

## FIFA case: Federal Court, 20.12.2005 - BGE 132 III 285

### 1. Abstract

**Purpose:** Provide a concise and formal overview of the case. Often sourced *verbatim* from the court's official summary ("*Regeste*," "*Ementa*," etc.) an equivalently accurate translation.

**Translation obstacle:** Ensure the translation is precise in meaning, even if not literal.

≡ Abstract ⓘ ▾

Validity of choice of law clauses (Art. 116 PILA).  
According to Art. 116 of the Swiss Private International Law Act, the regulations of a private association cannot be included in a choice of law clause. They can only be incorporated into the contract in accordance with the applicable law, observing the limits of mandatory provisions (Sec. 1).  
A provision requiring claims to be brought to court within a certain period of time is inapplicable because it is contrary to Art. 129 of the Swiss Civil Code (mandatory rule on statute of limitations) (Sec. 2).

Cf., original text of the decision:

≡ Original text ▾

Urteilskopf  
  
132 III 285  
  
35. Auszug aus dem Urteil der I. Zivilabteilung i.S. X. AG gegen Y. (Berufung)  
4C.1/2005 vom 20. Dezember 2005  
  
Regeste  
  
Art. 116 IPRG; Zulässigkeit der Rechtswahl.  
Reglemente privatrechtlicher Vereine können nicht Gegenstand einer Rechtswahl im Sinne von Art. 116 IPRG sein. Sie können nur im Rahmen einer materiellrechtlichen Verweisung unter Berücksichtigung der zwingenden Bestimmungen des anwendbaren Sachrechts Vertragsinhalt werden (E. 1).  
Die Vorschrift, wonach Forderungen binnen einer bestimmten Frist gerichtlich einzuklagen sind, verstösst gegen Art. 129 OR und ist daher unbeachtlich (E. 2).

### 2. Themes

Manually assigned from a predefined list composed of the following categories - party autonomy, freedom of choice, rules of law, express and tacit choice, mandatory rules, public policy, and absence of choice.



### 3. Relevant Facts



**Purpose:** Give a short, structured overview of who the parties are, what happened, and the stages of the proceedings, with a particular focus on private international law elements (such as different nationalities, different legal frameworks, or cross-border aspects).

**Tone:** Clear, accessible language - less formal than the Abstract.

### Key points to cover:

1. Identities of the parties (e.g., nationality, location).
2. The factual backdrop of the dispute without too much detail into the merits.
3. Procedural history (lower-court decisions, appeals).
4. Any explicit choice of law clauses or conflicts rules mentioned.

 Themes 

 Relevant facts /   
Summary of the  
case

Party autonomy, Rules of law

X. AG (plaintiff), represented by a FIFA agent, concluded a contract with Y. (defendant), a Greek public limited company, for the transfer of a player represented by the plaintiff. In this contract, the parties included a choice of law clause establishing that "[the] agreement is governed by FIFA rules (FIFA Football Agent Regulations, 2000) and Swiss law".

The plaintiff filed a lawsuit before the Commercial Court of the Canton of St. Gallen in 2003. The Commercial Court validated the choice of law clause. The plaintiff appealed against this judgment before the Federal Supreme Court, which rejected the understanding of the lower court. The application of a private set of rules as the contractual governing law is contrary to federal law; therefore, the choice of law clause refers solely to Swiss law. The case was referred back to the lower court for a new assessment regarding the application of the mandatory norm of Art. 129 of the Swiss Civil Code.

### Pinpoint in the decision:

- Facts: "Faits à partir de page 285", first part of the case.
- Parties (including nationality), nature of the transaction, procedural history (courts involved and date).
- Considérants "1": choice of law clause; "1.4" for the conclusion.

## 4. PIL Provisions

**Purpose:** Highlight the main legal provisions, precedents, or doctrines that address the private international law question.

### Key points to cover:

1. Statutory provisions (e.g., from a PIL Act, the Rome I Regulation, etc.).
2. Relevant judicial precedents that clarify or interpret these provisions.
3. Interpretative methods that guided the decision.

### Pinpoint in the decision:

- *Regeste*.
- Main PIL passage in the text.

## 5. Choice of Law Issue

**Purpose:** Clearly articulate the principal private international law question the court addressed. Ideally, phrase it as a succinct question (yes/no or short descriptive question).

**Pinpoint in the decision:** It refers to the overruled point (synthesis of the problem discussed in paragraphs 1.2-1.4).

## 6. Court's Position

**Purpose:** Present the court's reasoning or holding regarding the choice of law issue. This is effectively the "answer" to the question posed in the previous field.

**Key Points to Cover:**

- The court's definitive response (yes, no, or conditional).
- Whether it aligned with, reversed, or modified lower-court judgments.
- Any significant nuances.

≡ PIL provisions ⓘ

Art. 116 PILA

≡ Choice of law ⓘ  
issue

Can parties choose the rules of a private association (non-State law) as the governing law of their agreement?

≡ Court's position ⓘ

No, the rules of a private association (FIFA, non-State law) cannot be chosen as governing law in an international contract under the meaning of Art. 116 PILA. Such rules can only be incorporated into a contract observing the mandatory provisions of the chosen/applicable national law.