

Winning cases against football clubs

How to get paid?

Your client's perspective

- CAS award: What's next?
- What are the most effective means to obtain payment?
- What are the most cost-efficient means to enforce monetary claims?

Special features of enforcement in sports matters

- Limited significance of the NY Convention
- Self-enforcement mechanisms within sports federations (FIFA, UEFA, UCI, FIBA)
- Ordinary legal remedies (outside/inside Switzerland)

Self-enforcement in football

- Licensing: Art. 49 et seq. UEFA CL&FFPR
- Disciplinary sanctions
 - Art. 64 of the FIFA DC
 - New Art. 12bis of the FIFA RSTP
- (Very) effective remedies
- BUT subject to specific requirements

Timing

Claim

CAS award

Art. 49 et seq. UEFA
CL&FFPR

Art. 64 FIFA DC

Art. 12bis FIFA RSTP

Art. 49 et seq. UEFA CL&FFPR

- 2003/2004: club licensing
- 2011/2012: financial fair play criteria
- No “overdue payables” towards other clubs, employees & social/tax authorities
- Two-tier procedure: License & Monitoring
- Creditor’s right to assistance with enforcement?

Art. 12bis FIFA RSTP

New: 1 March 2015

Financial contractual obligations towards
players and other clubs

Requirements:

More than 30-day delay

Notice of default with 10-day deadline

Delay without a prima facie contractual
basis

Article 64 FIFA FDC

Amended in 2011:

Decisions issued by FIFA

CAS awards issued in appeal arbitration

Two-tiered proceedings:

A fine together with deadline to comply

If failure to comply: one or several
staggered sanctions

Right to assistance with enforcement

Validity of self-enforcement in Switzerland

- *Rayo Vallecano de Madrid SAD v. FIFA* (decision 4P.240/2006 of 5 January 2007)
- No violation of the state's monopoly of debt enforcement
- (Valid) sanction based on association law
- Limits: Personality rights (Art. 28 SCC) – *Matuzalem* (ATF 138 III 322)

Validity of self-enforcement in foreign jurisdictions

- Recent challenges in EU Member States
- Validity of self-enforcement under EU (competition) law
- The *Pechstein* saga: appeal before German Constitutional court
- The *SV Wilhelmshaven*: recent decision of the German Federal Supreme Court

The *SV Wilhelmshaven* case (1)

- ▶ Amateur Argentinean/Italian player
- ▶ Transfer to new club: SV Wilhelmshaven
- ▶ Training compensation due to former clubs: Atlético Excursionistas and River Plate
- ▶ SV Wilhelmshaven refuses to pay
- ▶ DRC decisions: order to pay EUR 100,000 and EUR 57,500 respectively
- ▶ Upheld *in* CAS 2009/A/1810 & 1811

The *SV Wilhelmshaven* case (2)

- ▶ SV Wilhelmshaven still refuses to pay
- ▶ 1st FIFA DC decision (Art. 64 FDC)
 - 1) Fine with deadline to comply
 - 2) 6-point deduction (executed by DFB)
- ▶ 2nd FIFA DC decision: forced relegation (executed by NFV)
- ▶ Forced relegation upheld *in* CAS 2012/A/3032

The *SV Wilhelmshaven* case (3)

- Legal action before German courts against DFB and NFV
- Negative declaratory action
- Action dismissed by LG Bremen (*exceptio arbitri*)
- BUT OLG Bremen: violation of German mandatory laws (free movement rights)
- German Federal Supreme Court: forced relegation lacks sufficient “statutory” basis

The *SV Wilhelmshaven* case (4)

- Second bite at the apple?
- *Res judicata* effect of the CAS awards (Art. III NYC)
- CAS awards are self-executing
- Relevant question: should the CAS awards be recognized in Germany (Art. III, V NYC)?
- Court shall not revisit the findings of the tribunal: *illicéité qui crève les yeux*

Ordinary legal remedies

- Enforcement of CAS awards
 - In foreign jurisdictions: NY Convention
 - In Switzerland: attachment or freezing proceedings (Art. 271 et seq. DEBA)
- State's monopoly of debt enforcement
- Proceedings before the ordinary courts of law
- May be time-consuming

Timing

Claim

CAS Award

Art. 271(1) No. 4
DEBA - contractual
claim & debtor
domiciled in a
foreign country

Art. 271(1) No. 6
DEBA - title for the
definitive clearance
to proceed

Sequence

Freezing
Order

Validation

Objection to the
freezing order

Seizure of
the assets (\$)

Attachment of monies by UEFA

- Monies due to clubs participating in the UEFA Europa and Champions League
- Before the Court of Nyon (seat of UEFA)
- At the start of the competition: application encompasses all (future) monies
- Decision 5A_328/2013 of 4 November 2013

Summary

- Various means to obtain payment
- Self-enforcement most effective
- Attachment proceedings in Switzerland may be also considered
- Best option: cumulative recourse to both means of enforcement

Thank you for your attention

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