



Arbitration CAS 2008/A/1708 Football Federation Islamic Republic of Iran (IRIFF) v. Fédération Internationale de Football Association (FIFA), award of 4 November 2009

Panel: Mr Rui Botica Santos (Portugal), President; Mr Jahangir Baglari (Islamic Republic of Iran); Mr François Carrard (Switzerland)

Football

Contract of employment between a club and a coach

Appealable decision before CAS

Request for the grounds of the decision and exhaustion of internal remedies

Conformity of art. 15 of the FIFA Procedural rules with public order

Hierarchy of rules in the provisions of a Sports federation

Lack of enforcement of art. 15 of the FIFA Procedural rules due to unclear information on the appeals procedure

FIFA standing to be sued

1. According to CAS case law, in order for a decision to be appealable before CAS three conditions should be met: first, there must be a “*decision*” of a federation, association or another sports-related body; second, the parties must have agreed to the competence of the CAS and, third, the (internal) legal remedies available must have been exhausted prior to appealing to CAS.
2. The act of requesting for the reasons of the decision cannot be qualified as an “*internal remedy*” within FIFA in the sense of Article R47 of the CAS Code.
3. Article 15 of the FIFA Procedural rules does not infringe any fundamental legal principles which belong to public order. The duty to solicit a reasoned decision within 10 days of its notification in order to be able to appeal it before CAS does not affect the Appellant’s access to the courts and legal protection as the only thing the Appellant has to do in order to preserve his right of appeal is to solicit (in writing) a reasoned decision. In addition, the provision applies to all appellants and, thus, guarantees equal treatment among all (indirect) members of FIFA. Additionally, the 10 days-deadline of Art. 15(1) of the Procedural Rules does not shorten the deadline which is applicable for filing an appeal, once the grounds of the decision are served to the parties. Indeed, the relevant 21 days-deadline remains untouched by Art. 15(1). Furthermore, the provision serves a legitimate purpose i.e. to cope with the heavy caseload of FIFA and contributes to the goal of an efficient administration of justice.
4. In principle, any International Federation (IF) has the freedom to establish its own provisions, but there are limits to this autonomy. When creating new rules and regulations, the relevant organs are bound by the limits imposed on them by the higher ranking provisions, in particular the association’s statutes. Article 15 of the Rules Governing the FIFA Procedures may be in conflict or in non-conformity with

article 63(1) of the FIFA Statutes, since, in practical terms, it imposes upon the appellants a condition - asking for the grounds of the decision- to extend the deadline to file the appeal from 10 to 21 days. It is a condition and limitation not foreseen under article 63(1). For this reason, article 15 of the Procedural Rules is incompatible with article 63(1) of the FIFA Statutes, a provision of higher level in the hierarchy of the FIFA regulations.

5. Where a new procedure followed by an IF in issuing its decision constitutes a considerable change from the previous one used by it, one could have expected from the IF a precise and clear information on the appeals procedure moreover taking into consideration the addressees' lack of familiarity with the new mechanism. Therefore, under the particular circumstances, article 15 of the Procedural Rules cannot be held and applied against the Respondent.
6. Neither the FIFA Regulations nor the CAS Code contains any specific rule regarding standing to be sued. According to a well established CAS jurisprudence, a party has standing to be sued and may thus be summoned before the CAS only if it has some stake in the dispute because something is sought against it. An IF has no standing to be sued if there is no legal remedy which the CAS can grant against it in relation to the subject matter of the dispute which is the alleged breach of an employment contract entered into between a national federation and a Coach.

Football Federation Islamic Republic of Iran (IRIFF) is a member of the Fédération Internationale de Football Association (FIFA) and is the body in charge of running football in the Islamic Republic of Iran.

The FIFA is the international federation governing the sport of football, based in Zurich, Switzerland.

This appeal was filed by the IRIFF against the decision passed by the FIFA Players' Status Committee (the "FIFA PSC") dated 23 September 2008 (the "FIFA Decision").

On 1 October 2004, the IRIFF and B., a football coach (the "Coach"), entered into an employment contract (the "Employment Contract") valid for a period of two years, running from 1 October 2004 to 1 October 2006.

Under the Employment Contract, the IRIFF agreed to employ the Coach as the head coach of the Iranian national football team for a total fee of USD [...] over the two year period, in addition to 10% of the price money received from any LG-Cup or any similar friendly tournament, and the fee mentioned on the next paragraph.

The IRIFF and the Coach agreed on annex 1(9) of the Employment Contract that in case the Coach succeeded in guiding the team to the World Cup in Germany in 2006 he would be paid 10% of the price money related to such qualification. Annex 1(9) read as follows:

“Qualification and any final standings in World Cup Final round 2006 Germany will be awarded with 10% of related price money”.

