DIPLOMA IN FOOTBALL LAW
1st Edition (2020/2021)

Module 4 - 16-19 November 2020 & 30 November- 2 December 2020
Acting before the Organs of Justice of Football, Practical Tips

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Things to ask / Things to do
What is the case about?

- Get acquainted to the case. Analyse documentation, Ask questions.
- Conflict-check.
- Overall Strategy. Time-line (do you have the time to take care of the matter?)
- Responsability. Team-up with another law firm?
- Request all available documents.

What are the documents telling you?

- “Words spoken fly away, word written remain”
Is there a running deadline?

• Ask this during the first conversation / correspondence.

• Do not rely on the information given by the client, check the documents yourself.

• Transparency.
Correspondence with client and Risk Assessment

• Keep client informed about every communication received.

• Update risk assessment in case of new information.

• Transparency
Correspondence with the judicial bodies

• Deadline extension requests:
  • Always request the suspension of the deadline for the time the judicial body needs to decide over your deadline extension request.
  • Follow-up in writing.
  • If you make a call to follow up and you receive information orally, write and state your understanding of the situations.
  • Accrued responsibility of Counsel (TAS 2017/A/5290)

• Choose your battles:
  • Show good conduct at any moment
  • Do not challenge for the sake of challenging (What would the Panel do, if you are right?)

voie de droit par la seule lecture du texte légal. Les exigences envers les parties représentées par un avocat sont naturellement plus élevées: on attend dans tous les cas des avocats qu’ils procèdent à un contrôle sommaire des indications relatives à la voie de droit. En revanche, il n’est pas attendu d’eux qu’outre les textes de loi, ils consultent encore la jurisprudence ou la doctrine y relatives.
Settlement talks

- Is there a possibility for settlement (of financial disputes)?
  - Inherent risk to any procedure
  - Length of proceedings.
  - Procedural costs. Legal fees
  - The accumulated interests
  - Disciplinary proceedings? Ethics proceedings?

- What is the right time for settlement?
  - Legal arguments – know the jurisprudence
  - Sporting sanctions can be imposed?
  - Speculate on the outcome of the proceedings?
  - Move forward with a claim or even an appeal to increase pressure (procedural arguments)
  - Counterclaim?
FIRST INSTANCE PROCEEDINGS
FIFA proceedings
Claimant
Types of proceedings

- **Dispute Resolution Chamber (DRC)**
  - Disputes between club and player in relation to the maintenance of contractual stability in relation to the issue of the ITC, sporting sanctions or compensation for breach of contract (Art. 22 lit. a FIFA RSTP)
  - Employment related disputes between a club and a player of an international dimension (Art. 22 lit. b FIFA RSTP)
  - Disputes relating to Training Compensation and Solidarity Mechanism between clubs belonging to different associations (Art. 22 lit. d FIFA RSTP)

- **Player’s Status Committee (PSC)**
  - Employment related disputes between a club/association and a coach of an international dimension (Art. 22 lit. c FIFA RSTP)
  - Disputes between clubs belonging to different associations that do not fall within the cases provided for the issues to be dealt with before the DRC (Art. 22 lit. f FIFA RSTP)
  - Disputes between clubs (for example validity of transfer agreement, execution of clauses of the transfer agreement)

- **Disciplinary Committee? Ethics Committee?**
  Usually only in the role of Respondent.
Jurisdiction (1 of 2)

- Redress possible before a civil court? If yes, which procedure is more beneficial for the client?
- Have the parties opted in writing for an independent arbitral tribunal?
  - In the framework of the association or a collective bargaining agreement?
  - Is the arbitration clause included directly in the contract or collective bargaining agreement?
  - Disputes between clubs (for example validity of transfer agreement, execution of clauses of the transfer agreement)

  “Independent Arbitral Tribunal” according to FIFA Circular No. 1010
  - Principle of parity when constituting the arbitration tribunal
  - Right to an independent and impartial tribunal
  - Principle of fair hearing
  - Right to contentious proceedings
  - Principle of equal treatment
In case it is unclear/unsure whether an alternative jurisdiction has been agreed because the arbitration clause leaves room for interpretation, assess whether to still file a claim with FIFA or not.

