Provisional Measures by CAS/TAS

By Sergios Manarakis
Attorney at Law, CIArb Accredited Mediator

Preface

Aim of the Court of Arbitration for Sport (hereinafter CAS) is to settle sports-related disputes through arbitration and mediation[1]. In this paper we will concentrate only on arbitration and in particular on the period after the filling of a request and before the issuing of the final award by the relevant CAS Division (under either the Code or the ad hoc rules). A period that may be relatively[2] short, but still crucial for an athlete, who doesn't have the luxury to stop participating in sports events or even to stop its training program and do nothing but waiting (and hoping) to be declared innocent. Such a loss of time could be detrimental for his/her chances to meet his/her athletic goals.

That was the determinant of success in the Pechstein's Case in which CAS accepted, (partially) her application for provisional measures allowing her to "*participate in all training sessions authorized or organized by the Deutsche Eisschnelllauf Gemeinschaft e.V. (DESG) or a club and to use for training purposes any available speed skating racing track, until the Panel's decision on the merits of the appeal*", because it felt that such a permission was necessary to "*protect*" Pechstein's "*chances to qualify for the Vancouver Winter Olympic Games of 2010*". CAS tried with this decision to balance the interests of both the athlete (who at that point was accused, but not finally condemned, for a doping violation[3]) to qualify for and, if the ban were to be dismissed, participate at the Olympics and the fight of the authorities against doping.

However that decision did not allow her to participate in competitions[4], and constant to that ruling another Panel of CAS denied Pechstein's request for provisional measures in order to be able to compete at the ISU World Cup events of 6-7 and 11-13 November in Berlin, Germany, and Heerenveen, Netherlands respectively, emphasizing that she had not established that her non-participation in those events would cause her 'irreparable harm', and therefore the conditions which would allow it to grant the stay were not met[5].

---

[1] See art. S1 of the Code of Sports-related Arbitration ("Statutes of the Bodies Working for the Settlement of Sports-related Disputes"), available at http://www.tas-cas.org/rules.

[2] in comparison with the time a Court would need to issue an award.

[3] Pechstein' appeal was eventually dismissed and therefore the decision of the Disciplinary Commission of the International Skating Union was confirmed by CAS (2009/A/1912). However, that development of Pechein' case does not reduce the importance of CAS's interim decision.

[4] According to the explicit announcement of CAS "*the leave granted is strictly confined to training and practice sessions and does not allow Claudia Pechstein to take part in any skating competition sanctioned by a sports authority at any level whatsoever, be it international, national or local*", see Press Release of 4 September 2009, available at http://www.tas-cas.org/press-release.

[5] see Press Release of 6th September 2009, available at http://www.tas-cas.org/press-release.

That case was the occasion for this paper to deal with the problem of the criteria used by CAS when granting or denying to grand provisional or conservatory measures. And, furthermore, with the problem of how CAS applies[6] those criteria.

Provisional measures and arbitration

Arbitration is an, alternative to litigation, process of resolving disputes[7] covering issues of any kind and becoming, day by day, more and more popular. Therefore, it is not surprising that already being a "*generally accepted method of resolving international business disputes*"[8] it has also become the choice of International Olympic Committee for resolving disputes directly or indirectly linked to sport. A choice that led to the creation of CAS in 1984[9], seated in Lausanne, Switzerland[10] and therefore based on Swiss Law[11] and in particular Chapter 12 of the Swiss International Private Law Act of 18 December 1987.

This Act, the *lex arbitri*[12], is the law governing the arbitrations conducted by CAS, dealing with matters, such as the arbitration agreement, the appointment of the arbitrations etc. And –among others– providing for "*provisional and conservatory orders*".

In particular, according to article 183 of this Act:

"*1. Unless the parties have agreed otherwise, the arbitral tribunal may enter provisional or conservatory orders at the request of one party.*

2. If the party concerned does not comply voluntarily, the arbitral tribunal may request the assistance of the judge with jurisdiction who shall apply his own law.

