

The Olympus of sports arbitration may be crumbling

A pivotal ECJ ruling reinforces the primacy of EU law over international sports arbitration.

Selected legal insight for the sporting goods and consumer goods sector.

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“The ruling could well be a game changer for athletes, sports federations and clubs as well as for the sporting goods industry and its leading brands.”

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A second-tier Belgian football club, the Royal Football Club Seraing (Seraing) in the province of Liège, has just made history. Seraing challenged FIFA's ban on third-party ownership before the European Court of Justice (ECJ), and on Aug. 1 of this year the ECJ rendered a pivotal verdict, reinforcing the primacy of the EU legal framework over international sports arbitration – in this case, the Court of Arbitration (CAS) in Lausanne. The ruling could well be a game changer for athletes, sports federations and clubs as well as for the sporting goods industry and its leading brands. The facts It all started in 2015, when Seraing entered into financial agreements with the Maltese company Doyen Sports, transferring some of the rights to several Seraing players to that commercial entity. Seeing in these arrangements a breach of the prohibition on thirdparty holding of players' economic rights, FIFA swiftly levied a monetary fine and imposed a number of sanctions on Seraing, such as forbidding it to register new players for several periods. The dispute soon landed before the international CAS sports arbitration. To no one's surprise, the leading global body for international sports arbitration upheld both the sanctions and the fine. But Seraing did not give in and brought the case before the Belgian courts, questioning the Lausanne verdict's compatibility with EU laws. Both the court of first instance and the appeals court were of the opinion that the CAS judgment was final and ineligible for review by ordinary national courts. The dispute ultimately reached the Belgian Court of Cassation, which in 2023 asked the ECJ for a preliminary ruling on whether Belgian courts could still rule despite the supposed desired finality of the CAS judgment.

In legal language this relates to the fundamental principle of *res iudicata*, also known as claim preclusion, which prevents parties from relitigating a case in which a competent court has rendered final judgment on the merits. To simplify, the ECJ now ruled that CAS awards must be subject to effective judicial review by national courts, to ensure their compliance with EU law and to ensure that arbitration clauses – which are unilaterally imposed by sports federations and make CAS arbitration mandatory and final in disputes – cannot override EU fundamental rights. The ECJ emphasized that EU public policy and legal protections were to be upheld even in sports arbitration. —> Read the ECJ's full verdict (Case C-600/23) [here](#). The possible consequences for international sports arbitration For many years the power and authority of the Lausanne-based CAS, with branches in New York and Sydney, seemed absolute and untouchable. CAS was founded in 1984 by the International Olympic Committee (IOC) itself, to provide a platform for the arbitration of international sports-related disputes and a neutral, specialized, very efficient tool for alternative dispute resolution. From 1994 onward the CAS changed its governance, taking on the International Council of Arbitration for Sport (ICAS) as its overseer, in order to preserve a certain distance from its founding body, the IOC. Yet CAS was still seen as close – some say too close – to the Olympic movement and its sports constituencies. Approximately 90 percent of all cases handled by CAS have a disciplinary background, dealing with athlete doping as well as sponsorships and media rights. CAS was one of the last bastions of the famous “autonomy of sport” doctrine, since its awards were final and needed to be accepted by the parties involved, whether they liked it or not. But this temple of exclusive jurisdiction has been crumbling over the past few years. “Cracks” in the CAS monopoly Already in December 2023, the ECJ ruled in *ISU v. EU Commission* (Case C-124/21 P) that the eligibility rules of the International Skating Union (ISU) – which threatened athletes with lifetime bans if they dared to participate in unauthorized events – violated EU competition laws. Further, the European judges questioned the CAS's exclusive jurisdiction. This verdict opened the first severe cracks in the CAS monopoly, and the

recent judgment of Aug. 1, 2025, could now bring the whole structure down. It at least opens the door for parties who believe they have been denied justice to challenge CAS rulings before ordinary national courts, whatever the divergent wording of the arbitration clause

is in, say, a sponsorship contract. Athletes, clubs and also brands now have legal recourse if they believe a certain CAS award violates EU law, especially competition law. Therefore:

Athletes, clubs, sponsors, sports federations and the like should take a close look at the dispute-resolution clauses of their contracts. If these are subject to exclusive CAS jurisdiction, they should be reviewed and adjusted, lest they be deemed invalid and/or non-enforceable in the event of a dispute.

For future contracts, entities in the sporting goods sector would be well advised to review what are frequently labeled boilerplate clauses (which, by the way, are too often not given the treatment their relevance and importance demands) and think about the extent to which the contracting parties should opt for CAS jurisdiction. There are still some benefits to inserting a CAS ADR clause: it can provide access to the expertise of the CAS arbitrators, it can provide the means for an expedient procedure, and it can enable the proceedings to be conducted in multiple languages and at locations convenient to the contracting parties. Nevertheless, CAS proceedings can amount to a waste of time if an unsuccessful contracting party seeks to appeal an unfavorable arbitration award before ordinary courts.

Such implications are not limited to CAS arbitration, however, and can arise from any alternative dispute-resolution scheme, mediation included, in sports and sports business. The downside of this latest development is that different national courts could take different views of certain related matters, which could in turn lead to fragmentation and inconsistency. Right now, though, it is still too early to predict how things will evolve. Only the future will tell.

About the author Dr. Jochen M. Schaefer (www.sjlegalonline.de) is a German attorney practicing around Munich. For several years, he has been legal counsel to the World Federation of the Sporting Goods Industry (WFSGI) and the European Federation of the Sporting Goods Industry (FESI). He also chairs the WFSGI's Legal Committee and co-chairs FESI's Digital Committee. Among his other clients are many well-known brands within and beyond the bicycle / sporting goods sector. He specializes in advising on operational and strategic activities, such as national and international distribution, intellectual property (IP) and risk management, and in the drafting and negotiation of comprehensive contracts, taking a kind of cradle-to-grave approach. Address any questions about this article (or in general) to sj@sjlegal.de or call +49 151 1640 7932.