How to resolve contractual disputes between players and clubs in Football?

Halimeh Khalili  
Department of Law, Najaf Abad Branch, Islamic Azad University, Najaf Abad, Iran  
Khalili.hl@yahoo.com

Dawood Nasiran  
Department of Law, Najaf Abad Branch, Islamic Azad University, Najaf Abad, Iran

Abstract

Due to age and history of the of Football and its considerable influence on various aspects of human relationships, resolving disputes especially contractual disputes between players and sports clubs in this sport, is undeniably important. Sport Claims should be specifically addressed because of their special nature, the presence of famous people as parties, the need to preserve their character and reputation and the lack of timely and urgent attention to specialized issues of Sports in general courts. The present study investigates the ways of resolving contractual disputes between Football players and clubs. For this purpose, after collecting information through libraries (documents) and considering the data, we will get the desired results. The method used in this research is an analytical method.

Keywords: sports Contracts, Iranian football federation, international football federation, Court of Arbitration for Sport.
Introduction
With the increasing development of sport in the world and occurring a variety of events, and the complexity and development of organizations and sports activities in the world, the need to formulate specific measures for the supervision and control of the sports events is becoming more and more important and has forced the legal and judicial practitioners to seriously work to predict and enact rules and regulations for sports events and community actions and develop a set of rules to govern the legal relations exercised in their communities. (Kashef and Sheidaei, 2010, p. 22)

In terms of contractual claims in football, do the parties can resort to the judicial authorities to settle their disputes? Or are they able to go to legal institutions of the Federations seeking to resolve existing conflicts? Consequently, the Federation associated with the sport of football, and then the way of resolving contractual disputes in this field will be investigated according to the statutes of the federation. Sports law, was first considered in 1976 as a physical education course in High School of Sports in Iran to make the students familiar with the law and its applications in the fields and sporting events. From then on and with the expansion of physical education faculties, the students in other faculties of the country were faced with sports law course as one of the essential functional units incorporated in the curriculum. (Kashef and Sheidaei, ibid). In the field of sports law, books, articles and dissertations have been written by researchers and they have studied various issues in this field, such as the following:

- Ahsani Forouz (2012), wrote a book on sports Law with a perspective on taekwondo, General sports law, taekwondo federation's disciplinary regulations, the disciplinary authorities, members, meetings and decisions, offenses and punishment and legal issues in the field of sport is studied.

- Chalabi (2011) in his book on sports law, regarded the history of sports Law in Iran, the rules of sporting events after the Islamic Revolution, the civil and criminal responsibilities in sports, sports competitions and regulations of crisis management and congestion, and the international regulation of doping.

- The nature and legal effect of Sports contracts (Bahramiyeh, 2005) was a thesis that investigated the research records of sports contracts, sports law’s definition, characteristics of sports contracts, the determination of the nature of contracts, analysis of the effects in terms of the obligations of the parties and the enforcement of the breach of contract, and dispute settlement authorities and finally the dissolution of the contracts.

- Sports’ problems and Sports’ civil liability (Katouzian, 1999) are investigated by Katouzian; in this article, rules of sport from a legal perspective, and the violations of sports are investigated from three perspectives: 1) the relationship of athletes during sports games. 2) The relationship between athletes and coaches with third parties. 3) The relationship between coaches and athletes and sports organizations and their effects on legal relations.

- Aqaei Nia (1990) wrote a book on sports law explaining and understanding the sports laws and investigating the crimes and semi crimes of athletes, teachers, coaches, administrators, fans, creators and manufacturers of equipment and the like. As it can be seen, the research conducted in connection with the sports, have more investigated the civil and criminal liabilities, but in relation to the present study, no researches have been
conducted. In the following, we will look at dispute settlements in the articles of association of these federations.

1. Statute of the Asian Football Confederation (AFC) related to the settlement of disputes

   Article 60-1 disputes.
   1. Member Associations shall insert a clause in their statutes or regulations stipulating that it is prohibited to take disputes within the Member Association or disputes affecting Leagues, Clubs, members of Clubs, Players, Officials and other Member Association Officials to ordinary courts of law, unless FIFA regulations, AFC regulations or binding legal provisions specifically provide for or stipulate recourse to ordinary courts of law.
   2. According to Article 60, Section 1, the federations and their member clubs should provide good conditions to prohibit their staff members from referring their disputes to ordinary courts.
   3. Any violation of this Article shall be sanctioned in accordance with these Statutes.

