

THE COMPATIBILITY OF ARTICLE 15 OF THE RULES  
GOVERNING THE PROCEDURES OF THE PSC AND DRC  
OF FIFA WITH THE FIFA STATUTES AND SWISS LAW  
AS VIEWED BY THE JURISPRUDENCE OF THE CAS.

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**1. INTRODUCTION**

Since the reform of the international football transfer framework introduced by FIFA in 2001, many consequences have arisen from this renovated system which after more than ten years continues to generate a *general* consensus, unknown until then, between the main stakeholders of football: clubs and players.

One of the effects of these regulations implemented by the FIFA Extraordinary Congress in Buenos Aires has been the creation of a proper, autonomous, dispute resolution system within the framework of the international federation for conflicts arising from international transfers of players between clubs, which after some years of de-

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bate was later subjected to the final review of the Court of Arbitration for Sport (CAS)<sup>2</sup>.

The idea in itself of an internal dispute resolution system and the work performed since then by the department in charge of this matter within FIFA, i.e. the FIFA Player Status Department, can be qualified at the same time as very necessary and very productive. Fact is that, in the last years, the amount of football-related conflicts submitted to the two bodies created by FIFA to deal with such disputes, i.e. the Players' Status Committee (hereinafter, PSC) and the Dispute Resolution Chamber (hereinafter, DRC) has exponentially grown.

During the first years, FIFA managed to deal with the claims lodged by clubs and players with a certain normal speed. However, after a decade with this system in place, fully recognized and accepted at a worldwide level, the amount of cases submitted to FIFA has been multiplied by 10, causing an excessively slow decision-making process, which did not provide an efficient answer to the needs of the parties<sup>3</sup>.

In order to provide an answer to this more management-related rather than strictly legal problem, FIFA revised its procedural rules, taking inspiration from some institutions and rules under Swiss statutory procedural law, and transposing them into FIFA's Rules and Regulations. This revised, new framework, as well as its interpretation by the CAS, is briefly described in this paper.

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<sup>2</sup> FIFA Circular n. 827. 10 December 2002.

<sup>3</sup> The number of total cases estimated before the PSC and DRC in the season 2002/2003 was of approx. 400. Nowadays, the FIFA Player's Statutes Department manages approx. 4000 cases every football season.

## 2. ARTICLE 15 OF FIFA PROCEDURAL RULES AND CAS JURISPRUDENCE.

### a) Introduction. Legal framework.

According to Article 67.1 of the FIFA Statutes (Edition 2013)<sup>4</sup>:

*“Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question.”*

This statutory clause has for the last 10 years provided the general legal basis for appeals to be lodged against the FIFA bodies’ final decisions and, within the specific context of Article R49 of the Code of Sports-Related Arbitration (the “CAS Code”), concedes a 21-day time limit to appeal these rulings before the CAS.

Within the aforementioned scheme, and in order to offer a more agile and efficient administration for the cases submitted to the PSC and the DRC, in 2008 the FIFA Executive Committee decided to amend the Rules Governing the Procedures of the PSC and DRC (hereinafter, the “Procedural Rules”). At that time, a new Article 15.1 was enacted with the following content:

*“The Players’ Status Committee, the DRC, the single judge and the DRC judge may decide not to communicate the grounds of a decision and instead communicate only the findings of the decision. At the same time, the parties shall be informed that they have ten days from receipt of the findings of the decision to request, in writing, the grounds of the decision, and that failure to do so will result in the decision coming into force”<sup>5</sup>.*

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<sup>4</sup> The 2008 Edition of the FIFA Statutes foresees the same provision in Art. 63.1.

<sup>5</sup> A few months later, the FIFA Disciplinary Code was amended in the same way, and the same system was applied on disciplinary decisions (cf. Art. 116.1 – Edition 2009). UEFA has introduced a similar system of decisions without grounds in the 2011 Edition of its Disciplinary Regulations (cf. Art. 46bis) and reinforced this approach in the 2013 Edition of the same rules (cf. Art. 52).