If yes, assess whether to already address the matter of jurisdiction in the claim or wait and see whether the Respondent even challenges the jurisdiction.

- **Pros:**
  - Pro-active tackling of an upcoming issue
  - The judges hear your arguments first (in “charge” of the topic)

- **Cons:**
  - Signaling an issue and pushing the door open for Respondent to tackle it (Respondent might oversee the issue otherwise)
  - Claimant switches role and becomes the “Defendant” on this topic
Jurisdiction (bonus) – Pathological clause

Material essential points of an arbitration agreement:
1. Intent of the parties to bind themselves to submit their dispute to decision by an arbitral tribunal and
2. Determination of the object of the dispute, which is to be submitted to arbitration

STF 4A_246/2011

1. An agreement to arbitrate is valid if it meets the requirements of the law of contract or those of another applicable substantive law or Swiss Law.
2. To be valid the arbitration agreement must clearly express the will of the parties to waive the jurisdiction of the state courts in favour of a private arbitral tribunal and it is only when that intent is clearly established that the interpretation of the arbitration agreement, or that of a pathological arbitration clause, can be made with a view to ensuring that the arbitration takes place.
3. To ensure that arbitration agreements are upheld insofar as possible, a liberal approach is adopted under Swiss law.
Jurisdiction (bonus) – Pathological clause

Non-essential points:*

- **Seat of the nominated arbitral tribunal**
- **The rules as to the composition of the arbitral tribunal**
- **The choice of the language of the proceedings**
- **Determination of the procedural rules**

*Unless a party sees them as a condition sine qua non in a way that is recognizable for the other party
**Jurisdiction (bonus) – Pathological clause**

In Swiss Law, the interpretation of an arbitration agreement takes place according to the general rules of contract interpretation. The court shall first seek to bring to light the real and common intent of the parties, empirically as the case may be, on the basis of the clues without regard to the inaccurate expressions or designations they may have used. Failing this, it shall then apply the principle of reliance and seek the meaning that the parties could and should give according to the rules of good faith to their reciprocal expressions of all the circumstances (ATF 140 III 134 at 3.2 135III 295 at 5.2, P 302 and the cases quoted). Should the application of this principle fail to bring to a conclusive result, some alternate means of interpretation may be resorted to, such as the so-called rule of ambiguous clauses pursuant to which the contract must be interpreted against its drafter in case of doubt (Unklarheitsrege I, in dubio contra stipulatorem or profentem: AFT 124III 155 at 16. p.158 and cases quoted). Moreover, if the interpretation leads to the conclusion that the parties wanted to waive the state jurisdiction in their dispute to submit it to an arbitral tribunal, but with some discrepancies as to how the arbitral proceedings should be conducted, the principle of utility (Utilitatis geadanke) must be resorted to, namely to give the pathological clause a meaning which makes it possible to uphold the arbitration agreement (ATF 138 III 29\(^9\) at 2.3.3 [condition met] 4A_3882012 of March 18, 2013 at 3.4.3 and A_244/2012 of January 17, 2013, at 4.4 (Condition not met)). Therefore an imprecise designation of the arbitral tribunal does not necessarily cause the arbitration agreement to be void (ATF 138 III 29\(^10\) at 2.3.3 p36 and the cases quoted).
Time-limit to file a claim

Any case must be submitted to DRC or PSC within two years since the event giving rise to the dispute.

- **Two year time-limit**
  - Relevant date for the deadline is the date on which the claim **is received** by FIFA,
  - Is examined ex officio (art. 25 para. 5 FIFA RSTP)

- **“Event giving rise to the dispute”**
  - Moment of knowledge: Claimant carries burden of proof.
  - For Training Compensation and Solidarity Mechanism cases the date of the registration of a player with the respondent club **plus** 30 days
Correct Respondent(s)

- Who is the claim aimed at?
- Are there several Respondents (joint liabilities)?
  - This is the moment you define the course of the entire proceedings. Not naming a respondent cannot be remedied at a later stage.
  - If you are not sure, rather name one respondent too many than one too less.
  - Other elements?
Applicable Law

FIFA Statutes and regulations whilst taking into account all relevant arrangements, laws and/or collective bargaining agreements that exist at national level, as well as the specificity of sport (art. 2 FIFA Rules Governing the Procedures of the Player’s Status Committee and the Dispute Resolutions Chamber (“FIFA Procedural Rules”))

- Which version of the FIFA Regulations is applicable?
- What subsidiary law is applicable? Is there an applicable law clause in the contract?
- national state law or Swiss law?