   Article 61, the Court of Arbitration for Sport (CAS)
   1. The AFC recognizes the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between the AFC and the other Confederations, Member Associations, Leagues, Clubs, Players, Officials, Intermediaries and licensed match agents.
   2. The provisions of the CAS Code of Sports–related Arbitration shall apply to the proceedings. The CAS shall apply the various regulations of the AFC, and additionally where relevant, the laws of Malaysia.
   3. Recourse may only be made to CAS after all other internal AFC channels have been exhausted. 4 - All decisions taken by the CAS are final and binding for all parties.

   Article 62. Jurisdiction of CAS as an Ordinary Court of Arbitration

   Jurisdiction of CAS as an Ordinary Court of Arbitration
   CAS shall have jurisdiction, to the exclusion of any ordinary court or any other court of arbitration, to deal with the following disputes in its capacity as an ordinary court of arbitration: a) disputes between the AFC and its Member Associations, their Leagues, Clubs, Players and/or Officials; and b) disputes of international dimension between Member Associations, Leagues, Clubs, Players and/or Officials.

   Article 63. Jurisdiction of CAS as an Appeals Arbitration Body
   1. Any final decision made by an AFC body may be disputed exclusively before CAS in its capacity as an appeals arbitration body, to the exclusion of any ordinary court or any other court of arbitration.
   2. Appeals shall be lodged with CAS within twenty-one (21) days of notification of the decision in question.
   3. The appeal shall not have a suspensive effect. The appropriate AFC bodies, or alternatively, CAS may order the appeal to have a suspensive effect.
   4. Only parties directly affected by a decision may appeal to CAS. Both FIFA and the World Anti-Doping Agency are entitled to appeal to CAS against any internally final and binding doping-related decision passed by the AFC in accordance with the provisions set out in the AFC Anti-Doping Regulations.
3. Statute of Europe Football Union (UEFA) in connection with the settlement of disputes and lawsuits

Chapter seven. Recognition of the UEFA Statutes, Disputes

Recognition of the UEFA Statutes

Article 59. Each Member Association shall include in its statutes a provision whereby it, its leagues, clubs, players and officials agree to respect at all times the Statutes, regulations and decisions of UEFA, and to recognize the jurisdiction of the Court of Arbitration for Sport (CAS) in Lausanne (Switzerland), as provided in the present Statutes. Each Member Association shall ensure that its leagues, clubs, players and officials acknowledge and accept these obligations. Each participant in a UEFA competition shall, when registering its entry, confirm to UEFA in writing that it, its players and officials have acknowledged and accepted these obligations.

2. Disputes of National Dimension

Associations shall include in their statutes a provision under which disputes of national dimension arising from or related to the application of their statutes or regulations shall, subject to their national legislation, be referred in the last instance to an independent and impartial court of arbitration, to the exclusion of any ordinary court.

3. Disputes of European Dimension, CAS as Ordinary Court of Arbitration

Article 61. The CAS shall have exclusive jurisdiction, to the exclusion of any ordinary court or any other court of arbitration, to deal with the following disputes in its capacity as an ordinary court of arbitration:

a) Disputes between UEFA and associations, leagues, clubs, players or officials;
b) Disputes of European dimension between associations, leagues, clubs, players or officials.

The CAS shall only intervene in its capacity as an ordinary court of arbitration if the dispute does not fall within the competence of a UEFA organ.

CAS as Appeals Arbitration Body

Article 62. Any decision taken by a UEFA organ may be disputed exclusively before the CAS in its capacity as an appeals arbitration body, to the exclusion of any ordinary court or any other court of arbitration. Only parties directly affected by a decision may appeal to the CAS. However, where doping-related decisions are concerned, the World Anti-Doping Agency (WADA) may appeal to the CAS. The time limit for appeal to the CAS shall be ten days from the receipt of the decision in question.

An appeal before the CAS may only be brought after UEFA’s internal procedures and remedies have been exhausted. An appeal shall not have any suspensory effect as a stay of execution of a disciplinary sanction, subject to the power of the CAS to order that any disciplinary sanction be stayed pending the arbitration. The CAS shall not take into account facts or evidence which the appellant could have submitted to an internal UEFA body by acting with the diligence required under the circumstances, but failed or chose not to do so.

Concluding Provisions, Governing Law and Legal Forum

Article 64. These Statutes shall be governed in all respects by Swiss law. The legal forum shall be the headquarters of UEFA. Lausanne (Switzerland) shall be the legal forum for all cases which, in accordance with these Statutes, come under the jurisdiction of CAS.
The most important elements in accordance with the FIFA Statutes are: 1. Congress, is the supreme and legislative body. 2. Executive Committee, is the executive body. 3. Secretariat, is the administrative body.

