his case in the CAS arbitration proceedings.

[8] "His argument – that, contrary to the finding in the award under appeal, the fact that his right to be heard was not sufficiently complied with in the disciplinary proceeding could not be cured in the CAS appeal proceeding, irrespective of the CAS's full power of review – is not persuasive (see R57(1) of the CAS Code).[(3)] Contrary to what the appellant seems to assume, no right to two arbitration instances or stages follows from the principle of the right to be heard (Art. 190(2)(d) PILA) (see decision 4A_530/2011 of 3 October 2011 at 3.3.2; 4A_386/2010 of 3 January 2011 at 6.2 and references therein)."

2. Violation of Public Policy (Art. 190(2)(e) PILA)

[9] "The appellant [further] claims that there was a violation of public policy within the meaning of Art. 190(2)(e) PILA.

[10] "Public policy (Art. 190(2)(e) PILA) has both substantive and procedural contents (BGE 132 III 389 at 2.2.1 p. 392; 128 III 191 at 4a p. 194; 126 III 249 at 3b p. 253 and references therein). The substantive adjudication of a dispute violates public policy only if it disregards some fundamental legal principles and therefore is completely at odds with the essential, generally recognized values that, according to the opinion prevailing in Switzerland, should be the basis of any legal order. Among such principles are contractual good faith (pacta sunt servanda); the prohibition of abuse of right; the

requirement to act in good faith; the prohibition of expropriation without compensation; the prohibition of discrimination, and the protection of people who are unable to act for themselves [*Handlungsunfähigen*] (BGE 132 III 389 at 2.2.1; 128 III 191 at 6b p. 198 and references therein).

[11] "This enumeration, however, is not exhaustive (decision 4A_458/2009 of 10 June 2010 at 4.1, in: SJ 2010 I p. 417). Promising bribes also violates public policy, if proved (BGE 119 II 380 at 4b p. 384 et seq.; decision 4P.208/2004 of 14 December 2004 at 6.1). Further, the Federal Supreme Court has held that a decision that disregards – also indirectly – such a fundamental principle of law as the prohibition of forced labor, violates substantive public policy (decision 4A_370/2007 of 21 February 2008 at 5.3.2). A breach of public policy is thus conceivable in case of a violation of Art. 27 ZGB[(4)] (see decision 4A_458/2009 of 10 June 2010 at 4.4.3.2, in: SJ 2010 I p. 417; 4A_320/2009 of 2 June 2010 at 4.4; 4P.12/2000 of 14 June 2000 E. 5b/aa and references therein).

[12] "Further, the arbitral award under appeal shall be annulled only if its outcome, not only its reasons, contradicts public policy (BGE 120 II 155 at 6a p. 167).

[13] "The appellant argues that because he could not pay the damages of € 11,858,934 and interest at 5 percent since 5 July 2007 to his previous employer FC Shakhtar Donetsk, he would in fact be subject to an unlimited and worldwide prohibition to work professionally, if the creditor requested payment. He claims that this is a serious violation of the freedom of profession guaranteed by Art. 27(2) of the Federal Constitution ([*Bundesverfassung*] – BV) and by international treaties, as well as an excessive limitation of personal freedom as enshrined in Art. 27 ZGB.

[14] "Contrary to the view expressed in the award under appeal, the Federal Supreme Court did not anticipate, in its decision of 2 June 2010 [in this case], the question whether imposed or threatened disciplinary measures are a serious violation of personal rights [*Persönlichkeitsverletzung*], which in this case could lead to a violation of public policy by the award under appeal. The Federal Supreme Court merely considered that the appellant's commitment to a five-year employment contract was not inadmissible from the point of view of the protection of personal rights, and also that there was no reason to find that there was an excessive obligation because the appellant would be responsible for the damages arising as a consequence of the breach of contract (decision 4A_320/2009 of 2 June 2010 at 4.4).

[15] "The said decision did not express an opinion in respect of the compatibility with public policy of disciplinary measures imposed by a federation in case of a failure to pay damages (see also, in respect of the comparable issue of a request for contractual damages, decision 4A_458/2009 of 10 June 2010 at 4.4.8, in: SJ 2010 I p. 417, in which the Federal Supreme Court specifically left open the question whether a sanction issued by the competent FIFA body as a consequence of a failure to pay conflicted with public policy).

[16] "A person's personal rights are a fundamental legal value and require the legal order's protection. In Switzerland, [these rights] are protected constitutionally through the guarantee of the right to personal freedom (Art. 10(2) BV), which protects, in addition to the right to physical and mental integrity and freedom of movement, all freedoms constituting the basic manifestations of the expression of

one's personality (BGE 134 I 209 at 2.3.1 p. 211; 133 I 110 at 5.2 119; both with references therein). The free expression of one's personality is also guaranteed, among others, by the constitutional right to economic freedom, which includes in particular the right to choose a profession freely and to access and exercise an occupational activity freely (Art. 27(2) BV; see BGE 136 I 1 at 5.1 p. 12; 128 I 19 at 4c/aa p. 29).

