

The use of ADR to Resolve Professional Sports Disputes (Football-Soccer)

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1. Introduction [\[arriba\]](#)

First part:

Presenting the topic

In this paper I will try to give an answer and show how an alternative dispute resolution system can resolve the problems that may arise in sports. More particularly in football.

What Americans like to call soccer.

There are several reasons why I chose this sport for this paper.

One of these reasons is that football, as you may know, is the world's most popular sport. In many ways, since it's the activity that has the most followers around the world. Millions of dollars are moving around this sport. Sponsorship, advertising, contracts, stadiums full of people, passion, etc.

So, when many of these things are combined, problems might appear. It is too difficult to handle all these matters without conflict of interests, different opinions, decisions.

We must mention that in nearly all sports, the active life of the main characters is quite short. As in many sports, a football player will sign his first professional contract at the age of 18-20 years old. And he will probably end his career in the mid 30s. Although, there are some exceptions of great football players like David Beckham that continues in activity at the age of 38 and playing at high level competitions. As well as the Argentinean player Javier Zanetti that is 37 years old and hasn't yet decided his retirement.

Thus, we can see that in terms of "life", football players last only 12-15 years. We can't say that about golf players or formula 1 pilots that can be active for a longer time.

Quick and thoughtful decisions must be taken in football matters. Decisions that may implicate signing of publicity contracts, sponsorship and many others that will make a player and his team earn tons of money.

However, there are some decisions no one likes to take. Decisions concerning conflicts between the team and its players, breaches of contracts, use of forbidden substances to heighten physical activity and many others.

"Football is not only the worlds' favorite sport but also its most lucrative one and, as this book demonstrates, football disputes provide a rich seam to be worked by sports lawyers, who, together with sports administrators and other interested parties, including sports marketers and corporate sponsors, need to be fully briefed on the subject of 'CAS and Football'." [1]

Statement of why ADR is so important for professional sports disputes.

One excellent mechanism that can help resolve all these problems is the use of alternative dispute resolution ("ADR").

ADR systems have some advantages in contrast to other systems in order to resolve sports disputes.

One important advantage is TIME.

As I have already mentioned, the professional activity of a football player is quite short. No more than 15 years. Imagine if a player has to wait for 5 years or more for a decision that will decide his future. A third part of his life will be compromised to that decision and probably in that period of time he won't be able to sign important contracts, because no brand wants a potential cheater for example.

In these days, everyone knows that:

“no one seriously doubts that in-court litigation time in comparable cases is much longer than the time required to arbitrate a dispute, and no evidence need be cited to make the point that full-blown litigation, including discovery and appeals, is significantly more expensive than arbitration”[2]

Rule 33, second part, from the Court of Arbitration of Sports (“CAS”) says: “Every arbitrator shall appear on the list drawn up by the ICAS in accordance with the Statutes, which are part of this Code, shall have a good command of the language of the arbitration and shall be available as required to complete the arbitration expeditiously.”[3]

Rule 44.4 refers specifically to the time issue.

“Expedited Procedure With the consent of the parties, the Division President or the Panel may proceed in an expedited manner and may issue appropriate directions therefor”.[4]

A second benefit is ECONOMY.

Everyone knows that procedures in court litigation might be really long. And a consequence of this is money. A lot of money is needed to carry on a dispute where millions of dollars are involved because of the incidence, interests and importance of both parties. These parties could be a professional football player, who earns huge amounts of money and an institution who, besides money, has a lot of power. Great combination for lawyers' eager to receive expensive fees, but an awful one for the parties who are paying those fees through the period of time the trial lasts.

Parties have the necessity of resolving their conflicts rapidly and without spending so much money on it.

“Due to the more abbreviated time frame of arbitration, cases should be less costly to resolve”.[5]

“A large commercial dispute often requires greater discovery than a routine arbitration. However, delay and cost are not an inherent part of arbitration. Quite the opposite, they are contrary to arbitration's core objectives”[6]

A third advantage is CONFIDENTIALITY.

