



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF ALI RIZA v. SWITZERLAND

(Application no. 74989/11)

JUDGMENT

Art 6 (civil) • Access to a court • Inadmissibility decision of Court of Arbitration for Sport (CAS), sitting in Lausanne, upheld by Federal Supreme Court, on grounds of lack of jurisdiction to rule on merits of dispute between a professional football player and his former Turkish club • Art 6 § 1 applicable to economic rights resulting from a contractual relationship between private individuals. • Decisions neither arbitrary nor unreasonable • Extremely tenuous link between the dispute and Switzerland • Specificity of proceedings before the CAS and Federal Supreme Court • Proportionality

Prepared by the Registry. Does not bind the Court.

STRASBOURG

13 July 2021

FINAL

22/11/2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Ali Riza v. Switzerland,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Paul Lemmens, *President*,

Dmitry Dedov,

Carlo Ranzoni,

Georges Ravarani,

María Elósegui,

Darian Pavli,

Anja Seibert-Fohr, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 74989/11) against the Swiss Confederation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a British and Turkish national, Mr Ömer Kerim Ali Rıza (“the applicant”), on 11 November 2011;

the decision to give notice to the Swiss Government (“the Government”) of the complaints concerning the right of access to a court, the right to a public hearing and the principle of equality of arms, and to declare inadmissible the remainder of the application;

the parties’ observations;

the decision of the British and Turkish Governments not to avail themselves of their right to intervene in the proceedings (Article 36 § 1 of the Convention),

the decision of the President of the Chamber on 22 January 2021 to appoint Carlo Ranzoni to sit as an *ad hoc* judge, in the absence of a judge elected in respect of Switzerland (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court).

Having deliberated in private on 8 June 2021,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The application concerns a dispute between the applicant, a professional football player, and Trabzonspor, the Turkish club for which he formerly played. He alleges, *inter alia*, that he did not have access to a court within the meaning of Article 6 § 1 of the Convention, following a decision by the Court of Arbitration for Sport (CAS), sitting in Lausanne, finding his case inadmissible on the grounds that it did not have jurisdiction to rule on the dispute, a decision that was upheld by the Swiss Federal Supreme Court.

THE FACTS

2. The applicant was born in 1979 and lives in Broxbourne. He was represented by Mr L. Valloni, a lawyer practising in Zurich.

3. The Government were represented by their Agent, Mr A. Chablais, of the Federal Office of Justice.

I. BACKGROUND TO THE CASE

4. The applicant is a British national. In view of family's Turkish origins, he was also granted Turkish nationality on 17 August 2004.

5. At the time of the events giving rise to the present application, the applicant was a professional football player.

6. In January 2006 the applicant signed an undated fixed-term employment contract, effective from 17 January 2006 to 30 June 2008, with Trabzonspor Kulübü Derneği ("the Club"), a professional football club in the Turkish league and a member of the Turkish Football Federation (TFF, *Türkiye Futbol Federasyonu*); in turn, the TFF is affiliated with Fédération Internationale de Football Association ("FIFA"). The contract was drawn up in English and specified, among other points, the amount of the applicant's salary and an arbitration clause in favour of FIFA.

7. On 4 January 2008 the applicant left the Club and returned to the United Kingdom. He informed the Club that he would no longer play for it, claiming that the Club had failed to honour its contractual obligations.

8. By decisions of 8 and 14 January 2008, the Club's board of directors ordered the applicant to pay a fine for leaving the Club without notice, missing training sessions without permission and failing to return to the Club. The applicant was notified of those decisions on 14 and 15 January 2008 respectively, through a notary.

9. On 18 January 2008¹ the applicant brought the dispute before the FIFA Dispute Resolution Chamber. He alleged that the Club had repeatedly defaulted on its payment obligations under the contract, and that certain salary payments had been made with delays of more than four months.

10. In a letter dated 19 February 2008, FIFA informed the applicant that it could not intervene in disputes between two parties of the same nationality. It therefore advised him to submit the dispute to the decision-making bodies of the relevant FIFA association member, in this case the TFF.

11. On 8 April 2008 the applicant sent the Club and the TFF a written notice of termination of the contract entered into with the Club; he argued that this was within his rights, since his salary for the month of March had not been paid. The notice also stipulated that the applicant would no longer play for the Club in future.

¹ According to the Court of Arbitration for Sport, the correct date is 11 January 2018.

II. PROCEEDINGS BEFORE THE TURKISH FOOTBALL FEDERATION (TFF)

12. On 16 May 2008 the Club lodged an application brought its dispute with the applicant before the TFF's Dispute Resolution Committee (*Türkiye Futbol Federasyonu Uyuşmazlık Çözüm Kurulu*), seeking a transfer ban, damages for wrongful termination of the contract and payment of the fine imposed on the applicant by its board of directors.

13. On 2 December 2008 the Dispute Resolution Committee ruled in favour of the Club and ordered the applicant to pay compensation for the wrongful termination of the contract, and a fine. It also suspended his ability to sign with another club for four months.

14. On 22 January 2009 the applicant lodged an objection with the TFF Arbitration Committee against the Dispute Resolution Committee's decision of 2 December 2008.

15. By a decision of 16 April 2009, the TFF Arbitration Committee upheld the Dispute Resolution Committee's decision, finding that the contract had been wrongly terminated. However, it reduced the amount that the applicant had to pay and set aside the sporting sanction imposed on him.

16. The applicant was notified of the Arbitration Committee's decision on 21 October 2009. The law in force at the material time provided that the Arbitration Committee's decisions were final and enforceable and were not subject to review by the ordinary courts (see paragraph 52 below).

III. PROCEEDINGS AGAINST TURKEY BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS

17. On 20 April 2010 the applicant lodged an application with the Court against Turkey, alleging a violation of Article 6 § 1 of the Convention on account, *inter alia*, of the TFF Arbitration Committee's lack of independence and impartiality. His application was joined by the Court to those of four other Turkish nationals.

18. In its judgment of 28 January 2020 (*Ali Rıza and Others v. Turkey*, nos. 30226/10 and 4 others, 28 January 2020), the Court noted, first, that at the material time the Arbitration Committee had exclusive and compulsory jurisdiction over the applicant's dispute. Moreover, that body's decisions were final and binding, and therefore not amenable to judicial review. Thus, the arbitration was compulsory (§ 176) and, in consequence, the safeguards of Article 6 § 1 of the Convention ought to have been afforded by the Arbitration Committee (§§ 180-181).

19. On the merits, the Court found that there had been a violation of Article 6 § 1 of the Convention in relation to the applicant. It considered that the constitution of the TFF Arbitration Committee did not in fact meet the conditions for independence and impartiality. This was in large part due to

the fact that the TFF Regulations did not provide adequate safeguards protecting the members of the Arbitration Committee from outside pressures. In addition, the Board of Directors, the TFF's executive body, was made up of members or managers of football clubs and had excessive influence over the organisation and running of the Arbitration Committee (§ 222).

20. On that basis, the Court indicated that, under Article 46 of the Convention, measures were to be taken to ensure the structural independence of the Arbitration Committee (§ 242).

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT AND THE FEDERAL SUPREME COURT

21. In the meantime, the applicant had applied on 11 November 2009 to the Court of Arbitration for Sport ("the CAS") against the TFF Arbitration Committee's decision of 16 April 2009.

22. On 12 March 2010 the CAS informed the parties, namely the applicant on the one side, and the Club and the TFF on the other, that it intended to rule on the preliminary question of its own jurisdiction. It asked the parties if they would like a hearing to be held on this question, in the absence of which it would base its decision solely on their written observations.

23. On 17 March 2010 the applicant replied in the affirmative, whilst the two opposing parties stated that they both considered a hearing on the preliminary question of jurisdiction to be unnecessary.

24. On 18 March 2010 the CAS gave the parties an opportunity to submit written observations regarding its jurisdiction, followed by a second round of written pleadings on 23 March 2010.

25. On 10 June 2010 the CAS declared the case inadmissible for lack of jurisdiction, without holding a hearing.

26. In its 22-page decision, the CAS considered, under section 176 of the Swiss Federal Act on Private International Law (*la Loi fédérale sur le droit international privé*, "PILA", see paragraph 47 below), that the dispute in question fell under Chapter 12 of that Act, entitled "International Arbitration", given that neither party was domiciled or habitually resident in Switzerland when the contract was concluded, and that the CAS headquarters are in Switzerland.

27. The CAS then applied section 186 PILA (see paragraph 47 below), allowing it to rule on its own jurisdiction. It pointed out that Article R47 of the CAS Code of Sports-related Arbitration ("the Code"; see paragraph 48 below) established that its jurisdiction could derive either from a contract containing an arbitration clause, a subsequent arbitration convention, or even from a sporting organisation's statutes or regulations providing for the appeal to the CAS. However, the CAS found that nothing in the contract between the applicant and the Club established its jurisdiction and noted that the parties had not signed a subsequent arbitration convention.

