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The Court of Arbitration for Sports (CAS) promote mediation to resolve sports disputes

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→ [Court of Arbitration for Sport \(CAS\) - Mediation - Football disputes](#)

- On May 16th, 2014, the Court of Arbitration for Sport (CAS) held a conference on mediation. Why does CAS wish to promote this form of resolution of sport disputes?

The success of the 1st CAS Conference on Mediation, attended by more than 130 participants from 40 countries, demonstrates the great interest of the sports world in exploring and developing alternative ways to resolve sports disputes. Mediation can be a very efficient dispute resolution mechanism for athletes, clubs and sports associations. Mediation can accommodate the particularities of the sports sector, which include the short professional life of athletes and the desire to maintain a business relationship in a small sports world. It responds to the aforementioned characteristics by offering a quick, flexible, economic and confidential resolution of the dispute between the parties.

In this respect, CAS is the ideal venue for sports mediation. CAS has established itself as the international, supreme instance for sports disputes and offers a neutral, impartial and centralized institution for mediation in sports. Moreover, by opting for CAS mediation, the parties can still have recourse to a

CAS expedited arbitral procedure if the mediation is unsuccessful.

- What are the main differences between CAS mediation and CAS arbitration?

We should clearly distinguish between mediation and arbitration: CAS mediation is an informal, non-binding procedure, based on an agreement to mediate in which each party undertakes to negotiate in good faith with the other party with a view to settling a sports-related dispute. The CAS mediator assists the parties in their negotiations and helps them resolve their dispute. The terms of the agreement are only binding once they are included in the settlement agreement signed by both parties and the mediator.

Arbitration is a formal and binding procedure, in which the arbitral tribunal renders a binding award, enforceable under the New York Convention. The CAS rules on arbitration apply to the CAS arbitration procedures. As a general rule, a CAS arbitration procedure entails higher costs and takes more time than a mediation, which is frequently terminated at the end of the mediation meeting.

- What are the main rules for CAS mediation?

CAS Mediation is conducted pursuant to our CAS Mediation Rules, which were updated and reviewed last year. The CAS Mediation Rules, which are available on the CAS website, are very flexible. They provide some information on the conduct of the proceedings and outline the basic principles of CAS mediation, which are the confidentiality and the without prejudice principles. The latter means that all views or admissions made by one of the parties cannot be used as evidence in other subsequent arbitral or judicial proceedings. This is important because the parties feel free to negotiate knowing that they do not put at stake their initial positions if the case does not settle.

- When a case is submitted to CAS arbitration, is it possible that the arbitrator suggests mediation at one point or another? In this case could this arbitrator become the mediator?

When a case is submitted to CAS arbitration, the parties – upon suggestion by the arbitrator or not – may decide to suspend the ongoing

arbitration proceedings and opt for mediation. In this case, the deadlines linked to the arbitration procedure are suspended waiting for the outcome of the mediation. If the mediation results in a settlement agreement, the arbitral proceedings are terminated. If the mediation is unsuccessful, the arbitral proceedings resume automatically.

The arbitrator may not act as a mediator between the parties but, according to Article R42 of the CAS Arbitration Rules, the Panel may at any time seek to resolve the dispute by conciliation. If such settlement occurs within the framework of a CAS arbitral procedure, it will be embodied in a “Consent Arbitral Award”. This is different from the settlement agreement obtained within the framework of a mediation procedure.

- Will there be a list of CAS mediators? Can a CAS arbitrator be also a CAS Mediator?

The list of CAS mediators, currently comprising 66 mediators, exists since 1999 and has to be distinguished from the list of CAS arbitrators. However, it is, in principle, possible to appear in both lists if the arbitrator/mediator in question fulfils the necessary skills according to the CAS rules. The mediators’ list has been updated recently in order to include some renowned mediators from all over the world and to provide a wider choice to the parties. According to Article 13 of the CAS Mediation Rules, in the event of failure to resolve a dispute by mediation, the mediator shall not accept an appointment as an arbitrator in any arbitral proceedings concerning the parties involved in the same dispute, unless both parties agree in writing.

- How can the mediation decisions be enforced in different countries, in particular regarding national public orders?

A mediation procedure does not result in a decision but in a settlement agreement, a contract signed by both parties and the mediator (pursuant to Article 12 of the CAS Mediation Rules). In case of breach of any of the terms of the settlement agreement, the parties may have recourse to CAS expedited procedure for a declaratory award or to ordinary judicial authorities. Furthermore, according to Article 6 of the European Directive on mediation 2008/52, the EU member states should ensure that the content of a written



agreement resulting from mediation be made enforceable if the parties so wish, unless the content of that agreement is contrary to the law or there is no provision on enforceability in the Member State where the enforcement is requested.

- Is mediation possible for all kinds of disciplinary sanctions? If not, for what type of disciplinary sanction is it possible? What are the criteria?

At the current stage, and in accordance with the CAS Mediation Rules, CAS mediation is available for the resolution of contractual disputes. Disciplinary matters, such as doping issues, match-fixing and corruption, are in principle excluded from CAS mediation. However, in certain exceptional cases and following the express agreement of both parties, disputes related to other disciplinary matters may be submitted to CAS mediation. The “Togo case”, in which the Confederation of African Football banned the Togo National Football Team from competing in the next two Africa Cup of Nations Competition, for government interference, is the exception confirming the aforementioned rule: in this disciplinary case, the parties decided to suspend the ongoing arbitral proceedings and had their case successfully mediated by CAS.

- What are the perspectives of mediation in football-related disputes?

Football disputes currently account for some 60% of our mediation caseload (mostly related to termination of contracts of employment and agency contracts). In more than 50% of cases, the parties successfully reach and sign a settlement agreement, which essentially shows that football cases can well be resolved through mediation. Like the FIFA Head of Players’ Status and Governance, Mr *Omar ONGARO*, said in our conference, mediation is a potential alternative means of dispute resolution in certain, specific cases that could possibly reduce the workload of FIFA’s decision-making bodies. For this to happen, though, both the parties and the parties’ lawyers should start building trust in this alternative mode of dispute resolution.