3. The arbitral tribunal or the judge may make the entry of provisional or conservatory orders subject to the receipt of appropriate security".

Based on those provisions, the Code of Sports-related Arbitration ("*Statutes of the Bodies Working for the Settlement of Sports-Related Disputes*" - hereinafter "The Code") have relative provisions.

The provisions of the Code

Art R37 of the Code entitled "*Provisional and Conservatory Measure*"[13] allows the parties to ask for "*provisional or conservatory measures*", without[14], however defining "*specifically in*

---

[6] All CAS's decision referred in this paper, are available at http://www.tas-cas.org/jurisprudence-archives.

[7] It should not however been classified as a method of Alternative Dispute Resolution (ADR) since although arbitration presents an alternative to litigation, it is nonetheless fundamentally the same in that the role of both the Judge and the Arbitrator is judgmental. They both not propose or even help parties to find the best solution to their dispute, but rather make a binding decision. See Redfern and Hunter *Law and practice of International Commercial Arbitration*, Sweet & Maxwell third edition (1999) 1-51 with further reference to Carrol and Dixon, Alternative Dispute Resolution Developments in London, *The International Construction Law Review,* [1990 Pt 4] 436 at 437.

[8] Redfern and Hunter *Law and practice of International Commercial Arbitration*, Sweet & Maxwell third edition (1999) 1-01.

[9] For the history of CAS see http://www.tas-cas.org/history

[10] This is also the case for the ad hoc divisions of CAS, since their rules explicitly provide that their seats and panels are always in Lausanne, even if the hearing takes place in one of the decentralized offices of CAS or elsewhere.

[11] See Vetter M. The CAS – An arbitral institution with its seat in Switzerland, *Sports Law eJournal,* Bond University (2008), available at http://epublications.bond.edu.au/slej/9

[12] See Redfern and Hunter, Op.cit 2-06.

which circumstances CAS is to issue some provisional measures". In other words, without, any reference to:

- either the kind of "*provisional or conservatory measures*" that the President, his Deputy or the relevant Panel can order,
- or the conditions under which these measures can be ordered.

As a result, it is the duty of the President[15], or the relevant Panel[16] or Division, firstly to identify the criteria for granting or denying provisional and conservatory measures and apply them in each case and secondly to decide the "*appropriate*" in any case measure. Although the matter of what constitutes an "*appropriate*" measure is not the subject of this paper, it should be noted that, as it is generally accepted[17], interim or provisional or conservatory measures can be classified in three broad categories:

- measures which relate to the taking and preservation of evidence,
- measures which aim at preserving the "status quo", and
- measures which aim to prevent the transfer or dissipation of assets.

Especially in the case of preserving the "status quo" and given the nature of the cases dealt by CAS, the "*appropriate*" to that end measure can differ/vary[18] for each specific case. In other words, the variety, the range of those decisions could be unlimited.

That is exactly the reason of the importance of both the identification and the interpretation of the "*conditions*" under which those "*provisional or conservatory measures*" can be ordered by the President or the relevant Panel/Division.

Before, however, dealing with that matter, CAS must check whether the preconditions of its authority to deal with a said case exist, otherwise it will just deny doing so.

Preconditions

---

[13] No party may apply for provisional or conservatory measures under these Procedural Rules before the request for arbitration or the statement of appeal, which implies the exhaustion of internal remedies, has been filed with the CAS. The President of the relevant Division, prior to the transfer of the file to the Panel, or thereafter the Panel may, upon application by one of the parties, make an order for provisional or conservatory measures. In agreeing to submit to these Procedural Rules any dispute subject to appeal arbitration proceedings, the parties expressly waive their rights to request such measures from state authorities. This waiver does not apply to provisional or conservatory measures in connection with disputes subject to ordinary arbitration proceedings. If an application for provisional measures is filed, the President of the relevant Division or the Panel invites the opponent to express his position within ten days or within a shorter time limit if circumstances so require. The President of the relevant Division or the Panel shall issue an order within a short time. In case of utmost urgency, the President of the relevant Division, prior to the transfer of the file to the Panel, or thereafter the President of the Panel may issue an order upon mere presentation of the application, provided that the opponent is heard subsequently. Provisional and conservatory measures may be made conditional upon the provision of security.

