



Arbitration CAS 2007/A/1303 Robert Regvar v. Fédération Internationale de Football Association (FIFA), award of 5 December 2007

Panel: Mr Hendrik Willem Kesler (The Netherlands), President; Mr Martin Schimke (Germany); Mr Stephan Netze (Switzerland)

Football

Disciplinary sanction against a player

CAS scope of review

Compliance of the duty to comply with the decisions of the bodies of FIFA with constitutional and association law

1. Under Art. R57 of the CAS Code, the scope of review of CAS is basically unrestricted. Such unlimited power of review is however limited to the issues addressed in the challenged decision(s). Therefore, when challenging a decision of the FIFA DC, it is not possible to also challenge the underlying decision of the FIFA DRC if this latter has become final and binding.
2. Art. 71 of the FIFA Disciplinary Code makes it a disciplinary duty of players, coaches or clubs to fully comply with the decisions of the bodies of FIFA. Considering the global system of professional football it is crucial that the enforcement of the decisions of the judicial bodies of FIFA is consistent and not impaired by the diversity of the legal orders around the globe and the different preferences of local authorities. The Swiss Federal Court has recently confirmed the compliance of this “mechanism” with Swiss constitutional and association law.

Robert Regvar (“the Appellant”) is a professional football player from Zagreb, Croatia.

FIFA (“the Respondent”) is the international federation governing the sport of football. It has its registered seat in Zurich, Switzerland.

The circumstances stated below are a summary of the relevant facts, as established on the bases of the written submissions of the parties and of the file of appeal against the FIFA Disciplinary Committee Decision passed on 13 April 2007 (“the DC Decision”) and the FIFA Dispute Resolution Chambers’ Decisions file passed on 25 August 2006 (“the DRC Decision”).

On 25 August 2006 the FIFA Dispute Resolution Chamber condemned the Appellant to pay the amount of BAM 34.000 and to restitute the car received to the club NK Zrinjski Mostar (“the Club”) within the next 30 days as from the date of notification of the foresaid decision (28 November 2006). Furthermore the Dispute Resolution Chamber decided that in the event that the above mentioned

amount was not paid within the stated deadline, an interest rate of 5% per year would apply as of expiring of the 30 days payment deadline. In addition, an ineligibility period of 4 month to play in official matches was imposed upon the Appellant.

By letter dated 28 March 2007, the Appellant lodged an Appeal against this Decision with the CAS, which opened an arbitration proceeding under the reference CAS 2007/A/1303. It was obvious that the Appellant filed this Statement of Appeal with a wrong date, which was confirmed by the CAS Office and FIFA at the Hearing. The correct date of the Statement of Appeal should have been 31 May 2007, as it was received by the CAS Office on the 31 of May 2007.

Initially, the factual background goes back to 29 August 2003 when the Appellant signed an employment contract with the Club for a period of two football seasons and expiring on 31 July 2005 ("the Contract").

On 10 December 2004, the Appellant contacted FIFA to lodge a claim for an amount of EUR 26,900. He submitted that the Club had not paid his salaries for the preceding 6 months. He therefore requested to be released of the club.

On 6 January 2005 the Club submitted its position to the claim to FIFA. It informed FIFA that in turn, the player was in breach of the Contract because he had left the Club on 25 July 2004 without the Club's consent. As a result, the Club had fined the player with BAM 4,000. The Club did not understand why the player was now lodging a claim for EURO 26,900, because the signing-on fee of BAM 5,000 (BAM 20,000 in cash and the provision of a car) had been paid.

The Club stated that the player had also been urged on a number of occasions to settle his situation with the club, but without success.

The Club contested that it had not paid for the player's medical treatment and this fact was substantiated by a record of his hospital visit. The Club added that it was still regularly covering the instalments of the payment for the Appellant's car. Finally, the Club claimed that the player had breached the Contract and the club had consequently imposed an additional fine of BAM 10,000 upon him and also suspended him.