28. The CAS then found that neither the FIFA statutes nor the 2008 FIFA Regulations on the Status and Transfer of Players provided a basis for its jurisdiction. With regard to the Regulation on the TFF Arbitration Committee, Article 14 provided that any opposition to the Arbitration Committee's decisions on disputes arising in particular from sporting contracts could be submitted to the CAS, in so far as those disputes contained an international element (see paragraph 53 below). The CAS found that the international element in question referred to the dispute itself and not to the contract. In this regard, the CAS found that the dispute had nothing to do with the applicant's wish to be transferred from Trabzonspor to a non-Turkish club and that no foreign club was involved in the dispute itself. The dispute related to salary arrears and arose from a contract between a Turkish club and the applicant, who was, among other things, a Turkish national.

As to whether the applicant could be considered a foreigner in Turkey, the CAS referred to several documents and took account of various aspects of the player's history. It noted, in particular, that he had arrived in Turkey in 2003 at the age of 23, and was registered there as a Turkish player. The CAS considered that, with regard to the dispute, his closest ties were with Turkey, and his dual nationality was insufficient grounds to justify ascribing an international element to the dispute within the meaning of Article 14 of the Regulations on the TFF Arbitration Committee.

Lastly, the CAS pointed out that FIFA had already found that there was no international element to the dispute and had accordingly refused to become involved (see paragraph 10 above), and that the applicant had not challenged that decision.

29. In conclusion, the CAS found that there was no international element to the dispute and, accordingly, that Article 14 of the TFF Arbitration Committee Regulations did not apply to the case (see paragraph 53 below). It followed that the conditions of Article R47 of the Code had not been fulfilled, and, according to the CAS, there was no basis for its jurisdiction (see paragraph 48 below).

30. On 9 July 2010 the applicant lodged a civil-law appeal with the Swiss Federal Supreme Court against the CAS's inadmissibility decision of 10 June 2010.

31. Procedurally, the applicant asked first, as a preliminary measure, that the Federal Supreme Court grant suspensive effect to his appeal. Secondly, the applicant asked it to grant the Club and the TFF a single non-extendable time-limit for submitting comments. Thirdly, he expressed his wish for a public hearing before the Federal Supreme Court.

32. On the merits, the applicant requested that the inadmissibility decision of 10 June 2010 be quashed on the basis of section 190 (2)(b) and (d) PILA (see paragraph 47 below), asked for the CAS's jurisdiction to be recognised and, were this granted, that his case be sent back to the CAS.

33. In this connection, the applicant alleged, for the first time, that there had been a violation of Article 29a (guarantee of access to the courts) and Article 30 (guarantee of judicial proceedings) of the Swiss Constitution (see paragraph 44 below), and of Article 13 of the Convention. In his view, the CAS had erred in holding that it did not have jurisdiction, since the international element in the dispute was clear from the contract, the legal bases for the dispute, the dispute itself and his personal situation. As a result of the CAS decision, it had proved impossible for the dispute to be examined by an impartial and independent court, since the Turkish authorities did not fulfil these criteria and the Arbitration Committee's decisions were final and binding. On this basis, he requested that the CAS award be overturned, in accordance with section 190 (2)(b) PILA (see paragraph 47 below).

Secondly, the applicant claimed in his appeal that the CAS had not fulfilled its obligation to give reasons for its decision.

Thirdly, the applicant alleged that there had been a breach of his right to be heard, in that no hearing had been held before the CAS, although he had responded in the affirmative when asked for his view on that matter (see paragraph 23 above). In his view, a hearing would have given the CAS a more precise understanding of the factual situation, and especially of the fact that the applicant considered himself to be a foreigner in Turkey. He alleged a violation of Article 29 § 1 of the Constitution and Article 6 of the Convention, thus basing his request for the decision to be quashed on section 190 (2)(d) PILA.

34. The Club and the TFF were notified of the appeal on 14 July 2010.

35. The Federal Supreme Court ruled first on the question of suspensive effect, which it granted in a decision on 30 September 2010.

36. The defending parties then applied for a security for costs order. The Federal Supreme Court granted this application on 11 November 2010 and fixed the amount of security at 10,000 Swiss francs (CHF), after having given the parties an opportunity to submit comments on this point.

37. In a decision dated 2 December 2010, the Federal Supreme Court then gave the Club and the TFF until 18 January 2011 to submit their observations on the appeal (noting that the period of 18 December to 2 January inclusive was not included, this being the court recess).

38. On 20 January 2011 the applicant received the observations submitted by the Club and the TFF on his appeal and was informed that he had until 7 February 2011 to comment on them.

39. In a judgment of 19 April 2011, notified to the applicant on 13 May 2011, the Federal Supreme Court dismissed the applicant's appeal.

40. It began by dismissing the applicant's request for a public hearing. The Federal Supreme Court found that it was not appropriate to hold a public hearing on the basis of section 57 of the Federal Supreme Court Act ("the FSCA") (see paragraph 45 below). It added that a public hearing could exceptionally be required by a law that is higher than domestic law. However,

this obligation did not apply in appeal proceedings against an arbitral award, governed by section 77 FSCA (see paragraph 45 below).

41. The Federal Supreme Court pointed out that only the grounds listed exhaustively in section 190(2) PILA could be relied upon in support of an appeal against an international arbitration award. It noted that the provisions of the Constitution and the Convention were not, in principle, grounds for appeal, but that they could be mentioned in support of the grounds listed in section 190(2) PILA. However, section 77(3) FSCA set out a specific requirement that reasons were to be given for these complaints. In consequence, the Federal Supreme Court examined only complaints that had been raised and sufficiently substantiated in the notice of appeal. In the present case, however, the applicant had not satisfied that requirement when he relied in his appeal on Article 29a of the Constitution and Articles 6 and 13 of the Convention in relation to the CAS's jurisdiction and the violation of his right to be heard. Thus, the Federal Supreme Court did not explore these complaints.

42. Moreover, the Federal Supreme Court upheld the CAS's decision to the effect that there was no international element to the dispute and that it did not therefore fulfil the conditions of Article 14 of the Regulations on the TFF Arbitration Committee. Thus, there were no grounds for the CAS's jurisdiction (see point 4 et seq. of the judgment).

43. Lastly, the Federal Supreme Court pointed out that, according to its case-law, section 190(2)(d) PILA did not confer a right either to particular reasoning in an arbitral award, or a hearing before an arbitration court (see point 5).

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT SWISS LAW

44. The relevant provisions of the Federal Constitution (Recueil systématique ("RS") - Compendium of Federal Law, 101) read as follows:

Article 29 General procedural guarantees

"Every person has the right to equal and fair treatment in judicial and administrative proceedings and to have their case decided within a reasonable time.

..."

Article 29a Guarantee of access to the courts

"In a legal dispute, every person has the right to have their case determined by a judicial authority. The Confederation and the Cantons may by law preclude the determination by the courts of certain exception categories of case."

Article 30 Judicial proceedings

“Any person whose case falls to be judicially decided has the right to have their case heard by a legally constituted, competent, independent and impartial court. Ad hoc courts are prohibited.

...”

45. The relevant provisions of the Federal Supreme Court Act of 17 June 2005 (the “FSCA”, RS 173.110) read as follows:

Section 47 Extensions

“Time periods set by the law may be extended.

The periods set by the judge may be extended on sufficient grounds if the request is made before their expiration.”

Section 57 Hearings

“The President of the Court may order hearings.”

Section 58 Deliberation

“The Federal Supreme Court deliberates at a hearing:

- a. if the President of the Court so orders or if a judge so requests;
- b. if there is no unanimity.

In other cases, the Federal Supreme Court issues its decisions by means of circulation.”

Section 59 Publicity

“Any oral proceedings, deliberations and votes at a hearing shall take place at a public sitting.”

The Federal Supreme Court may order the hearing to be held totally or partially in camera in the event of a threat to safety, public order or morals, or if the interest of an implicated person so requires.

The Federal Supreme Court shall make available to the public, for a period of 30 days from the date of notification, the operative part of any judgment which has not been delivered at a public sitting.”

Section 61 Authority of *res judicata*

“The Federal Supreme Court’s judgments shall acquire the authority of *res judicata* on the day of their delivery.”

Section 77 International arbitration

“A civil-law appeal shall be admissible against decisions of arbitral tribunals:

- a. for international arbitration, under the conditions provided for in sections 190 to 192 of the Federal Law of 18 December 1987 on Private International Law;

b. for domestic arbitration, under the conditions provided for in sections 389 to 395 of the Swiss Code of Civil Procedure of 19 December 2008

In the said cases, the following provisions are inapplicable: section 48 (3), sections 90 to 98, 103 (2), 105 (2) and 106 (1), together with section 107 (2) in so far as the latter provision enables the Federal Supreme Court to rule on the merits of the case.