As the Court of Arbitration of Sports (CAS) states:

“Proceedings under these Procedural Rules are confidential. The parties, the arbitrators and CAS undertake not to disclose to any third party any facts or other information relating to the dispute or the proceedings without the permission of CAS. Awards shall not be made public unless all parties agree or the Division President so decides”.[7]

A fourth advantage is SPECIALIZATION.

This refers to the necessity of specialized arbitrators. Parties want to resolve their conflicts with experts on the football field. CAS provides this unique service thanks to the diversity list of arbitrators.

The specific matter of football conflicts requires an ADR system and its arbitrators prepared for this specific task. This will give confidence for parties who are seeking a fair decision because they know the ones resolving the dispute are professionals who have knowledge on those specific matters.

The Statute of the Bodies Working for the Settlement of Sports-Related Disputes on its 14 statute says,

“In establishing the list of CAS arbitrators, ICAS shall call upon personalities with appropriate legal training, recognized competence with regard to sports law and/or international arbitration, a good knowledge of sport in general and a good command of at least one CAS working language, whose names and qualifications are brought to the attention of ICAS, including by the IOC, the IFs and the NOCs. ICAS may identify the arbitrators with a specific expertise to deal with certain types of disputes”.^[8]

Second part. Present the Court of Arbitration of Sports: Its foundation [\[arriba\]](#)

The Court of Arbitration for Sports was founded in 1984. Before CAS's appearance, the conflicts in this scenario were resolved under the sphere of the unions or federations of each sport. The organisms in detriment of the athletes took many unfair decisions by taking advantage of their beneficial position. The foundation of this ADR system was possible thanks to the vision of a man called José Antonio Samaranch. Samaranch at that precise moment was the International Olympic Committee's (IOC) president and understood that changes were arising in the sports arena. He received help by Keba Mbaye, who suggested the creation of an independent tribunal to resolve the sports disputes.

“Samaranch chance that among the members of the CIO Judge Keba Mbaye of Senegal, who had held the office of President of the International Court of Justice, which had also become part of the executive committee in the CIO is given. President instructs the Judge Mbaye perform a complete and thorough of all the Olympic Charter to make it "legally impeccable" review and analyze which aspects of the legal framework related to the CIO should or could be improved”.^[9]

“In the development of one of his works, Keba Mbaye Judge proposed to the IOC president who did not hesitate to accept the creation of a Court of Arbitration for Sport in order to strengthen the international sports federations, and consequently standardization of sports adjudication in the world, as the existence of a sports court trying cases on appeal from the international federations, makes the various federations are strengthened, it removes or reduces the minimum sense of doubt and bias over a private body that judges its affiliated members.”^[10]

“...Due to the large increase in international litigation generated by the increasing globalization of competitions, the increasing mobility of athletes to the highest standards worldwide and the absence of an independent agency specializing in sports authority to issue binding decisions, international federations began to reflect on the advantages of having a tribunal outside its structures”.^[11]

However, it was not until 1993 that the Court began to engross its activity. At the beginning few federations believed on CAS since it was a tribunal supported from the IOC. Thanks to the reform act of 1993 the appearance of CAS changed, giving it more transparency and independence.

“ICAS (International Council of Arbitration for Sports), a civil non-profit organization based in Lausanne, whose main purpose is the management and financing of TAS, replacing IOC was created. From this reform the supreme organ of TAS happened to be the ICAS, which consists of 20 members that must necessarily be high-level jurists and specialized issues in sports law arbitration”. [12]

After this, “...most international federations began to include in its charter a clause submitting disputes to arbitration TAS”. [13]

Members:

After the reform’s enforcement, ICAS starting playing a fundamental role in CAS. They became the controlling institution of CAS. The following members compose ICAS:

“ICAS is composed of twenty members, experienced jurists appointed in the following manner:

- a. four members are appointed by the International Sports Federations (IFs), viz. three by the Association of Summer Olympic IFs (ASOIF) and one by the Association of Winter Olympic IFs (AIOWF), chosen from within or outside their membership;
- b. four members are appointed by the Association of the National Olympic Committees (ANOC), chosen from within or outside its membership;
- c. four members are appointed by the International Olympic Committee (IOC), chosen from within or outside its membership;
- d. four members are appointed by the twelve members of ICAS listed above, after appropriate consultation with a view to safeguarding the interests of the athletes;
- e. four members are appointed by the sixteen members of ICAS listed above, chosen from among personalities independent of the bodies designating the other members of the ICAS.” [14]

We must mention that it was recently in the year 2002 that FIFA (Federation International of Football Association) accepted and incorporated CAS’ jurisdiction as an alternative system to its regulations.