Chapter 1. Judicial bodies of FIFA

1. The judicial bodies of FIFA are: a) the Disciplinary Committee; b) the Ethics Committee; c) the Appeal Committee.

2. The judicial bodies shall consist of a chairman, a deputy chairman and a specific number of other members. The composition of the judicial bodies should respect the fair distribution of positions and take account of the Members.

3. The judicial bodies are to be composed in such a way that the members, together, have the knowledge, abilities and specialist experience that is necessary for the due completion of their tasks. The chairmen and deputy chairmen of the judicial bodies shall be qualified to practice law. The term of office shall be four years. The members may be re-elected or relieved of their duties at any time, although they may only be relieved of their duties by the Congress.

4. The chairmen and deputy chairmen of both chambers of the Ethics Committee shall fulfil the independence criteria as described in the Standing Orders of the Congress.

5. The chairmen, deputy chairmen and other members of the judicial bodies shall be elected by the Congress and shall not be members of the Executive Committee or of a standing committee.

6. The responsibilities and function of the judicial bodies shall be stipulated in the FIFA Disciplinary Code and the FIFA Code of Ethics.

7. The decision-making powers of certain committees remain unaffected.

62. Disciplinary Committee

1. The function of the Disciplinary Committee shall be governed by the FIFA Disciplinary Code. The committee shall pass decisions only when at least three members are present. In certain cases, the chairman may rule alone.

2. The Disciplinary Committee may pronounce the sanctions described in these Statutes and the FIFA Disciplinary Code on Members, Clubs, Officials, Players, intermediaries and licensed match agents.

3. These provisions are subject to the disciplinary powers of the Congress and Executive Committee with regard to the suspension and expulsion of Members.

4. The Executive Committee shall issue the FIFA Disciplinary Code.

64. Appeal Committee

1. The function of the Appeal Committee shall be governed by the FIFA Disciplinary Code and the FIFA Code of Ethics. The committee shall pass decisions only when at least three members are present. In certain cases, the chairman may rule alone.

2. The Appeal Committee is responsible for hearing appeals against decisions from the Disciplinary Committee and the Ethics Committee that are not declared final by the relevant FIFA regulations.
3. Decisions pronounced by the Appeal Committee shall be irrevocable and binding on all the parties concerned. This provision is subject to appeals lodged with the Court of Arbitration for Sport (CAS).

65. Disciplinary measures
The disciplinary measures are primarily:

1. For natural and legal persons: a) a warning; b) a reprimand; c) a fine; d) the return of awards.
2. for natural persons: a) a caution b) an expulsion; c) a match suspension; d) a ban from the dressing rooms and/or the substitutes’ bench; e) a ban from entering a stadium; f) a ban on taking part in any football-related activity or social work.
3. for legal persons: a) a transfer ban; b) playing a match without spectators; c) playing a match on neutral territory; d) a ban on playing in a particular stadium; e) annulment of the result of a match; f) expulsion; g) a forfeit; h) deduction of points; i) relegation to a lower division; j) replaying a match.

66. Court of Arbitration for Sport (CAS)

1. FIFA recognizes the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, Clubs, Players, Officials, intermediaries and licensed match agents.
2. The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.

67. Jurisdiction of CAS

1. 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.
2. .
3. CAS, however, does not deal with appeals arising from: a) violations of the Laws of the Game; b) suspensions of up to four matches or up to three months (with the exception of doping decisions); c) decisions against which an appeal to an independent and duly constituted arbitration tribunal recognized under the rules of an Association or Confederation may be made.
4. The appeal shall not have a suspensive effect. The appropriate FIFA body or, alternatively, CAS may order the appeal to have a suspensive effect.
5. FIFA is entitled to appeal to CAS against any internally final and binding doping-related decision passed in particular by the Confederations, Members or Leagues in accordance with the provisions set out in the FIFA Anti-Doping Regulations.
6. The World Anti-Doping Agency (WADA) is entitled to appeal to CAS against any internally final and binding doping-related decision passed in particular by FIFA, the Confederations, Members or Leagues in accordance with the provisions set out in the FIFA Anti-Doping Regulations.

68. Obligations
1. The Confederations, Members and Leagues shall agree to recognize CAS as an independent judicial authority and to ensure that their members, affiliated Players and Officials comply with the decisions passed by CAS. The same obligation shall apply to intermediaries and licensed match agents.