National state law can only apply to issues that are not dealt with in the FIFA Regulations.

- Which law is preferable for this case?
  - Argue in line with the preferred applicable law, even though this might be challenged in case the applicable law is unclear.
  - Still back up your arguments with the other possible applicable law.
PRACTICAL EXAMPLE?

- CAS 2015/A/4105, PFC CSKA Moscow v. Fédération Internationale de Football Association (FIFA) & Football Club Midtjylland A/S, Award of 21 December 2015

- Dispute between a football club from Russia, a football club from Denmark and FIFA

- Disputed issues: Payment of solidarity contribution / Prescription of the claim of CSKA Moscow

- Which national law determines the prescription of the claim?

33. CAS has its seat in Lausanne, Switzerland. Therefore, the PILA is applicable. Article 187 para. 1 of the PILA provides – inter alia – that “the arbitral tribunal shall rule according to the law chosen by the parties or, in the absence of such a choice, according to the law with which the action is most closely connected”. According to the legal doctrine, the choice of law made by the parties can be tacit and/or indirect, by reference to the rules of an arbitral institution. In agreeing to arbitrate the present dispute according to the CAS Code, the Parties have submitted themselves to the conflict-of-law rules contained therein, in particular to Article R58 of the CAS Code (CAS 2008/A/1705 para. 9 and references; CAS 2008/A/1639, para. 21 and references; CAS 2006/A/1141, para. 61).
Applicable Law

- **PRACTICAL EXAMPLE?**

  - CAS 2015/A/4105, PFC CSKA Moscow v. Fédération Internationale de Football Association (FIFA) & Football Club Midtjylland A/S, Award of 21 December 2015

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Applicable Law

SUMMARY AND “STANDARD APPROACH”

1. CAS IS AN ARBITRAL TRIBUNAL WITH ITS SEAT IN SWITZERLAND
   ➢ THE ARBITRATION IS SUBJECT TO THE SWISS PRIVATE INTERNATIONAL LAW ACT

2. ART. 187 PILA ALLOWS TO SUBMIT A DISPUTE TO THE “RULES OF LAW CHOSEN BY THE PARTIES”
   ➢ “RULES OF LAW” CAN BE NON-STATE LAW
   ➢ A CHOICE CAN ALSO BE MADE INDIRECTLY, FOR EXAMPLE BY CHOOSING A SET OF ARBITRATION RULES (CAS-CODE)

3. ART. R58 CAS-CODE REFERS (PRIMARILY) TO “REGULATIONS”, SUBSIDIARY TO “RULES OF LAW CHOSEN BY THE PARTIES”
   ➢ REGULATIONS: FIFA REGULATIONS
   ➢ RULES OF LAW CHOSEN BY THE PARTIES: INDIRECT CHOICE VIA FIFA-STATUTES (WHICH REFER TO SWISS LAW)

RESULT: 1. FIFA REGULATIONS / 2. SWISS LAW
PRACTICAL EXAMPLE 2

What if an employment contract contains a choice of law?

A Player and a Club conclude a contract with an express choice of law clause, submitting the contractual relationship to Czech law.

A dispute arises about the premature termination of the contract by the Player.

Question: Did the Player have «just cause» in the meaning of the FIFA RSTP?

