



SPORTS LAW

CHANGES TO THE LAW OF COURT OF ARBITRATION FOR SPORT

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These changes have been made as a result of the President of the Republic's request to review the constitutionality of nos. 1 and 2 of article 8 on appeals against arbitral awards when read with articles 4 and 5, which establish the scope of necessary arbitration.

In Judgment no. 781/2013, the Constitutional Court declared the restrictions on the right of access to the courts and the principle of effective judicial protection to be unconstitutional. The grounds for this judgment were that not all the decisions handed down by the CAS in the context of necessary arbitration would be subject to appeal to the Supremo Administrative Court (SAC), but only those which, having been admitted to appeal to the board of appeal, have clear social and legal relevance.

With the new wording of article 8(1), decisions handed down by panels of arbitrators are now always subject to appeal and it is for the parties to choose between appeal to the state court, that is to the Central Administrative Court (CAC) - resolving the question of the exceptional nature of appeal by way of review to the SAC - or appeal to the CAS board of appeal.

However, if the parties choose the latter, they must simultaneously waive their right of appeal to the state courts against any decision handed down.

There is, however, an exception for decisions handed down by the board of appeal that contradict - as to the same fundamental issues of law, under the same legislation or regulation - judgments handed down either by the CAC or by the SAC. In such cases, appeal is to the SAC itself, as established in article 8(7) as introduced by Law no. 33/2014. Article 8(8), also introduced by the new law, establishes that such appeals are governed, with any necessary adaptation, by the provisions of the Code of Procedure for Administrative Courts (CPAC) on appeals for standardisation of case law.

Under the new wording of article 8(2), appeals to the CAC are governed by the provisions of the CPAC on urgent proceedings. Such appeals do not stay the proceedings and must be decided within 45 days.

These changes have been made as a result of the President of the Republic's request to review the constitutionality.

The existing wording of article 8(3) and (4) is not changed. Accordingly, there is still no appeal against decisions on disputes voluntarily submitted to the CAS but, in all cases, the possibility of appeal to the Constitutional Court is safeguarded.

As already established in the previous wording of article 8(6), the new wording provides that any challenge against arbitral decisions does not prejudice the sporting effects determined by such decisions that have been executed by the competent authorities.

The new wording of article 8(5) establishes that the courts with jurisdiction to hear the appeals and challenges referred to in article 8(1-4) are the Southern CAC for decisions handed down in the context of the necessary arbitration and the Court of Appeal of the place of residence of the person against whom the decision is intended to be enforced, in the case of disputes submitted to voluntary arbitral jurisdiction.

Law no. 33/2014 also makes changes to article 4 of the CAS Law. However, those changes only involve the formulation and organisation of the rule in question and the respective content on necessary arbitration stays practically the same.

Access to the CAS is only possible by way of appeal, on the one hand, against the decisions of the disciplinary bodies and, on the other, against the decisions of the judicial bodies of the sports federations. The latter case only applies when decisions are handed down in an appeal against decisions of a body of the federation other than the disciplinary body.

Furthermore, appeal against the final decisions of the bodies of the professional leagues and other sports bodies may be brought before the CAS.

Access to the CAS is also possible (except in respect of disciplinary proceedings under article 59 of the Law no. 38/2012 of 28 August) whenever the decision of the federation's judicial body or the final decision of the league or other sports body is not handed down within 45 or 75 days, according to whether it is a case of added complexity. The deadline established in the previous wording was 30 days.

The wording of articles 52, 53 and 54 has also been changed. However, their basic content is unaltered and the changes in question have only been made so that the references to article 4 are coherent.

Finally, article 59 now establishes that the appeal to the board of appeal must be lodged within 10 days and must be accompanied by the respective allegation and the express declaration of both parties that they waive the right to appeal against any decision that is handed down. This latter requirement was introduced by Law no. 33/2014 following the establishment of the possibility to choose between an appeal to the state court, that is to the CAC, or an appeal to the board of appeal when, in this case the decision will, as a rule, be unappealable.

In reference to the transitional rule, article 3(3) of the law that creates the CAS extends the period that the exclusive or prior jurisdiction given to the arbitral committees created under collective employment agreements (e.g. the joint Arbitral Committee of the Portuguese Professional Football League and the Union of Professional Football Players) is in force for one more year. Accordingly, the respective arbitral jurisdiction passes to the CAS as from 31 July 2016.

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Iberian Law Firm of the Year
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Financial Times – Innovative Lawyers Awards, 2011-2013