As the CAS has stated in the first case in which the new provision was evaluated, the *ratio legis* of Article 15.1 of the Rules “serves a legitimate purpose, i.e. to cope with a heavy caseload of FIFA and contributes to the goal of an efficient administration of justice”<sup>6</sup> and was based on the very similar system valid at that time in the Canton of Zurich.<sup>7</sup>

In this regard, the mentioned CAS Award noted that “it does not come as a surprise, therefore, that similar restrictions as the one in the DRC Procedural Rules can be found also in relation to the access to state courts. An example of this, is sec. 158 of the law governing the organisation of the judiciary of the canton of Zurich, around which Article 15(1) of the DRC Procedural Rules has evidently been crafted”<sup>8</sup>.

A similar line of reasoning was followed by the Panel in CAS 2011/A/2563 CD Nacional v/ FK Sujeska. The Panel noted the rationale behind the amended FIFA rules: “The genesis of the rule, its drafting, the way its conception and introduction was communicated by FIFA to its members, all this clearly show that FIFA’s intention was to give to the users of the FIFA dispute resolution process the possibility to accept a decision on the basis of its ruling only, and by doing so to save time and money, or ask the grounds of the decision to be issued, postponing the party’s own decision about filing of an appeal against the FIFA’s decision at a later stage, after receipt of the grounds. The goal of FIFA was therefore evidently to facilitate a more efficient administration of the caseload within the FIFA dispute resolution bodies, by offering to the parties a “two-steps” system already in use in relation with the access to state courts and giving

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<sup>6</sup> CAS 2008/A/1705, *Grasshopper v. Club Alianza de Lima*, at para. 8.2.8.

<sup>7</sup> Cf. Sec 158, Law Governing the organisation of the judiciary of the canton of Zurich “In decisions of first instance relating to civil matters and the enforcement of monetary judgments the courts may renounce to provide the reasons for the decision and communicate the operative part only to the parties. Instead of advising the parties of the appropriate recourse against the decision the court informs the parties that they may ask for the reasons of the decisions within 10 days of the notification, failing which the decision becomes final and binding” (Nowadays, replaced by Art. 239.2 of the Swiss Code of Civil Procedure).

<sup>8</sup> CAS 2008/A/1705, *Grasshopper v. Club Alianza de Lima*, at para. 8.2.8.

to parties a possibility of better considering whether or not a dispute should be continued at CAS level<sup>9</sup>.

**b) The CAS jurisprudence with regard to the decisions without grounds.**

Bearing in mind the above-mentioned legal framework and notwithstanding the fact that the first case at CAS concerning the interpretation of the amended FIFA rule was partially in favor of the reform operated in 2008, few questions had remained open to discussion, and in the meantime have been clarified by further CAS awards.

The main issue seems simple: is Article 15.1 of the FIFA Procedural Rules a deviation from the 21-day time limit established in the FIFA Statutes? Does it contravene any other general principle of Swiss Law?

For this purpose it is appropriate to examine these problems on the basis of the jurisprudence of the CAS, which has, since 2008, been dealing with this issue either directly or through arbitral awards that indirectly affect the considerations exposed herein.

To our knowledge and to this date, there have been nine decisions of CAS, which have in one way or another analyzed on appeal the problem of decisions without grounds and the compatibility of this approach with the FIFA internal legal order and Swiss Law<sup>10</sup>.

The awards CAS 2008/A/1705 *Grasshopper v. Alianza de Lima*, of 18 June 2009, and CAS 2011/A/2563 *CD Nacional v. FK Sutjeska*, of 30 March 2012, are particularly noteworthy. Both cases synthesize and analyze the main legal issues regarding Article 15.1

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<sup>9</sup> At para. 8.46.

<sup>10</sup> In chronologic order: CAS 2008/A/1705, *Grasshopper v. Club Alianza de Lima*, CAS 2008/A/1708, *Iran FF v. FIFA*, CAS 2009/A/1781, *FK Siad Most v. Beto Gonzalves*, CAS 2009/A/1919, *Salertina v. River Plate & Cesar Costa*, CAS 2009/A/1956, *Club Tofta, B 68 v. R. Van Dooren*, CAS 2011/A/2436, *AC Coimbra v. Bluewings FC*, CAS 2011/A/2439, *FA Thailand v. FIFA*, CAS 2011/A/2536, *CD Nacional v. FK Sutjeska* and CAS 2012/A/2961, *Khaled Adenon v. FIFA*.

of the Procedural Rules and its relation to the time limit of 21 days as per Article 67.1 of the FIFA Statutes.