The Player alleged that certain salary payments were made late, whereas the Club argued that they had not yet fallen due at the moment of termination.
Applicable Law

118. During the course of the procedure, the parties referred to and relied upon the FIFA regulations (and chiefly the RSTP) in both their oral and written submissions. However, the parties disagreed with the application of any subsidiary law. In particular, the Player and Astra assert that no choice of law was decided upon between the parties and that “just cause” is a “by-product” of the FIFA regulations, not national law. As such, the Sole Arbitrator should only rely on the FIFA regulations, which are to be interpreted under Swiss law, when deciding on the alleged breach of the Slavia Contract. On the contrary, Slavia asserts that the Slavia Contract contains an express provision on the applicable law chosen by the Parties. According to Slavia, in fact, the parties agreed in the preamble of the Slavia Contract to conclude it “according to the Par. 1724 and following of the Civil Code”. The provision refers to Czech law; therefore Czech law should be applicable for all matters not regulated by the FIFA regulations.
Applicable Law

122. In that regard, the Sole Arbitrator holds that the application of Swiss law is confined to ensuring the uniform application of the FIFA regulations. In other words, Article 57 para 2 of the FIFA Statutes merely confirms that the FIFA regulations are based on concepts borrowed from Swiss law. Therefore, if questions of interpretation arise about the application of the FIFA regulations, recourse must be made to Swiss law in this regard. Conversely, any other issues regarding interpretation and application that are not addressed in the FIFA regulations, *i.e.* for which FIFA has not set any uniform standards, are subject to the law that has been chosen by the parties: in this case, Czech law. As a result, and for instance, insofar as the FIFA rules make reference to “just cause” for termination of contracts, that concept shall fall to be interpreted according to Swiss law. On the other hand, where an issue arises with regard to the due date for payments under a contract, since the FIFA regulations do not provide for rules in that respect, the different law governing the contract at stake, chosen by the parties, shall apply to settle it.
Applicable Law

• PRACTICAL EXAMPLE 2

  • Result?

    • The term “just cause” in the meaning of the FIFA RSTP needs to be interpreted based on Swiss law, irrespective of the choice of law clause (Czech law) contained in the contract

    • Other issues, such as the due dates of salary payments, are governed by Czech law

    • Possibility that various national state laws apply to the same contract
Costs

• Are any costs to be paid (art. 18 FIFA Procedural Rules)
  • DRC: Only for proceedings in relation to Training Compensation and Solidarity Mechanism.
  • PSC. Up to 10% of the amount in dispute until CHF 200’000, maximum of CHF 25’000
  • Exception? Covid-19

• Are any advance of costs to be paid?
  Only for PSC proceedings (art. 17 FIFA Procedural Rules)

• Things to take into account for the advance of costs:
  • Calculate the advance of costs and have your client pay the advance of costs as early as possible as you need to provide proof of payment at the time the claim is filed
  • Convert the currency of the dispute to Swiss Francs in order to check how much advance of costs the client has to pay
  • Interest?
Training Compensation and Solidarity Mechanism cases need a special approach by a Legal Counsel.

Even though it is permitted to represent a client in those cases, the claim must be uploaded to FIFA TMS. This means the handling of those cases are somewhat out of the lawyer’s hands as the client needs to upload the claim and receives all communications from FIFA. Ensure that your client has uploaded the claim and have the client check FIFA TMS on a daily basis for any communication received by FIFA. Follow up on a regular basis with the client whether something was received.
FIFA Proceedings
Respondent
“Reverse thinking”

In principle, everything that has to be thought about in the role as a Claimant shall be scrutinized as a Respondent:

- Does the FIFA judicial body have jurisdiction to hear the case?
- Has the claim been filed within the provided time-limit?
- Are you the correct Respondent? If yes, should other Respondents have been called as well?
- Applicable Law
- Settlement?
Appeal proceedings before CAS
Statement of Appeal
R48 CAS Code

R48 Statement of Appeal

The Appellant shall submit to CAS a statement of appeal containing:

- the name and full address of the Respondent(s);
- a copy of the decision appealed against;
- the Appellant’s request for relief;
- the nomination of the arbitrator chosen by the Appellant from the CAS list, unless the Appellant requests the appointment of a sole arbitrator;
- if applicable, an application to stay the execution of the decision appealed against, together with reasons;
- a copy of the provisions of the statutes or regulations or the specific agreement providing for appeal to CAS.

