

**BEYOND THE FIFA REGULATIONS,  
BUT THROUGH THE FIFA REGULATIONS:<sup>1</sup>  
THE POWERS OF FIFA JUDGES AND CAS ARBITRATORS**

by *Josep Francesc Vandellós Alamilla\**

*ABSTRACT: Art. 1 of the Swiss Civil Code empowers FIFA judges and CAS arbitrators to go beyond the literal text of regulations, allowing them to adapt, extend, and integrate provisions to address gaps and ambiguities in an ever-evolving legal landscape. This provision is a powerful and transformative tool that acknowledges the inherent limitations of written law, emphasizing the dynamic relationship between legal texts and reality, facilitated through interpretation and gap-filling. This paper seeks to demonstrate that, in applying general rules to specific cases, judges and arbitrators inevitably shape the law by bridging written and unwritten norms beyond the text. It further examines how this process of integrating norms outside the text can be effectively executed while preserving the principle of legal certainty.*

*L'art. 1 del Codice civile svizzero autorizza i giudici FIFA e gli arbitri CAS ad andare oltre il testo letterale dei regolamenti, consentendo loro di adattare, estendere e integrare le disposizioni per colmare le lacune e le ambiguità in un panorama giuridico in continua evoluzione. Questa disposizione è uno strumento potente e trasformativo che riconosce i limiti intrinseci della legge scritta, enfatizzando il rapporto dinamico tra i testi legali e la realtà, facilitato dall'interpretazione e dal riempimento delle lacune. Il presente lavoro cerca di dimostrare che, nell'applicare le norme generali a casi specifici, i giudici e gli arbitri modellano inevitabilmente il diritto creando un ponte tra norme scritte e non scritte al di là del testo. Esamina inoltre come questo processo di integrazione delle norme al di fuori del testo possa essere efficacemente eseguito preservando il principio della certezza del diritto.*

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<sup>1</sup> The title to this article is an adaptation the author made from the Préface to F. GÉNY, *Méthode d'interprétation et sources en droit privé positif*, I, LGDJ, Paris, 1899 written by R. SAILELLES, which the latter closes as follows: "Aussi je ne saurais mieux finir que par cette forte devise, inspirée d'un mot analogue d'Jhering, autour de laquelle converge, qu'enveloppe ou que développe, comme l'on préfère, tout le livre de M. Gény: «Par le Code civil, mais au-delà du Code civil ! Je serais ceux peut-être qui en eussent volontiers retourné les termes: Au-delà du Code civil, mais par

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*Regolamenti sportivi – Lacuna – Interpretazione letterale – Integrazione delle norme – Spirito normativo.*

SUMMARY: 1. Introduction – 2. The challenge to legal positivism – 3. Delineating the contours of Art. 1 CC – 4. The interpretation of rules – 5. Filling-in lacunae in sports regulations: Customary law and free research – 6. Custom – 7. The judge-legislator – 8. The role of the doctrine and the jurisprudence – 9. Conclusion

## 1. Introduction

Every time a dispute is brought to the FIFA Football Tribunal or Court of Arbitration for Sport (“CAS”), judges and CAS arbitrators<sup>2</sup> must discern the law, regulations, and/or legal principles applicable to the case at stake and decide accordingly.

This task becomes straightforward when the regulation articulates a rule that is explicit, unambiguous, and directly applicable to the case. But even the most accurately drafted laws or regulations cannot capture life’s infinite plethora of circumstances, and often, the questions of law presented to a Court do not find an answer in the text.

The Swiss Civil Code (“CC”) of 1907 solves the above situation in its Art.1. Testimony to the doctrinal debates of its time,<sup>3</sup> the CC decided to leave behind the principles of radical legal positivism and consciously embraced its limitations, acknowledging the law’s incapability to regulate every possible situation from its first article.

Far from giving up control, it turned that limitation into a strength by equipping judges with powerful tools to interpret but also, in exceptional cases, to decide “*according to the rules he would establish if he were to act as a legislator*”, through a structured system of multiple sources of law that complete its inevitable shortcomings and work as a breathing apparatus, oxygenating the text and keeping it fresh.

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*le Code civil ! Je reconnais que ce serait manquer un peu de hardiesse et vouloir conserver une part de fiction. Aussi, je n’insiste pas, trop heureux de me laisser convaincre, pourvu que cela puisse convaincre ce à quoi nous tenons le plus c’est à «l’Au-delà». Il sera désormais que cet «Au-delà» ne devienne pas le mot d’ordre de tous les juristes”.*

<sup>2</sup> In the following, the term “judge” will be used interchangeably to denote judges within bodies of sports organizations and arbitrators of the Court of Sports for Arbitration (CAS).

<sup>3</sup> To my best knowledge, only the Spanish Civil Code of 1889 adopted an open system of sources of law years before the CC. “*Article 1: 1. The sources of the Spanish legal system are written laws, custom and general legal principles*”. An official English translation of the code is available at [https://www.mjusticia.gob.es/es/AreaTematica/DocumentacionPublicaciones/Documents/Spanish\\_Civil\\_Code\\_\(Codigo\\_Civil\\_Espanol\).PDF](https://www.mjusticia.gob.es/es/AreaTematica/DocumentacionPublicaciones/Documents/Spanish_Civil_Code_(Codigo_Civil_Espanol).PDF).