“Since FIFA, the world governing body of football, agreed to use the CAS as a final court of appeal for football disputes in 2002, the workload of the CAS has increased dramatically year after year and continues to do so...” [15]

In order to become CAS an independent tribunal, it was fundamental that every federation or union around the world incorporated a compromising clause that in case a conflict arose between its affiliates, CAS would be the tribunal in charge of resolving those issues.

“Obviously as the arbitral tribunal is a private entity, because its jurisdiction is derived from the will of the parties under the contract between them, so that the TAS could develop its functions was necessary to include the arbitration clause in the international statutes federations, hereby requires all its members to the submission of their disputes to the assessment of a characteristic of the sports federation tribunal system”. [16]

So nearly all federations incorporated a binding clause to their statutes.

Types of resolutions:

“Awards made by the CAS, like other international arbitral awards, are legally enforceable generally in accordance with the rules of international private law, and also specifically under the provisions of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 1958. The CAS is also recognised under the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations of 24 April 1986. So, the CAS decisions are legally effective and can be enforced internationally. This is particularly important in the case of disputes involving intellectual property rights, especially trademarks, which are generally of a territorial nature”.[17]

“One of the difficulties faced by the CAS in its desire to develop a Lex Sportiva and provide some degree of legal certainty and consistency stems from the fact that, generally speaking, CAS proceedings and decisions are a matter of private law and confidential to the parties”.[18]

“The CAS operates generally under Swiss Law having its ‘seat’ in Lausanne. Awards of CAS can be legally challenged before the Swiss Federal Supreme Court, which is also based in Lausanne. However, the grounds for appeal are limited under the provisions of article 190(2) of the Swiss Federal Code on the Private International Law of 18 December, 1987”.[19]

“In the latest fundamental challenge in 2003 concerning the independence of the CAS, in view of its association with and partial funding by the IOC, the Swiss Federal Supreme Court held that the CAS offered all the guarantees of independence and impartiality to be regarded as a real court of arbitration, even where the IOC-as in that particular case- was a party in its proceedings”.[20]

Procedure: Authority. Binding decisions.

CAS has different alternatives ways of functioning.

The first way is through ordinary arbitration. This usually occurs when the parties have incorporated an arbitration clause that in case a conflict arises, CAS would be the tribunal resolving that future dispute between them. In that way, both parties agree to resign from ordinary jurisdiction of regular courts.

“The ordinary arbitration is one where both parties submit a dispute equal. It arises from an agreement between the parties before or after the conflict to arise where both voluntarily submit to arbitration TAS”.[21]

CAS itself has proposed a sample of a binding clause that could be incorporated in a contract between the parties.

“Any dispute arising from or related to the present contract will be submitted exclusively to the Court of Arbitration for Sport in Lausanne, Switzerland, and resolved definitively in accordance with the Code of sports-related arbitration.”

Optional explanatory phrases: “The Panel will consist of one [or three] arbitrator(s).” “The language of the arbitration will be...”[22]

The second way of action is when CAS appears as an appealed panel. This happens when federations or sport unions have inserted in their bylaws a binding clause that accepts CAS’ jurisdiction.