The Federal Supreme Court shall examine only those complaints which have been relied upon and substantiated by the appellant.”

Section 100 Appeal against a decision

“An appeal against a decision must be lodged with the Federal Supreme Court within 30 days of notification of the full [judgment].

...”

Section 102 Exchange of submissions

“If necessary, the Federal Supreme Court shall communicate the appeal to the previous court as well as to any other interested parties or participants in the proceedings, or to the authorities who have standing to appeal; in doing so, they will grant them a time period to submit observations.

...”

46. Article 312 of the Swiss Code of Civil Procedure (“the CPC”, RS 272) reads as follows:

Article 312

“The appellate court serves the appeal on the opposing party for its written comments, unless the appeal is obviously inadmissible or obviously unfounded.

A response to the appeal must be filed within 30 days.”

47. The relevant dispositions of the Swiss Federal Act of 18 December 1987 on Private International Law (the “PILA”, RS 291) read as follows:

Section 23

“If a person has one or more foreign citizenships in addition to Swiss citizenship, jurisdiction based on citizenship is determined by reference to Swiss citizenship only.

If a person has more than one citizenship, the citizenship of the state with which such person is most closely connected is exclusively relevant in determining the applicable law, unless this Act provides otherwise.

If recognition of foreign decision in Switzerland depends on a person’s citizenship, it is sufficient to take into consideration one of such person’s citizenships.”

Section 176

“The provisions of this chapter shall apply to arbitrations if the seat of the arbitral tribunal is in Switzerland and if at least one of the parties at the time when the arbitration agreement was concluded was neither domiciled nor habitually resident in Switzerland.

...”

Section 186

“The arbitral tribunal shall decide on its own jurisdiction.

...

The arbitral tribunal shall, in general, decide on its jurisdiction by a preliminary decision.”

Section 190

"(1) The award shall be final when communicated.

(2) It can be challenged only:

a. if a sole arbitrator was designated unlawfully or the arbitral tribunal was constituted unlawfully;

b. if the arbitral tribunal erroneously held that it had or did not have jurisdiction;

c. if the arbitral tribunal ruled on matters beyond the claims submitted to it or if it failed to rule on one of the claims;

d. if the equality of the parties or their right to be heard in adversarial proceedings was not respected;

e. if the award is incompatible with Swiss public policy (*ordre public*).

(3) An interlocutory award may only be challenged on the grounds stated in subsection 2, points (a) and (b); the time limit for lodging an appeal shall run from the communication of that award."

Section 191

“Appeal lies only to the Federal Supreme Court. The procedure shall be governed by section 77 of the Federal Supreme Court Act of 17 June 2005.”

48. The relevant provisions of the CAS Code of Sports-related Arbitration (2004 version, in force at the material time) read as follows:

R47 Appeal

“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.

...”

R57 Hearing

“... After consulting the parties, the Panel may, if it deems itself to be sufficiently well-informed, decide not to hold a hearing. At the hearing, the proceedings take place in camera, unless the parties agree otherwise.

...”

II. THE RELEVANT CASE-LAW OF THE FEDERAL SUPREME COURT

49. In its case-law, the Federal Supreme Court has established that the complaints listed under section 190(2) PILA are exhaustive (ATF [judgments of the Federal Supreme Court] 4A_370/2007 of 21 February 2008):

“5.3.2 The European Convention on Human Rights does not apply directly to arbitration The breach of the provisions of that convention is not included in the limited number of complaints listed in section 190(2) PILA. However, these underlying principles should not be immediately disregarded when examining these complaints (ATF 4P.105/2006 of 4 August 2006, at 7.3). To this effect, it is possible to accept, with the appellant, that a decision which undermined a principle as fundamental as the prohibition of forced labour, even indirectly, would be contrary to the concept of substantive public policy, within the meaning of Swiss law.”

50. The Federal Supreme Court subsequently clarified its remarks, explaining that the principles arising from the Convention may be used, in the context of examining an appeal against a decision by the CAS, to secure the guarantees invoked on the basis of section 190(2) PILA (ATF 4A_238/2011 of 4 January 2012):

“3.1.2 The respondent continues to rely on the case-law to the effect that it is not permitted to argue directly that there has been a violation of the ECHR in an appeal against an international arbitral award, given that such a violation is not one of the grounds exhaustively listed in section 190(2) PILA (ATF 4A_404/2010 of 19 April 2011 at 3.5.3; ATF 4A_43/2010 of 29 July 2010 at 3.6.1; ATF 4A_320/2009 of 2 June 2010 at 1.5.3; ATF 4A_612/2009 at 10 February 2010 at 2.4.1; ATF 4P.105/2005 of 4 August 2006 at 7.3). She further submits that, in this context, the appellant had in any event failed to satisfy the requirement that reasons be given, as set out in section 77(3) FSCA.

It is true that, according to the cited case-law, an appellant cannot directly accuse the arbitrators of having breached the ECHR, even if the principles which arise from it can be used, where applicable, to secure the guarantees invoked [by the appellant] on the basis of section 190(2) PILA (see cited judgments, *ibid.*). However, the problem to be resolved in the present case is different: it is not a matter of examining whether the arbitrators failed to comply with one of these guarantees, interpreted where necessary in the light of Article 6 § 1 ECHR, but rather of investigating whether section 192 PILA, which enables parties to exclude in advance any appeal against an arbitration award (or to exclude one of the grounds of appeal), is compatible with Article 6 § 1 ECHR (indirect review of the standards).”

III. RELEVANT TURKISH LAW

51. Section 12/A of Law no. 5719, as in force at the material time, established the TFF Dispute Resolution Committee’s exclusive jurisdiction to settle disputes arising under all kinds of contracts between (i) clubs, (ii) clubs and footballers, coaches, trainers, players’ agents, masseurs and match organisers; and (iii) players’ agents and footballers.

52. Section 6 § 4 of Law no. 5894 of 5 May 2009 on the Establishment and Duties of the Turkish Football Federation (“the TFF Law”), as in force at the material time, reads as follows (translation):

“All awards made by the Arbitration Committee are final and binding for the parties and proceedings cannot be brought against these awards before the judicial authorities.”

53. Article 14 of the TFF Statutes on the Arbitration Committee reads as follows (translation):

“Any opposition to the Arbitration Committee’s decisions for disputes arising from contracts of players, managers and trainers which have an international element may be submitted to the Court of Arbitration for Sport in the light of the regulations and directives of FIFA and UEFA.”

IV. RELEVANT FIFA RULES

54. Article 63 § 1 of the FIFA Statutes, as in force at the material time, reads as follows:

“Appeals against final decisions by FIFA’s legal bodies and against decisions passed by confederations, members or leagues shall be lodged with the CAS within 21 days of notification of the decision in question.

...”

55. Article 22(b) of the 2008 FIFA Regulations on the Status and Transfer of Players, as in force at the material time, reads as follows:

“Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear:

...

(b) employment-related disputes between a club and a player of an international dimension, unless, at the national level, an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of the players and clubs has been established in the framework of the association and/or in the agreement of a collective agreement;

....”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE OF THE CONVENTION IN RESPECT OF THE RIGHT OF ACCESS TO A COURT

56. Relying on Article 6 § 1 of the Convention, the applicant submitted that he had been unable to bring his dispute before an impartial and independent court in either Turkey or Switzerland, and that, as a result, his right of access to a court had been violated.

57. Article 6 § 1 of the Convention reads as follows:

“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing ... by a tribunal ...”

A. Admissibility

1. Application of Article 6 § 1 of the Convention

(a) The parties' submissions

(i) The Government

58. The Government considered that the present case should be declared incompatible *ratione materiae* with Article 6 of the Convention.

59. They considered that the proceedings before the CAS had not been directly decisive for the applicant's civil rights and obligations. In their view, since the CAS had declared that it did not have jurisdiction, the question of whether Article 6 § 1 of the Convention was applicable to the proceedings before that body had never arisen.

60. As to the Federal Supreme Court, the Government accepted that, as a State court, it was required to ensure that the procedural guarantees of Article 6 § 1 of the Convention were complied with. However, they submitted that the dispute brought before the Federal Supreme Court, which was limited to the question of the CAS's jurisdiction, was beyond the scope of this provision. They argued that Article 6 § 1 of the Convention admittedly guaranteed the right of access to a domestic court, but not a right of access to a private arbitration tribunal. The Government noted that the right of access to a State court was not in issue before the CAS or the Federal Supreme Court. Thus, the Government considered that the proceedings before the Federal Supreme Court had not been directly decisive for the applicant's "civil" rights and obligations.

