



Arbitration CAS 2014/A/3629 Parma F.C. S.p.A. v. Federazione Italiana Giuoco Calcio (FIGC) & Torino F.C. S.p.A., award of 31 October 2014

Panel: Mr Romano Subiotto QC (United Kingdom), President; Mr Patrick Lafranchi (Switzerland); Mr Dirk-Reiner Martens (Germany)

Football

Eligibility for UEFA licence

CAS jurisdiction

Article 59 of UEFA Statutes is principally intended to ensure that football related decisions can be appealed to the CAS. However, the UEFA (or FIFA) Statutes merely constitute an instruction to introduce a regulation providing for CAS arbitration and do not by themselves grant jurisdiction to CAS over appeals against decisions passed by national federations or leagues. Therefore, if neither the statutes nor the regulations of a national federation recognize the jurisdiction of CAS to deal with disputes between clubs and the national federation regarding the refusal of UEFA licenses, CAS has no jurisdiction to entertain the appeal.

I. THE PARTIES

1. Parma Football Club S.p.A. (the “Appellant”) is a professional Italian football club with its registered office in Parma. The Appellant is a member of Lega Serie A (the Italian first league) and of the Italian Football Federation.
2. Federazione Italiana Giuoco Calcio (the “FIGC” or the “First Respondent”) is the national governing body of football in Italy, with its registered office in Rome. The FIGC is affiliated to the Union des Associations Européennes de Football (“UEFA”).
3. Torino Football Club S.p.A. (the “Second Respondent”) is a professional Italian football club with its registered office in Turin. The Second Respondent is a member of Lega Serie A and of FIGC.

II. FACTS

4. In the season 2013/2014, the Appellant finished sixth in Lega Serie A. Consequently, the Appellant qualified for the UEFA Europa League season 2014/2015. The Second Respondent

finished seventh in Lega Serie A, position which does not give the right to participate in the European competitions.

5. On May 12, 2014, the First Instance Licensing Committee of the First Respondent refused to issue the UEFA licence for the 2014/2015 season in favour of the Appellant, pursuant to § 14.7.5 of the Italian UEFA Club Licensing Manual (the “Manual”). The First Instance Licensing Committee found that the Appellant had not paid personal income tax deductions on payments from October and November 2013 to ten of its players and therefore the Appellant did not fulfil the requirement set forth in § 14.7 – F04 of the Manual.
6. On May 15 and 16, 2014, the ten players declared in writing that the payment from October and November 2013 had been a loan from a “voluntary redundancy package”. They had requested the loan for personal reasons.
7. By decision of May 19, 2014, the UEFA Club Licensing Appeals Committee of the First Respondent confirmed the first instance decision dated May 12, 2014.
8. Against this decision, Parma appealed on May 22, 2014 before the Alta Corte di Giustizia Sportiva, the Italian High Court of Sport Justice (the “Alta Corte”) in accordance with Article 4.21 of the Manual. By decision of May 28, 2014, the Alta Corte upheld the decision of the First Respondent.

III. PROCEEDINGS BEFORE THE CAS

9. On June 10, 2014, pursuant to Article R48 of the Code of Sports-related Arbitration, 2013 Edition (the “Code”), the Appellant filed a Statement of Appeal before the Court of Arbitration for Sport (the “CAS”) with the following requests for relief:
 - 1) *To accept the present appeal against the challenged decision;*
 - 2) *To set aside the challenged decision;*
 - 3) *To establish that the Appellant shall be granted the UEFA licence for participating in the 2014/2015 UEFA competitions and to take any other measure necessary for ensuring the participation of the Appellant in the 2014/2015 UEFA competitions;*
 - 4) *To condemn the respondents to the payment in the favour of the Appellant of the legal expenses incurred;*
 - 5) *To establish that the costs of the arbitration procedure shall be borne by the respondents.*
10. The Appellant did not propose to proceed in an expedite manner pursuant to Article R44.4 of the Code and, on June 16, 2014, it requested a ten-day extension to submit the Appeal Brief.