The Parties also agreed on article III (4) of the Employment Contract that the Coach could only absent himself from work with the written consent of the IRIFF’s General Secretary. Failure to obtain such consent would see his monthly salary reduced accordingly, and unauthorised absence would lead to the termination of the Employment Contract. Article III (4) read as follows:

“Any non-show of the Head Coach for training sessions should rely on a written consent of the General Secretary. Otherwise it will be his absence, which will cause for reduction of the monthly payment to the Head Coach accordingly. Nevertheless, his non-authorized absence could cause the termination of this contract”.

They also agreed on article V(1) and (2) of the Employment Contract that:

“1) In case of non-fulfilment of any article of this contract by the Head Coach, Federation may unilaterally terminate the contract through a written notice. In such an event, Head Coach shall not be entitled to any outstanding payment except eventually late payments.

2) In case of early termination of the contract by the Federation for any other reason, Federation undertakes to pay the Head Coach the entire rest amount of total value [...] USD, specified in the contract”.

The Coach successfully guided the team to qualification for the 2006 World Cup in Germany. However, on or about 21 June 2006, after the Iranian national football team had been eliminated from the first round of the 2006 competition, the IRIFF alleges that the Coach did not return to his duties and abandoned his work, even though he had been paid an advance pay of USD [...] by the IRIFF.

The IRIFF filed proceedings before the FIFA PSC against the Coach claiming compensation from him for breach of the Employment Contract.

In his defence, the Coach filed a counterclaim before the FIFA PSC seeking the 10% compensation of the total price money for qualification to the World Cup as agreed on annex 1(9) of the Employment Contract.

The Coach stated that he had a two year contract which run from 1 October 2004 to 1 October 2006. He stated that 3 months prior to the Employment Contracts’ original date of termination, he and the IRIFF had agreed to terminate the Employment Contract by mutual consent on 20 June 2006 and he was therefore no longer the coach with effect from 1 July 2006. The Coach produced a document “Mutual Agreement of Early Termination of the Contract No. 7724” signed by him and Mr Mohammad Dagdan, the then President of the IRIFF.

In accordance with point 9 annex 1 of the Employment Contract, which provided that “(...) qualification and any final standing in world cup final round 2006 Germany will be awarded with 10% of related

price money” the Coach claimed compensation to the amount of USD [...] on the basis of the price money for qualifying to the World Cup 2006.

In arriving at USD [...], the Coach deducted the advance payment of USD [...] which he acknowledges as having been paid, and adds USD [...] which he claims was his outstanding salary for June 2006.

The Coach’s calculations were summarised as follows:

<u>Amount</u>	<u>Nature</u>
+ CHF: [...] (equivalent to USD [...])	Qualification award for the World Cup
+ USD: [...]	Outstanding salary for June 2006
(-) USD: [...] (amount to be deducted)	Advance payment
USD: [...] + interest	Total amount due to the Coach

In a letter dated 14 September 2007 and addressed to FIFA, the Coach informed FIFA that the IRIFF misinterpreted paragraph 9 of annex 1 of the Employment Contract in its letter dated 19 September 2006 by stating that the “(...) *bonus for qualification for WC 2006 was 10% of total amount of contract and not 10% of related price money as it is explicitly stated (...)*”.

On 19 September 2006 the IRIFF acknowledged having not paid the Coach’s salary for June 2006 (USD [...]) and justified this on grounds that the Coach had abandoned his duties by failing to return to Iran after the World Cup 2006 ended.

The IRIFF reiterated on 19 September 2006 that in accordance with the Employment Contract the Coach had already been paid USD [...].

The IRIFF stated that it had fulfilled all its contractual obligations to the Coach.

On 20 August 2007, the IRIFF however claimed a refund of the USD [...] paid to the Coach, on grounds that the Coach had failed to comply with article III (4) of the Employment Contract which subsequently meant that the IRIFF could not implement annex 1 point 9 of the Employment Contract.

The IRIFF claimed that the Coach acted contrary to article III (4) of the Employment Contract by absenting himself from duty with effect from 21 June 2006 without any permission from the IRIFF immediately after Iran’s last World Cup match in Germany 2006.

As a consequence of the Coach’s breach of the Employment Contract, the IRIFF claimed that it was not entitled to fulfil annex 1 point 9 of the Employment Contract.

On 23 September 2008, the FIFA PSC issued its findings in relation to the IRIFF's claim and notified the Parties as follows:

"Decision of the Players' Status Committee

- 1. The claim of the Claimant/Counter-Respondent, IR Iran Football Federation, is rejected.*
- 2. The claim of the Respondent/Counter-Claimant, [B.] is accepted.*
- 3. The Claimant/Counter-Respondent, IR Iran Football Federation, has to pay the amount of USD [...] plus an annual interest of 5% as from 1 July 2006, **within 30 days** as from the date of notification of this decision.*
- 4. The Claimant/Counter-Respondent, IR Iran Football Federation, has to pay the amount of USD [...] plus an annual interest of 5% as from 26 June 2007, **within 30 days** as from the date of notification of this decision.*
- 5. If the aforementioned sum and the relevant interest are not paid within the aforementioned deadline, the present matter shall be submitted upon the parties request to FIFA's Disciplinary Committee for its consideration and decision.*
- 6. The Respondent/Counter-Claimant, [B.], is directed to inform the Claimant/Counter-Respondent, IR Iran Football Federation, immediately and directly of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received.*
- 7. The costs of the proceedings in the amount of CHF 10,000 are to be paid by the Claimant/Counter-Respondent, IR Iran Football Federation to FIFA **within 30 days** of notification of the present decision to the following bank account with reference to case nr. 06-00887/mdo (...)*