(ii) The applicant

61. For his part, the applicant alleged that Article 6 § 1 of the Convention was just as applicable to the proceedings before the CAS as it was to those before the Federal Supreme Court. He argued that the arbitrators were comparable to judges and that they had a judicial function, although their jurisdiction depended on an agreement between the parties.

62. He also submitted that the proceedings before the CAS and the Federal Supreme Court had been decisive for his civil rights and obligations. In his view, the TFF Arbitration Committee could not be considered impartial and independent. The CAS and the Federal Supreme Court had been the only bodies who met these two criteria and could thus determine the dispute between him and the Club and the TFF.

(b) The Court's assessment

63. The Court reiterates that Article 6 § 1 of the Convention applies only to the determination of “civil rights and obligations and any criminal charge” (see *Mutu and Pechstein v. Switzerland*, nos. 40575/10 and 67474/10, § 56, 2 October 2018).

64. In the present case, the Court notes that the applicant complained before the CAS about the Arbitration Committee's decision of 16 April 2009, ordering him to pay compensation to the Club. Consequently, the rights that the applicant asserted in his appeal before the CAS are of a pecuniary nature and stem from a contractual relationship between private persons. They are therefore “civil” rights within the meaning of Article 6 of the Convention (see, to this effect, *Mutu and Pechstein*, cited above, § 57; see also *Ali Riza and Others v. Turkey*, nos. 30226/10 and 4 others, § 159, 28 January 2020).

65. Article 6 § 1 of the Convention is therefore applicable *ratione materiae* to the dispute forming the subject matter of the present case, to which the applicant was a party before the CAS and the Federal Supreme Court.

2. Conclusion

66. The Court notes that this complaint is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

67. The applicant submitted that his right of access to a court under Article 6 § 1 of the Convention had been breached, in that he had been unable to bring his dispute before an impartial and independent tribunal in either Turkey or Switzerland. He considered that the Turkish national bodies did not meet these two criteria and emphasised that neither the CAS nor the Federal Supreme Court had ruled on the merits of the dispute.

68. The applicant also alleged that the CAS had not correctly interpreted the contract and had thus disregarded the parties' intentions. In his view, the CAS should have acknowledged that the arbitration clause in the contract extended to the CAS, thus applying the principle of *in dubio contra stipulatorem*. Such an approach was even more important with regard to disputes in the field of sports.

69. The applicant further argued that the CAS had not assessed the international dimension of the dispute correctly. In his view, he ought to be considered as a British player who had spent some time in Turkey for his career.

(b) The Government

70. The Government considered that the applicant had not been deprived of his right of access to a court. In their view, the dispute between the applicant, the Club and the TFF was an entirely Turkish matter. Accordingly, the Government argued that it had been the Turkish authorities' responsibility to rule on a potential legal remedy against the Arbitration Committee's decision. Thus, the applicant had never been denied his right of access to a court under Article 6 § 1 of the Convention: in the Government's view, he was merely required to assert that right before the Turkish courts.

71. The Government added that, in any event, the applicant had been able to submit an appeal against the CAS's arbitral award to the Federal Supreme Court and had thus been able to raise his related complaints. The Swiss Federal Supreme Court had then thoroughly examined, with detailed reasoning, all of the arguments presented by the applicant. According to the Government, there had thus been no infringement of the applicant's right of access to a court.

2. The Court's assessment**(a) General principles**

72. The right to a fair hearing, as guaranteed by Article 6 § 1 of the Convention, must be construed in the light of the rule of law, which requires that all litigants should have an effective judicial remedy enabling them to assert their civil rights (see, *inter alia*, *Al-Dulimi and Montana Management Inc. v. Switzerland* [GC], no. 5809/08, § 126, ECHR 2016; *Eşim v. Turkey*, no. 59601/09, § 18, 17 September 2013; and *Běleš and Others v. the Czech Republic*, no. 47273/99, § 49, ECHR 2002 IX). Everybody has the right to have any claim relating to his or her civil rights and obligations brought before a court or tribunal. In this way, Article 6 § 1 of the Convention embodies the right to a court, of which the right of access, that is the right to institute proceedings before courts in civil matters, is one particular aspect (see, *inter alia*, *Howald Moor and Others v. Switzerland*, nos. 52067/10 and 41072/11, § 70, 11 March 2014, and *Golder v. the United Kingdom*, 21 February 1975, § 36, Series A no. 18).

73. However, the right of access to a court is not absolute, but may be subject to limitations; these are permitted by implication, since the right of access, by its very nature, calls for regulation by the State, which enjoys a certain margin of appreciation in this regard (see *Baka v. Hungary* [GC], no. 20261/12, § 120, 23 June 2016; *Al-Dulimi and Montana Management Inc.*, cited above, § 129; *Yabansu and Others v. Turkey*, no. 43903/09, § 58, 12 November 2013; and *Howald Moor and Others*, cited above, § 71). Furthermore, these limitations must not restrict or reduce a person's access in such a way or to such an extent that the very essence of the right is impaired (see *Baka*, cited above, § 120; *Al-Dulimi and Montana*

Management Inc., cited above, § 129; *Stanev v. Bulgaria* [GC], no. 36760/06, § 230, ECHR 2012; and *Howald Moor and Others*, cited above, § 71).

74. That being said, such limitations will not be compatible with Article 6 § 1 if they do not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Baka*, cited above, § 120; *Al-Dulimi and Montana Management Inc.*, cited above, § 129; *Stubbings and Others v. the United Kingdom*, 22 October 1996, § 50, *Reports of Judgments and Decisions* 1996-IV; *Stagno v. Belgium*, no. 1062/07, § 25, 7 July 2009; and *Howald Moor and Others*, cited above, § 71).

75. This access to a court is not necessarily to be understood as access to a court of law of the classic kind, integrated within the standard judicial machinery of the country; thus, the “tribunal” may be a body set up to determine a limited number of specific issues, provided always that it offers the appropriate guarantees (see *Ali Rıza*, cited above, § 173; *Mutu and Pechstein*, cited above, § 94; and *Lithgow and Others v. the United Kingdom*, 8 July 1986, § 201, Series A no. 102). Article 6 does not therefore preclude the establishment of arbitral tribunals in order to settle certain pecuniary disputes between individuals (see *Suda v. the Czech Republic*, no. 1643/06, § 48, 28 October 2010).

76. In addition, a distinction must be drawn between voluntary arbitration and compulsory arbitration. If arbitration is compulsory, in the sense of being required by law, the parties have no option but to refer their dispute to an arbitral tribunal, which must afford the safeguards secured by Article 6 § 1 of the Convention (see *Mutu and Pechstein*, cited above, § 95; *Ali Rıza*, cited above, § 174; and *Suda*, cited above, § 49).

77. Lastly, the Court reiterates the fundamental principle that it is for the national authorities, particularly the courts, to interpret and apply domestic law (see, *inter alia*, *Kruslin v. France*, 24 April 1990, § 29, Series A no. 176 A; *Kopp v. Switzerland*, 25 March 1998, § 59, *Reports* 1998-II; and *Nusret Kaya and Others v. Turkey*, nos. 43750/06, 43752/06, 32054/08, 37753/08 and 60915/08, § 38, ECHR 2014 (extracts)). The Court cannot therefore call into question the assessment by the domestic authorities regarding alleged errors of law, save where these are arbitrary or manifestly unreasonable (see, to that effect, *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, §§ 85-86, ECHR 2007-I).

(b) Application of these principles to the present case

78. The Court considers it appropriate to address the complaint regarding the right of access to a court by responding successively to the following questions: (i) What is the subject matter of the dispute to be determined by the Court? (ii) Was the applicant able to avail himself of a right of access to a court *vis-à-vis* Switzerland? (iii) Was there a limitation on the applicant’s right of access to a court? (iv) Was the limitation of the right justified?

(i) The subject matter of the dispute before the Court

79. The Court notes that in the present case, the applicant submitted a number of arguments to show that the arbitration before the Turkish national authorities was compulsory. The Court reiterates that its task in the present case is not to analyse whether the arbitration within the TFF was voluntary or compulsory. The Court has already ruled on this matter (see *Ali Rıza and Others*, cited above, § 176). In that case, the Court held that, given the Arbitration Committee's exclusive and compulsory jurisdiction over the applicant's dispute, and the fact that the decisions reached by that body were final and binding, the proceedings in Turkey amounted to compulsory arbitration.