11. By letter of June 19, 2014, the Appellant emphasized the necessity to receive an award in short time in light of the beginning of the UEFA Europa League scheduled on September 18, 2014.
12. Also on June 19, 2014, pursuant to Article R29 of the Code, the Second Respondent objected this appeal being conducted in Italian, which had been asked so by the Appellant in their Statement of Appeal. Furthermore, they did not agree with an expedited procedure, which had been proposed by the CAS Court Office. However, both Respondents agreed with the ten-day extension of the Appellant's deadline for filing its appeal brief.
13. On June 27, 2014, the Appellant filed its appeal brief.
14. On July 28, 2014, CAS acknowledged receipt of the advanced costs from the Appellant and notified the Parties that, pursuant to Article R54 of the Code, the Panel had been constituted as follows: Mr. Romano Subiotto QC (President), Mr. Patrick Lafranchi and Dr. Dirk-Reiner Martens (arbitrators).
15. On 3 September 2014, the CAS Court Office informed the parties that pursuant to Art. R55 of the Code, the Panel had decided to rule on its jurisdiction in a preliminary decision. Furthermore, the CAS Court Office invited the parties to inform whether they would have preferred a hearing to be held (limited to jurisdiction) or for the Panel to render a preliminary award on jurisdiction on the sole basis of the parties' written submissions. Thereafter, all the parties informed that they preferred a preliminary award on jurisdiction to be rendered on the sole basis of the parties' written submission.
16. On 6 October 2014, the CAS Court Office informed the parties that the Panel deemed itself sufficiently well informed with the parties' written submissions and, consequently, it decided not to hold a hearing pursuant to Art. R57 of the Code.

IV. SUBMISSIONS OF THE PARTIES AS TO THE ISSUE OF CAS JURISDICTION

17. The jurisdiction of the CAS was contested by the Second Respondent by letter of July 11, 2014 and by the First Respondent by letter of July 15, 2014. It was argued that, contrary to Article R47 of the Code, the Manual set forth in Article 13 L.01 A, last bullet point, the exclusive jurisdiction of the Alta Corte. Accordingly, the licence applicant must declare that it undertakes to accept the jurisdiction of the Alta Corte to settle any controversy regarding the interpretation and application of the Manual in relation to the refusal of the licence. Both First and Second Respondent requested the Panel to render a preliminary award on jurisdiction.
18. By letter of July 18, 2014, the Appellant agreed with the request of the First and Second Respondent that the Panel renders a preliminary award on jurisdiction. However, the Appellant argued, pursuant to Article 13 L.01 A, first bullet point, of the Manual, that every licence applicant must declare to recognise the jurisdiction of the CAS. Moreover, in accordance with Article 43 of the UEFA Club Licensing and Financial Fair Play Regulations (the "UEFA Fair Play Regulations"), the Licence applicant must submit a legally valid

declaration confirming that it recognizes as legally valid the jurisdiction of the CAS as provided in the relevant articles of the UEFA Statutes.

19. The Applicant further argued that Article 59 UEFA Statutes provides that each Member Association shall include in its statutes a provision whereby it agrees to recognise the jurisdiction of the CAS, adding that, according to the case law of the Swiss Federal Tribunal (“SFT”), such general reference to the right to appeal is sufficient to establish the jurisdiction of the CAS.
20. By the abovementioned letter of July 11, 2014, the Second Respondent requested a deferral of its time limit for filing its answer on the merits until there was a decision on CAS jurisdiction. On July 18, 2014, the Appellant agreed with the Second Respondent’s request related to the deferral of its time limit for filing its answer on the merits.

V. CAS JURISDICTION

21. As per the parties’ request, the present award addresses only the issue whether CAS has jurisdiction to hear the appeal lodged by the Appellant.

A. JURISDICTION OF CAS TO RULE ON ITS OWN JURISDICTION

22. Art. 176 Para. 1 of Switzerland’s Federal Code on Private International Law (hereinafter referred to as the “PIL”) provides that Articles 176 et seq. PIL apply if the seat of the arbitral tribunal is in Switzerland and if at least one of the parties at the time the arbitration agreement was concluded was neither domiciled nor habitually resident in Switzerland. The seat of the present arbitration is Lausanne, Switzerland (Article R28 of the Code). None of the parties are domiciled in Switzerland. Articles 176 et seq. PIL therefore apply to the present case.
23. According to Art. 186 Para. 1 PIL, the arbitral tribunal shall rule on its own jurisdiction. The objection of a lack of jurisdiction must be raised prior to any defense on the merits. Respondents have contested CAS jurisdiction in their submissions in a timely manner.
24. The Panel can therefore rule on its own jurisdiction in the present matter.

B. JURISDICTION OF CAS TO THE MERITS OF THE CASE

25. Article R47 of the Code states that:

“An appeal against the decision of a federation, association or sports-related body may be filed with CAS insofar as the statutes or regulations of the said body provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body”.