[14] as acknowledged by CAS's case-law, see 2003/O/486.

[15] if the relevant Panel has not been formed yet (See Art R37 available at http://www.tas-cas.org/statutes and 2002/A/378, 2001/A/329, 2000/A/274).

[16] if it has already been formed (See Art R37 and 2001/A/328).

[17] See Alan Redfern (1995), *Arbitration and the Courts: Interim Measures of Protection – Is the Tide About to Turn?,* Texas International Law Journal [Vol. 30: 71], p. 78.

[18] The Pechstein's case is actually a very good example of that.

The first substantial precondition is CAS's jurisdiction, in the absence of which no party can apply for provisional measures. As it is stated in many cases[19] the applicants must have standing to make the application to the relevant (Ordinary, Appeal or ad hoc) CAS Division "*without such status there is no basis either for the request for relief as to the so called merits. It follows that if there is no standing to request relief for the merits there can be no Application for extremely urgent preliminary relief, which of necessity must spring out of the merits*".
In order to avoid contradictory awards[20] the new edition of The Code[21] explicitly imposes to the President of the relevant Division or the Panel the duty to "*rule first on the CAS jurisdiction*" who, according to this new provision "*may terminate the arbitration procedure if he rules that the CAS has manifestly no jurisdiction*".

Jurisdiction may be lacking because the parties, simply don't have the right to challenge a certain decision. For example art. 60[22] of the Statutes of UEFA explicitly exclude the jurisdiction of CAS on decisions of the so-called "*sporting nature*". As a result, when a decision of UEFA authorities falls in that category, CAS must deny the request, otherwise, its decision will be annulled by the Swiss Federal Tribunal[23].
Which is, however, the meaning of the term "*sporting nature*"?
As repeatedly stated by CAS[24] "*the nature of a dispute cannot result from preestablished criteria but must be determined on a case by case basis in accordance with the circumstances of the dispute*".
Those "*circumstances*" seem to be the economical dimension, the economical consequences of the disputed decision. If the decision does not cause (directly or indirectly) any or, at least, not revere, pecuniary damage, the decision is more likely to be considered as one of "*sporting nature*".
In the *Celtic FC case*[25] CAS denied its jurisdiction concluding that "*in the present matter, it appears clearly that the suspension of the team manager of Celtic FC for one match is also mainly a decision of a sporting nature. Considering that no evidence of a possible financial damage has been brought by the Appellants, the direct pecuniary consequences of such suspension are not obvious, at least at this stage of the proceedings*".
Similarly, in the *Real Madrid case*[26], in which the use of the Santiago Bernabeu Stadium was banned for 2 UEFA matches, CAS denied also its jurisdiction concluding that "*such decision was a sporting sanction and that the consequences of such ban were primarily of a sporting nature*", although it is clear that the ban of the use of a stadium causes pecuniary damage of a certain degree.

---

[19] See OG 2008/001.
[20] Namely an interim award accepting CAS' jurisdiction and a final award dismissing the claim (or the appeal) for lack of jurisdiction.
[21] R37 of the 2010 edition, available at http://www.tas-cas.org/rules
[22] "*A decision of the Organs for the Administration of Justice of a sporting nature, or any part of a decision that is of a sporting nature, may not be challenged in civil law*".
[23] Pursuant to art. 190 of the Swiss International Private Law Act (*La loi federale sur le droit international prive – LDIP)*, published in FF 1988 I5.
[24] See 2001/A/342.
[25] Op.cit
[26] 1998/199, reference of that case found in the 2001/A/342.