Before examining the specific material questions of law, one shall note that the the different CAS panels that have dealt with these diverse cases have a common viewpoint in relation to two formal issues.

As we have already explained above, it is maintained that the reform in Article 15.1 of the Procedural Rules serves a legitimate purpose, which is none other than a more efficient administration of the dispute resolution system offered by FIFA to its (direct and indirect) members. Furthermore, such purpose has been well accepted within the international football community<sup>11</sup>. Secondly, it is repeatedly highlighted that the provision is indeed not an "invention" of FIFA and that a similar restriction can be found also in relation to access to state courts. In fact, it is accepted under Swiss Law that a party may be deemed to have waived its right to challenge a decision by appeal or objection if that party does not request the grounds of the decision within a certain deadline (cf. Article 239.2 of the *new* Swiss Federal Procedural Code)<sup>12</sup>.

As for the material questions of law debated, the CAS panels have raised different legal problems around the interpretation of Article 15 of the Procedural Rules. We will examine these questions in the following paragraphs.

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<sup>11</sup> CAS 2011/A/2563, *CD Nacional v. FK Sutjeska*, at para. 8.33

<sup>12</sup> CAS 2011/A/2563, *CD Nacional v. FK Sutjeska*, at para. 8.34. The Art. 239.2 of the Swiss Code of Civil Procedure reads as follows: "1. The court may give notice of the decision to the parties without providing a written statement of the grounds: a) at the main hearing, by handing over the written conclusions to the parties and giving an oral summary of the grounds; b) by serving the parties with the conclusions. 2. A written statement of the grounds must be provided if one of the parties so requests within 10 days of the notice being given of the decision. If no statement of grounds is requested, the parties are deemed to have waived their right to challenge the decision by appeal or objection".

**(i) The compatibility, in view of the general principle of internal hierarchy, of the time limit established in the Procedural Rules with the one foreseen in the FIFA Statutes and the general principles of Swiss Law.**

As we explained above, the preliminary considerations with regard to the validity of Article 15 of the Procedural Rules have focused on the issue of compatibility of this deadline with the 21 days foreseen in FIFA Statutes and other applicable consequences under Swiss Law.

At first sight, it would be easy to conclude that Article 15 of the Procedural Rules violates the fundamental right of the FIFA Statutes, which guarantees 21 days to appeal any decision to the CAS. Moreover, this specific provision could be in breach of Article 75 of the Swiss Civil Code, which provides for the right of the members of an association to challenge a final decision of the Association within one month from the date of the decision.

With regard to the first question and taking into consideration the principle of hierarchy of norms related to sports associations (according to this principle, regulations of a lower level may complement and concretize higher ranking provision, but not amend nor contradict or change them – the relevance of this principle is debated under Swiss Law, and CAS jurisprudence is not consistent on this matter), the problem to be analyzed is, formally, quite simple: whether or not Article 15 of the Procedural Rules is compatible with Article 67.1 of the FIFA Statutes, and whether the failure to ask for the grounds of the decision within the 10-day deadline renders the FIFA Decision final and binding.

The CAS jurisprudence on this issue must be considered, at least at its early phase, unsteady. Whilst two CAS Panels have suggested that FIFA should somehow have considered integrating Article 15 of the Procedural Rules into its Statutes in order to prevent conflicts with the hierarchy of laws and issuing notices to the parties in such a clear way so that no doubt can exist on what action a party is required and entitled to

undertake upon having been informed of the results of a FIFA procedure<sup>13</sup>, other CAS Awards have fully confirmed the approach that the 10-day time limit neither enters into contradiction with, nor implies a material change of the 21-day general deadline of the FIFA Statutes<sup>14</sup>. The latter decisions attempt to explain the reason why, apparently, different CAS Panels can get different opinions on the same legal question: "To finalise, the Sole Arbitrator notes that in another CAS related case (CAS 2008/A/1708 Football Federation of Iran v/ FIFA, in which article 15.1 of the PSC DRC Procedural Rules was analyzed), the Panel ruled on the admissibility of the appeal in a different way. However it is important to note that in such case, the Panel stressed, as part of the grounding of its decision on admissibility, on certain confusing aspects of the decision concerning its appeal before the CAS which do not exist, in the Sole Arbitrator's view, in the present case"<sup>15</sup>.