Rule 27 says “.... may involve an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies, or a specific agreement provide for an appeal to CAS (appeal arbitration proceedings)”.[23]

Just like in ordinary arbitration, CAS gives alternatives of binding clauses to be inserted:

“1. [Brief description of the dispute]2. The dispute will be submitted exclusively to the Court of Arbitration for Sport in Lausanne, Switzerland, and settled definitively in accordance with the Code of sports-related arbitration.3. Alternative1The Panel set in operation by the Court of Arbitration for Sport will consist of a sole arbitrator designated by the President of the CAS Division concerned.Alternative2The Panel set in operation by the Court of Arbitration for Sport will consist of three arbitrators. Each party designates the following arbitrator:

· Claimant: Mr/Mrs ... [insert the name of a person included on the list of CAS arbitrators (see Annex I)];· Defendant: Mr/Mrs ... [insert the name of a person included on the list of CAS arbitrators (see Annex I)];

These two arbitrators will designate the President of the Panel within 30 days following the signature of this agreement. If no agreement is reached within this time limit, the President of the Division concerned will designate the President of the Panel.”[24]

The third way in which CAS operates is as a consultant entity for conflicts for either the sports federations or even athletes.

“TAS works as an advisory body, since it may be consulted by the IOC, international sports federations, by NOCs, WADA, by the organizing committees of the Olympic Games, and by any association recognized by the IOC, on any matter related to the sport, not having the characteristic of a judgment or award but as a merely report of the Court giving their opinion with respect to a given topic. The report issued by the CAS, despite not being considered an award, may, in some cases, take an atypical form of arbitration.”[25]

CAS also offers the alternative of a mediation process conducted by a CAS mediator who will mediate and negotiate between parties who agreed to resolve their sport dispute in the CAS. However, it is important to mention that there are some areas that cannot be decide under the mediation process. These areas refer to conflicts resulting from doping issues, match fixing or corruption.

“Article 1: CAS mediation is a non-binding and informal procedure, based on an agreement to mediate in which each party undertakes to attempt in good faith to negotiate with the other party with a view to settling a sports-related dispute. The parties are assisted in their negotiations by a CAS mediator”. [26]

But, we must mention that when important competitions such as Olympics or Football’s World Cup are taking place, CAS can act as an Ad Hoc Tribunal. This Ad Hoc Tribunal will be in charge of resolving conflicts that may occur during the period of time the competition lasts or even a few days before.

“The AHD has been ever-present at Summer Olympics since Atlanta in 1996. The AHD has also sat at each Winter Olympics since Nagano in 1998, the Commonwealth Games in 1998, 2002 and 2006, the European Football Championships since 2000 and the FIFA World Cup since Germany hosted in 2006.”[27]

2. Conflicts.

Description of the wide variety of conflicts that may arise on this field.

In sports we can find many different conflicts that may arise and particularly in football where millions of dollars are involved. Imagine that in nearly every country of the world the practice of football is present. Today, 209 associations are members of FIFA. Every country has its own national association that unifies every team. And these 209 associations are conglomerate under a confederation that represents a region and/or a continent.

These confederations are:

- UEFA (Union des Associations Européennes de Football)
- CSF (Confederacion Sudamericana de Futbol)
- CONCACAF (Confederation of North, Central American and Caribbean Association Football)
- CAF (Confédération Africaine de Football)
- AFC (Asian Football Confederation)
- OFC (Oceania Football Confederation)

So there are a wide variety of football disputes that may occur between associations, confederations, players, trainers, agents, etc.

These disputes can be summarized in the following list:

- Contractual stability
- Match fixing
- Young football players: protection of minors
- Player agent
- Players release
- Hooliganism
- Club ownership
- Doping

Contractual stability

Under this dispute, I will approach the first breach of contract that CAS ever had. A leading case in this matter was brought, as you might appreciate after reading it, by the football player Ariel Ortega. The case is "CAS 2003/O/482 Ariel Ortega v/ Fenerbahçe & Fédération Internationale de Football Association (FIFA)", awarded on 5 November 2002.

First, I will begin by saying that Ortega was one of Argentina's most famous players. Before signing his contract with Fenerbahçe, he was playing for the best team in the country (Club Atlético River Plate) and was one of the National Team stars. It is important to mention that, previously, he played for three other important teams in Europe (Valencia FC, Parma FC and UC Sampdoria). In these teams he couldn't get accustomed to living outside his country and far away from his family and friends. This was one of the causes, which took him to return to Argentina where he was respected and, more important, comfortable with the environment. He was those kind of players that only play in good performance at home.

I mentioned the above because everyone in Argentina from journalists, agents, directors, even fans, knew that Ortega was not going to last for a long time living in Turkey.