80. In consequence, the applicant could not bring proceedings before the ordinary courts in Turkey and thus had no other choice but to bring the dispute to the TFF's arbitration bodies. Having lost his case before those bodies, he brought his case to the CAS and the Swiss Federal Supreme Court, in proceedings which proved futile in that the CAS stated that it had no jurisdiction over the subject matter of the dispute. Against that background, the question to be answered by the Court is whether the CAS's ruling that it did not have jurisdiction, subsequently upheld by the Federal Supreme Court, deprived the applicant of effective access to a court within the meaning of Article 6 § 1. To that end, the Court considers it appropriate to analyse the proceedings before the CAS, followed by those before the Federal Supreme Court, as a set of proceedings that are separable from those brought by the applicant before the TFF bodies.

(ii) The existence of the right of access to a court vis-à-vis Switzerland

81. The Court expresses certain doubts as to whether the applicant can assert a right of access to a court *vis-à-vis* Switzerland, in so far as the dispute which is the subject matter of the present application has only an extremely tenuous link with the respondent State. The Court points out that the proceedings brought before the FTT authorities had, *a priori*, no link with the Swiss courts and no international dimension. On the contrary, they concerned a dispute between the applicant, a Turkish football player (who also had British nationality) as one party, and a Turkish football club and the TFF as the other. Moreover, the law in force at the material time provided that the decisions of the Arbitration Committee were final and binding. Thus, there was no right of appeal to the CAS and, in consequence, the proceedings before the CAS could not be considered part of the compulsory arbitration proceedings before the FTT bodies.

82. Furthermore, as the Court observed in the above-cited case of *Ali Rıza and Others*, the applicant had the right to an independent and impartial tribunal in Turkey. The fact that he was unable to enjoy it effectively, which led to the finding of a violation by the Court, does not mean that an appeal to

the CAS should necessarily have been open. That being said, it cannot be claimed that, following the shortcomings in the proceedings in Turkey, Switzerland was under an obligation to guarantee a procedure before an independent and impartial tribunal in Switzerland. In other words, the procedural shortcomings found by the Court to have existed in Turkey did not automatically engage Switzerland's responsibility.

83. However, the Court considers that it can leave open the question whether the applicant was able to assert a right of access to a court in Switzerland, given that the complaint alleging such a violation is unfounded for the following reasons.

(iii) Restriction on the right of access

84. The Court is required to examine whether the applicant's right of access to a court was restricted. It reiterates, in this respect, that everybody has the right to have any claim relating to his or her civil rights and obligations brought before a court. Thus, Article 6 § 1 of the Convention embodies the right to a court, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect (see *Nait-Liman v. Switzerland* [GC], no. 51357/07, § 113, 15 March 2018, with further references). Assuming that the applicant was able to assert a right of access to a court in Switzerland, the Court considers that his right of access to a court was indeed restricted, in that the CAS declared that it did not have jurisdiction to examine his dispute with the Club and the FTT, a lack of jurisdiction that was confirmed by the Federal Supreme Court.

(iv) Whether the restriction was justified

85. The next question that the Court is required to determine is whether the restriction on the right of access to the CAS pursued a legitimate aim. The Court is willing to accept that the restriction of the CAS's jurisdiction pursued the aim of securing the proper administration of justice and the effectiveness of domestic judicial decisions.

86. As to reasonable relationship of proportionality between the means used and the aim pursued, the Court reiterates that the regulations governing the right of access to the courts may vary in time and in place according to the needs and resources of the community and of individuals. In laying down such regulations, the Contracting States enjoy a certain margin of appreciation. Whilst the final decision as to observance of the Convention's requirements rests with the Court, it is no part of the Court's function to substitute for the assessment of the national authorities any other assessment of what might be the best policy in this field. Thus, the right of access to the courts is not absolute. Nonetheless, the limitations applied must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired (see paragraph 73 above and the

case-law cited therein; see also *Zubac v. Croatia* [GC], no. 40160/12, § 78, 5 April 2018). In the present case, the Court must also answer the question whether, in the light of this case's specificity, the CAS's refusal to accept jurisdiction impaired the very essence of the applicant's right of access to a court.

87. The Court reiterates at the outset that the dispute at the origin of the application had only an extremely tenuous link with the respondent State, that the Turkish Arbitration Committee's awards were final and binding, that the proceedings before the CAS were not part of a compulsory arbitration procedure and that the applicant was entitled to submit his case to an independent and impartial court in Turkey (see paragraphs 80 and 81 above, and *Ali Rıza*, cited above).

88. The Court also notes that it is for the national authorities to interpret and interpret domestic law; it follows that the Court cannot call into question the findings of the domestic authorities on alleged errors of domestic law unless they are arbitrary or manifestly unreasonable (see the case-law cited above, paragraph 77). Moreover, a decision establishing a court's lack of jurisdiction does not infringe on the right to a court if the arguments by the interested party were the subject of a genuine and effective examination, and if the court has adequately stated the reasons on which its decision is based (see, to this effect, *Obermeier v. Austria*, 28 June 1990, § 68, Series A no. 179, and *Konkurrenten.no AS v. Norway* (dec.), no. 47341/15, §§ 46-47, 5 November 2019).

89. It is within the context of this limited European supervision that the Court will assess the CAS's award, subsequently upheld by the Federal Supreme Court.

90. In an award which was extensive and detailed in its reasoning, the CAS first reiterated that Article R47 of the Code laid down that its jurisdiction could result either from a contract containing an arbitration clause, or from a subsequent arbitration convention, or from a sporting organisation's statutes or regulations providing for an appeal to the CAS. However, the CAS found that nothing in the contract concluded between the applicant and the Club provided for its jurisdiction. It also pointed out that the parties had not signed a subsequent arbitration convention (see paragraph 27 above) and that neither the FIFA statutes nor the 2008 FIFA Regulations on the Status and Transfer of Players gave grounds for jurisdiction (see paragraph 28 above).

91. With regard to the Statutes of the TFF's Arbitration Committee, the CAS held that Article 14 provided that any opposition to the Arbitration Committee's decisions in respect of, *inter alia*, disputes arising from sporting contracts could be submitted to the CAS, in so far as they contain an international element (see paragraph 28 above). In that connection, it noted that this Article related to the dispute and not to the contract. The dispute was unrelated to the applicant's wish to be transferred from Trabzonspor to a non-Turkish club and no foreign club had been involved in the dispute itself. With

regard to the question whether the applicant could be considered a foreigner in Turkey, the CAS referred to several documents and took into account various aspects of the player's history. It noted, in particular, that the applicant had arrived in Turkey in 2003 at the age of 23 and was registered there as a Turkish player. The CAS considered that, with regard to the dispute in question, his closest ties were with Turkey and his dual nationality was insufficient to justify conferring on the dispute an international dimension within the meaning of Article 14 of the Statutes of the TFF's Arbitration Committee. The CAS also pointed out that FIFA had already held that there was no international element to the dispute and had, in consequence, refused on 19 February 2008 to become involved. The applicant had not contested that decision.

92. The CAS concluded, having regard to the above reasons, that the dispute did not have an international element and, accordingly, that Article 14 of the TFF's Statutes on the Arbitration Committee did not apply to the present case (see paragraph 29 above). It followed that the conditions of Article R47 of the Code (see paragraph 48 above) had not been fulfilled and there was therefore no basis for the CAS's jurisdiction.

93. On 19 April 2011, the applicant having lodged a civil-law appeal, the Federal Supreme Court upheld the CAS's decision to the effect that there was no international element to the dispute and that it did not therefore fulfil the conditions of Article 14 of the TFF Statutes on the Arbitration Committee. Thus, there were no grounds on which the CAS's jurisdiction could be based (see points 4 et seq. of the judgment).

94. In the light of these considerations, the Court considers that the CAS, in a detailed and reasoned decision, provided a convincing explanation for why it could not examine the dispute and, in particular, why there was no international element to the dispute. It follows that the applicant, having had his case dismissed by the TFF authorities, brought his complaints before a court which did not have jurisdiction to examine them.

95. Furthermore, the CAS's conclusions were upheld by the Federal Supreme Court. Its judgment was equally detailed in its reasoning, responding to all the arguments raised by the applicant and providing clear reasons and convincing findings.

96. The Court therefore concludes, within the scope of its limited supervision, that the decisions of the CAS and the Federal Supreme Court were neither arbitrary nor manifestly unreasonable within the meaning of the relevant case-law as cited above.

97. In light of the foregoing, and given the extremely tenuous link between the applicant's dispute and Switzerland, as well as the specificity of the proceedings before the CAS and the Federal Supreme Court (see, to this effect, *Bakker v. Switzerland* (dec.), no. 7198/07, § 40, 3 September 2019), the restriction on the right of access to a court was not disproportionate to the aim pursued, namely the proper administration of justice and the

effectiveness of domestic judicial decisions. It follows that the very essence of this right was not impaired.

98. There has accordingly been no violation of Article 6 § 1 of the Convention with regard to the right of access to a court.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LACK OF A PUBLIC HEARING

99. Relying on Article 6 § 1 of the Convention, the applicant also complained that he had not been granted a public hearing before the CAS or the Federal Supreme Court.

