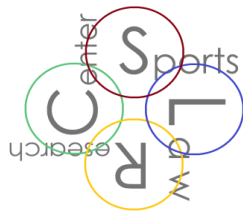




# Football coaches in international legal perspective

FIFA Regulations – TAS/CAS Jurisprudence

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**PROF. AVV. LUCIO COLANTUONI**

**UNIVERSITY OF MILAN** – Faculty of Law (Italy)

Director of **SPORTS LAW RESEARCH CENTER** (Italy)

**TAS/CAS Arbitrator** – Lausanne (CH)

**Attorney** in Milan (Italy)

Former President of **UIA** Sports Law Commission

Board Member of International Association of Sports Law (**IASL**)

[lucio.colantuoni@unimi.it](mailto:lucio.colantuoni@unimi.it) - [lucio.colantuoni@sportslawrc.com](mailto:lucio.colantuoni@sportslawrc.com)

Co-authored by: **Mr. Daan de Jong**, LLM, the Netherlands

# “Football Coach” the legal definition



- A pure legal definition of the term “coach” does not exist in the applicable regulations.
- Different terms in different countries: Manager (UK), Coach (Europe & other countries), Trainer etc.
- Interpretation of the term “coach” highly depends on what has been agreed upon in contract more than upon what term is used.

# Situations that may lead to legal consequences



- Coach leaves the club without the permission of the former club.
- Coach gets sacked by the club.
- Coach is placed on non-active or is placed in a lower job title.
- Coach is placed under a non-active status
- Disciplinary sanctions imposed on the coach due to misbehaviour in international competitions.

# The italian framework

- **Law n. 91/1981** on professionalism in sports: according to article 2, the coaches are intended to be as professional persons and fall within the application of such Law.
- A coach signs an employment contract with the Club and, therefore, agrees to work under the director of the management of the Club.
- The contract must have a maximum duration of five years, which can be terminated by agreement of the parties or withdrawn with cause by each party.
- In case of withdrawal without cause, the withdrawing part shall be considered responsible and might be ordered to compensate the damages

# The italian framework



- Internal Organizational Federal Rules of FIGC (**NOIF**): according to article 38, a coach during a sports season is entitled to be registered only with one club, except as otherwise provided by the collective bargaining agreements.
- An Italian peculiarity: the so called “esonero”, i.e. when a coach is relieved from his duties by the Club, but the employment contract still remains binding.
- The Club appoints a new coach for the team, but, at the same time, continues to pay the former “sacked” coach pursuant to the binding employment contract.

# The italian framework

- “*Esonero*” is expressly regulated by the collective bargaining agreement between AIAC (the Italian Association of Italian Coaches) e the Italian Professional Leagues.
- A coach relieved during a sporting season can request his club to terminate the employment contract at the end of the season, provided that he will be regularly paid until such termination.
- In absence of agreed termination or withdrawal, the club will be required to pay all compensations under the employment contract.

# Jurisdiction



## ■ **Contractual disputes:**

- Coach and club from the same country → national football regulations apply.
- Coach and club from different countries → FIFA regulations apply.

## ■ **Disciplinary sanctions imposed on the coach:**

- National competitions → national disciplinary regulations
- International competitions → applicable international disciplinary regulations.

# Contractual disputes with an international dimension

- Answer in: FIFA Regulations on the Status and Transfer of Players





# Contractual disputes with an international dimension



- FIFA Regulations on the Status and Transfer of Players 2012 (RSTP) art. 22 sub c:

*“Employment-related disputes between a club or an Association and a coach that have an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings exists at national level”.*

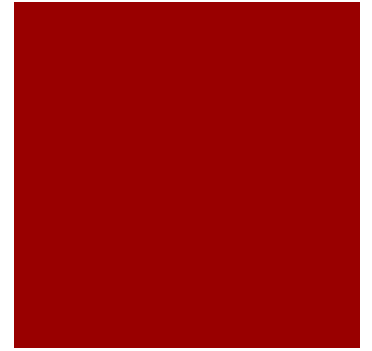
An independent arbitration tribunal is uncommon therefore the vast majority of cases are submitted to FIFA in first instance.

# FIFA Procedures

- According to the RSTP art. 23:
- The Players' Status Committee shall adjudicate on any of the cases described under article 22 c) and f) as well as on all other disputes arising from the application of these regulations, subject to article 24.