Upon filing the statement, the Appellant shall pay the CAS Court Office fee provided for in Article R64.1 or Article R65.2.

If the above-mentioned requirements are not fulfilled when the statement of appeal is filed, the CAS Court Office may grant a one-time-only short deadline to the Appellant to complete its statement of appeal, failing receipt of which within the deadline, the CAS Court Office shall not proceed.
Things “set in stone”

The Statement of Appeal already defines many issues which cannot be changed at a later stage. It is therefore very important to already have a good knowledge of the case at the time the Statement of Appeal must be lodged.

“Set in stone” after the Statement of Appeal:

• The Parties (CAS 2007/A/1229 & 1330, at para. 10 and 11)
• The Appealed Decision
• The Arbitrator selected

The request for reliefs can be amended with the Appeal Brief
Prayers for relief

• Be specific and precise
  • CAS can only grant you want you are asking for
  • A request for “any other relief that CAS deems fair and just” is inadmissible. (CAS 2013/A/3272, at a para. 71 et sequ.):
    “Prayers for relief must be so specific as to allow the adjudicating body to determine the subject matter and the Panel’s scope of review (also to avoid violating the principle of ne ultra petita), and to enable the other party to defend itself against the request.”

• Declaratory relief are in principle inadmissible
  • Declaratory reliefs can only be granted if the requesting party establishes a special interest to obtain such declaration. (CAS 2009/A/1870, at para. 132)
  • Only request a declaratory relief in connection to a request for performance of duties/obligations (“Leistungsbegehren”).
Panel / Arbitrator

• First Decision: Panel or Sole Arbitrator?
  • In case of a fast decision is sought, it might help the speediness of the proceedings
  • Other factors (costs, others)?

• Which Arbitrator to nominate?
  • Research CAS decisions that are similar to your case / the main question in dispute and check who the Arbitrators were on this list
Application to stay the execution (1 of 2)

- Not necessary for purely monetary cases (CAS 2003/O/486, at para. 13)

- For other type of decisions: Requirements:
  - Irreparable harm
  - Likelihood of success on the merits
  - Interest of Appellant outweighs those of the opposite party
Application to stay the execution (2 of 2)

- Things to consider for a request to stay a decision imposing sporting sanctions:

  - If you request for the stay of the execution of sporting sanctions you do not know when a final decision is rendered. In case of a negative outcome, you cannot control the timing of the sporting sanctions to be applied.
  
  - Player with ban to play for 4 months and more:
    - Is he injured at the moment?
    - Are there important matches coming up?
    - Does the player wish to transfer clubs in the near future?
  
  - Club:
    - Is the ban to register players implemented before the winter or summer transfer window?
    - Stay may give the chance to become very active in the next transfer window in case of a negative outcome
    - However, prices for players will go up in case the competition knows about the threat of a transfer ban for the club
    - Evidence to bring to CAS?
Application for expedited procedure

• To replace the need for a request for stay?

• Does your client have an interest in a quick decision?
  • Usually when it comes to the annulment of matches
  • The more time elapses the harder it is to change the result of a match that would affect a series of future other matches

• Agreement of all parties is necessary
Costs

• CAS Court Office Fee of CHF 1´000 needs to be paid before filing the Statement of Appeal and prove of payment shall be submitted with the Statement of Appeal

• Purely Disciplinary Proceedings?
  • Disciplinary Proceedings are free of charge (R65 CAS Code)
  • However, CAS introduced R65.1 whereas decisions related to sanctions imposed as a consequence of a dispute of economic nature are not included and costs apply (e.g. art. 15 FDC).