Note relating to the findings of the decision (art 15 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber):

*A request for the grounds of the decision must be sent, in writing, to the FIFA general secretariat **within 10 days** of receipt of notification of the findings of the decision. Failure to do so within the stated deadline will result in the decision coming into force".*

The FIFA PSC communicated the findings of the FIFA Decision to the IRIFF and the Coach on 27 October 2008.

On 8 November 2008, the IRIFF sent a letter to the FIFA PSC, asking for the reasons and grounds of the FIFA Decision. The letter read:

"(...)

With reference to the decision made, regarding the above case, we highly appreciate if you kindly inform us about the reasons and grounds of the said decision.

The date of receipt of the letter was 28 October 2008 and this request within the ten days deadline.

(...)"

On 12 November 2008, FIFA sent its reply to the IRIFF, acknowledging receipt of the letter dated 8 November 2008. FIFA informed the IRIFF that the grounds of the decision were communicated

on 27 October 2008 and drew the IRIFF's attention to article 15 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (the "Rules Governing FIFA Procedures"), in accordance with which the FIFA Decision would come into force if the request for the grounds was not made within 10 days. The letter read as follows:

"(...)

We refer to the above-mentioned matter, and in this respect, we acknowledge receipt of your correspondence dated 8 November 2008, received on the 9 November 2008, the contents of which have been duly noted.

In particular, we understand that you request the grounds of the decision reached by the Players' Status Committee on 23 September 2008 in the dispute between the above captioned parties, the findings of which were communicated to the parties on 27 October 2008.

In this regard, we kindly draw your attention to art 15 of the Rules governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber referred in the note relating to the findings of the aforementioned decision which stipulates that failure to request the grounds of the decision within 10 days of receipt of the notification of the findings of the decision will result in the decision coming into force.

(...)"

On 16 November 2008, the IRIFF lodged its Statement of Appeal with the Court of Arbitration for Sport (CAS) and filed its Appeal Brief on 27 November 2008.

In the Statement of Appeal, the IRIFF appeals only against FIFA, referring to it as the "Defendant", and it is understood that the IRIFF requests the CAS to set aside the FIFA Decision and to "(...) inform [the IRIFF] of the period of filling the appeal brief, with regard the last paragraph of the decision of the Players Status Committee, secondly, kindly ask FIFA to send the whole pages of the decision including the facts and arguments, in order to be able to submit the appeal brief".

In its Appeal Brief, the IRIFF requested the CAS to set aside the FIFA PSC decision and to declare that the Coach was not entitled to receive the USD [...] monthly pay for the periods during which he was absent from work. The IRIFF also wants the CAS to order the Coach to refund the USD [...] pre paid to him because the payment of this amount was conditional to the Coach fulfilling the Employment Contract, which he failed to do.

On 12 December 2008, FIFA wrote to the CAS asking it to reject the admission of the IRIFF's appeal on grounds of lack of jurisdiction and standing to be sued, claiming that the FIFA Decision had already become final and binding. FIFA underlined that the statutory arbitration agreement included on article 63 of the FIFA Statute was no longer applicable to FIFA, adding that FIFA had no standing to be sued because it had not accepted to submit itself to the jurisdiction of the CAS on an extraordinary basis. Consequently, FIFA refused to appoint an arbitrator and requested that the present arbitration procedure be terminated by the President of the Appeals Arbitration Division on the grounds of a manifest lack of competence of the CAS. In addition, and as a subsidiary request, FIFA asked the CAS to suspend all deadlines imposed on it.

On 11 February 2009, the CAS wrote to the Parties informing them that the President of the CAS Appeals Division had ruled that the issue of admissibility shall be referred to the Panel to issue a preliminary decision thereon.

On 3 March 2009, FIFA filed its answer wherein it states the facts and legal arguments in reply to the appeal, together with all documents and evidence upon which it intends to rely on.

On 13 March 2009, FIFA sent a letter to the CAS indicating that it did not deem a hearing necessary in this matter.

On 16 March 2009, the IRIFF sent a letter to CAS indicating its preference for a hearing. Enclosed to that letter was an officially translated declaration signed by the former president of the IRIFF, Mr Mohammad Dagdan, indicating that the Coach had received all his payments, and that the bonuses claimed by the Coach are not due because, even though the President and board of the IRIFF had pledged to grant bonuses to the entire Iranian football team members including the Coach, this plan was “(...) *never executed and came into force (...)*” and no one received a bonus.