# Players' Status Committee



- Tribunal, administrated by FIFA
- Normally procedure with three members of the Players' Status Committee.
- In simple cases → Single Judge possibility

# Players' Status Committee

Chairman		
Theo ZWANZIGER	 Germany	
Deputy Chairman		
V. Manilal FERNANDO	 Sri Lanka	(provisionally suspended)
Member		
Chuck BLAZER	 USA	
Juan PADRON	 Spain	
Tai NICHOLAS	 New Zealand	
Geoff THOMPSON	 England	
Luis BEDOYA	 Colombia	
Decio DE MARÍA	 Mexico	
Saeed AL MASRI	 Syria	
Victor CISSE	 Senegal	
Norman DARMANIN DEMAJO	 Malta	
Alhaji Aminu MAIGARI	 Nigeria	
Semetey SULTANOV	 Kyrgyzstan	

# CAS Procedures

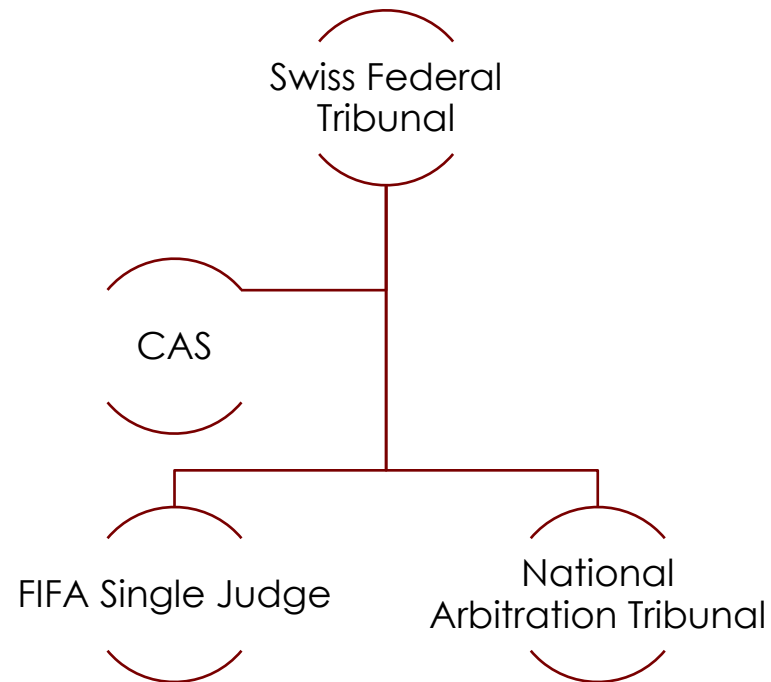


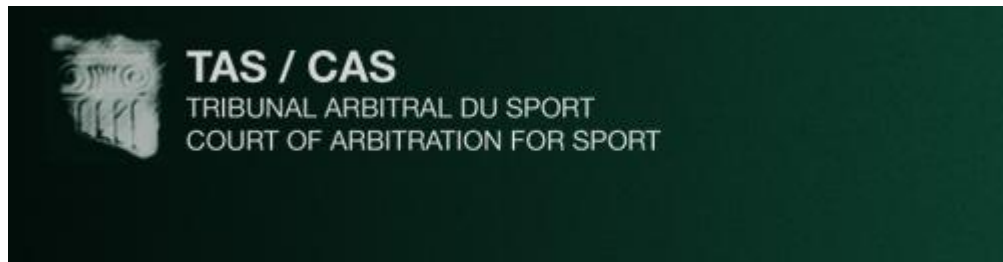
- Court of Arbitration for Sport
- Appeals body for FIFA Single Judge Cases (in case of Coach contractual disputes) → art 23 sub 3 RSTP:

*“Decisions reached by the single judge or the Players’ Status Committee may be appealed before the Court of Arbitration for Sport (CAS).”*

- Last instance, can only be appealed to Swiss federal court but only on limited grounds (arbitrators not independent and other procedural errors).

# Jurisprudence





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# Del Bosque v/ Besiktas (2006)





# Del Bosque v/ Besiktas



## Facts

- In June '04 Del Bosque signed a contract with Besiktas for two seasons. In this agreement a bank guarantee had been established for the sum of EUR. 1.000.000. Under this contract parties agreed upon submission to CAS in the case of a dispute.
- In July '04 both parties also signed a standard contract from the Turkish Football Federation (TFA) with no mention of a bank guarantee but with the same conditions on remuneration. Under this contract parties agreed upon submission to the arbitral body of the TFA in case of any disputed.