• CAS Court office fixes an estimate of the costs and advance of costs shall be paid in equal shares by the Appellant and Respondent.
  • Difficult to anticipate

Keep in mind that the Respondent can refrain from paying its share of the advance of costs and Appellant will need to pay the full amount of advance of costs.
Appeal proceedings before CAS
Submissions
Appeal Brief structure

• Various approaches and styles
• Prayers for relief and procedural requests should be at a prominent spot and easily be found

Example of structure:
A. Prayers for relief
B. Introduction (What is this case about?)
C. Facts (including the parties)
D. Procedural Aspects
   A. CAS Jurisdiction
   B. Applicable law
   C. Time limit respected
E. Merits
F. Document production request
G. Witnesses
H. Summary and conclusion
Answer to the Appeal structure

- Various approaches and styles
- Prayers for relief and procedural requests should be at a prominent spot and easily be found

Example of structure:
A. Prayers for relief
B. Introduction (What is this case about?)
C. Facts (including the parties)
D. Procedural Aspects and Applicable Law
E. CAS Jurisdiction (lack thereof)
F. Inadmissibility of the Appeal
G. Merits
H. Witnesses
I. Summary and conclusion
Things to keep in mind

• Which issues are procedural, which issues belong to the merits of the case?
  • It is not always clear from the outset
  • Procedural: admissibility, absence of any legal interest
  • Merits: standing to sue, standing to be sued
  • Sometimes some issues are connected

  In case the first instance lacked jurisdiction to hear the case, but still rendered a decision, the issue should be dealt with on the merits on CAS level.

• Does it make sense to request the bifurcation of the proceedings to specific questions?
  • For procedural economy it could make sense to request for bifurcation
  • Usually in case the main issue is on the procedural side (Jurisdiction or admissibility of the appeal)
  • Other reasons?

• In case you challenge CAS Jurisdiction make such reservation in every correspondence sent to CAS and at the beginning of the Answer. (4A_628/2012)
CAS Jurisdiction

CAS hears appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by confederation, member associations or leagues (art. 58 para. 1 FIFA Statutes).

Conditions:

- Appellant has exhausted all internal legal remedies
- There must be a “decision” of a federation, association or another sports-related body
- Parties must have agreed to the competence of CAS
- The decision does not involve the violations of the Laws of the Game and suspensions of up to four matches or up to three months (with the exception of doping decisions)
CAS Jurisdiction: “Final Decisions”

• Not only decisions that are titled as such, not the formal but the material criteria are of essence (CAS 2008/A/1583 & 1584)
• Could also be a communication that contains a ruling intending to affect the legal state of the addressee, i.e. the legal situation of a party is materially affected by the communication (e.g. a letter from the FIFA administration deciding to not open proceedings)
CAS Jurisdiction: No decision? (1 of 2)

In case the supposed First Instance Body does not issue a decision, this could result in a “denial of justice”:

“If a body refuses without reasons to issue a decision or delays the issuance of a decision beyond a reasonable period of time, there can be a denial of justice, opening the way for an appeal against the absence of a decision” (CAS 2015/A/4195, at para. 32)

Conditions:
• The request must fall within the competence of the body addressed by the request
• A request must have been filed by the party claiming a denial of justice
• Absence of a ruling within a reasonable period of time
CAS Jurisdiction: No decision? (2 of 2)

There is no time limit to file an appeal for denial of justice.

However, parties may write to the first instance body, claiming that if no decision is rendered within x amount of time the party considers this to be a denial of justice.

Be careful when doing so as you might just set yourself a time limit to appeal for denial of justice:

If an authority explicitly refuses to render a decision, the principle of good faith according to art. 5 al. 3 of the Swiss Constitution requires a party invoking a denial of justice shall do so within the given time limit for an appeal. (BGE 2P. 16/2002, consid. 2.2)
CAS Jurisdiction: Exhaustion of all internal legal remedies

• If it is a disciplinary decision, could the appealed decision be appealed with the Appeal Committee of the First Instance Association first?

• Are there other decisions with a second instance within the association? E.g. Electoral Codes or Ethic codes
• Through Statutes and Regulations of the First Instance Association

• Through a specific arbitration agreement

“An arbitration clause must be understood as an agreement by which two or more determined or determinable parties agree to be bound to submit some existing or future disputes to an arbitral tribunal to the exclusion of the original jurisdiction of the state courts, according to a determined or undetermined legal order (BGE 130 III 66 at 3.1. p. 70). It is essential that the parties should express the intention to let an arbitral tribunal, i.e. not a state court, decide certain disputes” (BGE 138 III 29 at 2.2.3 p. 35; 129 III 675 at 2.3 p. 679)

• Possible issues: parties applying for membership
• See also art. 178 PILA
Admissibility

• Time-limit to Appeal respected? (R32 CAS Code)
  • Start the day after notification is received
  • Is respected when the communication is sent before midnight at the time of the location on the last day on which the time limit expires
  • If the last day is an official holiday or non-business day in the location from where the document is sent, the time limit expires at the end of the subsequent business day

  Official holidays means it has to be recognized by the government and the day is declared a non-business day.