On the other hand, in the *Addo & van Nistelrooig case*[27] CAS accepted its jurisdiction concluding that "*although the non-qualification of two players is a decision of a sporting nature, it can be also argued that such a decision may have consequences of a pecuniary nature*"[28].

Jurisdiction may also be lacking because of the absence of a specific decision that could be appealed by that party. That was the case in the latter attempt of Claudia Pechstein to compete in the Vancouver 2010 Olympic Winter Games. The athlete files an application requesting that she be nominated for and allowed to participate in the speed skating competitions. The ad hoc Division, however, dismissed her application because she "*did not challenge a specific decision of the DOSB not to nominate her for the Winter Olympic Games. Indeed, such a decision could not exist considering that the athlete is currently suspended for a period of two years, since 8 February 2009. As a consequence, Ms Pechstein was ineligible to compete in the 2010 Olympic Winter Games and the DOSB could not have taken any material decision not to select her*". In the absence of such a decision, the ad hoc division ruled that it "*did not have jurisdiction to entertain*" that application[29].

Finally, jurisdiction may also be lacking simply because the parties, ignore ArtR37 of the Code which explicitly demands the exhaustion of internal remedies, and, without exhausting them, file a request of the arbitration or a statement of appeal[30].

Criteria

Jurisdiction established, the relevant Division, will have to decide whether to grant or deny the request. Because ArtR37 doesn't specify the conditions under which such a request is granted, CAS follows a "*general rule*" according to which "*it is necessary to consider whether the measure is useful to protect the Appellant from irreparable harm, the likelihood of success on the merits and whether the interests of the Appellant outweigh those of the opposite party*".

In other words, three are the conditions for granting or denying such a request:

- the *Irreparable harm* of the requesting party,
- the *Likelihood of success on the merits* and
- the *Interests* of the opposite party,

that must all be met.

It must be noted, at this point, that that the acceptance and application by CAS of this "*general rule*" has led to their incorporation, as an explicit provision to all the rules decided for the ad hoc Divisions that were, first, created for the 1996 Olympic Gamed held in Atlanta, and have since gain the acceptance of the sport community.

Interpretation

However, neither the Code, nor the ad hoc Rules contain provisions interpreting those conditions. In fact, such an "interpretation" would only result to unfair decisions, since

---

[27] See 2001/A/324.

[28] Eventually, CAS denied the request of the players, but only because it concluded that theirs interests did not outweigh those of UEFA.

[29] see Press Release (7) of 18th February 2010, available at http://www.tas-cas.org/press-release.

[30] See 1998/202, in which CAS denied the request concluding that "*CAS has no jurisdiction to hear the Case*" and therefore "*it has also no jurisdiction to hear the attached to it request for provisional measures,*".

their actual meaning cannot be pre-established, but must, rather, be determined on a case by case basis in accordance with the circumstances of the dispute.

Throughout the years, CAS Divisions (Ordinary, Appeal, ad Hoc) developed certain "guidelines" that must be followed, certain "tests" that must be executed[31], to identify whether those conditions are met and therefore to grand or deny the requested provisional or conservatory measure.

In particular:

- *Likelihood of success on the merits*

In order to meet the condition of the "*Likelihood of Success on the merits*" the party must not only "*give the impression that the facts have a certain probability*"[32] but also " *make at least plausible that the facts and the rights cited exist and that the material conditions for a legal action are fulfilled*"[33].
In other words, as CAS concluded in the *Sovetov case*[34] "*the Appellant's likelihood of success over the substance is* prima facie *reasonable in the sense that it cannot be definitely discounted*"

- *Irreparable harm* of the requesting party and the *Interests* of the opposite party

In the case of the conditions of the "*Irreparable harm*" of the requesting party and the "*Interests*" of the opposite party, CAS uses the "***so-called balance of convenience or interest",*** criteria according to which the relevant Division must "*compare the risks*[35] *incurred by the Appellant in the event of immediate execution of the decision with the disadvantages for the Respondent in being deprived such execution*"[36].