On 24 March 2009, FIFA sent its reply objecting to the admission of Mr Mohammad Dagdan’s official declaration on grounds that it had been filed out of time and no exceptional circumstance have been invoked, as required under R56 of the CAS Code.

On 22 April 2009 the Panel invited the IRIFF to comment on the following issues raised by FIFA in its defence:

1. Lack of competence of the CAS / non-admissibility of the appeal; and
2. FIFA’s lack of the standing to be sued.

On 30 April 2009, the IRIFF filed its position on the above mentioned issues.

On 3 July 2009, the Panel delivered its ruling and dismissed the IRIFF’s application to call Mr Dagdan as its witness on the grounds that such request had been made after the expiry of the deadline stipulated under article R51 of the CAS Code and that no exceptional circumstances had been presented to allow such a request under article R56 of the CAS Code.

The hearing took place on 24 August 2009 at the CAS Court Office.

At the beginning of the hearing the Panel informed the Parties that it had to rule on the preliminary issue related to whether or not the IRIFF’s declaration dated 3 January 2009¹, filed as evidence on 16 March 2009, was admissible.

¹ At the hearing the Appellant, following an inquiry from the Panel, drew the attention of the Panel to an error in relation to the date indicated on the translation of the document (“04-10-2009”), saying it was a mistake and that the correct date as contained on the original document is 3 January 2009.

The document relates to a written declaration from Mr Mohammad Dadgan informing the CAS that the IRIFF no longer owed the Coach any salaries and that it had fulfilled all its contractual obligations.

On 18 March 2009, the CAS invited FIFA to indicate whether or not it consented to the admission of the IRIFF's declaration dated 16 March 2009.

On 23 March 2009, FIFA replied, indicating its objection to the admission of the aforesaid declaration on the basis of article R56 of the CAS Code and on grounds that no exceptional circumstances had been invoked and proved which called for its late admission.

It is without question that the declaration dated 16 March 2009 has been filed out of time.

The Panel also stated that article 142 of the FIFA Disciplinary Code 2009, invoked by the IRIFF to justify the late admission of the document, is not applicable to the case, because the nature of the dispute does not relate to a disciplinary case.

Consequently, and for the reasons hereinabove, the Panel rejects the admission of the evidence filed on 16 March 2009, because under article R56 of the CAS Code no exceptional circumstances have been invoked by the IRIFF which would allow the Panel to verify whether such circumstances would justify the late submission of the document.

At the beginning of the hearing the Parties confirmed having no objection in relation to the composition of the Panel and, upon closure, the Parties expressly stated that they did not have any objection in respect to whether their rights to be heard and to be treated equally in these arbitration proceedings had been granted.

LAW

CAS Jurisdiction

1. The competence of CAS results from paragraph 1 of article R47 of the CAS Code, which stipulates the following:

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

2. The abovementioned provision contains three pre-requisites under which CAS jurisdiction is established (cf. CAS 2008/A/1705 and CAS 2004/A/748):

- There must be a “decision” of a federation, association or another sports-related body;
 - The parties must have agreed to the competence of the CAS; and
 - The (internal) legal remedies available must have been exhausted prior to appealing to CAS.
3. Decision by a federation: Although FIFA did not send to the IRIFF the grounds on which the FIFA Decision was passed, the decision in itself clearly bears all the formal and material requirements of a “decision” within the meaning of article R47 of the CAS Code and the aforementioned CAS jurisprudences. On a material level it states the outcome of the deliberations regarding the dispute between the IRIFF and the Coach, affecting the legal status of the addressees. On a formal level the findings of the decision carry the heading “decision”, and were passed by an organ of FIFA (the FIFA PSC), and is signed by the FIFA PSC’s Secretary General Mr Jérôme Valcke, whose competence to effect the said signature was derived from article 68(3) of the FIFA Statutes. Furthermore, the findings contain legal instructions on how to appeal against it, thus bearing all the elements ascribed to a “decision”. The fact that the decision is not motivated can, as such, not affect its status as a “decision” (cf. CAS 2008/A/1705, CAS 2008/A/ 1548 and CAS 2004/A/748).
4. Consent to arbitrate: article R47 of the CAS Code provides several possibilities on how the parties can agree to arbitration before the CAS. This could take place through the statutes and regulations of the relevant federation containing an arbitration clause to which the parties have submitted. In the case at hand articles 62 and 63(1) of the FIFA Statutes clarify that:
- “1. FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, Clubs, Players, Officials and licensed match agents and players’ agents.*
- 2. The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”* (Article 62 of the FIFA Statutes).
- “Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question”* (Article 63(1) of the FIFA Statutes).
5. Furthermore, by filing the appeal, participating in the proceedings without any reservation and/or by signing the Order of Procedure without any reservations, the Parties have acknowledged the competence of the CAS to deal with this case.
6. Exhaustion of legal remedies: the FIFA Decision passed by the FIFA PSC cannot be appealed before any other internal legal body of FIFA. The act of requesting for the reasons of the decision cannot be qualified as an “internal remedy” within FIFA, in the sense of article R47 of the CAS Code.
7. The CAS has inherent authority to decide on its own jurisdiction. The so-called *Kompetenz-Kompetenz* principle must be applied pursuant to article 186 of the Swiss Private International