The reason for this unstable jurisprudence could possibly be that, in the short period of three years, a quite important number of cases and three different versions of Article 15 of the Procedural Rules – following different approaches of CAS Panels – have come up with regard to this problem. This situation offers a steady environment and, consequently, not a very stable legal situation. However, the main differences between the mentioned CAS Awards are minimal, and the main problem has focused on the way in which FIFA has communicated – whether clearly or not – the then new system of decisions submitted first without grounds.

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<sup>13</sup> CAS 2008/A/1705, Grasshopper v. Club Alianza de Lima, at para. 8.2.15 and CAS 2008/A/1708, Football Federation Islamic Republic of Iran v. FIFA, at para. 106. More specifically, the latter clearly considered that "article 15 of the Rules Governing the FIFA Procedures is incompatible with article 63(1) of the FIFA Statutes, a provision of higher level in the hierarchy of the FIFA regulations. Consequently, article 15 of the Rules Governing the FIFA Procedures should be read and interpreted in light of article 63(1) of the FIFA Statutes. Article 15 of the Rules Governing the FIFA Procedures cannot amend, override, change or contradict any provision of the FIFA Statutes as it appears to do so in practical terms", at para. 99.

<sup>14</sup> CAS 2011/A/2439, FA Thailand v. FIFA, at para. 51 and CAS 2011/A/2563, CD Nacional v. FK Sutjeska, at paras. 38 and 39.

<sup>15</sup> CAS 2011/A/2439, FA Thailand v. FIFA, at paras. 61 and 62.



In conclusion, even if the first CAS jurisprudence can only be considered unsteady regarding this situation, at that moment and bearing in mind the three different versions of Article 15 of the Procedural Rules since 2008 and the efforts of FIFA to follow the CAS jurisprudence in this regard, on the basis of the different time limits established in the Statutes and Procedural Rules of FIFA, the interpretation must be made with the understanding that the 10-day time limit to request the grounds of a decision is to be deemed complementary to the deadline of 21 days foreseen in Article 63 of the FIFA Statutes, in line with the conclusions of CAS 2011/A/2439 FA Thailand v. FIFA<sup>16</sup>.

This way, while the statutory time limit of 21 days remains invariable, the provision in the referenced article of the Procedural Rules extends the deadline to appeal before the CAS insofar as FIFA does not notify the grounds of the decision, thus extending the conclusion of the time limit of Article 67.1 of the Statutes. In any case, these conclusions shall be understood in this context, which will be examined in the next section.

Concerning the compatibility of Article 15 of the Procedural Rules with some mandatory provisions of Swiss Law, all CAS Panels have ruled that the principle behind the provision is not disproportionate and serves a legitimate purpose, quoting for this purpose some relevant rulings of the European Court of Human Rights<sup>17</sup>. Hence, Article 15 of the FIFA Procedural Rules is compatible with the fundamental legal principles belonging to the *ordre public* and does not infringe any fundamental rights nor any Swiss mandatory provision<sup>18</sup>.

**(ii) The request for grounds as prerequisite for an appeal before the CAS.**

Apart from the technical considerations related to the compatibility of the Procedural Rules with regard to the FIFA Statutes and Swiss Law, the second important issue in

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<sup>16</sup> At para. 51.

<sup>17</sup> CAS 2008/A/1705, Grasshopper v. Club Alianza de Lima, at para. 8.2.8.

<sup>18</sup> CAS 2011/A/2563, CD Nacional v. FK Sutjeska, at para. 8.25.

the debate surrounding decisions without grounds notified by the PSC or DRC and/or the FIFA Disciplinary Committees to the parties, is the legal consideration which has to be applied to the request for their grounds. The issue is, whether a request for grounds must be considered a procedural prerequisite for an appeal before CAS. In other words and from a practical point of view, the issue to be decided by the CAS was to determine the legal consequences for an appellant that has failed to request the grounds of a decision within the 10 days foreseen in the Procedural Rules.