In response, the Appellant claimed that he had never been contacted by the Club and that he knew nothing of the fact that he had been suspended. He added that the Club had never provided him with a health insurance policy. In the first year, the Appellant received a car with a value of only EURO 14,000 and the remaining EURO 11,000 had never been paid.

On April 2005, the Football Federation of Bosnia & Herzegovina informed FIFA that an International Transfer Certificate (ITC) for the player Robert Regvar had been issued to the Croatian Football Federation. In view of the fact that the player had been fined on two occasions, that he had received a signing-on fee of BAM 20,000 and that he had been given a car, the club lodged a counterclaim of BAM 34,000 and requested the returning of the car.

Despite several requests from FIFA, the Appellant never substantiated his claim in precise terms nor did he submit a response to the Club's counterclaim.

The competence of the FIFA Dispute Resolution Chamber and the FIFA Disciplinary Committee was not contested by the Appellant.

The Appellant filed a Statement of Appeal with the CAS against the DC Decision on 31 May 2007, followed by its Appeal Brief together with 8 exhibits, numbered 1 to 8 from 14 June 2007.

Although this submission has been lodged against the DC Decision, the arguments were factually directed to the prior DRC Decision. The Appellant's prayers for relief read as follows:

"considering all the above listed arguments, it is clear that the Committee Decision on the penalty has numerous incorrect, and incomplete facts, and explanations that there are not only contradicting the given facts but are also illegal.

Having said that, I recommend that the penalty or the illegal decision is annulled and that the case is brought back for another review of the Committee, so that all the above listed facts and arguments can be reviewed and assessed".

On 11 July 2007, the Respondent filed its Answer, together with 8 exhibits, numbered 1 to 8. His submissions can be summarized as follows:

- The FIFA Disciplinary Committee is not authorized to re-examine whether the substantive decision of the Dispute Resolution Chamber regarding the Appellant's debts (money and car) was correct.
- The sole task of the FIFA Disciplinary Committee was to analyse whether the DRC Decision was correctly notified and whether the Appellant complied with the DRC Decision.
- The CAS cannot review or modify a previous decision which has become final because it has not been appealed or because an appeal against that decision has been dismissed. Consequently, the claims made by the Appellant concerning the substance of this matter must be rejected. The Respondent refers to several other CAS precedents.

Upon request of the Appellant, a hearing was held on 22 October 2007 at the headquarters of CAS, Lausanne, Switzerland.

LAW

CAS jurisdiction

1. The jurisdiction which is not disputed derives from Art. 60 and following of the FIFA Statutes and Art. R47 of the Code of Sports Related Arbitration (“the Code”). It is further confirmed by the Order of Procedure, duly signed by the Parties.
2. It follows that the CAS has jurisdiction to decide on the present dispute.
3. According to Art. R57 of the Code, the Panel has full power to review the facts and the law of the case. Furthermore 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.

Appeal proceeding

4. As this proceeding involves an appeal against a disciplinary decision issued by a federation (FIFA) whose statutes provide for an appeal to the CAS, it is considered and treated as an Appeal Arbitration Proceeding in a Disciplinary Case in the meaning and for the purpose of the Code.

Admissibility of the appeal

5. As the DC Decision was notified to the Appellant on 11 May 2007, the Appeal is admissible because the Appellant’s Statement of Appeal was filed within the deadline provided by the FIFA Statutes and the DC Decision. No further recourse against the DC Decision, rendered in application of Art. 71 par. 5 of the FIFA Disciplinary Code (FDC) and Art. 61 par. 1 of the FIFA Statutes is available within the structure of FIFA. Accordingly the Appeal is admissible.

Applicable law

6. Art. R58 of the Code provides the following:
“The Panel shall decide the dispute according to the applicable regulations and rules of law chosen by the parties or, in the absence of the such a choice, according to the law of the country in which the federation / association of 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. Art. 60 par. 2 of the FIFA Statutes provides:
“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”.