A. Admissibility

1. *Preliminary observations*

100. The Court reiterates that domestic proceedings, even if they take place at different court levels, must be considered as a whole. For this reason, the Court finds it appropriate to examine jointly whether the lack of a public hearing before the CAS and before the Federal Supreme Court was in breach of Article 6 of the Convention (see, to this effect, *Schlumpf v. Switzerland*, no. 29002/06, § 51, 8 January 2009).

101. Furthermore, the Court notes that there is a certain confusion as to whether the issue in the present case is a “hearing” or a “public hearing”. It appears that, before the domestic authorities, the applicant sometimes referred to the right to a simple hearing, and sometimes the right to a public hearing. Given that, before the Court, the applicant relies on the right to a public hearing and that this complaint was communicated to the parties under that angle, the Court considers that it is the right to a public hearing, or the right to be publicly heard, that is to be examined here.

2. *The parties’ submissions*

(a) **The Government**

102. The Government considered that there had been no violation of Article 6 § 1 on account of the failure to hold a public hearing before the CAS.

103. In their view, the preliminary question which arose in this case, namely that of the CAS’s jurisdiction, was a highly technical matter, which justified the decision not to hold a hearing.

104. The Government also pointed out that, in the absence of a public hearing, a second exchange of written pleadings had been organised by the CAS, thereby providing the applicant with two opportunities to submit evidence.

105. Lastly, the Government alleged that the principle that court hearings should be held in public had to be interpreted differently in the context of arbitral proceedings. They accepted that this principle was one of the means whereby confidence in the courts, superior and inferior, could be maintained, but argued that, in the context of arbitration, the parties' confidence did not arise from potential public review, but rather from the ability to choose their arbitrators. In their view, the recourse to arbitration made it possible to prevent strictly private disputes, in particular financial disputes, from being brought into the public arena.

106. With regard to the proceedings before the Federal Supreme Court, the Government considered that section 57 FSCA (see paragraph 45 above) admittedly provided for the possibility of organising hearings, but specified that a public hearing was only arranged in exceptional cases. Given that the present case did not constitute one such exceptional case, the Government considered that the case had been ready for decision on the basis of the file. The Government submitted that the only question that the Federal Supreme Court had to decide on was that of the CAS's jurisdiction and of compliance with the procedural guarantees applicable to it. These were therefore highly technical legal questions, which did not involve any examination of facts that might potentially require a public hearing.

(b) The applicant

107. The applicant considered that Article 6 § 1 of the Convention had been breached on account of the failure to hold a public hearing before either the CAS or the Federal Supreme Court.

108. With regard to the proceedings before the CAS, the applicant maintained that he had never waived the right to a public hearing. First, since, in his view, the arbitration had been compulsory, it could not be argued that he had waived the privileges of Article 6 § 1. Equally, he had responded in the affirmative when asked by the CAS if a public audience was required, and had specifically requested that a public audience be held.

109. In addition, the applicant submitted that the second exchange of written pleadings before the CAS had not replaced the holding of a public hearing. In his view, it would have become clear from a public hearing that his dispute with the Club and the TFF had an international dimension. This would also have enabled the CAS to assess the parties' intent in agreeing to an arbitration clause and their understanding of it.

110. With regard to the proceedings before the Federal Supreme Court, the applicant noted that these had dealt with several issues of credibility or contested facts, which called for a public hearing. In his view, for example, the matter of whether he ought to be considered as a foreigner in Turkey required a hearing. The applicant alleged that it would have become clear from a public hearing that there was an international element to the present dispute.

111. The applicant also considered that holding a public hearing before the Federal Supreme Court would have compensated for the CAS's failure to do so.

112. Lastly, the applicant argued that questions of a legal or highly technical nature had not been raised before either the CAS or the Federal Supreme Court. Rather, the proceedings had concerned a jurisdictional and contractual matter between an athlete and his club, given that the Club had claimed compensation and that the issue of access to an impartial and independent court was at stake.

3. *The Court's assessment*

(a) *The applicable principles*

113. The Court reiterates that there may be proceedings in which an oral hearing is not required under Article 6. This may be the case, in particular, where there are no issues of credibility or contested facts which necessitate a hearing and the courts may fairly and reasonably decide the case on the basis of the parties' submissions and other written materials (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 190, 6 November 2018; *Döry v. Sweden*, no. 28394/95, § 37, 12 November 2002; *Pursiheimo v. Finland* (dec.), no. 57795/00, 25 November 2003; and *Şahin Karakoç v. Turkey*, no. 19462/04, § 36, 29 April 2008).

114. Accordingly, even where a court has jurisdiction to review the case both as to facts and as to law, the Court cannot find that Article 6 always requires a right to a public hearing irrespective of the nature of the issues to be decided. There are other considerations, including the right to trial within a reasonable time and the related need for expeditious handling of the courts' caseload, which must be taken into account in determining the need for a public hearing (see *Varela Assalino v. Portugal* (dec.), no. 64336/01, 25 April 2002). The Court has thus already concluded that a hearing may not be necessary due to exceptional circumstances of the case, for example when it raises no questions of fact or law which cannot be adequately resolved on the basis of the case-file and the parties' written observations (see *Döry*, cited above, § 37). This applies to proceedings exclusively dedicated to legal or highly technical questions (see *Schlumpf*, cited above, § 64; *Jurisić and Collegium Mehrerau v. Austria*, no. 62539/00, § 65, 27 July 2006; and *Mehmet Emin Şimşek v. Turkey*, no. 5488/05, §§ 30-31, 28 February 2012).

115. The Court reiterates that the principles concerning public hearings in civil cases, as described above, are valid not only for the ordinary courts but also for professional bodies ruling on disciplinary or ethical matters (see *Mutu and Pechstein*, cited above, § 179, and *Gautrin and Others v. France*, 20 May 1998, § 43, *Reports* 1998-III).

(b) Application of these principles to the present case

116. With regard to the proceedings before the CAS, the Court points out that they were limited to an assessment of the CAS's jurisdiction, and the dispute was therefore not examined on the merits. The CAS did not hold a public hearing, despite an express request to that effect from the applicant.

117. The Court accepts that in order to rule on its jurisdiction, the CAS was required to examine whether the dispute had an international dimension. A factual question was therefore raised by the case. However, there is nothing to indicate that this question could not have been resolved on the basis of the file and the parties' written observations, especially as the CAS had requested a second exchange of written pleadings, in order to have all the necessary information and evidence, as the Government rightly observed. The Court fails to see how holding a hearing would have helped the CAS to determine whether there was an international element to the dispute.

118. As to the Federal Supreme Court, the Court notes that in its judgment of 19 April 2011 that court rejected the applicant's request for a public hearing, reiterating that public hearings were held only in exceptional circumstances, in accordance with a law that is higher than domestic law or under section 57 FSCA. In the view of the Federal Supreme Court, a hearing was not appropriate in the present case.

119. The subject matter of the dispute before the Federal Supreme Court concerned only the jurisdiction and admissibility of the appeal before the CAS. The Court shares the Government's opinion that the question of the CAS's jurisdiction was a highly technical, legal matter, within the meaning of the above-cited case-law, and could be resolved validly without recourse to a hearing.

120. It follows that this complaint must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

**III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION
FOR FAILURE TO COMPLY WITH THE PRINCIPLE OF EQUALITY
OF ARMS**

121. Relying on Article 6 § 1 of the Convention, the applicant also argued that the principle of equality of arms had not been respected in the proceedings before the Federal Supreme Court.

1. The parties' submissions

(a) The Government

122. The Government did not deny that the applicant had been granted a shorter period to file his appeal than that granted to the opposing parties to submit their responses. However, the Government argued that the shorter deadline for filing an appeal, compared to the time granted by the Federal

Supreme Court to respond to it, resulted from the different nature of these steps, one being determined by legislation and the other decided by the judge, and from the need to ensure that the proceedings were conducted properly, whilst also ensuring that the rights of both parties were respected.

123. The Government also alleged that the applicant had asked that his appeal be given suspensive effect; consequently, the Federal Supreme Court had first been required to rule on this request. Before doing so, it had to give the opposing parties an opportunity, in advance, to submit observations. In addition, the opposing parties had applied for an order awarding security for costs. The Federal Supreme Court had given the applicant an opportunity to comment on that request. It had then granted the opposing parties a 30-day deadline (excluding judicial holidays) to respond to the applicant's appeal.

124. The Government emphasised that they failed to see how this legal time-limit of 30 days was particularly short, given that the degree of complexity involved did not appear more complex than in other disputes submitted to the Federal Supreme Court.

