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CAS Decision sanctioning a ban by FIFA of a football player violates public policy

Georg von Segesser (von Segesser Law Offices) · Thursday, April 5th, 2012

With its decision of 27 March 2012, the Swiss Federal Supreme Court held unlawful a disciplinary sanction by which FIFA threatened the football player Matuzalem with a lifetime ban in case he failed to pay a damage claim of his former club and employer.

By an earlier decision of the CAS, Francelino da Silva Matuzalem, together with the football club Real Saragossa SAD, were ordered to pay an amount of over EUR 11 million plus interest as damage after Matuzalem had left his former football club Shakhtar Donetsk to join Real Saragossa without a reason and without giving notice. As both Matuzalem and Real Saragossa did not pay the damage, FIFA set a final deadline for payment and, failing payment, ordered that Matuzalem be banned from taking part in any kind of football-related activity. The order of the FIFA Disciplinary Committee was confirmed by CAS with its decision of 29 June 2011.

The examination of CAS decisions by the Federal Supreme Court in setting aside proceedings is very limited. Article 190(2)(e) of the Private International Law Act provides that an award may be set aside if incompatible with public policy (“ordre public”). An unlimited ban to exercise a profession, as threatened against the football player, in case he should not pay the high amount of damages, was held to cause an obvious and severe restriction of the personal rights of an individual. Additionally, the disciplinary measure disregards the fundamental bounds of legal commitments. With the failure to pay the damage, the personal freedom of the player would be restricted to an extent which would jeopardize his economic existence, and this without any justification by either the interest of FIFA or its members. The Federal Supreme Court further stated that it did not see a necessity for the disciplinary sanction, as Shakhtar Donetsk has the possibility to seek enforcement of the first CAS award based on the New York Convention.

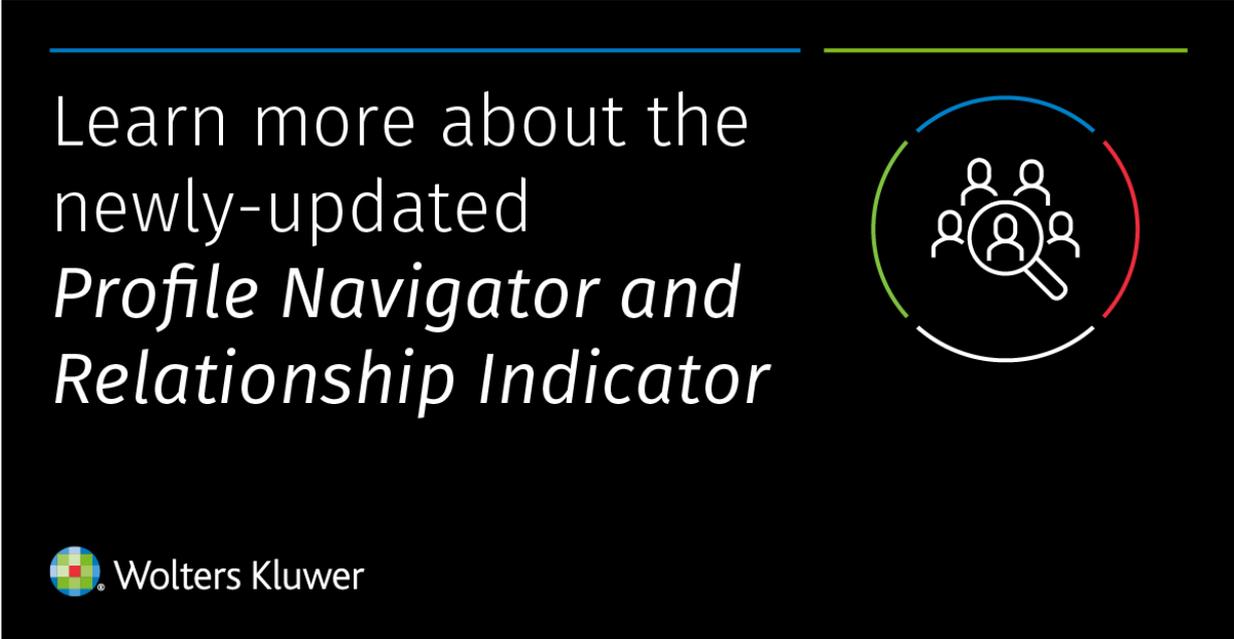
The decision is available on the website of the Federal Supreme Court, www.bger.ch (search for 4A_558/2011).

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