The facts of this case are quite simple. Ortega signed a tripartite agreement:

- “On 23 May 2002 the Club, River Plate, and Mr Ortega signed a tripartite agreement to transfer Mr Ortega from River Plate to the Club at a fee of USD 7,500,000.
- On 8 June 2002, Mr Ortega signed a global contract, including for image rights, with the Club (“Global Contract”) for which he was paid USD 2,000,000 per season.
- On 24 June 2002, Mr Ortega signed a contract to play football for the Club for 4 years (“Employment Contract”) at a salary of USD 1,000,000 per season, payable in 10 instalments”. [28]

Due to this agreement, he began playing with Fenerbahce. He didn’t have a good performance. He was discontent with the team, the players, with everything.

On mid January of 2003, he returned to Argentina to treat an illness with his personal physiotherapist. After that, he played a friendly match against Holland in Amsterdam on February 13th of the same year. Instead of flying back to Turkey, he returned to Argentina. He alleged Fenerbahce’s President had given him permission because of the birth of his third child.

After this episode and a number of exchanged letters, communications and negotiations, Fenerbahce decided to make a claim to FIFA on April 11th.

“On 6 June 2003, the Dispute Resolution Committee of the Players Status Committee of FIFA (“DRC”), in the absence of Mr Ortega or any representative, ruled that Mr Ariel Arnaldo ORTEGA (“Mr Ortega”) was in breach of his contract without just cause, and ordered (“the Decision”), inter alia, Mr ORTEGA to pay FENERBAHÇE SPOR KULÜBÜ (“the Club”) an amount of USD 11,000,000 as compensation for breach of an employment contract (“the compensation order”) and stated that Mr Ortega was not eligible to play for any club until 30 December 2003 (“the suspension order”)”. [29]

“Following the decision against him Mr. Ortega asked to stay, suspend and set aside the order of the decision. On the 19th of September 2003 the CAS held a hearing and the parties made their various submissions”. [30]

After this hearing, both parties agreed that CAS was the one in charge to resolve their dispute. And as I mentioned before, this was possible thanks to FIFA’s decision of accepting CAS jurisdiction.

First, we have to point out which law was applicable, since the contract was signed in Turkey and none of the parties decided to subject this matter to Turkish law.

Article 58 of CAS states that in case the parties haven’t agreed on which law will be applicable, “the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate”. [31]

So FIFA’s regulations were applicable and Swiss Law as complimentary law.

Second, what were the parties’ allegations? Here, both parties stated a breach of contract from the other party.

· “Mr Ortega complains of a breach of three terms: (i) Payment of his salary; (ii) Payment to a Mr Iacoppi who had an undefined - it may be undefinable - role as a friend, mentor and minder to Mr Ortega; (iii) Failure to provide adequate medical treatment.

· The Club complains Mr Ortega’s failure or refusal to continue to play for the Club after 12 February 2003”.[32]

CAS refused Ortega’s three allegations of breaches.

To the first complaint, “the CAS found that the failure of the Club to make the payment of the salary owed to the Player for December and January until March could not, in itself, constitute a breach of contract and entitle the Player to treat the contract as terminated”.[33]

To the second complaint “CAS found that although Mr. Iacoppi had only been paid the first instalment of US \$6,000 this was not enough to discharge Mr. Ortega from the contractual obligations he owed to the Club”.[34]

To the third complaint, “CAS found that these claims were grossly exaggerated”.[35]

But what was really weird about this case is that “Ortega had the opportunity to give notice of early termination of contract if he had not been paid within 15 days of the due date of salary. He would have had to issue a notice of termination of the contract to the Turkish Football Association and Fenerbahçe would have had 7 days to make payment of the said outstanding salaries.”[36]

Due to not being aware of Turkish regulations referring to breaches of contracts, Ortega missed a suitable opportunity of terminating his contract with Fenerbahce or may be settled good terms with the team.