Law Act (PILA) which provides: “1. *The arbitral tribunal shall rule on its own jurisdiction. 2. The objection of lack of jurisdiction must be raised prior to any defence on the merits. 3. In general, the arbitral tribunal shall rule on its jurisdiction by means of an interlocutory decision*” (cf. CAS 2008/A/1600).

8. Therefore, the Panel holds that the requirements set forth under article R47 of the CAS Code have been met and the findings notified to the IRIFF and the Coach are considered a decision for purposes of appeal to the CAS.

Mission of the Panel

9. The mission of the Panel follows, in principle, from article R57 of the CAS Code, according to which the Panel has full power to review the facts of the case and the law. Furthermore, article R57 of the CAS Code also provides that the Panel may issue a new decision which replaces the decision challenged or may annul the decision and refer the case back to the previous instance.

Law Applicable

10. Article R58 of the CAS Code provides the following:
“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.
11. In accordance with the provisions of article 62 paragraph 2 of the FIFA Statutes, the Panel finds that the dispute must be decided according to FIFA Regulations and, complementarily, if necessary, to Swiss law.

Admissibility of the appeal

12. According to article R49 of the CAS Code the appeal has to be filed within a certain time limit. The provision makes specific reference to the time limits fixed under the FIFA Statutes and to those fixed by the regulations of the federation whose decision is being appealed.
13. The FIFA Statutes contain a deadline within which an appeal must be filed. In accordance with article 63(1), an appeal has to be filed with the CAS within 21 days of notification of the decision in question.
14. However, another deadline is contained under article 15 of the Rules Governing the FIFA Procedures. This provision reads as follows:

- “1. The [PSC], the [DRC], the single judge and the DRC judge may decide not to communicate the grounds of a decision and instead communicate only the findings of the decision. At the same time, the parties shall be informed that they have ten days from receipt of the findings of the decision to request, in writing, the grounds of the decision, and that failure to do so will result in the decision coming into force.*
- 2. If a party requests the grounds of a decision, the motivated decision will be communicated to the parties in full, written form. The time limit to lodge an appeal begins upon receipt of this motivated decision.*
- 3. If the parties do not request the grounds of a decision, a short explanation of the decision shall be recorded in the case files.*
- 4. All decisions that lead to sporting sanctions may only be communicated with grounds”.*
15. The FIFA Decision was notified to the IRIFF on 27 October 2008 and the IRIFF was granted 10 days to request the grounds and reasons behind the notice of the FIFA Decision. The communication of a notice is deemed to have been completed once it is received by the party to whom it has been addressed.
16. The 10 days-deadline began to run on 27 October 2008 when the FIFA PSC communicated the findings of its decision to the IRIFF.
17. It is clear that the IRIFF’s request for grounds and reasons dated 8 November 2008, received at FIFA’s office on 9 November 2009, was received outside the 10 day time limit. The 10 days deadline lapsed on 6 November 2008.
18. The IRIFF filed its Statement of Appeal on 16 November 2008, without requesting for the grounds of the decision within the 10 days deadline fixed under article 15 of the Rules Governing the FIFA Procedures.
19. It is undisputed that the IRIFF has not requested for the grounds of the FIFA Decision within the 10 days set forth under article 15 of the Rules Governing the FIFA Procedures. It is also undisputed that the appeal was filed within the 21 days set forth under article 63(1) of the FIFA Statutes.
20. Therefore, the first task of the Panel is to analyse:
 - whether or not the provisions of article 15 of the Rules Governing the FIFA Procedures are in breach of the fundamental legal principles; and
 - depending on the answer to the previous question, whether article 15 of the Rules Governing the FIFA Procedures is compatible with article 63(1) of the FIFA Statutes and whether the failure to ask for the grounds of the decision within the 10 days deadline renders the FIFA Decision final and binding and consequently leads to the rejection of the present appeal based on its inadmissibility.
21. The appeal mechanism set forth under article 15 of the Rules Governing the FIFA Procedures came into force on 1 July 2008 and the only CAS jurisprudence identified on this issue is the case 2008/A/1705. The Panel in this case was of the view that these provisions do

not breach any fundamental legal principles and it justified its views on section 8.2.8, saying the following:

“(…). The duty to solicit a reasoned decision within 10 days of its notification in order to be able to appeal it before CAS may be seen as effecting the Appellant’s access to the courts and legal protection. The Panel holds, however, that this limitation is not disproportionate. It is true that the time limit of ten days is short. However, little is required from the appellant within this time frame. He doesn’t need to file a full brief that outlines his legal position. He is not even required to file specific motions or requests. The only thing he has to do in order to preserve his right of appeal is to solicit (in writing) a reasoned decision. In addition, the provision applies to all appellants and, thus, guarantees equal treatment among all (indirect) members of FIFA. Additionally, the 10 days-deadline of Art. 15(1) of the (...) Procedural Rules does not shorten the deadline which is applicable for filing an appeal, once the grounds of the decision are served to the parties. Indeed, the relevant 21 days-deadline remains untouched by Art. 15(1) of the (...) Procedural Rules. Furthermore, the provision serves a legitimate purpose i.e. to cope with the heavy caseload of FIFA and contributes to the goal of an efficient administration of justice. Even the European Court of Human Rights has all along allowed the right of access to the courts to be limited “in the interests of the good administration of justice” (cf. Briner/von Schlabendorff, in: Liber amicorum Bockstiegel, 2001, p. 89, 91). It does not come as a surprise (...) that similar restriction (...) can be found also in relation to the access to state courts. An example of this is sec. 158 of the law governing the organization of the judiciary of the canton of Zurich (...):

In decisions of first instance relating to civil matters and the enforcement of monetary judgements the courts may renounce to provide the reasons for the decision and communicate the operative part only to the parties. Instead of advising the parties of the appropriate recourse against the decision the court informs the parties that they may ask for the reasons of the decision within 10 days of the notification, failing which the decision becomes final and binding (...). Does a party request the reasons of the decision, the full decision is served with the reasons to the parties in writing. The deadlines for filing any appeal or any action to negate the claim shall start to run with such notification of the full decision with the reasons”.

(...).”

22. Like the Panel in the case CAS 2008/A/1705, this Panel also concludes, based on the arguments highlighted above, that article 15 of the Rules Governing the FIFA Procedures does not infringe any fundamental legal principles which belong to *public order*.
23. Another legal issue to be analysed and decided by the Panel is whether article 15 of the Rules Governing the FIFA Procedures is compatible and consistent with the hierarchical structure of the FIFA regulations.
24. In principle, FIFA has the freedom to establish its own provisions, but there are limits to this autonomy. When creating new rules and regulations, the relevant organs are bound by the limits imposed on them by the higher ranking provisions, in particular the association’s statutes. This follows from the principle of legality which means that a lower level provision may complement and concretize a higher ranking provision, but not amend, override, contradict or change the higher one. This principle is also well established in CAS jurisprudence (cf. CAS cases with reference 2006/A/1705, 2006/A/1181, 2006/A/1125 and 2004/A/794).

25. At this point, it is necessary to address the argument put forward by FIFA stating that the 10 days-deadline is merely a formality and does not affect the parties' right to appeal, given that the 21 days-deadline set under article 63(1) of the FIFA Statutes remains in place.
26. Any party which fails to request for the grounds of a decision within 10 days loses its right to appeal to CAS and, as such, is simply faced with a reduced deadline to file its appeal.
27. The grounds of the decision should not be considered as a pre-requisite for the appeal, because the CAS has the power to decide *ex-novo* and the appellant may (for any reason) consider it more beneficial to have the CAS review the case *ex-novo* without knowing the reasons and arguments behind the decision. If the grounds or reasons for a decision are not considered as a pre-requisite for filing an appeal to the CAS, why should the appellant be limited to the 10 days-deadline? And what would happen if the appellant decides to appeal to CAS before the 10 days-deadline fixed under article 15 of the Rules Governing the FIFA Procedures lapses, and without also having requested for the grounds?
28. The Panel does not see, in light of article 63(1) of the FIFA Statutes, any reason to consider the appeal inadmissible in a case involving the scenarios described hereinabove.
29. The Panel is of the view that article 15 of the Rules Governing the FIFA Procedures may be in conflict or in non-conformity with article 63(1) of the FIFA Statutes, since, in practical terms, it imposes upon the appellants a condition to extend the deadline to file the appeal from 10 to 21 days.
30. Even accepting that little is required from the appellant within the 10 days deadline, as referred to on paragraph 21 above, it is true that for an appellant to preserve the right to appeal within the 21 days deadline, he must ask for the grounds of the decision, which is a condition and limitation not foreseen under article 63(1) of the FIFA Statutes.
31. For this reason, the Panel is of the view that article 15 of the Rules Governing the FIFA Procedures is incompatible with article 63(1) of the FIFA Statutes, a provision of higher level in the hierarchy of the FIFA regulations. Consequently, article 15 of the Rules Governing the FIFA Procedures should be read and interpreted in light of article 63(1) of the FIFA Statutes. Article 15 of the Rules Governing the FIFA Procedures cannot amend, override, change or contradict any provision of the FIFA Statutes as it appears to do so in practical terms.
32. Furthermore, the Panel also notes that the wording of the "note" inserted at the end of the findings is confusing. The note inserted reads:

"Note relating to the findings of the decision (art. 15 of the Rules governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber):

*A request for the grounds of the decision must be sent, in writing, to the FIFA general secretariat **within 10 days** of receipt of notification of the findings of the decision. Failure to do so within the stated deadline will result in the decision coming into force".*

33. The phrase "*the decision coming into force*", which results from the expression laid down under article 15. 1 of the Rules Governing the FIFA Procedures, is not clear and may confuse the addressees particularly in relation to whether the decision has become final and binding. Paragraph 2 of article 15.1 of the Rules Governing the FIFA Procedures expressly demands that FIFA informs the parties of the consequences of failing to request for the grounds of the decision within ten days, and in the Panel's view, such information should be made in clear and simple terms to avoid misunderstanding. The information should also take into consideration the addressees' knowledge and familiarity with the new mechanism set forth under article 15.1 of the Rules Governing the FIFA Procedures.
34. Contrary to FIFA's practice, there is no specific reference to the right to appeal the FIFA Decision to the CAS and the aforesaid note does not explain the compatibility, if at all it exists, between article 15 of the Rules Governing the FIFA Procedures and article 63(1) of the FIFA Statutes which incorporates the general provision of the 21 days-deadline for appeals to CAS.
35. The effects of the communication of the decision to the IRIFF, and its understanding of the effects of the expression "*coming into force*", should also be analysed in light of the following considerations:
 - The IRIFF was not familiar with the new mechanism laid down under article 15 of the Rules Governing the FIFA Procedures;
 - The IRIFF is a federation located in a different legal system; and
 - English is not the official language of Iran.
36. In view of the fact that the procedure followed by FIFA in issuing its decision constituted a considerable change from the previous one used by it and bearing in mind the importance of the mentioned changes, one could have expected from FIFA a more precise and clear information on the appeals procedure moreover taking into consideration the addressees' lack of familiarity with the new mechanism provided under article 15 of the Rules Governing the FIFA Procedures.
37. Therefore, the Panel holds under the present circumstances that article 15 of the Rules Governing FIFA Procedures cannot be held and applied against the IRIFF.
38. Furthermore, the Panel would like to stress that the present decision does not call in question the new system adopted by FIFA *per se*. For this reason and as already recommended by the Panel in case 2008/A/1705, FIFA should consider (i) somehow integrating article 15 of the Rules Governing the FIFA Procedures into FIFA Statutes to prevent conflicts with the hierarchy of laws and (ii) to issue notices to the parties in such a clear way that no doubt can exist on what action a party is requested and entitled to do upon having been informed of the results of a FIFA procedure.

Merits

39. In order to determine whether the IRIFF is entitled to set aside the FIFA Decision in a way which shall see it absolved from its legal liability of having to pay any further fees or amounts to the Coach, including his salary of [...] USD due for the month of June 2006, and be entitled to a refund of the [...] USD pre paid to the Coach, the Panel must analyse and decide on the following questions:
- Whether FIFA has standing to be sued; and
 - Depending on the answer to the previous question, whether the IRIFF has grounds to annul the FIFA Decision and consequently (i) be absolved from having to pay any further fees and/or payments to the Coach; and (ii) to claim a refund of the amount of USD [...] received by the Coach as an advance amount.

A. *Whether FIFA has standing to be sued*

40. FIFA argues that the present Panel has no jurisdiction to review or handle the appeal as filed against FIFA due to the fact that FIFA was not a party in the FIFA PSC proceedings. These allegations were also restated by FIFA during the hearing, which claimed having had no standing to be sued in this appeal and, therefore, asked the Panel to dismiss the appeal.
41. The Panel examines the issue of whether FIFA has standing to be sued and notes that neither the FIFA Regulations nor the CAS Code contains any specific rule regarding standing to be sued. The Panel studies the definition given to the term “standing to be sued” by the CAS jurisprudence. In the case CAS 2007/A/1329 & 1330, also quoted in case CAS 2008/A/1517, the Panel ruled that “(u)nder Swiss law, applicable pursuant to Articles 60.2 of the FIFA Statutes and R58 of the CAS Code, the defending party has standing to be sued (*légitimation passive*) if it personally obliged by the “disputed right” at stake (see CAS 2006/A/1206). In other words, a party has standing to be sued and may thus be summoned before the CAS only if it has some stake in the dispute because something is sought against it (cf. CAS 2006/A/1189; CAS 2006/A/1192”.
42. The present appeal procedure relates to a dispute between the IRIFF and the Coach, pertaining to an employment-related dispute arisen between the two aforementioned parties, and was filed by the IRIFF as a result of the FIFA Decision.
43. The Panel notes that the parties in the aforementioned FIFA PSC proceedings were the IRIFF and the Coach. FIFA was not a party to those proceedings and solely acted in its role as the competent deciding body in a dispute which did not concern FIFA’s relationship with the IRIFF.
44. The Panel also notes that the appealed decision is not one with any disciplinary nature and the Statement of Appeal and Appeal Brief neither contain any request against FIFA nor any argument concerning FIFA. As FIFA argues in its defence, the entire arguments of the IRIFF

are directed against the Coach, who has not called by the IRIFF as a party to the present proceedings.