# Del Bosque v/ Besiktas

- In January '05, Besiktas terminated the contract without justification given. Outstanding wages till that date had been paid.
- In April '05, Del Bosque enforced the bank guarantee and received the guaranteed amount of EUR. 1.000.000 on his account.

# Del Bosque v/ Besiktas



## **TFA Proceedings**

- TFA ruled that parties explicitly agreed upon jurisdiction of TFA.
- TFA ruled that Besiktas breached the contract with Del Bosque and that they had to pay the amount of EUR. 738.098

# Del Bosque v/ Besiktas



## CAS Proceedings

- Del Bosque demanded to establish:

A) That the contracts were terminated without just cause.

B) That Besiktas is obliged to pay the full remuneration of the contract (minus the money yet received due to the bank guarantee).

# Del Bosque v/ Besiktas



## Besiktas respons

- CAS had no jurisdiction:
  - A) The signed contracts were standard forms of the TFA must prevail over the private contracts.
  - B) In the standard contracts both parties agreed upon the exclusive jurisdiction of the TFA. Therefore the CAS clause in the private contract is neutralized by the TFA clause in the standard contract.
  - C) The TFA decision is a valid and final decision.

# Del Bosque v/ Besiktas



## CAS Ruling

- The basis of CAS jurisdiction is the private contract.

*44. In view of the above, the Panel finds that the assumption that the parties would have had the intention to amend the content of the Private Contracts when they signed the Single Type Contracts is not only unsupported but in obvious contradiction with the intent clearly and expressly stated in the Single Type Contracts themselves.*

- No proof that parties wanted to amend the CAS clause by signing the TFA standard contract.
- Del Bosque reserved the right to submit his claim to CAS in TFA procedures by explicitly saying so.
- Termination was without just cause → full (gross) remuneration of 4.909.090,90 has to be paid to Del Bosque

# Metsu v/ Al-Ain Sports Club (2005)



# Metsu v/ Al-Ain Sports Club



## Facts

- Parties signed a 1-year employment contract for the period 06/'03 till 05/'04.
- Remuneration of USD 800.000 (400.000 upfront payment and USD 400.000 through monthly installments.
- On 1 january '04. Parties signed a second employment contract for the period 01/'04 till 06/'06. for a total remuneration of EUR. 2.075.000.



# Metsu v/ Al-Ain Sports Club



- 31 May '04: Al Ittihad Club asked for the Club's agreement to on releasing the coach. The Club disagreed.
- 19 June '04: the Club send the Coach a letter in which it was open to find a solution to the problem or demanded a sum of EUR 1.500.000 in the situation in which the Coach wanted to terminate the contract.
- 1 July '04: the Coach asked for a termination of the contract due to the fact that it was impossible for him to collaborate with the Club and players.
- 15 July '04: the Club signed an employment contract with a new coach.
- 1 August 2004, the Coach signed an employment contract with Al Ittihad Club.

# Metsu v/ Al-Ain Sports Club



## **FIFA Single Judge Proceedings**

- Coach breached the contract with the Club
- The Coach is obliged to pay EUR. 950.000 to the Club. (Taking into account the fact that the Coach breached the contract a few months after signing the second employment contract, the whole duration of the contract and the fact that the coach knew the circumstances of working in middle east region).

# Metsu v/ Al-Ain Sports Club



## Cas Proceedings

### ■ Position of the Coach:

RSTP      A) PSC was not competent according to regulations 2001.

B) Club breached the contract.

950.000      C) No justification for damage sum of EUR.

# Metsu v/ Al-Ain Sports Club



## **Position of the Club**

- Club always tried to find an amicable solution for the disturbed relationship but the Coach refused trying to.
- The second employment contract represented a considerable investment for the Club.

# Metsu v/ Al-Ain Sports Club



## CAS Ruling

- Single judge was competent.

