

FIFA V. U.S. Supreme Court: The Need of Changes in FIFA's Behavior toward Local Courts.

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Abstract: FIFA adopted a law that prohibited the use of courts of law to solve any dispute related to the soccer. Local federations and FIFA judicial committees have the jurisdiction over such disputes, and any appeal should be submitted exclusively to the Court of Arbitration for Sport (CAS). Failure to obey this rule will cause sanctions from FIFA against violators and their local federations. This paper will discuss the potential outcomes of current lawsuit brought to U.S Courts that potentially will violate FIFA's regulations. In this paper I will study the rules of FIFA and how FIFA handled similar situations in past.

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Keyword: FIFA, Court of Arbitration for Sports (CAS), US Supreme Court, FIFA's Regulations, Conflict of Laws.

1.Introduction:

FIFA (the *Fédération Internationale de Football Association*) is the international governing body for the sport of soccer; FIFA has also the power to oversee the action of local federations. As a part of the FIFA Statutes,¹ FIFA adopted a law that prohibited the use of courts of law to solve any dispute related to the soccer.² Local federations and FIFA judicial committees have the jurisdiction over such disputes, and any appeal should be submitted exclusively to the Court of Arbitration for Sport (CAS).³ Failure to obey this rule will cause sanctions from FIFA against violators and their local federations, FIFA sanctions for violations vary from warning to the expulsion from the game of soccer internationally.⁴

Article 57 of the FIFA Statutes states the Disciplinary Committee, the Appeal Committee, and the Ethics Committee as the judicial bodies of FIFA. The FIFA's Disciplinary Committee and the Ethics Committee are the primary judicial committees.⁵ In Article 62 FIFA Statutes also recognizes the Court of Arbitration for Sport (CAS)⁶ as an independent appeal court to resolve disputes between FIFA, Members, Confederations, Leagues, clubs, Players, Officials and licensed match agents and players' agents. Decisions passed by the judicial bodies of FIFA may be taken for appeal only before the Court of Arbitration for Sport (CAS),⁷ and decisions passed by the Disciplinary and Appeal Committees may be appealed against before the Court of Arbitration for Sport.⁸

The Problem:

Articles number 57 and 62 of FIFA's Regulations prohibits taking legal action against FIFA or local soccer authorities, league, players, agents, etc.... to the local courts of law, parties can only use FIFA committees or CAS and if parties did not follow

these article FIFA can impose sanctions against violators and their local federations.

For example in the summer 2011 FC Sion (a Swiss soccer team) was banned by FIFA and the Swiss federation from registering new players, however, the Swiss club proceeded to sign six players but FC Sion could not register the new players.⁹ Those six players took their case to a civil court in the Canton of Valais, which ruled they could play, and FC Sion subsequently fielded them in the Swiss league. FC Sion then fielded five of the six players during the Europa League match (continental league organized by the European football federation UEFA).¹⁰

As a result FC Sion was kicked out of the UEFA competition as a result, but had not been punished by their national FA. FIFA had threatened to suspend the Swiss Football Association if there was no action against FC Sion.¹¹ This meant that all national teams and clubs under the jurisdiction of the Swiss Football Association would not be allowed to participate in any FIFA and the European Football Federation competition. To escape from FIFA's sanctions the Swiss federation docked FC Sion three points for each of the 12 league and cup matches in which one or more of the six ineligible players appeared.¹²

Another incident occurred in May 2012 when the Scottish Football Association (SFA) has been threatened by FIFA to be paned from international football if one of the Scottish team continues with their case against the SFA in the courts.¹³

Current Cases reviewed in US Courts:

First, three U.S youth teams sues Major League Soccer Players Union (MLSPU) and three U.S national teams players (Clint Dempsey, Michael Bradley, De Andre Yedlin) over training and solidarity fees. The U.S. Soccer Federation prohibit U.S. youth teams from collecting such fees and have instructed

domestic leagues including Major League Soccer (MLS) and North American Soccer League (NASL) to follow its guidelines, not the ones mandated by FIFA regulations.¹⁴