“The Turkish Football Association regulations provide a specific mechanism for a player who considers that he is being denied his salary and wishes to terminate his contract. Art. 32 provides “The Player may issue a notice of termination within 15 days if the Player has not been paid by the Club as per the agreement, and this [sic] Regulations, within 7 days following the maturity date thereof”.[37]

After the decision was issued, Ortega lost some time of professional activity. Time referred to the suspension plus the time until another club (Newell’s Old Boys), that was in the end the one that paid the amount settled with Fenerbahce, hired him. Ortega vanished nearly a year of professional competition at the age of 30. Imagine how much time he would have lost with an ordinary procedure. In one sense, he was “lucky”. His non-professionalism and whim led him to lose a lot of money and time. Two things that are crucial for professional football players.

Doping (Sanction of a football team)

Under this dispute, I will try to approach a unique decision that involved a whole football team.

When we talk about doping, no matter what kind of sport we are referring to, we always think or imagine the sanctioning of a single athlete. Because that is how it usually works.

However, is it usual to sanctioning an entire team? Could this be possible?

This was addressed in the case “CAS 2004/A/593 Football Association of Wales (FAW) v. Union des Associations Européennes de Football (UEFA), award of 6 July

2004” where the entire national team of Russia was under consideration of being sanctioned.

Russia and Wales were going to play a qualifying match for a European competition on 2004. The team that won the series of two matches would qualify to the competition. In this case a Russian player named Titov, was involved.

“The case originates from the first match between Russia and Wales during the Euro 2004 qualifier on 15 November 2003, when the Russian player Titov was selected at random for a doping test. Titov was a substitute, who did not actually play in that match. The match ended in a goal-less draw. The return match took place in Cardiff on 19 November 2003. Titov played until the 59th minute and is said by the FAW to have made a substantial contribution to Russia’s victory. Russia won the match 1-0, and so qualified for the Euro 2004. Titov was not tested on 19 November 2003”. [38]

The important question to address is related to Russia’s duties and obligations to Tito.

Is the national team responsible for Tito’s infringement, since when he was found guilty of doping, under their supervision?

This was what the FAW stated as one of its contents.

“The FAW submitted that the doping offence occurred while Titov was on international duty, not club duty, and that the FUR must be regarded as implicated because it was involved in the offence in that Titov was under the direction and control of the FUR, not Spartak Moscow, when the offence was committed”. [39]

However, FUR in order to be held liable for Tito’s infringement, FAW must have had to show that FUR was a necessary participant or collaborate on the infringement. Something that was quite difficult to prove.

“The panel assumed in the FAW’s favour, without deciding, that Titov’s body was free from bromantan on 11 November 2003 and that his doping offence was committed while under the direction and control of the FUR. But even on that basis, the panel rejected the *res ipsa loquitur* argument advanced by the FAW and held that “there is no evidence at all that the FUR cooperated intentionally or negligently in the use of this banned substance by Titov.” [40]

So, in the end, besides Tito’s sanction for practicing professional football for 12 months, FUR was found not guilty in this particular case. FAW had some good allegations to sustain their position and obtained FUR disqualification from the competition but, it is so difficult to prove what they wanted to prove because, even though Tito was under FUR sphere, it’s impossible for FUR to control every single movement or action of its team. The trust on their players and making responsible an entire team for the actions of a single player is too broad.

“Even from a logical point of view, it is impossible for a federation or a club to control a player every day for 24 hours; the player will always have a chance sooner or later to hide and take by himself a forbidden substance”. [41]

Maybe a good way to make players stop cheating is by enacting exemplary decisions. Yet, there are so many interests involved in these cases (no need to mention them, everyone knows what I’m talking about) that the easy way to “solve” the problem is by sanctioning the one who committed the infraction. Perhaps in the future we will see changes on this field.

Short comparison to another sports ADR system (Baseball Arbitration).

At this moment, you've probably figured it out how CAS works on the disputes they resolved. But, we should know that there are some specific ADR systems for some sports.

This is what happens with American baseball. Baseball has the particularity of a unique arbitration process. However, this process is not available for any potential dispute. It was especially formed for labor disputes between MBL teams and its players.

When there is a dispute between a team and a player regarding the salary that player is going to receive, the salary arbitration process takes action.

The system is not that complicated but it has some rules.