• Do the prayers for relief request the same (or less) than what was requested at the first instance body?
  Even though CAS has a de novo review, the scope of the appeal cannot be construed as being wider than the power of the body that issued the appealed decision (TAS 2018/A/5792)
Standing to sue (1 of 2)

“a reasonable legal interest is a condition for access to justice. A court shall only be bothered to decide the merits of a request, if the applicant has a sufficient legal interest in the outcome of the decision. If – on the contrary – the request is not helpful in pursuing the applicant’s final goals, the scarce judicial resources shall not be wasted on such matter” (CAS 2016/A/4602, at para. 48)

When a direct addressee of the appealed decision, standing to sue is usually no issue.

However, no abstract, theoretical legal issues and have to concern concrete rights and duties which are established (CAS 2017/A/5166 & 5405, at para. 76)
What about decisions involving only third parties?

- Legitimate interest (CAS 2005/A/895, at para. 67)
  - Concrete, legitimate and personal interest (CAS 2016/A/4602)
  - in the outcome of the proceedings (CAS 2016/A/4924, at para. 99)

- Directly affected?
  - If the party is only a competitor, it is not directly affected
  - Where is the line?
    - Affirmative:
      - Second placed horse rider received gold medal after the first place horse was doped for the proceedings concerning the doping related issue of the first place horse (CAS 2005/A/895, at para. 75 et sequ.)
    - Negative:
      - Second placed in a football championship for the appeal of a forfeit decision of a match between the first place and a third team (CAS 2007/A/1278 & 1279, at para. 77 et sequ.)
      - Second placed team at the end of the season for the starting place in the next seasons Champions League (CAS 2015/A/4151, at para. 37)
Standing to be sued

• Who are the correct Respondent(s)?
  • If a first instance association has to be involved, it is always the association as such who has standing to be sued, not the specific judicial body which rendered a decision.

• When does the first instance association have to be a respondent to the proceedings?
  • In Disciplinary Cases
  • In DRC or PSC cases when the jurisdiction or admissibility of the first instance claim is challenged

• Disciplinary cases: do other parties than the relevant associations need to be called as a Respondent?
  • All the parties that will be affected by the requested prayers for relief
    • Typically an issue when a match result shall be changed or annulled and it changes the table of the relevant competition
  • Creditors of art. 15 FDC?
• “Brief summary of their expected testimony” or Full Witness Statement
  • Advantages/Disadvantages?
  • If broad description of the expected witness testimony
  • In case there is a fear of being ambushed during the hearing, you should request clarification of the contents of the witness testimony or the filing of a witness statement.
• Who can be a witness?
  • CAS Code does not provide for a definition. CAS tends to follow the IBA rules (art. 4(2)).
  • Any person may present evidence as a witness, even a party or a party’s officer, employee or other representative.
  • If you present your client as a witness, the other party has a right to cross-examine.
  • Panels handle the question and the evidential value of party witnesses very differently.
• A written expert statement provide in the submission is necessary in order for the opposing party and the Panel to know what exactly the expert gives evidence to.

• The expert statement shall contain (art. 5 (2) IBA Rules:
  • Statement regarding his present and past relationship (if any) with any of the Parties, legal advisors and Panel
  • Statement of independence from the Parties, legal advisors and Panel
  • Description of background, qualifications, training and experience
  • Description of the instructions pursuant to which he is providing his opinions and conclusions
  • Statement of the facts on which he is basing his expert opinion and conclusion
  • The opinion and conclusions, including a description of the methods, evidence and information used in arriving at the conclusions.
  • Original language, if the expert statement has been translated
  • Affirmation of the genuine belief in the opinions expressed in the export report