The different CAS Panels have had diverse approaches in this regard depending on the version of the Procedural Rules at stake. In the beginning, CAS Panels have declared the appeal lodged by a club, player or national association admissible if it was made within the 21 days from the receipt of the decision, even if the appellant had failed to request the grounds of the decision within the 10 days foreseen in the Procedural Rules.

For instance, the first CAS Panel which had the opportunity to examine the compatibility of Article 15 of the Procedural Rules (10 days) with the FIFA Statutes (21 days) accepted that the appellant had filed the appeal in a timely manner because “the additional restrictions imposed by Art. 15 of the DRC Rules can not be held against him”<sup>19</sup>. Moreover, in CAS 2008/A/1708 Football Federation Islamic Republic of Iran v/ FIFA the Panel concluded that, even though very little is required by a party within the 10 days to request the grounds, if a party does not wish the grounds, as the CAS, pursuant to Article R57 of the CAS Code can hear any appeal *de novo*, the grounds for the decision should not be considered a prerequisite for an appeal<sup>20</sup>. In this particular context, the Panel suggested an amendment of the final paragraph of Art. 15.1 of the

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<sup>19</sup> CAS 2008/A/1705, Grasshopper v. Club Alianza de Lima, at para. 8.3.5.

<sup>20</sup> CAS 2008/A/1708, Football Federation Islamic Republic of Iran v. FIFA, at para. 95. This approach was firmly contested by the Panel in CAS 2011/A/2563 CD Nacional v. FK Sutjeska, at para. 8.40. In this regard, the Panel stated that: “Finally, the Panel wishes to add that whether or not CAS, pursuant to Article R57 of the Code can hear any appeal *de novo*, does not prohibit to an association to set up rules which govern its dispute resolution system and the compliance of which, for instance, limits the possibility for a party to appeal against a decision (cf. CAS 2004/A/674, para. 47)”.

Procedural Rules, as a matter of clarification and in order to avoid future problems concerning the interpretation of this article. Instead of the wording "the decision coming into force" the Panel proposed the use of the wording "final and binding"<sup>21</sup>. FIFA followed this line in the 2010 edition of the Procedural Rules and modified Article 15.1 accordingly<sup>22</sup>.

Afterwards, and despite other particular cases rendered by CAS on this matter during this period<sup>23</sup>, the proceedings CAS 2011/A/2563 CD Nacional v/ FK Sujeska have to be considered a turning point with regard to this issue. In this decision, the CAS Panel declared an appeal lodged before CAS inadmissible as the grounds of the FIFA decision had not been requested within the 10 days stipulated in the Procedural Rules, even if the appeal was lodged within the 21 days foreseen in the FIFA Statutes. To

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<sup>21</sup> CAS 2008/A/1708, Football Federation Islamic Republic of Iran v. FIFA, at para. 100 *et seq.*

<sup>22</sup> Art. 15.1 of the Procedural Rules (Edition 2010) stated as follows: "The Players' Status Committee, the DRC, the single judge and the DRC judge may decide not to communicate the grounds of a decision and instead communicate only the findings of the decision. At the same time, the parties shall be informed that they have ten days from receipt of the findings of the decision to request, in writing, the grounds of the decision, and that failure to do so will result in the decision becoming final and binding".