2. Recourse to ordinary courts of law is prohibited unless specifically provided for in the FIFA regulations. Recourse to ordinary courts of law for all types of provisional measures is also prohibited.

3. The Associations shall insert a clause in their statutes or regulations, stipulating that it is prohibited to take disputes in the Association or disputes affecting Leagues, members of Leagues, Clubs, members of Clubs, Players, Officials and other Association Officials to ordinary courts of law, unless the FIFA regulations or binding legal provisions specifically provide for or stipulate recourse to ordinary courts of law. Instead of recourse to ordinary courts of law, provision shall be made for arbitration. Such disputes shall be taken to an independent and duly constituted arbitration tribunal recognized under the rules of the Association or Confederation or to CAS.

The Associations shall also ensure that this stipulation is implemented in the Association, if necessary by imposing a binding obligation on its members. The Associations shall impose sanctions on any party that fails to respect this obligation and ensure that any appeal against such sanctions shall likewise be strictly submitted to arbitration, and not to ordinary courts of law.

69. Principles

1. The Confederations, Members and Leagues shall agree to comply fully with any decisions passed by the relevant FIFA bodies which, according to these Statutes, are final and not subject to appeal.

2. They shall take every precaution necessary to ensure that their own members, Players and Officials comply with these decisions.

The same obligation applies to intermediaries and licensed match agents.

70. Sanctions

Any violation of the foregoing provisions will be punished in compliance with the FIFA Disciplinary Code.

4. Analysis of contractual disputes between players and sports clubs

In relation to football contracts, in accordance with the FIFA Statutes, sections 66 to 69, FIFA members are obliged to recourse their disputes to CAS. In addition, the recognition of the Court of Arbitration for Sport to address the differences in the statutes of football federations, is one of the membership requirements of FIFA. According to section 67 of the FIFA Statutes, judgments of this body can be appealed in CAS.

Also, in accordance with the Charter of the International Olympic Committee all the national and international federations, must recognize the charter. Disputes arising from the Olympics and in conjunction with the games can be stipulated to recourse to CAS, also decisions taken by the International Olympic Committee in certain cases relating to disputes arising from the actions
and their interpretation can be stipulated to recourse to CAS. In other words, regarding the contractual disputes related to football, Article 64 of the Statute of the Iranian Football Federation, has written in paragraph 1 that: Federations, legal members, players, etc. are prohibited to take disputes to ordinary courts of law. Also it states in paragraph 3 that: Federation is obliged to pass judgments on the National conflict of the Federation members, and any appeals against final judgments issued by FIFA and the Confederation, are considered in Lausanne. According to paragraph 2: final votes issued by FIFA and the Court of Arbitration remain in force and the Federation, members, players, coaches and agencies are required to act according to them.

Similarly, members are obliged to act under the Statute of AFC. The authority of CAS to deal with disputes between players and clubs, etc. is accepted and federations, clubs, leagues, staff and players are prohibited to take their dispute to ordinary courts.

In connection with the resolution of contractual disputes of football in Europe, as it was considered, in accordance with Articles 59, 61, 62 and 65 of the Statute, football contractual disputes shall be referred to CAS. So the handling of such disputes should not be conducted in the ordinary civil courts and has the mechanism of its own which is reflected in the Statute of Football federations.

According to Article 59 of the Statute of the Football Association of Europe (UEFA), Each Member Association shall include in its statutes a provision whereby it, its leagues, clubs, players and officials agree to respect at all times the Statutes, regulations and decisions of UEFA. Each Member Association shall ensure that its leagues, clubs, players and officials acknowledge and accept these obligations. Each participant in a UEFA competition shall, when registering its entry, confirm to UEFA in writing that it, its players and officials have acknowledged and accepted these obligations.

According to articles 60 and 61, paragraphs A and B of the UEFA Statutes, in relation to disputes with the national and European scope, the Court of Arbitration for Sport is competent to handle the disputes. Article 63 of the Statute states the cases that the Court of Arbitration for Sport is not competent to handle.

Regarding the Asian Football Confederation (AFC), and according to article 60, paragraph 2, of the Statute of the Confederation, the federations and their member clubs should provide good conditions to prohibit their staff members from referring their disputes to ordinary courts and any violation of this Article shall be sanctioned in accordance with these Statutes. Article 62 of the statute of the Asian Football Confederation states that CAS shall have jurisdiction, to the exclusion of any ordinary court or any other court of arbitration, to deal with the disputes between federations, leagues, clubs, staff, and players. The Court of Arbitration for Sport decision shall be binding for the parties. Even Article 63 of the Statute, introduces the Court as Appeals Arbitration Body.

