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The Future of the Resolution of Sports Disputes in Egypt in Light of Local Constitutional Limitations

Tarek Badawy · Saturday, November 5th, 2016

In February 2016, the Egyptian Conseil d'État rejected a draft sports law (the "Sports Law" or the "Law") proposed by the Egyptian Ministry of Youth and Sports (the "Ministry") because its dispute resolution provisions did not comply with the Egyptian Constitution. Among its many responsibilities, the Conseil d'État is the authority in charge of reviewing draft laws proposed by any ministry prior to their submission to the Egyptian Parliament for discussion and eventual enactment.

By way of background, the Ministry submitted the draft law for review by the Conseil d'État in September 2015 to ensure that Egypt's new sports legislation complied with international standards. The Ministry appears to have taken note of the Conseil d'État reservations before submitting the amended draft to Parliament for consideration. There are indications that the newly-proposed dispute settlement mechanism will strike a balance between Egypt's constitutional requirements and the terms of the International Olympic Committee's (the "IOC") Olympic Charter, which mandates in Article 61(2) that any Olympic sport-related dispute be resolved by the Court of Arbitration for Sport in Lausanne, Switzerland (the "CAS").

Background – The Dispute Resolution Minefield

Article 84 of the Constitution stipulates that practising sports is a constitutional right, that national sports authorities and sports-related affairs shall be regulated by law in accordance with international standards, and that such a law shall provide for a dispute-settlement mechanism. The draft Sports Law addresses issues that include media and digital rights, doping, the establishment of sports associations, management of clubs, and investing in sports. It also contains a compulsory dispute-resolution mechanism, reportedly modelled on international standards.

Prior to its review by the Conseil d'État, a procedure provided by Article 66 of the Conseil d'État Law No. 4/1972, Article 91 of the draft Sports Law stated that:

The resolution of sports disputes between sports authorities subject to this Law or between the authorities and those who work in the sports field that arise as a result of the application of this Law or the regulations and Articles of Association issued pursuant to its terms shall be through arbitration. The arbitration shall be governed

by the terms of the Arbitration Law in Civil and Commercial matters issued pursuant to Law No. 27 of 1994, as amended.

This dispute resolution mechanism was first proposed by the National Olympic Committee of Egypt (the "NOC"), which reportedly argued that subjecting sports disputes to adjudication before Egyptian courts was a breach of the Olympic Charter. The NOC suggested to the Egyptian Minister of Youth and Sports (the "Minister") that the resolution of sports disputes be by means of arbitration before the NOC, which as per the terms of Article 51(5) of the NOC's Articles of Association, can be appealed to the CAS. The NOC's proposal was reflected in the draft Law, which the Conseil d'État rejected, largely because of draft Article 91 that provided for the compulsory arbitration of sports disputes.

The Constitutional Court and compulsory arbitration

While Egyptian law is arbitration friendly, the Egyptian Supreme Constitutional Court (the "Constitutional Court" or the "Court") has on several occasions ruled that compulsory arbitration clauses are unconstitutional, as they deprive parties of their constitutional right to adjudication. Article 97 of the current Egyptian Constitution (and Article 68 of the 1971 Constitution) enshrines every person's "right" to adjudication. This was confirmed by the Constitutional Court. In January 2002 it ruled that certain provisions of the Capital Markets Law No. 95/1992 (the "CML") were unconstitutional because they prescribed compulsory arbitration and precluded parties from exercising their right to refer their disputes to courts instead.

By way of background, Articles 10(2) and 52 of the CML provided that shareholders holding 5% equity in a company looking to nullify a general assembly resolution that benefits certain shareholders at the expense of the company's interest can only challenge the resolution before a panel of arbitrators. The Constitutional Court struck Articles 10(2), 52, and other related Articles of the CML on the basis that they offended a person's constitutional right to adjudication as laid out in (the then) Article 68 of the Constitution [Constitutional Court Case No. 55/23J of 13 January 2002]. This principle is now enshrined in Egyptian law, and was upheld by the Constitutional Court in other cases [See for example, Constitutional Court Case No. 380/23J of 11 May 2003; later cited in Constitutional Court Case No. 2414/72J of 22 March 2005].

