



Arbitration CAS 2007/A/1374 CS Building Vanju Mare v. Romanian Football Federation (RFF), award of 29 April 2008

Panel: Mr Stuart McInnes (United Kingdom), President; Mr Jean-Phillippe Rochat (Switzerland); Mr Michele Bernasconi (Switzerland)

Football

Promotion of a club to a higher league

Lack of exhaustion of internal legal remedies

Interpretation of national football regulations regarding CAS Jurisdiction

Absence of power of a federation disciplinary body to review certain decisions

1. Under Art. R47 of the CAS Code, a decision taken by a federation's body cannot be subjected to appeal before the CAS if the legal remedies available to the appellant in accordance with the applicable statutes and regulations of the federation have not been exhausted.
2. It is appropriate although exceptional for the CAS to accept jurisdiction based on the national regulations for the organisation of football activities which seems not to be in line with the statutes of the federation but which are however not claimed to be invalid by the federation itself. If the relevant regulations do not contravene the statutes of the federation but rather extend the rights of members of the federation, adding a possibility of appealing certain decisions under certain circumstances before the CAS, in such exceptional circumstances, missing any clear guidance from the federation about another interpretation and meaning of such provisions, CAS jurisdiction regarding a decision taken by the federation's appeal body should be accepted.
3. Absent any provision granting a power of review, the disciplinary body of a national football federation has no power to review or sanction decisions taken by an urgency committee and by the executive board of the federation respectively.

The Appellant is a football club with its registered office in Judetul Meheditini Romania, which is affiliated to the Romanian Federation of Football.

The Respondent is a member of the Fédération Internationale de Football Association (FIFA) and is the national governing body for the sport of football in Romania.

The elements set out below are a summary of the main relevant facts, as established by the Panel on the basis of the written submissions of the parties and the evidence produced.

In the season 2005-2006, the Appellant, played in the Second League of the Romanian National Football Championship and ended the season in 15th Place.

Pursuant to the Regulations for the Organisation of Football Activities in Romania (“ROAF”), then in force, the teams placed between 15th to 18th in the Second League, at the end of the season are relegated to the 3rd League for the next season.

The Appellant was duly relegated to play in the Third League for the forthcoming 2006-2007 season.

Pursuant to the provisions of ROAF and before the commencement of the 2006-2007 season, FC Liberty Oradea ceded its right to participate in the First League to FC UTA Arad and participated in the Third League championship replacing FC UTA.

At the end of the 2006-2007 football season, FC Liberty Oradea was placed first in the Third League and thus gained the right, pursuant to the provisions of ROAF then in force, to be promoted to the Second League for the next season.

At the end of the 2006-2007 football season, the Appellant was placed second in the Third League.

By letter No 2806/28.06.2007, the Appellant requested confirmation of the Department for Competitions of the Respondent that it would participate in the Second League in the forthcoming 2007-2008 season, on the basis that FC Liberty Oradea was precluded from promotion to the Second League by virtue of the provisions of Article 55.1 ROAF having ceded its position in the First League to FC UTA.

No response to that letter was apparently received.

By letter No 03/07/2007, the Appellant solicited the personal involvement of Mr. Micea Sandu, Chairman of the Respondent, in the matter.

No response to that letter was apparently received.

By letter No 04/07/2007, the Appellant gave notice of its claim to the Committee of Urgency of the Respondent

No response to that notice was apparently received.

By letter No 0507/ 05.07.2007 to the Executive Committee of the Respondent, the Appellant requested that the Committee of Urgency of the Executive Committee convene a meeting to determine the issue.

By letter No 2061 dated 05.07.2007 from the Respondent to the Appellant, it was made clear that provisions of Article 55.3 ROAF precluded promotion of teams to a superior League for two sequential seasons which are subject to the exclusions set out in Article 55.1 ROAF but that Article

55.3 ROAF did not apply to circumstances where the right to take part in the competition had been ceded.

The content of letter No 2061 was confirmed by letter No 2065 dated 05.07.2007 from the General Secretary of the Respondent addressed to the Appellant.

By letter No 2074 from 06.07.2007, the Appellant gave notice of appeal to the Respondent's Commission for Discipline against the decision of the Respondent of Football communicated in letter No 2065 dated 05.07.2007.

The decision of the Commission for Discipline of the Respondent was communicated by letter No 2188 dated 18 .07.2007. The decision confirmed the content of letter 2065 dated 05.07.2007 and rejected the appeal.