<sup>23</sup> For instance, CAS 2011/A/2439, FA Thailand v. FIFA or CAS 2011/A/2436 AC Coimbra v. Bluewings FC. In this later case, the Panel declared the appeal admissible even if the request for grounds was lodged after the 10 days provided by Art. 15 of the Procedural Rules. The Panel emphasized that: "Article 15(1) DRC - PSC Procedural Rules by stipulating that a decision becomes final and binding although no grounds for it have been notified to the parties, serves to start the running of the time period for appeal according to Article 63 (1) of the FIFA Statutes" (at para. 15) and, once again, suggested the modification of the Procedural Rules: "Secondly, Article 239 SCCP expressly provides that a party is deemed to waive its right to appeal if it does not request the reasons for a decision. However, Article 15 (1) DRC - PSC Procedural Rules does not express or contemplate such a consequence (see above). The Panel is of the opinion that if FIFA had intended to provide in Article 15 (1) DRC - PSC Procedural Rules a result similar to that provided for in Article 239 SCCP, it would have had to use clear and precise language to achieve such a draconian consequence" (at para. 24). Finally, the Panel: "recognizes the force of a conclusion contrary to that which it has adopted that it may well be that those who drafted the relevant rules intended that there be no appeal even to CAS after expiry of a 10 day deadline, and does not suggest that such a deadline could not properly be imposed. The Panel notes that it is of course a matter for FIFA as to whether to amend the rules so as to put the issue beyond scope of argument" (at paras. 31 and 32).

reach the conclusion, the CAS Panel performed a comprehensive legal and historical analysis of Article 15 of the Procedural Rules, taking into account the previous CAS jurisprudence on this matter.

In this regard, the Panel analyzed the CAS jurisprudence until that date, especially the conclusions reached by the different Panels in the proceedings CAS 2008/A/1705 Grasshopper v/ Club Alianza de Lima, CAS 2008/A/1708 Football Federation Islamic Republic of Iran v/ FIFA and CAS 2011/A/2439 FA Thailand v. FIFA.

After a subjective and objective evaluation of the case at hand, the CAS Panel concluded that the appeal was inadmissible, bearing in mind (i) the information submitted by FIFA at the hearing in relation to the almost unanimous interpretation, understanding and acceptance of the rule by hundreds of parties, which has remained undisputed, (ii) the situation in 2011, which was completely different from the one existing in 2008 when the two-step system of notification of decisions without grounds was introduced<sup>24</sup>, and (iii) the fact that in the case at hand, the appellant was made aware of the FIFA Procedural Rules in advance of the receipt of the appealed decision. The appellant clearly proved to be well aware of the FIFA Procedural Rules: in fact, the appellant requested the grounds before filing any appeal with CAS. Bearing in mind all of these circumstances (which most likely are nowadays recurrent in all the cases before the PSC and/or DRC) the CAS declared the appeal inadmissible, even if it had been lodged within the term of 21 days foreseen in the FIFA Statutes<sup>25</sup>.

In consequence, the most recent CAS jurisprudence considers that the failure to request the grounds of a FIFA decision within 10 days implies that the decision itself

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<sup>24</sup> The Panel emphasizes this particular issue with the following conclusion "FIFA (i) has removed such inconsistencies in the wording of the rules that were held against FIFA for instance in the 1705 CAS case, (ii) has amended the wording of the rules to follow the suggestions of CAS and of the 1708 CAS case in particular and (iii) issued notices to the parties in a clear way so that in good faith no doubt can exist on what action a party is requested and entitled to do upon receipt of a FIFA decision without grounds" (CAS 2011/A/2563, CD Nacional v. FK Sugeska, at para. 8.51).

<sup>25</sup> This approach has been recently confirmed by a new CAS Panel in the proceedings TAS 2012/A/2961 Khaled Adenon c. FIFA (CAS Bulletin, 2/2013, page. 64 *et seq.*).

must be considered final and binding, and the parties will be deemed to have waived their right to file an appeal with CAS<sup>26</sup>. Hence, the request for grounds within the prescribed deadline of ten days must be considered a procedural prerequisite to be able to file, later, an appeal against the decision, once obtained the decision with grounds.

**(iii) Other procedural alternatives. CAS road map.**

In this context, and expecting similar cases based on the same factual and legal circumstances at the CAS in the near future, the Panel in the proceedings CAS 2011/A/2563 CD Nacional v/ FK Sujeska offered some comprehensive guidelines on how FIFA and parties of FIFA proceedings may deal with situations around the request of the grounds of a FIFA decision to be rendered, and appeals filed with CAS. In short, CAS provides two different scenarios, always under the obligation of fulfilling the above-mentioned deadline of 10 days, which cannot be extended under any circumstances.