What if?

Had the Egyptian Parliament enacted the Sports Law as it was initially proposed, the Constitutional Court would have most likely struck down Article 91. The fact that Article 84 of the Constitution defers to the law to regulate sports-related affairs "in accordance with international standards" does not suggest that the compulsory arbitration clause would have prevailed. While the "regulation of sports affairs and agencies" must be conducted in accordance with "international standards", there is no similar reference in the Constitution regarding the specific issue of dispute resolution.

Egypt's highest courts have repeatedly confirmed the need for harmony between the provisions of a law by stating that in the event of confusion, or possible multiple interpretations, a judge must read a legal provision in light of the law as a whole [See

Court of Cassation (Civil) Case No. 2324/72J, of 11 October 2004; see also Court of Cassation (Civil) Case No. 1190/ 73J of 22 May 2005, and Constitutional Court Case No. 1/17J of 3 July 1995]. The Constitution should be no exception. It follows that if the drafters of the Constitution had intended to subject sports disputes to "compulsory" arbitration based on international standards, Article 84 of the Constitution would have been less nuanced. Bearing in mind Constitutional Court jurisprudence, the drafters would have explicitly sanctioned compulsory arbitration, particularly since Article 92 of the 2014 Constitution specifically indicates that "No law regulating the exercise of rights and freedoms [such as the right to adjudication] may restrict such rights and freedoms in a manner prejudicing the substance and essence thereof".

Furthermore, the Constitution's reference to "international standards" does not suggest that those standards should replace domestic law. When the Constitution referred to international "standards" as opposed to "laws" or "regulations", it set an example for the drafters of sports legislation to emulate and codify into domestic law after taking into consideration local legal norms. This conclusion is supported by the Conseil d'État's rejection of draft Article 91.

Recent developments and the way forward

Recent developments suggest that the Ministry is (wisely) attempting to strike a balance between the prohibition of compulsory arbitration under Egyptian law, and the Olympic Charter's dispute settlement mechanism, which remits disputes to arbitration. Today, eight months following the Conseil d'État's rejection of draft Article 91, the Ministry omitted the reference to compulsory arbitration in the proposed Law, opting for more balanced language. The current draft Article 85 provides for the jurisdiction of the (to be established) Sports Arbitration Centre (the "Centre") "without prejudice to the jurisdiction of judicial authorities". The Centre may hear disputes relating to, among other things:

(i) the implementation of the provisions of the Law and the articles of association of the Egyptian Olympic and Paralympic Committees, as well as Olympic sports federations and sports clubs;
(ii) doping; and
(iii) the interpretation and implementation of sports contracts (including sports broadcasting agreements; athlete sponsorship contracts; contracts over the use of trademarks during sports competitions; sports agents' contracts; and contracts between clubs, coaches, and athletes).

The Centre's rules have yet to be drafted, although as indicated in draft Article 86, they will be subject to "international standards", decreed by the Minister, and published in the Official Gazette. It is possible that the rules will provide for an appeal system before CAS, to reflect the requirements of the Olympic Charter (Article 61), and the FIFA Rules (Article 66).

This minor change in the proposed dispute resolution provisions will likely immunize them against a successful constitutional challenge. In practice, while the proposed Law will not prejudice "the jurisdiction of judicial authorities", one expects a large

number of sports contracts to contain an arbitration clause, either because parties believe arbitration remains a faster means of resolution of disputes, as opposed to court proceedings which, in Egypt, are known for being slow and cumbersome; or because federation-backed sports contracts with athletes, which are often standard form contracts, will already contain an arbitration clause as per current practice. Given the inequality of bargaining power between athletes, coaches, and sports clubs, it is unlikely that athletes and coaches will challenge the arbitration clause, particularly since standard form contracts are acceptable under Egyptian law, provided they are not abusive. In light of the foregoing, while the proposed amendment appears to be of a cosmetic nature, since arbitration clauses will be included in most sports contracts, the dispute resolution provisions of the draft Sports Law will likely survive a constitutional challenge.

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