By letter No 2216 of 20.07.2007, the Appellant requested that the Commission of Discipline meet to review the decision communicated by letter No 2188 dated 18 .07.2007 on the basis that:

- the decision was not made by a judicial body subject to a right of appeal;
- the General Secretary was not competent to determine the issue and that the matter should be determined by the Commission of Discipline subject to appeal to Commission of Appeal;
- the General Secretary should not have determined the issue when the matter was subject to notification to the Commission of Discipline.

By letter No 2574 of 13.08.2007, the Appellant solicited the convocation of the Respondent's Committee of Urgency.

By letter No 2572 of 13.08.2007, the Appellant served Notice of Appeal to the Commission of Appeal against the decision of the Commission of Discipline.

The decision of the Committee of Urgency was communicated by letter 20.08.2007 which confirmed that having attained first place in the Third League Championship, FC Liberty Ordea was entitled to promotion to the Second League for the season 2007-2008 in accordance with the Official Statements of the FRF's stipulations, concerning the homologation of 2006-2007 championship's results, approved by the Executive Committee on 25.06.2007.

The decision of the Committee of Appeal was communicated by letter dated 23.08.2007 and rejected the Appeal against the decision of the Commission of Discipline. That decision confirmed that the Executive Committee of the Respondent had exclusive competence with respect to the organisation of football activity in Romania; that its decision had been confirmed by the Urgency Committee and that the Disciplinary Committee has no power to review decisions of the Urgency Committee and the Executive board and it declared itself unqualified to overturn the decision of Executive Committee and thus to resolve the Appellant's claim.

It is noted by the Panel that the English translation of the decision of the Committee of Appeal provided to the Court of Arbitration for Sport (CAS) does not record the right of appeal to CAF (the Romanian Court of Arbitration for Football) within 5 days of communication of the decision nor does it exclude appeal to the CAS.

The notice of appeal (the “Appeal”) to the CAS, against the decisions of the Commission of Disciplines, Committee of Urgency dated 20 August 2007 and of the Appeals Committee of the Romanian Federation of Football dated 23 August 2007, was filed by the Appellant on 29 August 2007. In the Appeal the following request for relief was made:

“The 2007-2008 seasons has begun. C.S. Building V. M. can no longer take its place to the 2nd League, as suppose according to ROAF. As consequence of this, we ask that the FRF be compelled to pay damages worth 10,000,000 CHF to C.S.Building V.M. The amount reflects the expenses that C.S.Building V.M. had to make back and forth to FRF for 2 months and the level of stress that both players and official. Between June and August FRF did not wish to solve this matter, only wished to postpone it until the start of 2007/2008 championship – in which phase C.S. Building V.M could no longer ask for its place in the 2nd League”.

The Appeal was stated to be made “...according to Disciplinary Regulations Art.88”.

By letter dated 31 August 2007, addressed to the Appellant, the Secretary General of the CAS made the following observations on the grounds of appeal:

“In your statement of Appeal, you have considered that the jurisdiction of the Court of Arbitration for Sport (CAS) was based on Article 88 of Regulations called “ROAF”. However it seems that the Romanian Football Federation has adopted a new provision concerning the jurisdiction of CAS which is article 57 of the statutes of the Romania Football Federation (RFF) providing that only the decisions of the Appeals Committees of the RFF having an element of extraneity (disputes of an international character) can be challenged before the CAS. A copy of such provision is attached hereto for your information. In the light of such provision, I would ask you to clarify whether Article 88 of the “ROAF” is still applicable despite the existence of Article 57 of the “RFF Statutes”.

By letter of reply dated 2 September 2007 the Appellant made the following comments:

“...Art.57 of the statutes of the Romanian Federation of Football does not apply to our dispute, since our dispute does not have an international character. However we filed this appeal based on Art.88.c) of Regulations of Discipline of RFF, that states: “the decisions made by the Commission of Appeal of FRF and AJF can be disputed by CAF, of by TAS. Recourse to CAF expels the right of Appeal to TAS and the other way around”.

The Respondent filed its answer dated 29 October on 31 October 2007.

The submissions made by the Respondent can be summarised as follows:

- As to jurisdiction; that the CAS does not have material competence to arbitrate the case because the decision of 20 August 2007 is a decision of the Executive Committee and according to Art 60.2 of the RFF statutes *“the decisions of the Executive Committee are final and executory”.*

- As to the merits; that pursuant to the provisions of Art.52.1 ROAF FC Liberty Oradea has the right to promotion to the Second League because Art 52.5 ROAF: *“The teams whose situations is covered by Art 52.1 are relegated to the next lower category and do not have the right to promote to the higher category for the next two editions of the championship in which they play. (...)”* is not applicable, because FC Liberty Oradea ceded its place in the First division and was not relegated.
- That on 20 August 2007 the Executive Committee of the Respondent decided that FC Liberty Oradea which was placed 1st in the 2006-2007 Third League Championship classification have the right to participate in the 2007-2008 Second League Championship according to the provisions of the RFF official statement regarding the validation of the national competitions results at the end of the 2006-2007 season, which statement was adopted by the Respondent’s Executive Committee on 25 June 2007.

