



Questions and answers on the *Platini v. Switzerland* judgment¹

This document is a tool intended for the media, published in connection with the delivery of the above-mentioned judgment. It is not binding on the Court.

1. Concerning the present case

Can the applicant still engage in professional activity related to football?

The ban on engaging in football-related professional activity, at national or international level, for a four-year period, was imposed on the applicant in 2015.

The appeals to the FIFA appeal body, the CAS, the Swiss Federal Court and then to the European Court of Human Rights did not suspend that sanction.

Consequently, **the ban on such activity only ran until 2019**. The applicant should now be able to engage in this type of professional activity once again.

Is the applicant obliged to repay the sum he received as a salary “supplement”?

The case before the Court concerned **only the sanction imposed** on the applicant by FIFA. It did not address the repayment of the sum received by the applicant, which is a **separate procedure**.

FIFA in fact announced in a press release² that it was filing a complaint against FIFA's President and the applicant, in order to obtain that reimbursement.

2. Concerning the proceedings before the Court

Is it the first time that the European Court of Human Rights has examined proceedings in the Court of Arbitration for Sport (CAS)?

The Court has previously examined three cases concerning the CAS.

The first application was lodged on 26 November 2003 by Ms Lazutina and Ms Danilova against Switzerland³. The applicants complained that the CAS did not afford sufficient safeguards of impartiality and independence in relation to the International Olympic Committee. However, the Court did not examine their complaints further, for in a letter of 12 October 2007 the applicants informed the Registry that they did not wish to maintain their application. In a letter of 1 November 2007 the respondent Government asked the Court to strike the case out of the list. The Court did so, finding that it was not required by any circumstance affecting respect for Convention rights to continue its examination of the case.

The Court heard a second case which was brought before it by applications of 13 July 2010 and 11 November 2010, lodged by Mr Mutu and Ms Pechstein⁴. The applicants argued that the CAS could not be regarded as an independent and impartial tribunal. The second applicant also complained

¹ See the press release.

² <https://fr.fifa.com/about-fifa/who-we-are/news/la-fifa-porte-plainte-contre-joseph-blatter-et-michel-platini>

³ ECtHR, 3 July 2008, *Lazutina and Danilova v. Switzerland*, no. 38250/03

⁴ ECtHR, 2 October 2018, *Mutu and Pechstein v. Switzerland*, no. 40575/10 and 67474/10

that she had not had a public hearing, neither before the ISU disciplinary board, nor before the CAS, nor before the Swiss Federal Court.

The Court found that there had been no violation of Article 6 § 1 of the Convention with regard to the alleged lack of independence and impartiality.

However, there had been a violation of Article 6 § 1 on the ground that the CAS hearing had not been held in public.

A third case was brought on 13 February 2007 by Mr Bakker⁵, a Dutch cyclist. He had been found guilty of a doping offence by the anti-doping committee of the Royal Dutch Cyclists Union. He was suspended for two years and fined. He appealed to the CAS, which banned him for life from sports competitions. He appealed against the arbitral decision to the Swiss Federal Court. His application was declared inadmissible.

He complained to the European Court of Human Rights that the proceedings in the Federal Court had breached his right to a fair hearing under Article 6 § 1 of the Convention.

The Court declared his application inadmissible on the ground that the Federal Court's conclusion was neither arbitrary nor manifestly unreasonable.

Lastly, a number of cases involving CAS proceedings are pending before the Court. One of them concerns the former Secretary General of FIFA, Mr Jérôme Valcke.

The Court can thus hear such disputes.

Why does this case concern Switzerland?

These complaints mainly concern the proceedings in the CAS and the sanction imposed. The CAS, however, is neither a State court nor another institution of Swiss public law, but a private-law foundation.

That being said, first, **Swiss law provides for the jurisdiction of the Federal Court to examine the validity of CAS awards** (Articles 387 and 393 of the Code of Civil Procedure of 19 December 2008). Secondly, **the Federal Court had dismissed the applicant's appeal**, thus rendering the relevant decision final in Swiss law.

The acts or omissions complained of may therefore engage the respondent State's responsibility under the Convention. It follows that the Court has jurisdiction to hear complaints by applicants about the acts and omissions of the CAS as endorsed by the Federal Court.

Does the ECtHR allow recourse to arbitration?

Article 6 § 1 of the Convention secures to everyone the "right to a court". However, the right of access to the courts is not absolute. It may be subject to implicitly permitted limitations. Nevertheless, it is the Court's task to rule at last instance on Convention compliance. The Convention lays down two basic requirements. (1) The limitations must not restrict access in such a way that **the very essence of the right is impaired**. (2) Any limitations must pursue a **legitimate aim** and there must be a **reasonable relationship of proportionality** between the means used and the aim pursued.

This right of access to a court does not necessarily entail a right to bring a case before an ordinary court of law. **Article 6 does not prevent the setting up of arbitral tribunals to hear certain economic disputes between individuals**. Being mindful that arbitration clauses in contracts have undeniable

⁵ ECtHR, 3 September 2019, *Bakker v. Switzerland*, no. 7198/07

advantages both for the parties and for the administration of justice, the Court has found that they are not in principle at odds with the Convention.

Is the present decision final?

In this decision the Court has found the application inadmissible. Inadmissibility decisions, like judgments of a Committee or of the Grand Chamber are final and cannot therefore be appealed against.