125. Lastly, they considered that the applicant had not been placed at a substantial disadvantage, within the meaning of the Court's case-law, *vis-à-vis* the opposing parties. They argued that the applicant had in fact had plenty of time to submit observations and that he himself had stated that a shorter period would have sufficed to comment on the responses to his appeal.

(b) The applicant

126. The applicant considered that the principle of equality of arms had been violated, in that the time period granted to the Club and the TFF to respond to his appeal had been five times longer than the period which he himself had been required to comply with when lodging an appeal with the Federal Supreme Court against the CAS's arbitral award.

127. He pointed out that, before the Federal Supreme Court, he had expressly requested that the opposing parties be invited to respond within a single and non-extendable time limit. He considered that the 30-day deadline for lodging an appeal, imposed by section 100(1) FSCA, was particularly short in complex cases which, as in the present case, had an international element. He noted that, despite these requests, his appeal had been transmitted to the Club and the TFF on 14 July 2010, but the parties had submitted their responses only on 18 January 2011. The applicant had received their responses to his appeal on 20 January 2011, and had then had only until 7 February 2011 to comment on them. Thus, the applicant considered that this amounted to a substantial disadvantage, given that he had had only 30 days to lodge his appeal and then 20 days to submit observations, whilst the Club and the TFF had had more than 6 months to comment on his appeal.

128. Lastly, the applicant alleged that Article 312 of the Code of Civil Procedure stipulated that in appellate proceedings the response to an appeal had to be submitted within 30 days (see paragraph 46 above). In his view, the

same rule ought therefore to be applied in proceedings before the Federal Supreme Court.

2. *The Court's assessment*

129. The Court reiterates that the adversarial principle and the principle of equality of arms, which are closely linked, are the fundamental components of the concept of a “fair hearing” within the meaning of Article 6 § 1 of the Convention. They require a “fair balance” between the parties: each party must be afforded a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage *vis-à-vis* his or her opponent or opponents (see *Avotiņš v. Latvia* [GC], no. 17502/07, § 119, 23 May 2016).

130. In this regard, the Court notes that it is in the first place for the national authorities, and notably the courts, to interpret and apply the procedural rules. These rules are designed to ensure the proper administration of justice and compliance with the principle of legal certainty (see *Miholapa v. Latvia*, no. 61655/00, § 24, 31 May 2007).

131. Turning to the present case, the Court does not see in what way the applicant had less time to lodge his appeal than the period granted to the opposing parties to respond to it. Under section 100(1) FSCA, the deadline for lodging an appeal is 30 days (see paragraph 45 above). The Federal Supreme Court subsequently imposed a 30-day deadline for the Club and the TFF to give their submissions. Thus, the time period *stricto sensu* was not different for each side.

132. The Court recognises, however, that, since the opposing parties were notified of the appeal on 14 July 2010, they had more time to prepare their observations, which they submitted only on 18 January 2011. This is because the Federal Supreme Court first dealt with the preliminary questions of suspensive effect and security for costs.

133. It remains to be seen whether, as a result, the applicant was deprived of a reasonable opportunity to present his case under conditions that did not place him at a substantial disadvantage.

134. The Court considers that the 30-day time-limit for lodging an appeal did not deprive the applicant of the possibility of making meaningful use of this remedy. Having regard to the limited issue raised before the Federal Supreme Court, namely that of the CAS's jurisdiction, the Court, like the Government, considers that the present case did not give rise to any special difficulty. In this respect, the Court also notes that the time which passed between notification of the appeal and 2 December 2010, when the Federal Supreme Court set a deadline for a response, is linked to the exchange of written pleadings between the parties on the preliminary issues of suspensive effect and security for costs. As the Government rightly observed, the applicant had ample opportunity to set out his case.

135. For this reason, the Court considers that the applicant was not placed at a substantial disadvantage *vis-à-vis* the Club and the TFF in the proceedings before the Federal Supreme Court.

136. It follows that this complaint must be rejected as manifestly ill-founded under Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT,

1. *Declares*, by a majority, the complaint concerning the right of access to a court admissible;
2. *Declares*, unanimously, the remainder of the application inadmissible;
3. *Holds*, unanimously, that there has been no violation of Article 6 § 1 of the Convention;

Done in French, and notified in writing on 13 July 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Paul Lemmens
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- concurring opinion of Judge Pavli, joined by Judge Dedov and Judge Ravarani;
- partly concurring, partly dissenting opinion of Judge Lemmens.

P.L.
M.B.

CONCURRING OPINION OF JUDGE PAVLI, JOINED BY JUDGES DEDOV AND RAVARANI

137. I have voted in support of the majority finding that the applicant's claim of access to court is admissible, as well as the unanimous conclusion that there has been no violation of Article 6 of the Convention in this case. I am writing separately, however, as I do not share the majority position, in paragraphs 81 to 83 of this judgment, which leaves open the question of whether the applicant "could assert a right of access to a court *vis-à-vis* Switzerland." In my view, the applicant did have an Article-6 right of access to a Swiss court.

138. The discussion in paragraphs 81 to 83 of the judgment seems designed to respond to the applicant's claim that neither Turkey nor Switzerland granted him the possibility of having his civil case heard by an impartial and independent tribunal (see paragraph 67 of the judgment). However, that parallelism is misplaced, as there were material differences between the Swiss and Turkish arbitration regimes applicable to the current case: most importantly, while the Turkish regime amounted to a form of compulsory arbitration, no such claim has been put forward with respect to Switzerland (see *Ali Riza and Others v. Turkey*, no. 30226/10, 28 January 2020, §§ 142, 174 and 181). Furthermore, while the rulings of the Turkish arbitration committee were not subject to any form of judicial review, the CAS decision in the current case was subject to appeal before a Swiss federal court. It was presumably on this basis that the Court rejected the applicant's request to consider the current application jointly with his earlier application against Turkey (*ibid*, § 142).

139. The respondent Government have not contested that the applicant was "within the jurisdiction" of Switzerland for the purposes of Article 6 of the Convention, and the Court has proceeded on the assumption that he was under Swiss jurisdiction. Furthermore, the Court has found that the dispute before the CAS and the Federal Supreme Court involved the determination of a "civil right" within the meaning of Article 6 (see paragraph 64 of the judgment). Those two findings are sufficient for Article 6 to be applicable in its entirety. It is therefore perplexing that the majority of the Chamber judges pose the additional question of whether Switzerland "was under an obligation ... to guarantee a procedure before an independent and impartial tribunal". This suggests that there would be some additional, silent (but unnamed) condition that the applicant must meet in order to give effect to his right of access to a Swiss court.

140. To address the issue in the terms used by the majority, I would agree that the respondent State had no "obligation" to grant the applicant access to a Swiss court. However, that is beside the point, considering that the Swiss legal order *has chosen* to grant CAS litigants a limited right of appeal before the Federal Supreme Court. The applicant has simply availed himself of that

opportunity and, in my view, has done so in a legitimate way. He relied on a regulatory provision of the Turkish Football Federation, allowing appeals before the CAS against decisions of the Turkish arbitration committee in contractual disputes with an “international element” (see paragraph 53 of the judgment). The applicant claimed the existence of an international element on the basis of his double nationality and his previous professional life outside Turkey. The CAS eventually found that this jurisdictional claim was not sufficiently substantiated, but it did so after careful consideration of the facts and after requesting extensive submissions by the parties (see paragraph 28 of the present judgment). On appeal, the Federal Supreme Court granted the applicant’s request for *effet suspensif* (paragraph 35 of the judgment), even though it ultimately upheld the CAS’s decision that it did not have jurisdiction. Thus, it cannot be said that the applicant’s attempt to have his case heard by the CAS, and subsequently by a Swiss court, was abusive or entirely without merit.

141. It should be recalled, in conclusion, that the CAS exists in large part to resolve sports-related contractual disputes with an international component; and that Swiss law has opted to provide for a right of appeal against certain CAS decisions, including those involving the latter’s jurisdiction. This is a valuable arrangement that enhances the legitimacy and credibility of CAS rulings. The Court should therefore be careful not to undermine this important arbitration regime by raising unnecessary doubts about the applicability of Article 6 of the Convention *vis-à-vis* the respondent State in this context.

PARTLY CONCURRING, PARTLY DISSENTING OPINION
OF JUDGE LEMMENS

(Translation)

1. To my regret, I am unable to concur with the majority's finding that the complaint concerning the right of access to a court is admissible (point 1 of the operative provisions).

In contrast, I voted with my colleagues in declaring inadmissible the complaints concerning the lack of a public hearing before the CAS and the Federal Supreme Court and the alleged failure to comply with the principle of equality of arms in the proceedings before the Federal Supreme Court (point 2 of the operative provisions).

My dissent concerns the question whether the applicant fell within Switzerland's jurisdiction for the purposes of Article 1 of the Convention.