At the request of the parties the Panel was invited to issue an award on the basis of the written submissions of the parties. A telephone conference was held on Monday 18 February 2008 between the members of the Panel when the matter was deliberated.

LAW

CAS Jurisdiction

1. Under Art R.47 of the Code of Sports Related Arbitration (the “CAS Code”), the decision of 20 August 2007 of the Committee of Urgency is not subject to Appeal before the CAS in that the Appellant has not exhausted the legal remedies available to in accordance with the statutes and regulations of the Romanian Football Federation. Indeed, it had to be confirmed - or set aside - by the Executive Committee of the Romanian Football Federation (see Statutes Romanian Football Federation at Art. 36 para. 5). The Panel accordingly declines to accept jurisdiction in relation to that part of the Appeal.
2. Article 88 of the ROAF provides: *“The decisions made by the Commission of Appeal of FRF and AJF can be disputed by CAF or by TAS. Recourse to CAF expels the right of appeal to TAS and the other way around”*.
3. The Panel considers that although the decision of the Appeals Committee dated 23 August 2007 mentions only appeals to CAF, it does not expressly exclude appeals to CAS. Further, Respondent rejected CAS’ jurisdiction on the basis of the nature of this matter only, but it did not dispute the existence nor *per se* the abstract applicability to this proceedings of art. 88 lit.c ROAF. Finally, the Panel observes that it is true that Art. 88 lit.c ROAF seems not to be in line with the Statutes of Romanian Football Federation. However, the Federation itself did not claim art. 88 ROAF to be not valid. Also, art. 88 ROAF does not contravene the Statutes of the Federation but rather extend the rights of members of the Federation, adding a possibility of

appeal certain decisions under certain circumstances by appealing with the CAS. Therefore, and missing any clear guidance from the Federation about another interpretation and meaning of such provisions, the Panel is minded that in such exceptional circumstances it is appropriate to accept jurisdiction.

4. It follows that CAS has jurisdiction to decide upon that part of the Appeal that relates to the decision of the Appeals Committee dated 23 August 2007.
5. Under Art R57 of the Code, the Panel has full power to review the facts and the law.

Applicable Law

6. Art. R58 of the 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 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”.

7. In the present matter both parties are subject to law of the Republic of Romania.

Main Issues

8. The main issue to be resolved by the Panel is whether the Respondents’ Commission for Discipline has power to review decisions of the Urgency Committee and the Executive Board.
9. The material provision is set out in Art. 36 of the Statutes of the Romanian Football Federation which provides *inter alia* as follows:
“... Art 36 (3) The Emergency Board shall decide on all problems related to the current activity of the federation requiring an immediate settlement between the meetings of the Executive Committee ...
... Art 36 (5) The decisions of the Emergency Board shall be applied on the terms set hereby and validated by the Executive Committee in its next meeting”.
10. There is no provision under which decisions of the Urgency Committee and Executive Board are subject to review or sanction of the Disciplinary Commission. Furthermore, taking into consideration all arguments raised and all evidence submitted by the parties, there is no evidence that the Appeal involves issues of a disciplinary nature. Additionally, the provisions which the Appellant claims to have been breached are not contained in the Disciplinary Code but appear in the ROAF. Finally, it seems therefore that the Appeal Committee was right in rejecting the appeal, confirming that the Disciplinary Committee does not have any power to review decisions of the Emergency Board and the Executive Board respectively. Therefore the decision of the Appeals Committee dated 23 August 2007 must be confirmed.

Conclusion

11. Based on the foregoing, and after taking into due consideration all evidence produced and all arguments made by the parties, the Panel finds that the Appeal must be dismissed, as far as it can be considered admissible.
12. All other prayers for relief are dismissed.

The Court of Arbitration for Sport rules that:

1. The appeal filed by C.S. Building Vanju Mare against the decisions of the Commission of Disciplines, Committee of Urgency dated 20 August 2007 and of the Appeals Committee of the Romanian Federation of Football dated 23 August 2007 is dismissed, as far as the Appeal has been declared admissible.
 2. All other prayers for relief are dismissed.
- (...).