

Basketball

The Outsourcing Strategy of FIBA

Andreas Zagklis

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Outline

Introduction

I. Internal remedies

II. Outsourcing: Basketball Arbitral Tribunal (BAT)

Conclusion

General principles

- Fair & Fast & Cost efficient
- CAS as **“Sports Supreme Court”**
 - CAS arbitration costs and legal fees
 - Duration of CAS proceedings
 - Requires exhaustion of internal legal remedies
- **First-instance** dispute resolution still lies with IFs

Classification of disputes

- Transfer / Nationality disputes
- Disciplinary matters (incl. doping)
- Ad-hoc matters /
Technical decisions

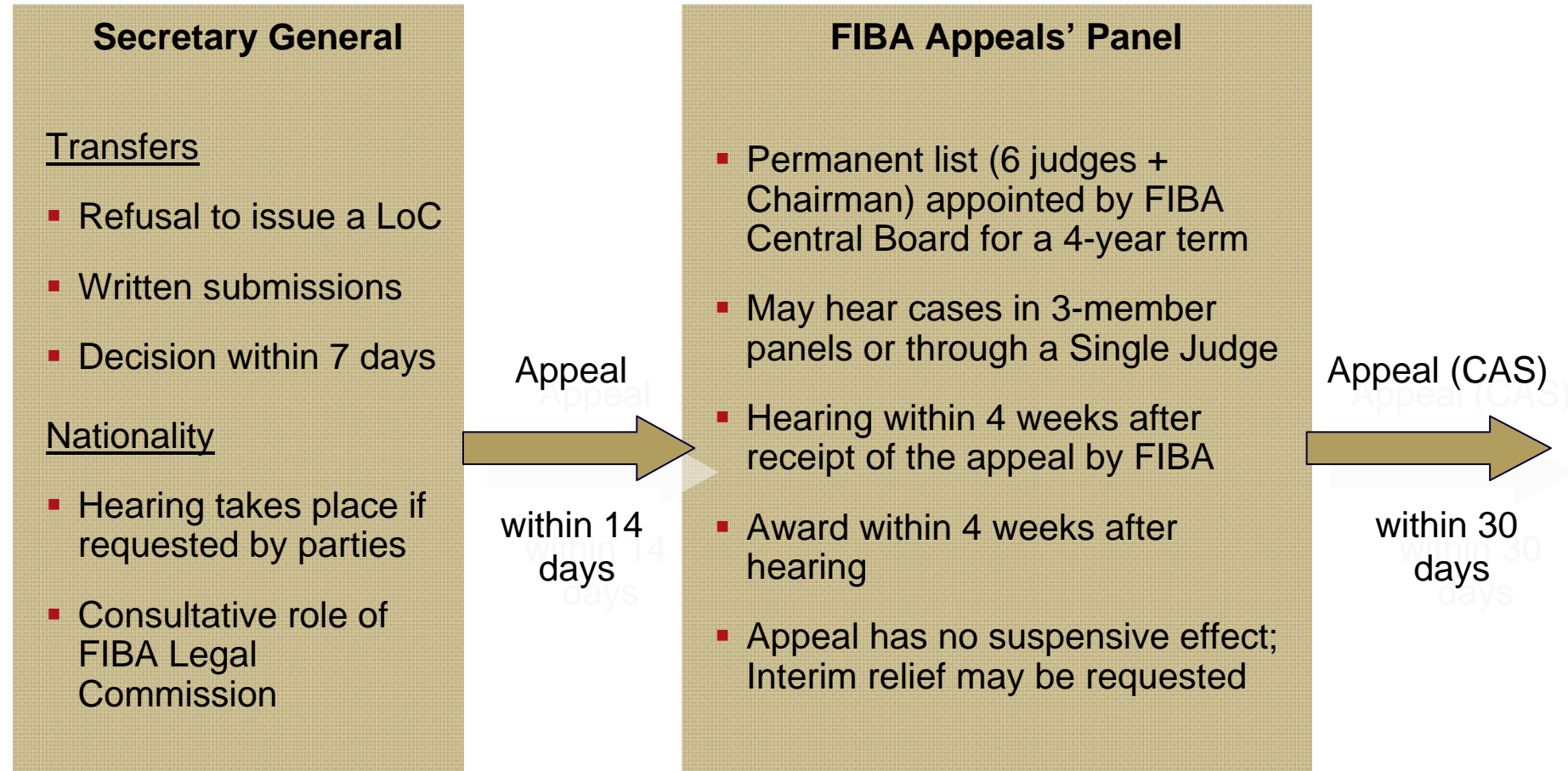
Internal
remedies

- Financial disputes



Independent
Tribunal

Transfer / Nationality disputes



Disciplinary matters (incl. Doping)

FIBA Disciplinary Panel

- Permanent Panel, chaired by President of Legal Commission, members appointed by Secretary General
- Cases decided by at least 2 members
- Principle of “neutral nationality”
- Written submissions + Hearing (in person, video or TelCo)
- Legal assistance

Appeal

within 14
days

FIBA Appeals' Panel

- Single Judge to hear appeals against warnings, reprimands and financial penalties
- Single Judge in doping cases
- WADA has a right to appeal the decision of the Disciplinary Panel before the FIBA Appeals' Panel (5 appeals in 8 years)

Appeal (CAS)