Absence of jurisdictional link to Switzerland as regards the right of access to a court

2. The majority made no express ruling on whether the applicant came within Switzerland's jurisdiction, the Government having raised no objection on that ground. Nevertheless, they question whether the applicant is entitled to assert a right of access to a court "*vis-à-vis* Switzerland, in so far as the dispute which is the subject of the present application has only an extremely tenuous link with the respondent State" (see paragraph 81 of the judgment). Three members of the majority prefer to leave this question open (see paragraph 83 of the judgment), whilst the other three members of the majority answer it clearly in the affirmative (see the concurring opinion of Judge Pavli, joined by Judges Dedov and Ravarani).

For my part, I believe that this case does indeed concern the question of Switzerland's jurisdiction.

3. Jurisdiction is assessed in relation to the subject matter of the complaint (see *Chagos Islanders v. the United Kingdom* (dec.), no. 35622/04, § 63, 11 December 2012). In the present case, with regard to the complaint regarding the right of access to a court, and in so far as this complaint is brought against Switzerland, the applicant alleges that he was unable to bring his dispute before a Swiss "court". However, a dispute (claim) "generally exists prior to the legal proceedings and is a concept independent of them" (see *Golder v. the United Kingdom*, 21 February 1975, § 32, Series A no. 18). It therefore stands to reason that the right of access to a court is a right which also exists *prior* to bringing a case before a court. Thus, the Court must examine whether, *prior to bringing legal proceedings* before the CAS, the applicant came within the jurisdiction of Switzerland. It is only if the answer to this question is positive that it is required to examine whether Switzerland

complied with its obligation to provide the applicant with access to a “court” corresponding to the guarantees of Article 6 § 1 of the Convention.

The dispute that the applicant wished to bring before the CAS was unrelated to Switzerland. It concerned a conflict between, on the one hand, the applicant - a British and Turkish football player - and, on the other, a Turkish football club and the Turkish Football Federation (TFF). It took the form of an appeal against an award by the TFF Arbitration Committee, governed by Turkish law. However, Turkish law provided that this award was final and enforceable and that no appeal lay against it before the courts (on all these points, see paragraph 81 of the judgment). In other words, it concerned a dispute which was in all respects related to Turkey, and only to Turkey. It was therefore completely natural that, in its judgment of 28 January 2020, the Court examined the complaints brought by the applicant against Turkey in respect of the proceedings in Turkey (see *Ali Rıza and Others v. Turkey*, nos. 30226/10 and 4 others, § 181, 28 January 2020).

In the present case, the applicant does not complain of violations which occurred when he was within Turkey’s jurisdiction. He asks the Court to recognise that he was entitled to “knock on the door” of the Swiss courts in order to submit to them his “Turkish” dispute.

4. It is understood that a State’s jurisdictional competence is primarily territorial, but there may be exceptional circumstances justifying a finding that the State concerned exercised jurisdiction extraterritorially (see, in particular, *M.N. and Others v. Belgium* (dec.) [GC], no. 3599/18, §§ 98 and 102, 5 May 2020).

In the present case, Swiss law did not oblige the applicant to bring his arbitration case to the CAS. Nor did it guarantee him access to a Swiss “court”, whether arbitral or judicial. In these circumstances, it cannot be said that Switzerland had exercised any jurisdiction over the applicant, territorial or extraterritorial, before he referred the dispute to the CAS.

The mere fact that Swiss law contains provisions on international arbitration, that is, on arbitration proceedings which involve at least one party that is neither domiciled nor habitually resident in Switzerland (see section 176 of the Swiss Federal Act of 18 December 1987 on Private International Law), is not, in my opinion, sufficient to reach the conclusion that Switzerland exercised jurisdiction over the applicant.

5. If Switzerland did not exercise territorial or extraterritorial jurisdiction, it is necessary to examine whether, by instigating proceedings before the CAS, the applicant created a “jurisdictional link” between himself and Switzerland (compare *M.N. and Others v. Belgium*, cited above, § 121).

In the case of *Markovic and Others v. Italy* ([GC], no. 1398/03, § 54, ECHR 2006-XIV), the Court accepted that a civil action brought before the courts of a respondent State, even if founded on events which took place outside the territory of that State, can create a “jurisdictional link” between the applicant and that State. Nonetheless, the Court pointed out that any

potential obligations of the respondent State towards the applicant “depend[s] on the rights which may be claimed under the law of the State concerned” and, in particular, the question “if the domestic law recognises a right to bring such an action” (ibid., § 53).

In the case of *Abdul Wahab Khan*, the Court explained that the mere fact of an individual instituting proceedings before a court of the respondent State was not sufficient to establish a jurisdictional link with this State in respect of the underlying dispute (see *Abdul Wahab Khan v. the United Kingdom* (dec.), no. 11987/11, § 28, 28 January 2014). This clarification confirms, in my opinion, that a jurisdictional link is created, with regard to the right of access to a court, only in so far as the domestic law of the State in question recognises a right to bring an action that has no link to that State.

6. In the present case, Swiss domestic law does not itself contain any rule of jurisdiction for arbitration courts with regard to international disputes, but instructs these courts to rule on their own jurisdiction (see section 186 of the Swiss Federal Act of 18 December 1987 on Private International Law). Having analysed the provisions of the relevant CAS, FIFA and TFF regulations, the CAS decided that it did not have jurisdiction to settle the dispute brought before it by the applicant. The appeal against this decision was rejected by the Federal Supreme Court. In the view of the majority, these decisions were not arbitrary nor manifestly unreasonable (see paragraph 96 of the judgment).

Thus, the applicant applied to an arbitral body which did not have jurisdiction to rule on disputes such as that which had arisen between him and his former club and the TFF. In other words, he attempted to enter the Swiss legal system by means of an action that not only had no objective link to Switzerland, but which also lacked the characteristics of an international dispute that could be submitted for arbitration at the CAS. The outcome of the proceedings before the CAS, and subsequently those before the Federal Supreme Court, is that the door of the arbitral body remained closed to the applicant, given the lack of a sufficient link with Switzerland.

7. In my opinion, it must therefore be concluded that the fact of lodging an appeal with the CAS did not create a jurisdictional link between the applicant and Switzerland in terms of the right of access to a Swiss court. In other words, the applicant never came within Switzerland’s jurisdiction in this regard.

It is for this reason that I believe the complaint regarding the right of access to a court must be declared inadmissible. With all due respect to my colleagues, I cannot therefore agree on point 1 of the operative provisions.

Since I consider this complaint inadmissible, I am of course of the opinion that there cannot have been a violation of Article 6 § 1 of the Convention. I have therefore voted with the majority on point 3 of the operative provisions.

Switzerland’s jurisdiction regarding the proceedings brought before the CAS and the Federal Supreme Court

8. In terms of the jurisdiction of a State Party to the Convention, the Convention rights can be “divided and tailored” (see, with regard to extraterritorial jurisdiction, *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, § 137, ECHR 2011; *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 74, ECHR 2012; *Jaloud v. the Netherlands* [GC], no. 47708/08, § 154, ECHR 2014; and *Georgia v. Russia (II)* [GC], no. 38263/08, § 114, 21 January 2021). The fact that the applicant did not come within Swiss jurisdiction as regards the right, asserted by him, to *apply* to a Swiss court does not exclude him from coming within its jurisdiction in other respects.

In my opinion, this is precisely the case as regards the conduct of the proceedings before the CAS, an arbitral court governed by Swiss law, and the Federal Supreme Court, a Swiss court of law. From the moment that the applicant submitted his case to the CAS, a jurisdictional link with Switzerland was created, obliging that State, pursuant to Article 1 of the Convention, “to secure in those proceedings respect for the rights protected by Article 6 [of the Convention]” (see *Markovic and Others*, cited above, § 54; also see, with regard to Switzerland’s responsibility for the actions and omissions of the CAS, *Mutu and Pechstein v. Switzerland*, nos. 40575/10 and 67474/10, §§ 66-67, 2 October 2018). Here, the “rights protected by Article 6” are the rights regarding the organisation of the courts (an independent and impartial tribunal, established by law) and the procedural guarantees (fair trial, publicity and a reasonable time), rather than the right of access to a court. This jurisdictional link existed throughout the proceedings and thus extended to the appeal procedure before the Federal Supreme Court (see, *mutatis mutandis*, *Klausecker v. Germany* (dec.), no. 415/07, § 45, 6 January 2015).

With regard to the complaints concerning the absence of a public hearing before the CAS and the Federal Supreme Court, and the alleged failure to comply with the principle of equality of arms, I therefore join the majority in the implicit conclusion that the applicant came within Swiss jurisdiction in those respects.

9. As to the merits of these latter complaints, I agree with my colleagues that they must be rejected as manifestly ill-founded. I have therefore voted with the majority on point 2 of the operative provisions.