Finally, a "*sine qua non*" condition for granting a request for provisional or conservatory measure, although not explicitly provided by neither the Code nor the ad hoc Rules, is the ascertainment of the truthiness of all those three conditions. Otherwise, if only one of them is lacking, the request is denied[37]. Although, until the recent years, it was not quite clear[38] whether those conditions were cumulative or alternative[39], recent decisions[40] made it clear that "*The conditions for the stay of a decision are cumulative*".

---

[31] if we could use those terms
[32] 2001/A/329
[33] 2000/A/274, 2001/A/328, 2001/A/329, 2001/O/341, 2002/A/378
[34] 2006/A/1141
[35] it is noting that in many decisions, instead of the term "*risks*" is used the term "*disadvantages*" raising queries of the exact meaning of them. It seems, however, that CAS uses those terms with the same meaning.
[36] 2000/A/274, 2008/A/1453, 2006/A/1141, 2003/O/486
[37] See OG 08-004 which denied the request because the Division concluded that "*we do not believe that Applicants can meet, among others, the requirement for provisional measures of a showing likelihood of success on the merits. In such circumstances, we do not need to examine whether the Applicants meet the other requirements for provisional measures*", and also 2000/A/272 concluding that "*Whereas at thiw stage of the proceedings, it appears that a doping offence has been established. Whereas, prima facie, it is not likely that the decision appealed from is contrary to FINA Doping Control Rules*"
[38] See Ian Blackshaw *Provisional and Conservatory Measures – an Under-Utilised Resource in the Court of Arbitration for Sport*, Entertainment and Sports Law Journal (ESLJ), Vol.4 Nu2, available at http://go.warwick.ac.uk/eslj/issues/volume4/number2/blackshaw.
[39] See however, OG 02-004 that concluding that "*The Panel is of the view that each of these considerations is relevant, but that any of them may be decisive on the facts of a particular case*".
[40] 2006/A/1141, 2008/A/1453

Case-law

But how is CAS applying those conditions in real life situations? In other words, what must the party or its lawyer prove to win?

Interesting answers prevail by reviewing CAS's case-law.

In particular, CAS's Divisions, have concluded that:

- *Irreparable harm*

Situations that constitute the condition of *Irreparable harm* tends to fall into the following categories:

<u>- The existence of harm</u>

In order to check whether the harm suffered by a party is "*irreparable*" or not, that "harm" must exist. Otherwise, if no harm can be established by the evidence brought before the Division, the request is denied.

That was the case, in the *Fulham FC case*[41] in which the request of the team to stay the execution the decision of the FIFA Executive Committee ordering her to pay FF30,000,000 to Olympique Lyonnais SASP, was denied simply because "*the view of this Panel is that there is, in the present case, no need, and thus no legal basis, to stay the Decision … OL is not legally in the position to enforce the Decision*".

That was also the reason for the rejection of the urgent request of the Football Federation of Togo (FTF)[42] for provisional measures in order to be able to participate in the draw[43] of the qualifying round for the next African Cup of Nations[44]. Taking into consideration the guarantee of the African Federation of Football (CAF) for the organization of a new draw in the event that the appeal of the FTF is upheld, considered that, "*at this stage, there was no risk of irreparable harm for the FTF*"[45].

<u>- The loss of the opportunity to participate in competitions</u>

CAS recognizes the fact that not participating in a particular sport event (such as the Olympic Games, or a Word Tournament), or not playing in official games for a relative long period, constitute *irreparable harm* simply because the loss of the opportunity to participate is irreversible. No one can go but on time and restore the damage done.