"Here's how it works. In the event a dispute does it arise, the parties attempt to settle their dispute by negotiation. As negotiations reach an impasse, each gives the other a final settlement offer. If no settlement results, the arbitrator is informed of the parties' final settlement offers and the matter proceeds to arbitration. A typical arbitration process ensues under whatever arbitration process agreed to by the parties. After the arbitration hearing, the arbitrator will make a final and binding award like in other arbitrations. But there is a twist; in baseball arbitration the arbitrator's award is limited to one of two amounts. You guessed it: one or the other of the final offers of settlement. Nothing more, nothing less, nothing in between." [42]

The arbitrator job is to decide which offer is the most appropriate for both parties. So, parties would have to give a reasonable offer since the arbitrator's decision will be binding for both.

Baseball Arbitration has resulted a very good system through the past years to resolve salary matters.

The American Arbitration Association (AAA) gives support to these disputes and other type of baseball disputes.

"The AAA also provides hearing facilities for many Major League Baseball salary arbitrations and handles many sport-related business disputes arising from a variety of individual professional sport contracts and other agreements." [43]

"Although the AAA is well known for the resolution of commercial disputes, to a certain extent it is lesser known for its history of assisting sports related entities in settling disputes. Each year, the AAA administers hundreds of franchise, joint-venture, and partnership disputes which include professional sports disputes. Among those matters arbitrated are doping, sports agents, team, coach and athlete disputes, college athletic conference membership disputes, product and merchandising agreements, sports franchises, partnerships, sponsorships and endorsements, licensing, intellectual property (IP), broadcasting, marketing and advertising agreements." [44]

3. Conclusion [\[arriba\]](#)

Finally, it's time to give a little conclusion about what we have learned of an incredible ADR system such as CAS.

I won't be repetitive stating the advantages this system gives to professional football players and teams since you have already discovered them. However, I would like to say that CAS has become an incredible and useful alternative for

football disputes. CAS has shown independence and impartiality over some of its decisions, even ruling against important teams or in cases involving considerable amounts of money.

The recent incorporation of the Ad Hoc tribunal for international competitions such as the Football World Cup has given football a new tool for resolving important disputes during a competition.

But there are some things that have to be analyzed to continue enriching this system.

“Thus, for disputes relating to sports bodies domiciled outside of Switzerland, the default law to be applied by a CAS panel in the absence of an agreement between the parties will, curiously, depend on whether the matter has been referred to the Ordinary Arbitration Division or the Appeals Arbitration Division; this despite the fact that the assignment of a matter by the CAS Court Office to either division ‘may not be contested by the parties or raised by them as a cause of irregularity’.”[45]

None of the ADR systems that I know were successful from its origins. All of them were amended through the years since new regulations and alternatives were been discovered. In my opinion, the perfect ADR system is the one that evolves over time, watching what is important for that specific moment and trying, if possible, to incorporate new tools.

CAS, as an ADR system that resolves professional sports disputes, is going throughout that path of enrichment.

Notas [\[arriba\]](#)

[1] Alexander Wild, CAS and Football: Landmark Cases, p.10 (2011).

[2] Devine v. White, 697 F.2d 421, 435 (D.C. Cir. 1983) abrogated by Cornelius v. Nutt, 472 U.S. 648, 105 S. Ct. 2882, 86 L. Ed. 2d 515 (1985).

[3] See Code of Sports-Related Arbitration, art. R33, available at [http://www.tas-cas.org/d2wfiles/document/4962/5048/0/Code20201320corrections20finales20\(en\).pdf](http://www.tas-cas.org/d2wfiles/document/4962/5048/0/Code20201320corrections20finales20(en).pdf) (last visited 19/03/2014).

[4] See Code of Sports-Related Arbitration, supra note 2, art. R44.4

[5] Katherine Benesch, Why Adr and Not Litigation for Healthcare Disputes?, Disp. Resol. J., August-October 2011, at 52, 55

[6] Raymond G. Bender, Jr., Arbitration-an Ideal Way to Resolve High-Tech Industry Disputes, Disp. Resol. J., November 2010-January 2011, at 44, 49

[7] See Code of Sports-Related Arbitration, supra note 2, art. R43

[8] See Code of Sports-Related Arbitration, supra note 2, art. S14.