8. Accordingly the FIFA rules and regulations shall be applied primarily, with Swiss law shall be applicable complementarily, which has not been contested by the parties.
9. The FDC Rules relevant to these proceedings are the following.

Art. 71 Failure to respect Decisions:

“Anyone who fails to pay another person (such as a player, a coach or a club) or FIFA a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of FIFA or CAS (financial decision), or anyone who fails to comply with another decision (non-financial decision) passed by a body, a committee or an instance of FIFA or CAS:

- a) will be fined at least CHF 5,000 for failing to comply with a decision;*
- b) will be granted a final deadline by the judicial bodies of FIFA in which to pay the amount due or to comply with the (non-financial) decision;*
- c) (only for clubs:) will be warned and notified that, in the case of default or failure to comply with a decision within the period stipulated, points will be deducted or demotion to a lower division ordered. A transfer ban may also be pronounced.*

If the club disregards the final time limit, the relevant association shall be requested to implement the sanctions threatened.

If points are deducted, they shall be proportionate to the amount owed.

A ban on any football-related activity may also be imposed against natural persons.

Any appeal against a decision passed in accordance with this article shall immediately be lodged with CAS”.

Art. 15 Fine:

“A fine is issued in Swiss francs (CHF) or US dollars (USD). It shall be paid in the same currency.

The fine shall not be less than CHF 300, or in the case of a competition subject to an age limit not less than CHF 200, and not more than CHF 1,000,000.

The body that imposes the fine decides the terms and time limits for payment.

Associations are jointly liable for fines imposed on representative team players and officials. The same applies to clubs in respect of their players and officials. The fact that a natural person has left a club or association does not cancel out joint liability”.

Legal merits

10. As a general principle the Panel has full power to review the facts and the law (Art. R57 of the Code). Under this provision, the Panel’s scope of review is basically unrestricted. Such unlimited power of review is however limited to the issues addressed in the challenged decision(s).
11. As already stated above, the submissions of the Appellant are formally lodged against the DC Decision, but factually also directed against the previous DRC Decision.

12. The Panel therefore has primarily to determine whether the DRC Decision can be subject to the present appeal. The question is whether the DRC Decision was duly notified to the Appellant and whether he could validly and timely exercise his appeal rights against that DRC Decision. If not, the present appeal could be considered as being directed also against the DRC Decision.
13. According to the Respondent, the DRC Decision was notified to Mr. Damir Jozić and to the Croatian Football Association on 28 November 2006. Mr Damir Jozić was authorized by Robert Regvar on 3 September 2004 to represent his interests before the Dispute Resolution Chamber. As a consequence, Mr. Jozić could be deemed to be the rightful recipient of documents and acts meant for the Appellant.
14. The Appellant however submitted that he had never received any document regarding the Decision of the DRC, because his representative Mr Damir Jozić had changed his place of residence, his telephone- and fax number. Consequently, according to the Respondent, he never had the chance to present his facts in this case before the DRC or any other body of FIFA. Allegedly, he learned of the DRC Decision only on May 11, 2007, together with the DC Decision.
15. Even if the Panel would conclude that the notification of the DRC Decision was not correct (because the Respondent must have realised that the agent remained passive and, in fact, did not duly act in the interest of his client) and only reached the Appellant on 11 May 2007 this conclusion is qualified by the mere fact the Appellant did not contest the statement of the Respondent as established in the DC Decision that he received the DRC Decision via the Croatian FA already on 14 April 2007.
16. Furthermore, asked by the Panel at the Hearing, the Appellant conceded that he had indeed received the DRC Decision around that date (14 April 2007) and even consulted his agent Mr Damir Jozić, who referred him to a well-known Croatian lawyer familiar with football cases for further advice. Unfortunately, neither Mr Jozić, nor the other lawyer advised the Appellant to file a statement of appeal against the decision of the DRC of FIFA in order to safeguard the Appellant's rights in due time.
17. According to the FIFA rules (Art. 61 of the FIFA Statutes), the DRC Decision could have been challenged before the CAS:
Any and all reasons for an Appeal to be brought against the DRC Decision had to be set forth in a request to the CAS under the applicable rules within 21 days of notification of the DRC Decision.
The period of 21 days for lodging an appeal started on the day following the receipt of the DRC Decision, i.e. on 15 April 2007. It is thus undisputable that the Statement of Appeal filed by the Appellant on 31 May 2007 can definitely not be accepted as a timely appeal against the DRC Decision of 25 August 2006.
18. The Panel therefore notes that the DRC Decision has become final and binding.