As was stated in the *Sovetov case*[46] **"***for a player to be denied the opportunity to play during fourth months would cause him damage irreparable if the Panel to be appointed were eventually to find that the suspension should be set aside. At this point, it appears thus that the execution of the particular disciplinary sanction contained in the Decision would result in an immediate harm to the Appellant, which would be difficult to compensate, assuming that the appeal would be eventually admitted*"

---

[41] 2003/O/486

[42] The FTF lodged an appeal at the CAS following the decision of the African Federation of Football (CAF) to suspend the national team of Togo for the next two editions of the African Cup of Nations (CAN) due to the decision to the government of Togo to withdrawn its team from the "2010 African Cup of Nations" following an armed attack against the team.

[43] which took take place on 20 February 2010.

[44] starting in September 2010.

[45] see Press Release of 18th February 2010, available at http://www.tas-cas.org/press-release.

[46] 2006/A/1141

Similar was the reasoning in the 2001/A/328 case in which it was stated that "*If the Appellant's request is denied, he will be ineligible to compete in the International Challenge Track and Field Championship even if he is successful in his appeal of the decision of GS/USA*",

- The possibility of failure to obtain compensation

Irreparable is also considered the harm, if, in case of winning on the merits, it is unlikely either for an athlete or a team to claim compensation for its damage.
As was stated in the *Jaramillo case*[47] "*the player would suffer irreparable damage if the stay were not granted. It is by no means clear to us against whom the Player could claim compensation if it were not granted, but the player were to win the appeal. The Colombian club? The DRC? Suffice to say that the matter is at best moot. In any event the Player is ready, willing and able to play now; months lost can never be recovered; a footballer's professional life is relatively short. The German club too will be deprived for the same period of his services that of which they wish to make use. Again it is unclear to us how it could ever be compensated and by whom for that loss*"

- The need to preserve evidence

Evidences and their existence are critical in order for the Division not only to be able to take a right and fair decision, but to be just able to take one. Therefore, the possibility of loosing such evidences is considered as an irreparable harm and therefore conservatory measures can be granted.
That was the reason the Panel of the ad hoc Division for the Olympic Games held in Salt Lake City[48] did not allow the judges of a game to leave the city and ordered them to attend before the Panel as witnesses "*Because the judges may leave Salt Lake City at any time, the Panel is satisfied that irreparable harm may be suffered by the Application if an order is not made*".

- *Likelihood of success on the merits*

Situations that constitute the condition of *Likelihood of success on the merits* cannot be categorized since that success depends on whether the interested party actually violated or not the relevant rule.
What is, however, important to note[49], is that CAS applies general principles of law such as the well known principle of "*in dubio pro reo*". In a doping case[50], in which the appeal was finally partially upheld, but still part of the decision was validated and therefore the appellant penalised, the Deputy President of the Appeals Arbitration Division in a procedural order, decided to stay the execution of the decision of TIA, because the reasons of that decision "*were not available to either the Appellant or to the CAS at the time of the procedural order. The Deputy President of the Appeals Arbitration Division felt unable to determine whether this decision violated FFM rules or rules of law and to establish whether the appeal was likely to succeed on the merits*".

- *Interests of the opposite party*

[47] 2008/A/1453
[48] OG 02-004
[49] apart from the fact the party doesn't need to convince the Division for what he believes is right, but rather, as stated above, to convince them that his claim "*cannot be definitely discounted*".
[50] 2000/A/281

This is the most difficult of the three conditions to judge and the most susceptible to subjectivity, since the relevant Division must manage to balance the opposite interests, which very often are of the same significance. To make thinks even more difficult for the Division, when it deals with that condition, it has already accepted the two other conditions[51]. In other words, it accepts that the request is plausible and that its denial causes irreparable harm to the requesting party. As a result, in that stage CAS is actually asked to set in order of precedence the opposite interests.
The criteria used by CAS in order to balance the opposite interests, seem –among others– to be:

-The importance of the fight against doping
Doping is, maybe, the worst enemy of sports. As a result CAS bears that in mind when deciding on such cases, and in most of the cases the result is against the requesting party. As stated in the *R. vs FIFA case*[52] "*In case of doping, the suspension of the effects of the challenged measure must be ordered parsimoniously*".
Therefore, the dismissal[53] of the party's argument that denial of the request for stay of execution "*will lead to his loss of the most important races for which he had trained*", based on the rationale that "*the Appellant's wish to take part in some forthcoming events* ***cannot prevail*** *on the application by the UCI of its own rules and its desire to fight doping in cycling*" cannot be considered as a surprise.
Similar was the reasoning behind the denial of the request another case about doping[54] "*the arguments advanced by the Appellant in her request for provisional measures are not sufficient to justify the stay of the execution of the decision challenged, compared with the interest of FINA to ensure the correct application of its regulations*"

However, CAS makes efforts not to ignore the interests of the requesting party. Therefore, in some cases[55], it allows a "*limited interim relief*" because, "*the interests of the Respondents in maintaining the suspension would appear to be minimally affected by the granting of limited interim relief*".
In must however be noted that in that particular case, the "*limited interim relief*" was in fact a permission to the athlete to compete in an International Championship, relief that was denied in the *Pechstein's Case*.

-The consequence of the provisional measure at the deterrent effect of the sanction
While, in doping cases CAS seems to be extremely reluctant in granting requests for provisional measures, things aren't the same with other cases, whose the content is of pure civil law (e.g. infringements of contract), thus cases that do not affront the principles of sport (as doping offences do).
As it was stated in the *Jaramillo case*[56] "*As to the balance of interests between the parties we consider that the deterrent effect of the sanction will not be undermined if its imposition is* ***merely postponed*** *and not cancelled. The disadvantages sustained by the Player in the event of*

[51] otherwise, it would had already denied the request without need to deal with this condition.
[52] 2005/A/958 (in French)
[53] 2002/A/378
[54] 2000/A/272
[55] as in the case 2001/A/328
[56] 2008/A/1453, see also 2006/A/1141

immediate execution of the restriction seem thus to outweigh the disadvantages for FIFA if such execution is stayed".

-The importance of the regulations

On the other hand, the Regulations dealing with the organization and the conduction of the Championships, are considered of great importance. As a result, failure to comply with them that cannot be argued to be caused by force majeure is highly unlikely to lead to the grand of provisional measures.

As it was stated in the *Addo & Van Nistelrooig case*[57] "*it appears that the interest of the Appellants to play the last rounds of the UEFA Cup, despite the fact that the club did not comply with the deadline for registration of players, do not outweigh the interests of the UEFA to have the UEFA regulations equally applied to all participants qualified in the UEFA Cup*".

That importance, was also stressed out in the *AS Roma vs FIFA case*[58] in which the determinative factor was time. As it was stated in that case, although in some cases the interest of the sport organization to see its regulations enforced and implemented may be less prominent than that of the other party to avoid irreparable harm, the fact that "*the effectiveness of a regulation*[59] *depends largely on the immediacy of its execution*" should not be ignored. In addition, one must have also in mind the possibility that "*the deterrent effect of such a sanction would be strongly attenuated if the suspensive effect was automatically granted by the CAS in cases of prohibition of recruitment*".

-the importance of the holding of the games

Similar importance is given to the holding of the games organized. As a result CAS denied[60] the request for annulment of a game due to political turbulence in the city hosting the game, with the reasoning that although it was "*aware of the security concerns underlined by the Claimant. However, he cannot minimize the insurance of safety given by both UEFA and the Russian and Daghestan authorities and the need for UEFA to ensure the proper running of the competitions which it organizes*"

Conclusion

It seems that CAS is trying to find the "*happy medium*" among the different and, totally, opposite, interests of the parties, to find the solution that could satisfy the feeling of justice on sports.

The solution that, in logn-terms will consolidate the Principles of Sport and the Olympic Ideal to all those related with Sports.

And till now, it's doing well.

[57] 2001/A/324

[58] 2005/A/916 (in French)

[59] such as, in that particular case the ban of recruiting new players for a given period of time.

[60] 2001/O/341