

# **Yearbook of International Sports Arbitration**

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The Yearbook of International Sports Arbitration is the first academic publication aiming to offer comprehensive coverage, on a yearly basis, of the most recent and salient developments regarding international sports arbitration, through a combination of general articles and case notes. It is a must-have for sports lawyers and arbitrators, as well as researchers engaged in this field. It provides in-depth articles on burning issues raised by international sports arbitration, and independent commentaries by esteemed academics and seasoned practitioners on the most important decisions of the CAS and national courts.

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Antoine Duval · Antonio Rigozzi  
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# Yearbook of International Sports Arbitration 2016

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# Editorial

The Yearbook of International Sports Arbitration (YISA) provides a unique, comprehensive yearly review of the world of international sports arbitration. With this second edition of the YISA, we continue our extensive coverage of the most recent CAS awards and court decisions through various commentaries, as well as the publication of longer analytical pieces on important aspects of international sports arbitration.

This YISA 2016 volume opens with an exclusive interview given by the three arbitrators who rendered the first CAS award thirty years ago. As they look back on that historical first case, Messrs François Carrard, Hans Nater and Jean Gay in the contribution by [Erika Hasler and ourselves](#) walk us through the transformations of the CAS and offer some thoughts and proposals for its future shape. The interview is followed by four general articles, where [Despina Mavromati](#) investigates the role of Swiss law in anti-doping cases, while [Christian Keidel and Paul Fischer](#) in their contribution examine the question of the standing to appeal of third parties before the CAS, and one of us, [Antoine Duval](#), reviews the jurisprudence of the CAS in cases related to the Russian doping scandal. Beyond the CAS, the Basketball Arbitral Tribunal (BAT)'s fast-growing caseload is a further illustration of the vitality of sports arbitration. As it approaches the 1,000 cases mark, the BAT has partly renewed and expanded its list of arbitrators, and updated its rules. [Erika Hasler's contribution](#) provides an overview of the changes introduced by the new BAT Rules, which entered into force on 1 January 2017. The central section of the YISA features several commentaries covering the CAS's main published decisions of 2016 (and late 2015). As is well known to sports arbitration practitioners, the core of the CAS caseload consists of doping and football-related disputes. The predominance of these two types of matters is reflected in the selection of cases commented on.

On the doping front, a number of high-profile CAS awards rendered in 2016 are discussed. The controversial *Essendon* award is examined at length by two of the most astute observers of anti-doping regulation, [Marjolaine Viret and Emily Wisnosky](#). The case touched upon fundamental issues linked to the burden of proof of non-analytical doping violations and systematic doping schemes. A second

commentary, by [Howard Jacobs](#), deals with three anti-doping cases revolving around the question of intent under the WADA Code. The introduction in 2015 of intent as a criterion to determine the length of anti-doping sanctions is a fundamental change to the workings of the WADA Code, and the CAS has started to develop jurisprudence on the issue. Finally, the commentary by [Nina Lauber-Thommenes](#) and [Charlotte Frey](#) on the Sundby case considers the operation of the principle of legal certainty in relation to WADA's Prohibited List.

Football disputes still constitute the lion's share of the CAS docket, which is again apparent from the number of commentaries devoted to football-related decisions in this YISA volume. Indeed, lawyers and researchers specialized in 'football law' will be happy to see that most of the cases reviewed in this edition concern disputes connected to the governance of football, disciplinary matters in football or the FIFA transfer system. The CAS is the final interpreter of the FIFA Regulations on the Status and Transfer of Players (FIFA RSTP) and it decides the most contentious issues arising out of their implementation. This YISA volume includes contributions by [Frans de Weger](#), [Fabrice Robert-Tissot](#), [Roy Levy](#), [Jan Kleiner](#), and [Ornella Désirée Bellia](#) examining different and often quite technical aspects of the FIFA RSTP. [Nicolas Bône](#) commented on the case involving the Moroccan Football Federation's decision to withdraw from the organisation of the African Cup of Nations in 2015 due to the Ebola crisis. Furthermore, the CAS has a growing decisional practice related to match-fixing sanctions issued by UEFA, a topic covered by both [Jorge Ibarrola](#) and [Marc Cavaliero](#), as is the case law on UEFA's disciplinary sanctions for the behaviour of supporters, with a commentary by [Rosmarijn van Kleef](#), and the fundamental *Galatasaray* award finding that UEFA's FFP Rules are compatible with EU law is analysed by [Antoine Duval](#). The question of compatibility with EU law is also central to Lassana Diarra's challenge against the principle of joint and several liability under Article 17(2) RSTP, currently pending before the Belgian courts, as discussed in [Ms Bellia's contribution](#) and [Antonio Rigozzi's addendum thereto](#). Finally, [Luca Beffa](#) discusses the much-awaited award partially upholding the ban on football activities imposed by FIFA on Michel Platini over corruption allegations in connection with the governance of FIFA.

The 2016 Yearbook closes with two commentaries on decisions by national courts related to CAS arbitration. [Erika Hasler](#) and [Yann Hafner](#) in their contribution examine the 2016 decisions of the Swiss Federal Tribunal (SFT) involving CAS awards. It is worth recalling that the SFT plays a crucial role in the functioning of the CAS as it is the only court with primary jurisdiction to hear challenges against CAS awards. It is only in exceptional circumstances, such as those surrounding the *Pechstein* ruling of the German Bundesgerichtshof, analysed by [Bernd Ehle](#) and [Ignacio Guala](#), that other national courts will have the possibility to review the work of the CAS and exercise some control over it.

The YISA series is only in its second year but has already found an avid readership due to the demand for independent and quality scholarship on the peculiar workings of the world of sports arbitration. The tremendous growth of international sports arbitration since the turn of the century will not be halted in

light of the ever-growing economic importance and internationalization of the sports sector. It is therefore more than ever necessary to provide researchers, practitioners and policy-makers with a high-quality comprehensive go-to outlet so that they can follow the key developments in international sports law and keep up to date with the latest debates and decisions, which will be shaping its evolution in the years to come.

Antoine Duval  
Antonio Rigozzi

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# Abbreviations

CAS	Court of Arbitration for Sport
CAS Code	Code of Sports-related Arbitration and Mediation Rules (latest edition)
CC	Swiss Civil Code
CCP	Swiss Code of Civil Procedure
CHF	Swiss franc
CJEU	Court of Justice of the European Union
CO	Swiss Code of Obligations
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
EUR	Euro
FIFA	Fédération Internationale de Football Association
FIFA DC	FIFA Disciplinary Code
FIFA DRC	FIFA Dispute Resolution Chamber
FIFA PSC	FIFA Players' Status Committee
FIFA RSTP	FIFA Regulations on the Status and Transfer of Players (latest edition)
FIFA Statutes	FIFA Statutes (latest edition)
FIFA TMS	FIFA Transfer Matching System
IBA Rules	International Bar Association, Rules on the Taking of Evidence in International Arbitration
ICAS	International Council of Arbitration for Sport
IOC	International Olympic Committee
ITC	International Transfer Certificate
NYC	New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards
OJ	Official Journal of the European Union
PILA	Swiss Private International Law Act (LDIP; IPRG)
SFT	Swiss Federal Tribunal (BGer; TF)

SGB	Sports governing body/bodies
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UCI	Union Cycliste Internationale
UEFA	Union of European Football Associations
UEFA CFCB	UEFA Club Financial Control Body
UEFA FFP	UEFA Financial Fair Play
UEFA Statutes	UEFA Statutes (latest edition)
USD	US dollar
WADA	World Anti-Doping Agency
WADA Code	World Anti-Doping Code (latest edition)