[17] "The free expression of personality is protected not only from infringements by the state, but also from infringements by private persons (see Art. 27 ZGB et seq., which regulate personal freedom in private law in Switzerland). It is generally recognized in this respect that a person may not renounce his freedom entirely in a legally binding manner and that there are limits to the limitations of one's freedom. The legal principle set out in Art. 27(2) ZGB is one of the essential, generally recognized values that, according to the opinion prevailing in Switzerland, should be the basis of any legal order.

[18] "A contractual limitation of economic freedom is deemed excessive according to Swiss opinion, within the meaning of Art. 27(2) ZGB, where it subjects the obligee to another person's arbitrariness, takes away his economic freedom or limits it to such an extent that the foundations of his economic existence are endangered (BGE 123 III 337 at 5 p. 345 et seq. and references therein; see also decision 4P.167/1997 of 25 November 1997 at 2a).

[19] "Whilst public policy must not be equated to mere illegality (Bernard Dutoit, *Droit international privé suisse*, 4th ed. 2005, no. 8 to Art. 190 PILA p. 678) and its violation is to be assessed more restrictively than a breach of the prohibition of arbitrariness (BGE 132 III 389 at 2.2.2 p. 393), an obligation can be excessive to such an extent that it becomes contrary to public policy where it constitutes an obvious and serious violation of personal rights (see decision 4A_458/2009 of 10 June 2010 at 4.4.3.2, in: SJ 2010 I p. 417; 4A_320/2009 of 2 June 2010 at. 4.4; 4P.12/2000 of 14 June 2000 at 5b/aa and references therein; see also Eugen Bucher, *Berner Kommentar*, 3rd ed. 1993, no. 26 to Art. 27 ZGB; Walter/Bosch/Brönnimann, *Internationale Schiedsgerichtsbarkeit in der Schweiz*, 1991, p. 236; Anton Heini, in: *Zürcher Kommentar zum IPRG*, 2nd ed. 2004, no. 45 to Art. 190 PILA; Wolfgang Portmann, *Einseitige Optionsklauseln in Arbeitsverträgen von Fussballspielern*, Causa Sport 2006 p. 209).

[20] "The limitations to legal commitment set by the protection of personal rights do not apply only to contractual agreements but also to the statutes and decisions of legal persons (Bucher, op. cit., no. 18 to Art. 27 ZGB; see BGE 104 II 6 at 2 p. 8 et seq.). Sanctions imposed by a federation, which do not merely ensure the correct course of games but actually encroach upon the legal interests of the person concerned are subject to judicial control according to case law (BGE 120 II 369 at 2 p. 370; 119 II 271 at 3c; 118 II 12 at 2 p. 15 et seq.; see BGE 108 II 15 E. 3 p. 19 et seq.). This applies in particular when sanctions issued by a federation gravely impact the personal right to economic development; in such a case the Federal Supreme Court has held that the freedom of an association to exclude members is limited by the members' personal rights where [the association] is the body of reference for the public in the profession or the economic branch concerned (BGE 123 III 193 at 2c/bb and cc p. 197 et seq.). This is in accordance with the point of view that was adopted in particular for sport federations (BGE 123 III 193 E. 2c/bb p. 198 and references therein; see also BGE 134 III

193 at 4.5 p. 200). In these cases not only is the right of the association to exclude a member reviewed from the point of view of an abuse of right, but the interests involved are also weighed against each other, taking into account the infringement of personal rights, and it is ascertained whether there is an important reason (BGE 123 III 193 at 2c/cc p. 198 et seq.; see also BGE 134 III 193 at. 4.4).

[21] "These principles also apply to associations under Swiss law with seat in Switzerland which – like FIFA – regulate international sport. Measures taken by such sport federations which seriously harm the economic development of individuals who practice that sport as a profession are allowed only if the interests of the federation justify the infringement of their personal rights.

[22] "As a professional football player, the appellant violated his contractual obligations towards the Ukrainian association FC Shakhtar Donetsk; on this ground, he was ordered to pay damages, jointly with the football club which hired him when his contract was still in force (see decision 4A_320/2009 of 2 June 2010). The Federation sanction under dispute – which the CAS bases on the [finding that] appellant is legally bound by the sanctions in Art. 64 of the FIFA Disciplinary Code – aims at privately enforcing the decision awarding damages in the case that claim remains unpaid. Upon a simple request by the creditor, the appellant would then be banned from all football-related professional activities until the claim, in excess of € 11 million with interest at 5 percent from mid-2007 (i. e., € 550,000 per annum), is paid. This should protect directly the interest of a FIFA member to the payment of damages by the employee in breach of contract, and indirectly the interest of the sport federation to contractual compliance by football players.