The first one being the case of an appellant lodging an appeal within FIFA against a FIFA decision without grounds rendered by the relevant body within the prescribed deadline of 10 days. In view of CAS "FIFA would have to inform the parties that such "appeal" would be treated as a request to issue a reasoned decision. The affected party will have 21 days to appeal (in other words: to "confirm its will to appeal") at a later stage, i.e. upon receipt of the reasoned decision"<sup>27</sup>.

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<sup>26</sup> In fact, this was the wording proposed by the CAS in this case for the new edition of the Procedural Rules. Bearing in mind this CAS Award, once again FIFA changed the Procedural Rules to accommodate Art. 15 to the CAS considerations. The current version of the Procedural Rules (Edition 2012) reads as follows: "The Players' Status Committee, the DRC, the single judge and the DRC judge may decide not to communicate the grounds of a decision and instead communicate only the findings of the decision. At the same time, the parties shall be informed that they have ten days from receipt of the findings of the decision to request, in writing, the grounds of the decision, and that failure to do so will result in the decision becoming final and binding and the parties being deemed to have waived their rights to file an appeal".

<sup>27</sup> At para. 8.58. Indeed, this approach was adopted by another Panel in the proceedings CAS 2009/A/1956, Club Tofta Itróttarfélag, B68 v. van Dooren: "The Panel is clearly of the opinion that the letter received on 6 May 2009 by FIFA is a sufficient step to be considered that a re-

In the second scenario, in the event that a party – instead of requesting the issuance of the decision with grounds – files an appeal against a decision without grounds, within ten days, directly before CAS “the Panel, taking into due consideration the statements made by FIFA at the occasion of the hearing, submits that CAS would have to inform the parties that (a) the “appeal” seems to be premature, (b) the appeal would be forwarded to FIFA which shall issue a reasoned decision and (c) upon receipt of the reasoned decision the appellant would then have a deadline of 21 days to decide whether he/it would file or not an appeal against the (reasoned) decision of FIFA”<sup>28</sup>.

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quest for the grounds of the decision has been made, upon receipt of the findings of the decision. There is no indication that a request for the grounds of the decision shall be made in a formal way. It is thus sufficient that the party dissatisfied with the operative part of the decision expresses its intention, probably in writing and within ten days, to challenge the decision. In the present case, the Club expressed the will to appeal the decision. The Club also expressed the intention to supplement its appeal, with other grounds. The Panel considers that such intention from the Respondent corresponds to his will to be able to file an appeal based on a fully grounded decision. Moreover, such a procedural step goes further than a plain request for the grounds of the decision and clearly shows the intention of the appealing party to challenge the decision received” (at para. 6.4).

<sup>28</sup> At para. 8.59. Since the FIFA bodies are not arbitral tribunals, it is doubtful whether such approach should be redefined in light of a recent decision of the Swiss Federal Court (decision of 14 December 2012, 4A\_198/2012) which states with regard to an arbitral decision without grounds rendered by the BAT, i.e. the Basket Arbitral Tribunal that “En application d’une disposition particulière des règles d’arbitrage du BAT (ci-après: AR), l’arbitre unique a notifié uniquement le dispositif de sa sentence aux parties. Aucune d’elles n’a fait usage de la possibilité, réservée par cette disposition, de demander, dans les dix jours, les motifs de cette décision en payant à cette fin l’avance de frais fixée par le Secrétariat du BAT. En s’abstenant de réclamer la notification d’une sentence motivée, la recourante a-t-elle implicitement renoncé à recourir contre cette sentence?

Une telle solution ne saurait être écartée d’emblée. Elle a d’ailleurs été adoptée, en procédure civile suisse, pour les décisions susceptibles d’appel ou de recours. L’art. 239 al. 2 du Code de procédure civile du 19 décembre 2008 (CPC; RS 272) prévoit, en effet, que, si la motivation n’est pas demandée, les parties sont considérées avoir renoncé à l’appel ou au recours. Cependant, il n’existe pas de disposition similaire en droit suisse de l’arbitrage interne et international. De plus, une doctrine quasi unanime admet que la renonciation aux motifs n’implique nullement une renonciation au droit de recourir contre la décision du tribunal arbitral, même si elle limite de manière drastique les possibilités de recours dès lors qu’une partie ne peut pas arguer que l’absence de motivation rend le contrôle de l’autorité de recours impossible (cf., parmi d’autres: ANDREAS BUCHER, Commentaire romand, Loi sur le droit international privé –