Second, the North American Soccer League (U.S. second tier league) Claims that Major League of Soccer (U.S. first tier league) and the US Soccer Federation have violated U.S. Antitrust Law when the US Soccer Federation changes the rule.¹⁵ NASL has accused US Soccer and MLS of conspiring to assure that MLS have no competitors for top flight football in the United States, a violation of American antitrust law.¹⁶ Among the proposed changes to US Soccer's requirements for a league to qualify as Division I are increasing the minimum number of clubs from 12 to 16, and requiring all 16 clubs to play in stadia with a capacity of 15,000 or more.¹⁷

In this paper I will study the rules of FIFA and how U.S. Courts decided comparable claims previously, for example: (*Los Angeles Memorial Coliseum Commission v. NFL*, 726 F. 2d 1381), (*Charles O. Finley & Co., Inc. v. Kuhn*, 569 F. 2d 527), (*American Needle, Inc. v. National Football League*, 130 S. Ct. 2201), (*US Football League v. National Football League*, 644 F. Supp. 1040). This paper will conclude with a proposal to resolve this issue.

Can an American court decide soccer related disputes?

According to the FIFA Statutes only CAS and FIFA committees have the jurisdiction over soccer related disputes, and to support this argument, courts in the US also recognized that the legal relation between members of professional sports leagues are constitute by contract law and the law of private associations and courts allows professional leagues to establish their own system of self governance.¹⁸ As a result members of the US soccer community should submit their disputes to FIFA, CAS, or to the US Federation.

On the other hand, US courts ruled in number of cases that courts will intervene if the decisions made by the leagues or the associations were following an arbitrary or capricious process or is tainted by bad faith. Also if there is a violation of a federal, like antitrust law, or a state law. The case line of (*Los Angeles Memorial Coliseum Commission v. NFL*, 726 F. 2d 1381), (*Charles O. Finley & Co., Inc. v. Kuhn*, 569 F. 2d 527), (*American Needle, Inc. v. National Football League*, 130 S. Ct. 2201), (*US Football League v. National Football League*, 644 F. Supp. 1040) gives states and federal courts jurisdiction over such disputes.

In the first case, the class action brought by the youth teams against MLSPU and three U.S. National Team players. The plaintiff argument is MLSPU did

not follow FIFA's regulation that allows youth teams to receive training compensation; therefore the MLSPU violates FIFA's regulations.¹⁹ The U.S. Soccer Federation disallows U.S. youth teams from collecting such fees and have instructed domestic leagues including MLS and NASL to follow its guidelines, not the ones mandated by FIFA regulations. The reason of prohibiting academies and youth teams from collecting fees is collecting such fees will violate antitrust laws in US.²⁰ Issues of U.S. antitrust law can only resolved in U.S. court.²¹

In the second case The North American Soccer League (U.S. second tier league) Claims that Major League of Soccer (U.S. first tier league) and the US Soccer Federation have violated U.S. Antitrust Law. MLS control the market in major cities and have multiple TV coverage contracts, NASL challenged that the MLS is monopolizing the market and the TV coverage contract. This is affecting the growing of the rival leagues.²² NASL argument is that MLS and US Soccer Federation violated antitrust law because US Soccer Federation decision to sudden changes in minimum number of teams and the minimum number of stadia was arbitrary and in bad faith.²³

US Federal Courts have decided comparable issue, antitrust in sport, previously.²⁴ US courts ruled in number of cases that courts will intervene if the decisions made by the leagues or the associations were following an arbitrary or capricious process or is tainted by bad faith. Also if there is a violation of a federal law, like antitrust law, or a state law.

Proposed Solution

The proposed solution is that FIFA must change its Statutes by adding a new clause that allow federations, teams, players, agents, etc... to use the local court system if the dispute results by a violation of the local laws (state law, federal law, or the country law). As a result of the new clause other disputes (not as a result of violating local law) will still be review by FIFA and local federations, but violation of local laws will be seen by courts of law.

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2. Article 57 and 62 FIFA's Regulation.
3. *Id.*
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