



SELADORE  
LEGAL

## Case Note

### *RFC Seraing v FIFA*

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## The CJEU opens the door for national courts to review CAS decisions, but what is the relevance for clubs and players?

The judgment of the Court of Justice of the European Union (CJEU) in *Royal Football Club Seraing SA v Fédération Internationale de Football Association (FIFA)* (Case C-600/23), delivered on 1 August 2025, marks a pivotal moment in the relationship between sports arbitration and the fundamental principles of EU law. This landmark ruling clarifies that arbitral awards made by the Court of Arbitration for Sport (**CAS**) are subject to review by EU Member State courts.

The decision arguably increases the options available to both clubs and players to challenge arbitral decisions. However, we consider that it will most likely be players who may benefit, with the judgment opening a new avenue for review that particular arrangements infringe EU laws.

### Background to the dispute

The case originated from a dispute concerning FIFA's ban on third-party influence and ownership of football players' economic rights set out in Articles 18bis and 18ter of FIFA's Regulations on the Status and Transfer of Players (**RSTP**) (**TPO ban**).

While the TPO ban itself was a significant point of contention, the recent judgment ultimately focused not on the legality of the TPO ban, but on the reviewability of the CAS award that upheld it, specifically regarding its res judicata effect in national courts.

The underlying dispute that led to the CJEU's decision has a lengthy procedural history. In 2015, Belgian football club Royal Football Club Seraing SA (**RFC Seraing**) entered into two contracts with an investment fund, Doyen Sports Investment Ltd (**Doyen**), which provided funding for RFC Seraing in exchange for Doyen acquiring a percentage of the economic rights over certain RFC Seraing players. FIFA commenced disciplinary proceedings against RFC Seraing alleging that this arrangement infringed the TPO ban.

The FIFA Disciplinary Committee found that RFC Seraing had breached the TPO ban by entering into the contracts.

After the FIFA Appeal Committee dismissed RFC Seraing's appeal, the club lodged an appeal with CAS, arguing that the TPO ban infringed EU law (specifically, the free movement of workers, freedom to provide services, and free movement of capital). In March 2017, CAS issued an award upholding the decision of the FIFA Appeal Committee. CAS found that the TPO ban was justified by legitimate sporting objectives and was proportionate.

In May 2017 RFC Seraing appealed the CAS award to the Swiss Federal Tribunal, again raising arguments based on EU law and Swiss competition rules. Under FIFA Statutes and the CAS Code, CAS awards are generally considered final and binding, with appeals limited to the Swiss Federal Tribunal on very narrow grounds. The Swiss Federal Tribunal dismissed the action in February 2018.

In parallel, RFC Seraing also intervened in separate proceedings brought by Doyen against FIFA in July 2015 (i.e., prior to FIFA's disciplinary findings) in the Brussels Commercial Courts which argued that the TPO ban was incompatible with EU law. After the Brussels Commercial Courts dismissed the claims in 2016, RFC Seraing appealed to the Court of Appeal. In 2019, the Court of Appeal held that the CAS award had *res judicata* effect against RFC Seraing.

RFC Seraing appealed this to the Belgian Court of Cassation, arguing that the Belgian Court of Appeal had erred by granting *res judicata* and probative value to a CAS award whose conformity with EU law had not been effectively reviewed by a court capable of making a preliminary reference to the CJEU.

The Belgian Court of Cassation found that the appeal raised two questions of interpretation of EU law that was necessary to refer to the CJEU. The key question referred to the CJEU was whether the application of national law can recognise an arbitral award as *res judicata* when the award has been reviewed for conformity with EU law by the court of a state that is not an EU member (and is not permitted to refer a question to the CJEU for a preliminary ruling).

## The CJEU's decision

The CJEU drew a distinction between compulsory or 'forced' arbitration and voluntary arbitration. It noted that the sports arbitration mechanisms (such as CAS) are unilaterally imposed by sports associations with regulatory and oversight powers on persons who are subject to the exercise of those powers in pursuit of the sport. In short, clubs and players have no choice but agree to arbitration.