[23] "Such infringement of the appellant's economic freedom would be appropriate to promote his willingness to pay and raise the amount due; however, if the appellant's statement that in no manner can he pay the whole amount is correct, the appropriateness of the sanction to achieve its direct purpose – namely, the payment of the damages – is questionable, because the prohibition to continue his previous economic and related activities will deprive the appellant of the possibility to pay his debt by carrying out his usual work.

[24] "Also, the Federation sanction is not necessary in order to enforce the award of damages: the appellant's previous employer can enforce the CAS award of 19 May 2009 through the New York Convention on the Recognition and Enforcement of Arbitral Awards of 10 June 1958 (SR 0.277.12), to which most states, and in particular Italy, which is the appellant's present domicile, have acceded.

[25] "The Federation sanction is also inadmissible to the extent that the interests which the world football federation seeks to enforce in this manner do not justify this serious infringement of the appellant's personal rights. The abstract goal of enforcing contractual good faith by football players vis-à-vis their employers is clearly less important than an occupational ban against the appellant from any football-related activities that is in fact unlimited in time and worldwide.

[26] "The threat of an unlimited occupational ban based on Art. 64(4) of the FIFA Disciplinary Code constitutes an obvious and serious infringement of the appellant's personal rights and disregards the fundamental limitations to legal commitments enshrined in Art. 27(2) ZGB. Should the imposed payment fail to take place, the award under appeal would lead not only to the appellant being

subject to his previous employer's arbitrary choice but also in particular to an infringement of his economic freedom of such gravity as to endanger the foundations of his economic existence without any justification based on some prevailing interest of the world football federation or its members.

[27] "Because of this threat, the CAS arbitral award of 29 June 2011 constitutes an evident and serious violation of personal rights and is in conflict with public policy (Art. 190(2)(e) PILA)."

II. Conclusion

[28] "Sects. 2-6 of the CAS arbitral award of 29 June 2011 must be annulled and the appeal granted insofar as admissible. In view of the outcome of the proceedings, the respondent shall bear the costs and compensate [the appellant] (Art. 66(1) and Art. 68(2) BGG)."

(….)

---

[1] Art. 64 of the FIFA Disciplinary Code (2009 edition) reads:

"1. Anyone who fails to pay another person (such as a player, a coach or a club) or FIFA a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of FIFA or CAS (financial decision), or anyone who fails to comply with another decision (non-financial decision) passed by a body, a committee or an instance of FIFA or CAS:
   (a) will be fined at least CHF 5,000 for failing to comply with a decision;
   (b) will be granted a final deadline by the judicial bodies of FIFA in which to pay the amount due or to comply with the (non-financial) decision;
   (c) only for clubs:) will be warned and notified that, in the case of default or failure to comply with a decision within the period stipulated, points will be deducted or demotion to a lower division ordered. A transfer ban may also be pronounced.

2. If the club disregards the final time limit, the relevant association shall be requested to implement the sanctions threatened.
3. If points are deducted, they shall be proportionate to the amount owed.
4. A ban on any football-related activity may also be imposed against natural persons.
5. Any appeal against a decision passed in accordance with this article shall immediately be lodged with CAS." informed of the ban on taking part in any football-related activity. Such ban will apply until the total outstanding amount has been fully paid…."

[2] Art. 190(2) of the Swiss Private International Law Act (PILA) reads:

"2. The award may only be annulled:
   (a) if the sole arbitrator was not properly appointed or if the arbitral tribunal was not properly constituted;
   (b) if the arbitral tribunal wrongly accepted or

declined jurisdiction;

(c) if the arbitral tribunal's decision went beyond the claims submitted to it, or failed to decide one of the items of the claim;

(d) if the principle of equal treatment of the parties or the right of the parties to be heard was violated;

(e) if the award is incompatible with public policy."

[3] Art. R 57(1) of the Code of the Court of Arbitration for Sport (CAS) reads:

"*Scope of Panel's Review, Hearing*

The Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. Upon transfer of the file, the President of the Panel shall issue directions in connection with the hearing for the examination of the parties, the witnesses and the experts, as well as for the oral arguments. He may also request communication of the file of the federation, association or sports-related body, whose decision is the subject of the appeal. Articles R44.2 and R44.3 shall apply. After consulting the parties, the Panel may, if it deems itself to be sufficiently well informed, decide not to hold a hearing. At the hearing, the proceedings take place in camera, unless the parties agree otherwise. If any of the parties is duly summoned yet fails to appear, the Panel may nevertheless proceed with the hearing."

[4] Art. 27 of the Swiss Civil Code (*Zivilgesetzbuch* – ZGB) reads:

"Protection of personal rights

I. From an excessive obligation

1. No one can waive all or part of his civil rights or the exercise thereof.
2. No one can renounce his freedom or limit its exercise to an extent contrary to the laws or good morals."