19. As a consequence, the object of this Appeal remains limited to the issues addressed in the DC Decision and cannot amount to a review of the DRC Decision. As a result only submissions relating to the fine imposed by the DC, such as its legal basis and quantum, can be heard.
20. In the light of the above the Panel finds that the reasons invoked by the Appellant concerning the debt to the Croatian club are untenable as grounds of appeal.
21. Since also grounds of nullity as regards to the DRC Decision (for example: incompetence of the issuing body or infringement of overriding fundamental principles) are neither put forward nor obvious the DRC Decision can indeed serve as a basis for a disciplinary sanction according to Article 71 FDC.
22. As a result, the Panel concludes that the conditions for a fine to be imposed on the Appellant, who breached his duty to make timely payment as ordered by the DRC Decision and to settle its debts with the Club, have been met. Moreover, the amount of the fine appears to be proportionate.
23. Art. 71 par. 1 a and b FDC says:
“Anyone who fails to pay another person (such as a player, a coach or a club) or FIFA a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of FIFA or CAS (financial decision), or anyone who fails to comply with another decision (nonfinancial decision) passed by a body, a committee or an instance of FIFA or CAS:
a) will be fined at least CHF 5,000 for failing to comply with a decision;
b) will be granted a final deadline by the judicial bodies of FIFA in which to pay the amount due or to comply with the (nonfinancial) decision;(...).”
24. Art. 71 FDC makes it a disciplinary duty of players, coaches or clubs to fully comply with the decisions of the bodies of FIFA. Considering the global system of professional football it is crucial that the enforcement of the decisions of the judicial bodies of FIFA is consistent and not impaired by the diversity of the legal orders around the globe and the different preferences of local authorities. The Swiss Federal Court has recently confirmed the compliance of this “mechanism” with Swiss constitutional and association law. In particular it stated, that it is acknowledged by Swiss Association Law that the violation of members’ duties may trigger sanctions such as punishments for clubs or associations (see Swiss Federal Court of 05.01.2007 – 4 P.240/2006).
25. As to the quantum of the fine, the Panel finds that the DC Decision is fully consistent with Articles 15 and 71 FDC: the amount of the fine, set at CHF 5,000 is not oppressive but corresponds to the minimum amount pursuant to Art. 71 FDC and takes into account that the Appellant appears rather to be a victim of his obviously incompetent or at least careless agent who had not duly represented the interests of his client. Although the passivity and negligence of the agent does not exculpate the Appellant from his *“cura in eligendo”* and his duty to ask his agent regularly about the pending proceeding, the agent’s behaviour may well constitute a breach of his professional duties. It is however not upon the Panel to investigate or sanction such behaviour.

26. In the light of the foregoing, the Panel dismisses the appeal brought by the Appellant and confirms the DC Decision.

The Court of Arbitration for Sport rules:

1. The appeal filed by Robert Regvar against the decision issued on 13 April 2007 by the FIFA Disciplinary Committee is dismissed.
 2. The decision adopted on 13 April 2007 by the FIFA Disciplinary Committee is confirmed.
 3. All other prayers for relief are dismissed.
- (...)