This compulsory nature of sports arbitration requires effective judicial review of arbitral awards affecting individuals' fundamental rights, in particular to ensure consistency with EU public policy. It requires effective judicial review of an award's consistency with EU public policy (which includes freedom of movement of workers, freedom to provide services, free movement of capital and competition law issues), including review of the award's legal interpretation and the legal characterisation of the established facts. The EU Member State court must offer effective remedies such as damages and interim relief.

A central tenet of the ruling is the importance of the preliminary reference procedure under Article 267 TFEU and prior review being by a Member State court or tribunal that is able to make such a reference for effective judicial protection to be guaranteed. The Swiss Federal Tribunal, which is the only court capable of reviewing CAS awards, is not a court of an EU Member State and therefore cannot make preliminary references to the CJEU.

The CJEU found that EU Member State courts and tribunals need not necessarily offer direct review, and indirect review when an award is invoked before a national court (for e.g., in injunction or follow-on damages proceedings) suffices. However, if national laws hinder the full effectiveness of EU law (specifically Article 19(1) of the Treaty on European Union and Article 47 of the Charter), national courts must disapply those national laws on their own initiative if they cannot interpret them in a way that aligns with EU law.

## Implications of the decision

The CJEU's decision makes it clear that arbitral awards arising from compulsory arbitration processes are amenable to judicial review by the courts and tribunals of EU Member States. In addition, where the dispute engages an element of EU law, the national courts and tribunals are obliged to consider whether the award is consistent with EU public policy in order to provide an 'effective' judicial review. This includes the ability to seek interim relief.

This ruling represents a significant shift, fundamentally altering the landscape for clubs, players, and indeed any entity subject to mandatory arbitration clauses imposed by powerful regulatory bodies. No longer can such arbitral awards, particularly those touching upon fundamental EU law principles like free movement or competition, be considered immune from scrutiny by national courts capable of engaging with the CJEU.

The CJEU's decision comes not long after the European Court of Human Rights (**ECtHR**) decision in *Semenya v Switzerland* in July this year, which found that Switzerland had violated Article 6 of the European Convention on Human Rights as the Swiss Federal Tribunal failed to conduct a 'particularly rigorous' examination of Semenya's challenge to a CAS award (which the ECtHR found was required given the specific and compulsory nature of CAS arbitration). Taken together, these judgments show the likelihood of increased judicial scrutiny of CAS awards both in Switzerland and in EU Member States (on EU public policy grounds).

It will be interesting to see whether this potential new opportunity will be taken forward by players who find themselves locked into contracts with clubs and who may be able to allege their freedom of movement has been restricted by their club, FIFA or both. On the other hand, clubs may not find this new review pathway as helpful, noting the difficulty in attempting to connect disciplinary or contractual disputes to issues of EU law.

Post-Brexit, *Seraing* does not bind English courts and review of sports awards in England & Wales remains under the Arbitration Act 1996, with section 69 appeals on points of law routinely excluded by most sports associations (including the English Premier League) and in any case requiring a high threshold to be met. In addition, unlike the CJEU and ECtHR, recent English cases have considered sports arbitration to be a voluntary choice (see for example, *Newcastle United Football Co Ltd v Football Association Premier League Ltd* [2021] EWHC349 (Comm) and *Manchester City Football Club Limited v The Football Association Premier League Limited* [2021] EWHC 628 (Comm)). However, it remains to be seen if this shift in the CJEU and ECtHR's position may encourage challenges to the status quo in England in cases engaging fundamental rights or competition/free movement issues.

Another potential development to look out for is whether FIFA opts to make changes to the mandatory CAS jurisdiction. If clubs and players were allowed to choose between CAS or a state court within the EU, the "forced" nature of CAS arbitration would be removed, theoretically allowing the CAS award to be treated as *res judicata* within the EU.