In relation to the Statute of the International Federation of Football Association (FIFA), the union that attempts to be a member of FIFA, should recognize the Court of Arbitration for Sports. According to section 66, 67, 68 of FIFA statute, FIFA recognizes the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, Clubs, Players, Officials, intermediaries and licensed match agents and the court will apply, the FIFA regulations and then Swiss laws.
According to FIFA statute, the Confederations, Members and Leagues shall agree to recognize CAS as an independent judicial authority and to ensure that their members, affiliated Players and Officials comply with the decisions passed by CAS. Associations shall include in their statutes a provision under which clubs and their members are prohibited from taking the disputes to ordinary courts. Finally, any violation of the FIFA Statutes and regulations, shall be sanctioned in accordance with the disciplinary regulations of the Statute.

So the member associations of FIFA are obliged to take their contractual dispute to the Court of Arbitration for Sport. And in this context the difference between Iran and other members of FIFA's Football Association does not exist. In this context there is no difference between Iran and other members of FIFA.

5. Court of Arbitration for Sport (CAS)

The Court of Arbitration for Sport is one of the competent authorities formed in the late nineteenth century to address conflicts and legal problems arose in sports; the main task of this Court, is to settle sports disputes that take place in different events. All economic, ethical and disciplinary issues in the sport comes within the competence of the court’s proceedings. The Court of Arbitration in Sport, is an independent body and not affiliated to any of the sports organizations. Its aim is to provide a mean for parties to resolve disputes that related to the special needs of the world. The court has 150 arbiter from thirty-seven countries that have been selected on the basis of their specialist knowledge of the rule of law and sport. (Aqaei Nia, 2007, p. 129)

Since 1996, two other decentralized courts are established in Sydney and Denver which are available for the parties. The Court also sets up temporary courts in situations like the Olympic Games, which according to the terms of such events, the specific regulations are called for, including the requirement to declare the vote within 24 hours; as we saw at the 1996 Atlanta Games. (Ibid. pp.130-129)

Any dispute directly or indirectly related to the sport, whether commercial or in connection with the implementation or development of sport; such as the disagreement or dispute arising from the decision of a sponsorship deal with sports organizations can be referred to the Court of Arbitration. (Ibid.)

In the case of disputes arising from contractual relations, normal handling method is applicable and for claims arising from the decisions of sports federations or associations, research type is applied. There is also a consultative procedure, according to which some are allowed to demand the Court’s advisory opinion on any legal issue related to the practice and development of sport or any activity related to sports that are not contentious. Court’s advisory opinions, are not considered the votes and will not be binding. (Ibid.)

Languages used to impose arbitration, are French and English. However, under certain circumstances, other languages may also be used. (Ibid., 131)

Based on past experiences, ordinary proceedings take between 6 to 10 months. In research proceedings, vote is issued within 4 months of the date of filing. In an emergency, and upon the requests, the Court issues an interim order or execution of the decisions under investigation in a very short time. Ordinary arbitration procedures are confidential. The parties, the arbiters and staff, are required to refrain from disclosing information about the differences, and votes shall not be published. Research proceedings don’t demand specific provisions addressing
confidentiality. However, arbiters and court staff are obliged to confidentiality issues unless the parties consent otherwise then judgments issued by the Court can be released. (Ibid.)
The votes of the Court of Arbitration are final and binding to the parties from the date of notification. However, the votes of the court is basically acceptable when it is stipulated in the Statute of the Confederations. And since, FIFA Statutes, recognizes the Court of arbitration’s proceedings. Disputes between the parties in relation to a contract or other items can be verified in the Court of Arbitration. Any natural or legal person can benefit from the services of the Court.

6. Conclusion
Nowadays, Sports as an institution with international characteristics has developed tremendously, in a way that it has even allocated the authorities to investigate the claims made in this regard. Claims related to the Sports cannot be regarded in ordinary courts, the Court of Arbitration is recognized by the International Federations is made solely to deal with legal issues of sports. Sports federations have to make all their clubs to commit to pursue all agents in the sport and the legal problems only through «CAS». These international guidelines should be considered in the context of the laws of the federation. Federations have forced all the agents in sports club to refer to CAS in terms of claims and disputes that arise in the field of sport, and according to the provisions of the Statute of the federations. According to the conducted studies and lack of the mastery of Sport rights’ activists to the international regulations in this regard, it is recommended to train dedicated individuals with regard to sports law to attend to the sports federations in order to preserve the rights of members.
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