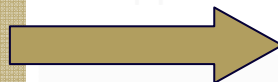
within 21
Days (doping)
or 30 days

Ad-hoc matters / Technical decisions

Technical Committee

- Created at the beginning of each FIBA competition
- Composed of FIBA Secretary General + delegate of organizing federation + 3rd member selected by them
- 1st instance in technical & disciplinary matters
- Decisions on technical issues (e.g. protests) within a few hours

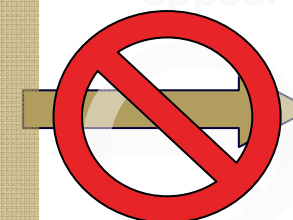
Appeal



FIBA Jury of Appeal

- 4 members – representatives of federations participating in the competition
- Nominated by the Technical Committee
- Presided over by the President of FIBA or the most senior member of the Central Board of FIBA present

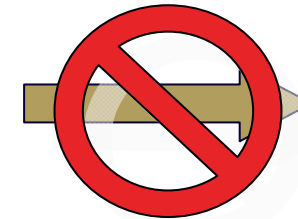
**No CAS
appeal**



Financial disputes

**Basketball Arbitral Tribunal
(BAT)**

**No CAS
appeal**



Until 2005: FIBA traditionally not involved in financial disputes

2006: FIBA agents regulations

2007: first case filed bevor the (then) FIBA Arbitral Tribunal

2010: renaming into BAT

2011: change in BAT Presidency

What is BAT ?

Article 3-289 FIBA Internal Regulations:

*“[...] an **independent** Basketball Arbitral Tribunal (BAT)...*

*...for the **simple, quick and inexpensive** resolution of disputes arising within the world of basketball...*

*...in which **FIBA, its Zones, or their respective divisions are not directly involved**...*

*...and with respect to which **the parties to the dispute have agreed in writing** to submit the same to the BAT.”*

What is BAT ?

“FIBA, its Zones, or their respective divisions are not directly involved”

- The BAT is primarily designed to resolve **disputes between clubs, players and agents**
- The BAT does **not** resolve conflicts in the area of **transfers or doping or disciplinary matters**

“independent”

- **Arbitration**
- Self-financed (100% from parties)
- FIBA Central Board appoints BAT President
- BAT President establishes list of arbitrators

“the parties to the dispute have agreed in writing”

- **Voluntary**
 - BAT has jurisdiction only if an **arbitration agreement** has been **concluded**
- **Recommended** BAT clause is set out in the FIBA Internal Regulations and in the **BAT Arbitration Rules**

“*simple, quick and inexpensive resolution of disputes*”

- Single arbitrator appointed by the BAT President
- English language
- Simple procedure (email communication)
- Short time limits
- Hearings only upon request by a party or upon decision by the Arbitrator (3 hearings in 250 cases)
- BAT arbitrators decide *ex aequo et bono* (in equity)
- Final award delivered within 6 weeks after the end of proceedings

Applicable Law

- To the procedure
 - ➔ Legal seat in Geneva: Swiss Private International Law Act (PILA)
 - ➔ Arbitration friendly: labour disputes are arbitrable

- To the merits
 - ➔ **ex aequo et bono** (in equity), unless the parties have agreed otherwise:
*“The Arbitrator shall decide the dispute applying **general considerations of justice and fairness** without reference to any particular national or international law”*

Costs

- Handling fee: from EUR 1,500 to EUR 7,000
- Advance on costs by both parties as determined by BAT Secretariat
- BAT President determines the final amount of the costs
- Arbitrator decides which party shall bear the arbitration costs and in which proportion + a contribution towards reasonable legal fees
- Special provisions for disputes below EUR 30,000: award without reasons

Statistics

- 280+ cases in 5 years (93 cases in 2011)
- Approx. 20% of the cases from female basketball
- Parties from Europe, Asia, Americas
- Average duration of proceedings: 174 days*
- Average value of disputes: EUR 268,884*
- Average cost of proceedings: EUR 6,552*

Public information

- Awards published on BAT's webpage
- Template Request for Arbitration, FAQs, Arbitrator Bios

* Status 31.12.2011

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Who is BAT?

- **BAT President:**

Prof. Richard H. McLaren, London, Ontario, Canada

- **BAT Arbitrators:**

Dr. Quentin Byrne-Sutton, Attorney in Geneva, Switzerland

Dr. Ulrich Haas, Professor of Law, Zurich, Switzerland

Dr. Stephan Netze, Attorney in Zurich, Switzerland

Mr. Raj Parker, Attorney in London, Great Britain

Mr. Klaus Reichert SC, Attorney in Dublin, Ireland

Honouring of BAT Awards

- FIBA intervention...
 - ...only after the award has been issued, and
 - ...only if requested by the winning party

- Disciplinary proceedings in accordance with FIBA Internal Regulations

- Sanctions
 - Monetary fine up to CHF 150,000; and/or
 - Withdrawal of FIBA-license (player's agents, coaches); and/or
 - Ban on international transfers (players); and/or
 - Ban on registration of new players (clubs)
 - Ban on participation in international club competitions (clubs)

Conclusion

- No **panacea**: several approaches can lead to legally and practically **“correct” solutions**
- Internal bodies must emerge from a **democratic procedure** and decide without **political interference**
- **BAT** has been well received by the basketball family
- Corpus of BAT **jurisprudence**: consistency v/ ex aequo et bono?

Thank you for your attention

FIBA.com/BAT