26. According to constant CAS jurisprudence, in order for the CAS to have jurisdiction to hear an appeal, there must exist either a specific arbitration agreement between the parties, or the jurisdiction of CAS must be expressly recognized in the statutes or regulations of the sports-related body (See, *e.g.*, CAS 2013/A/3199; CAS 2008/A/1602; CAS 2009/A/1910; CAS 2008/A/1708 and CAS 2005/A/952).
27. In the present case, no specific arbitration agreement was concluded and, moreover, neither the statutes nor the regulations of the First Respondent recognize the jurisdiction of CAS to deal with disputes between clubs and the FIGC regarding the refusal of UEFA licenses.
28. The Panel finds that none of the arguments raised by the Appellant confers jurisdiction to CAS to hear this matter.
29. First, the Manual clearly states that the Alta Corte has exclusive jurisdiction to settle disputes regarding the refusal or withdrawal of licenses. In particular, according to § 4.21 of the Manual:

“[a]ny dispute regarding the refusal or withdrawal of the License, arising between the FIGC and a Licence applicant or Licensee, following the verdict of the Appeals Committee, shall be exclusively devolved for judgement by the Alta Corte”.

Similarly, § 6.9 of the Manual provides that:

“[a]ny dispute regarding the refusal of the Licence, arising between the FIGC and a Licence applicant, following the verdict of the Appeals Committee, shall be exclusively devolved for judgement by the Alta Corte”.

30. No reference is made to the right of appeal against decisions of the Alta Corte (either to the CAS or any other instance). Quite to the contrary, Appendix II to the Manual (“Core Process”) states that the appeal before the Alta Corte can either lead to the licence being granted or “*refused definitely*”, *i.e.*, without any further appeal.
31. Second, it is true that, according to Article 13 L.01 A first bullet, licence applicants generally recognise “*the jurisdiction of the CAS in Lausanne, in accordance with the UEFA Statutes, and of the Sport Justice and Arbitration Bodies recognised by the FIGC Statues*”. However, this provision merely refers to issues that may arise during the participation of the applicant to the football activity and it is not sufficient to confer jurisdiction to CAS to hear a specific category of disputes exclusively devolved to another body, *i.e.*, the Alta Corte. In this respect, the last bullet of the same Article reiterates that any controversy specifically relating to “*the refusal or withdrawal of the licence*” will be devolved to the Alta Corte, which – as mentioned – has exclusive jurisdiction to settle such disputes according to §§ 4.21 and 6.9 of the Manual.
32. Third, the Panel agrees that Article 59 of UEFA Statutes is principally intended to ensure that football related decisions can be appealed to the CAS. However, consistent CAS jurisprudence is clear that the UEFA (or FIFA) Statutes merely “*constitute an instruction to introduce a regulation providing for CAS arbitration*” (CAS 2004/A/676, paras. 2.6 and 2.7) and do not by themselves grant jurisdiction to CAS over appeals against decisions passed by national federations or

leagues (See CAS 2013/A/3199; CAS 2004/A/676; CAS 2005/A/952; CAS 2004/A/676; CAS 2002/O/422 and Joined cases CAS 2010/A/2170 and CAS 2010/A/2171).

33. Therefore, Article 59 UEFA Statutes is not directly applicable and does not form part of the rules of FIGC. FIGC remains an independent legal entity with its own set of rules, which – as stated above – provides for the exclusive jurisdiction of the Alta Corte on disputes relating to the refusal of licenses.
34. If the FIGC rules are not in compliance with the UEFA Statutes, it is for UEFA to take the necessary steps to ensure such compliance.
35. Accordingly, it is a matter for the FIGC and UEFA to decide whether FIGC should introduce an arbitration clause to the CAS for disputes relating to the refusal of licenses. However, until such a clause is introduced, CAS does not have jurisdiction to hear such disputes.
36. As a result, the Panel concludes that the CAS has no jurisdiction to proceed on the appeal filed by the Appellant.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. It does not have jurisdiction to decide on the appeal filed on June 10, 2014, by Parma F.C. S.p.A. against the decision rendered on May 19, 2014, by the Alta Corte di Giustizia Sportiva.
 2. The appeal filed by Parma F.C. S.p.A against Federazione Italiana Giuoco Calcio and Torinos F.C. S.p.A is not entertained.
- (...)
5. Any further or other requests for relief are dismissed.