45. There is no legal remedy which the Panel can grant the IRIFF against FIFA because FIFA has no connection and/or relationship with the Employment Contract entered into between the IRIFF and the Coach.
 46. It is a well established principle of law that an appeal can only be directed against a party which took part in the proceedings before the court of first instance. However, in the present appeal, the IRIFF has named as “Defendant FIFA Players Status Committee” and not the Coach.
 47. To decide on the merits of this appeal, in the absence of the Coach and without hearing him would be considered an abuse and violation of the principles of law. This would amount to a possible and eventual condemnation of a party unheard.
 48. On these grounds, the Panel finds that FIFA has no standing to be sued because there is no legal remedy which the CAS can grant against FIFA in relation to the subject matter of the dispute which is the alleged breach of an employment contract entered into between the IRIFF and the Coach.
 49. The Panel recognizes that the appeal filed before the CAS, challenging the FIFA Decision, could concern FIFA. FIFA could have intervened in this appeal arbitration proceeding by making use of article R41.3 of the CAS Code. However, when FIFA was given the opportunity to participate in these proceedings under article R41.3 of the CAS Code, it declined to do so. However, such participation or right to intervene in the appeal proceedings as a party is conditional to the joint participation of the Coach as a respondent party in the appeal.
- B. *Does the IRIFF have grounds to annul the FIFA Decision and consequently (i) be absolved from having to pay any further fees and/or payments to the Coach; and (ii) to claim a refund of the amount of USD [...] received by the Coach as an advance amount?*
50. Considering the fact that the Coach is not a party in this appeal proceeding and the fact that FIFA has no standing to be sued, the Panel concludes that the appeal is rejected in full and for this reason, there is no need to consider the IRIFF’s requests. Furthermore, all other prayers for relief are rejected.
 51. Nevertheless, and notwithstanding the Panel’s decision on paragraph 120, the Panel would like to underline the following considerations in relation to the IRIFF’s arguments raised in relation to the FIFA Decision:
 - The Employment Contract was signed on 13 October 2006 for a 2 years period, starting on 1 October 2004 and ending on 1 October 2006.

- The Coach has been contracted by the IRIFF as the Head Coach of the Iranian National Football Team with the main purpose of training and preparing the National Team for the World Cup 2006 held in Germany.
- The Iranian National Team was eliminated from the World Cup 2006 and the Coach never came back to Iran after 21 June 2006, i.e. he ceased his functions 3 months before the term of the Employment Contract, but he alleged to have received permission to do so from the then President of the IRIFF Mr Mohammad Dadgan under the “Mutual Agreement of Early Termination of the Contract No. 7724” signed on 20 June 2006. The IRIFF does not deny this fact, but considers the “Mutual Agreement of Early Termination of the Contract No. 7724” invalid.
- The Panel notes that the alleged formal irregularities do not affect the force and validity of the “Mutual Agreement of Early Termination of the Contract No. 7714” under Swiss Law. It is a well established practice in the international civil law systems (*lex mercatoria*), that if an individual who holds a high ranking position within an entity presents and/or holds himself out to any contracting party, to the public or to any third party in good faith that he has the powers to contractually bind and/or represent the said entity, and if the said contracting party, the public or third party as the case may be, in good faith and relying on the good faith presented to it by the said individual agrees to enter into any contractual relationship with the entity through the said individual, the contract entered into therein shall produce full legal and binding effects on both the parties, including the entity which the said individual purported to represent, unless for any other reason or circumstances, the said contracting party, the public or third party ought to have reasonably known that the individual in question was not the true representative of the entity which he held himself out as having the ability to represent.
- The Panel also notes that under article III (4) of the Employment Contract, in case of unauthorised absence, the Coach would not be entitled to receive his monthly pay, and such effect could be cause for terminating the contract. This means that the eventual termination of the Employment Contract on grounds of the Coach’s absence was dependent on the sending of a prior notice through which either party would have grounds for terminating the Employment Contract. From the submissions it is undisputed that the Coach neither received nor claimed salaries related to the months of July, August and September 2006 and the notice of default asking the Coach to resume his duties was never sent by the IRIFF to the Coach.
- Furthermore, the Panel notes that the IRIFF has not specified the damages it sustained as a result of the Coach’s absence during the three months period before the expiry of term of the Employment Contract and no evidence was produced.

The Court of Arbitration for Sport rules:

1. The appeal filed by Football Federation Islamic Republic of Iran against the FIFA Players' Status Committee decision dated 23 September 2008 is dismissed in full.
2. The decision of the FIFA Players' Status Committee passed on 23 September 2008 is confirmed and upheld in full.
3. (...).
4. Any and all other prayers for relief are dismissed.