[9] Leonardo Andreotti, Tribunal Arbitral del Deporte: TAS/CAS, available at <http://bd.austral.edu.ar:2375/articulos.php?idarticulo=67172&print=2> (visited 23/03/2014).

[10] Ibid.

[11] Gustavo Albano Abreu, La independencia del TAS y el “Caso Messi”, available at <http://bd.austral.edu.ar:2375/articulos.php?idarticulo=63855&print=2> (visited 30/03/2014).

[12] Ibid.

[13] Ibid.

[14] See Code of Sports-Related Arbitration, supra note 2, art. S4.

[15] Alexander Wild, CAS and Football: Landmark Cases, p.9 (2011).

- [16] Leonardo Andreotti, Tribunal Arbitral del Deporte: TAS/CAS, supra note 9.
- [17] Jack Anderson, *Leading Cases in Sports Law*, p.69 (2013).
- [18] Alexander Wild, *CAS and Football: Landmark Cases*, p.7 (2011).
- [19] Ibid, p.8.
- [20] Ibid, p.8.
- [21] Leonardo Andreotti, Tribunal Arbitral del Deporte: TAS/CAS, supra note 9.
- [22] See Ordinary Arbitration Procedure, available at <http://www.tas-cas.org/clause-templates> (visited 10/04/2014).
- [23] See Code of Sports-Related Arbitration, supra note 2, art. R27.
- [24] See Ordinary Arbitration Procedure, supra note 22.
- [25] Leonardo Andreotti, Tribunal Arbitral del Deporte: TAS/CAS, supra note 9.
- [26] See Code of Sports-Related Mediation Rules, art. 1, available at http://www.tas-cas.org/d2wfiles/document/307/5048/0/Mediation20Rules20201320_clean20final_ggr.pdf (visited 12/04/2014).
- [27] Adam Beach, *The CAS ad hoc Division-fast, fair and free?*, available at <http://www.lawinsport.com/articles/regulation-a-governance/item/the-cas-ad-hoc-division-fast-fair-and-free> (visited 12/04/2014).
- [28] Arbitration CAS 2003/O/482 Ariel Ortega v/ Fenerbahçe & Fédération Internationale de Football Association (FIFA), award of 5 November 2002.
- [29] Ibid.
- [30] Alexander Wild, *CAS and Football: Landmark Cases*, p. 40 (2011).
- [31] See Code of Sports-Related Arbitration, supra note 2, art. R58.
- [32] Arbitration CAS 2003/O/482 Ariel Ortega v/ Fenerbahçe & Fédération Internationale de Football Association (FIFA), award of 5 November 2002.
- [33] Alexander Wild, *CAS and Football: Landmark Cases*, p. 42 (2011).
- [34] Ibid.
- [35] Ibid.
- [36] Ibid, p. 45.
- [37] Arbitration CAS 2003/O/482 Ariel Ortega v/ Fenerbahçe & Fédération Internationale de Football Association (FIFA), award of 5 November 2002.
- [38] Arbitration CAS 2004/A/593 Football Association of Wales (FAW) v. Union des Associations Européennes de Football (UEFA), award of 6 July 2004.
- [39] Alexander Wild, *CAS and Football: Landmark Cases*, p. 177 (2011).
- [40] Ibid, p. 179.
- [41] Arbitration CAS 2004/A/593 Football Association of Wales (FAW) v. Union des Associations Européennes de Football (UEFA), award of 6 July 2004.
- [42] Stanley Leasure, *Baseball Arbitration, Eminent Domain ADR*, available at <http://blog.edom-adr.com/?p=886> (visited 13/04-2014).
- [43] American Arbitration Association, *Sports Arbitration including Olympic Athlete Disputes*, available at https://www.adr.org/aaa/ShowPDF?doc=ADRSTG_004199, (visited 14/04/2014).
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- [45] Chartered Institute of Arbitrators (Great Britain); *London Court of International Arbitration, Arbitration international*, Volume 25, Number 4, p. 600 (2009).