*7.3.1 The Appellant mentioned at the beginning of the hearing that the Single Judge was not competent. The Appellant did not raise the question of the Single Judge's competence neither before the Single Judge nor in its Appeal Brief or in its final statement before the CAS.*

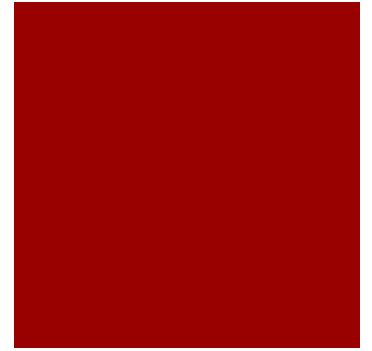
- Both parties were unhappy in their employment relationship. Club however never excluded a continuation but showed to be open to find a solution.
- By not responding to letters from the Club to find an amicable solution the Coach has breached the second employment contract without just cause.

# Metsu v/ Al-Ain Sports Club

## CAS Ruling

- The fact that the Club did not pay outstanding salary does not alter this fact as it was already clear for the Club that the coach did not want to remain under contract.
- Therefore the Coach is the only party at breach.
- Damages (art. 22 RSTP): EUR. 354.864 which consists of a surplus of costs due to the breach of contract by the Coach. (upfront payment of 300.000 and the difference between the previous and new monthly salary).

# Passarella v/ Corinthians (2007)



# Passarella v/ Corinthians



## Facts

- In March '05 parties signed an employment contract for the position of head coach for the period till December '05 for a monthly sum of BRL 355.764,94
- On the same date the Coach signed an employment contract with the MSI Group which had acquired Corinthians. In this agreement MSI would pay the coach a bonus of USD 700.000 in three installments.
- In May '05 the Club prevented the coach from holding training sessions and assigned tasks to him that were different from the tasks of a head coach. Subsequently the Coach communicated to the Club that he deemed the contract terminated without fair cause.



# Passarella v/ Corinthians



## **FIFA Single Judge Proceedings**

- In July '05 the Coach filed a claim with FIFA asking for the salary and MSI bonus till the end of his contract.
- The Club stated that it was the Coach himself that terminated the contract.
- The Single Judge partially accepted the claim of the Coach but did not entitle him the MSI bonus.

# Passarella v/ Corinthians



## Cas Proceedings

### ■ Position of the Club:

A) FIFA has no jurisdiction as parties explicitly mentioned the national court in case of disputes.

B) The Club never dismissed the Coach.

C) It was the Coach himself that terminated the contract.

D) MSI payment is not the responsibility of the Club since it is a whole different identity.

# Passarella v/ Corinthians



## Position of the Coach

- FIFA is competent as contract did not state that all claims would be submitted to the national court.
- Coach acted in good faith as he warned the Club before deeming the employment contract as terminated.
- Coach was hired as head coach according to the contract. Therefore it is not admissible that the Club tried to regulate him to perform only accessory tasks.
- Coach is entitled to full employment contract payment and MSI payment as the MSI payment can not be seen separately as MSI should be seen as part of the Club.

# Passarella v/ Corinthians



## Cas Decission

- FIFA has jurisdiction as there is no clause in the contract that states that all disputes shall be submitted to the national court.
- Coach was appointed as head coach. Club made it impossible for the Coach to perform his role. Therefore the Club breached the contract.
- Club has to pay the Coach the outstanding salary for the remaining period of his contract.
- MSI is not a party in the dispute

*55. There is no mention neither in the MSI Contract nor in any of the evidences produced in the present file which proclaims the joint and several nature of the obligations assumed by MSI and Corinthians .*

# Final Remarks

- Comprehensive contracts are essential in order to establish the tasks of a coach. As no pure legal definition exists.
- Just as a club can not dismiss a coach without legal consequences, a coach is not free to terminate a contract with a club without legal consequences. (background: contractual stability just as in cases related to clubs vs/ players).

S. v/ Litex Lovech (2007)



# S. v/ Litex Lovech (2007)



## Facts

- In Nov. '04 Coach and Club signed an employment contract for the period Dec. '12 – May '06.
- In May '05, Club was not happy with the Coach's performance. Club offered him different other positions (senior team manager or scout).
- Coach refused and Club terminated his contract.

# S. v/ Litex Lovech (2007)



## Cas Decision

- By terminating the contract, the Club breached the contract.
- It can't be expected from the Coach to accept a position which is subordinate to the agreed position of head coach.
- Club is liable for payment of remaining remuneration towards the Coach.





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**Thank you for your attention**

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Co-authored by: **Mr. Daan de Jong**, LLM, the Netherlands