### 3. CONCLUSIONS

In view of the considerations exposed above, the following conclusions can be made on the basis of the CAS jurisprudence until today:

(a) The amendment of the FIFA Procedural Regulations operated by FIFA by introducing the new Article 15 of the Procedural Rules in 2008 pursued a specific and legitimate goal, which is to contribute to improve the standstill in the administration of the decisions of both bodies, thus contributing to the objective of a more efficient administration of justice. Such purpose has been well accepted within the international football community. Additionally, the new system allows a party to decide to accept a FIFA decision – even though rendered first without grounds – if the outcome is acceptable to such party, by reducing the costs of the FIFA procedure and, at the same time, speeding up the time of the resolution of the dispute.

(b) The provisions incorporated to the Procedural Rules of FIFA have been inspired by existing statutory provisions of Swiss Procedural Law and, in particular, by sec. 158 of the Law governing the judicial administration of the Canton of Zurich (as well as by the current Article 239.2. of the new Swiss Federal Procedural Code).

(c) Article 15 of the Procedural Rules is neither incompatible with Article 75 of the Swiss Civil Code nor with the fundamental legal principles belonging to the *ordre public* or the hierarchy of norms of FIFA.

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Convention de Lugano, 2011, n° 4 ad art. 189 LDIP; DUTOIT, Commentaire de la loi fédérale du 18 décembre 1987, 4<sup>th</sup> ed. 2005, n° 10 ad art. 189 LDIP; LALIVE/POUDRET/REYMOND, Le droit de l'arbitrage interne et international en Suisse, 1989, n° 14 ad art. 189 LDIP; WIRTH, in Commentaire bâlois, Internationales Privatrecht, 2<sup>nd</sup> ed. 2007, n° 37 ad art. 189 LDIP; ZENHÄUSERN, in Schweizerische Zivilprozessordnung (ZPO), Baker & McKenzie (éd.), 2010, n° 12 ad art. 384 CPC; JOLIDON, Commentaire du Concordat suisse sur l'arbitrage, 1984, p. 476 i.m.; RÜEDE/HADENFELDT, Schweizerisches Schiedsgerichtsrecht, 2<sup>nd</sup> ed. 1993, p. 300 i.f.).

Force est d'admettre, dans ces conditions, que la renonciation à la notification des motifs d'une sentence arbitrale ne constitue pas un obstacle juridique au dépôt d'un recours contre cette sentence, même si elle réduit sensiblement en fait les chances de succès de la partie qui entend attaquer la sentence non motivée".

(d) CAS has rendered at least nine decisions in which it has directly or indirectly offered an interpretation concerning the decisions without grounds of the FIFA bodies (PSC and/or DRC and/or Disciplinary Committees). In this matter, the decisions CAS 2008/A/1705 *Grasshopper v. Alianza de Lima* and in particular CAS 2011/A/2563 *CD Nacional v. FK Sutjeska* can be considered as the leading on this issue.

(e) At the beginning, the different CAS Panels considered that the failure to request the grounds of a decision within the 10 days foreseen in the Procedural Rules did not avoid the possibility to lodge an appeal before CAS if this appeal was made within the deadline of 21 days stipulated in the FIFA Statutes. Bearing in mind the wording of Article 15 of the Procedural Rules (which has been adapted twice following the first CAS rulings) and the most recent jurisprudence of the CAS in this matter, a CAS Panel can nowadays be most likely to declare the appeal inadmissible under such circumstances. Only if the appeal is made (before FIFA or CAS) within the 10 days foreseen for the request of the grounds, could such an appeal be considered, instead of an appeal, a request for the grounds of the decision to be issued, in the line with the interpretation suggested by the CAS in CAS 2011/A/2563 *CD Nacional v/ FK Sujeska*.

(f) On this basis, parties of FIFA proceedings will be well advised to ask for the grounds of a decision of FIFA within 10 days upon receipt of the decision, should they want to maintain the possibility to file an appeal to CAS at a later phase, when the decisions with grounds has been rendered.



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