

Top EU judges to review role of sport's special arbitration court

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The powers of the Swiss-based Court of Arbitration for Sport to decide matters of EU law — such as antitrust provisions — will come before the EU's top judges in a new fight over regulating sport. Football club RFC Seraing is challenging Fifa's ban on financial investors owning players, and a Belgian court has sent the dispute to the EU's Court of Justice, seeking guidance on the value of a separate ruling from Switzerland's specialized court for sport.

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The proceedings are the latest to land at the EU's top court, which is already reviewing four other cases about whether sports bodies, such as Uefa and Fifa, should have special status in regulating their sports, meaning they could escape antitrust enforcement, for example.

The new case looks beyond Fifa, however, and focuses on the CAS, which is a private court handling disputes involving sports governing bodies. Based in Switzerland, it is outside the jurisdiction of the EU. In the past, this has led to questions over whether the rights of EU athletes and clubs can be safeguarded by a court outside of the bloc.

The Belgian litigation stems from a case brought by Malta-based Doyen Sports and Belgian club RFC Seraing, who argued that a worldwide ban on companies other than football clubs "owning" players — introduced by global governing body Fifa in May 2015 — restricted competition in the player-transfer market and breached EU free-movement rules, among other grounds ([here](#)).

Fifa defended the ban as necessary to protect players and the independence of clubs, as well as to avoid conflicts of interest. While the heart of the dispute is about applying EU competition rules, Belgian judges also considered what weight to give to a separate strand of the litigation before the CAS.

RFC Seraing was subject to disciplinary proceedings by Fifa for breaking the ownership rules, leading to a sanction that was upheld in the CAS. The Swiss court also ruled that a total ban on third-party ownership wouldn't breach EU law — and this was upheld on appeal to the Swiss Federal Court.

The Brussels Court of Appeal, reviewing the main dispute between RFC Seraing and Fifa, ruled that the EU law questions had been decided by the CAS, meaning RFC Seraing couldn't argue the opposite in the Belgian courts in its pursuit of damages.

On further appeal, Belgium's highest court, the Court de cassation, sent the case to the EU courts, questioning whether the ruling of the Swiss-based CAS could have such force inside its own judicial system.

Jean-Louis Dupont and Martin Hissel, lawyers for the Belgian club, said the "CAS takes great care to protect the strategic interests of its main client (Fifa), even when the latter violates EU law." It was "naive" to think the CAS was "independent," they said.

"This mechanism of private justice controlled by the main international federations, including Fifa and Uefa, therefore guarantees them, in total disregard of the European legal order, full effectiveness of their power to impose disciplinary sanctions, enabling these federations to abuse their monopolistic position by nipping in the bud any challenge to their decisions."

The CAS is the ultimate court for all sporting disputes, therefore, the new case in the EU courts could have a broader impact than just the Fifa case of player ownership rules.

RFC Seraing's lawyers argue this judicial architecture "removes the entirety of this important sector from an effective review of the legality of such decisions in the light of EU law."

"If the Court of Justice confirms that such CAS awards have no 'res judicata' effect in relation to rights guaranteed by EU law, particularly as they are the result of forced arbitration, RFC Seraing will not fail to claim full compensation from the Belgian courts for the harm it has suffered in this case, particularly as a result of disciplinary sanctions that were as disproportionate as they were unjustified," the Belgian club's lawyers said.

The Belgian court has sent two questions to EU judges, seeking answers on how to view the determinations of a tribunal outside of the bloc whose decisions can't be checked for their conformity with EU law.

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