



**Arbitration CAS 2007/A/1294 Piroozi Athletic & Cultural Club (Perspolis) v. Fédération Internationale de Football Association (FIFA), award of 18 December 2007**

Panel: Mr Rui Botica Santos (Portugal), President; Mr Jehangir Baglari (Islamic Republic of Iran); Mr Raymond Hack (South Africa)

*Football*

*Disciplinary proceedings for failing to comply with a decision of a FIFA body*

*Scope of review of CAS*

*Review of the decision of the previous FIFA body*

1. **When a decision of the FIFA Disciplinary Committee is challenged, the CAS has full power to establish whether the challenged decision is lawful or not, if the sanctions are correct and whether they are fair and proportionate, but cannot extend beyond the limits of a review of the disciplinary sanction imposed by the Disciplinary Committee.**
2. **At this stage of the proceedings, the substance of the dispute related to the final and binding decision of a previous FIFA body whose non-compliance with has led to the disciplinary proceedings may not be reviewed anymore.**

The present appeal was filed by the Piroozi Athletic & Cultural Club Co. (Perspolis) (“Perspolis Club” or the “Appellant”) against the decision rendered by Fédération Internationale de Football Association (FIFA or the “Respondent”) Disciplinary Committee passed on 13 April 2007.

The Perspolis Club is an Iranian football club, member of the Islamic Republic of Iran Football Federation.

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

The circumstances stated below are a summary of the relevant facts, as established on the basis of the written submissions of the Parties of the file of appeal against the FIFA Disciplinary Committee Decision passed on 13 April 2007 (the “DC Decision”) and by the documents produced by FIFA at request of the Panel.

The Finnish club Kuopion Palloseura Oy (Ltd.) (the “Creditor”) and the Perspolis Club signed a transfer agreement in order to transfer the player R. to the Perspolis Club.

The Creditor and the Perspolis Club agreed to a payment plan, according to which, on 11 May 2006 and upon several renegotiations in regard to the payment date, this latter club committed itself to pay to the first club the total amount of €130,000.

The Perspolis Club did not pay the debt on the agreed deadline and the Creditor decided to file a claim before the FIFA Players' Status Committee.

On 11 May 2006 the Creditor filed a claim before the FIFA Players' Status Committee.

The Perspolis Club did not take position in the FIFA Players' Status Committee procedure, despite having been asked to do so by FIFA on several occasions and, therefore, renounced to its right to defence and the allegations of the Creditor were accepted.

On 17 October 2006, following the abovementioned refusal of the Perspolis Club to pay the outstanding amount, the FIFA Players' Status Committee condemned the Perspolis Club to pay to the Creditor the total amount of €130,000, plus interest of 5% p.a. as of 3 March 2006, within 30 days following the date of the communication of the decision.

On 1 January 2007, the Perspolis Club filed an appeal against the FIFA Players' Status Committee's decision passed on 17 October 2006.

On 8 January 2007, the Court of Arbitration for Sport (CAS) informed Perspolis Club that the appealed decision was not enclosed in the Statement of Appeal or in the subsequent letters sent by the club on 6 and 7 January 2007.

On 23 January 2007, CAS sent to Perspolis Club a letter to which was attached the letter sent by CAS on 8 January 2007, stating that *"(...) the conditions to initiate an appeals arbitration procedure with the Court of Arbitration for Sport (CAS) and provided by art. R48 of the Code of Sports-related Arbitration are not met (...)* [and] *"as a consequence, the CAS [could] not entertain the appeal (...)"*.

On the same date, i.e. on 23 January 2007, the CAS informed FIFA that it could not initiate an arbitration procedure on this matter, as requested by the Perspolis Club, as the statement of appeal was incomplete.

The Perspolis Club did not pay the debt on the given deadline and on 26 January 2007, the secretary to the Disciplinary Committee opened disciplinary proceedings against the Perspolis Club.

On 28 January 2007, the Perspolis Club informed FIFA Disciplinary Committee that it had filed an appeal before the CAS.

On 5 February 2007, the secretary to the Disciplinary Committee referred to a fax dated 23 January 2007 sent by CAS, in which FIFA was informed that CAS could not initiate any arbitration procedure in this matter and informed the Perspolis Club that consequently the case kept pending on the agenda of the FIFA Disciplinary Committee.

On 5 March 2007, the Perspolis Club informed the Disciplinary Committee that it had become aware of the alleged existence of an agreement between the Perspolis Club and the Creditor and claimed that this agreement was “(...) *forged since it is not dated nor registered in club’s registry office*”.

On 13 March 2007, the secretary to the Disciplinary Committee informed the Perspolis Club that the decision rendered by the Player’s Status Committee on 17 October 2006 is final and binding and that the case will be submitted to the next meeting of the FIFA Disciplinary Committee on 13 April 2007, if the amount is not paid before 2 April 2007 at the latest.

On 13 April 2007, FIFA Disciplinary Committee decided that the Perspolis Club was guilty of failing to comply with a decision of the FIFA Players’ Status Committee in accordance with art. 71 FIFA Disciplinary Code and ordered the Perspolis Club to pay the fine amounting to CHF 15,000 within 30 days following the date of the notification of such decision.

FIFA Disciplinary Committee also decided that if the payment was not made within the given deadline, the Creditor could demand FIFA Disciplinary Committee to deduct 6 points of the Appellant’s first team in the domestic league championship and, once the Creditor has made such request, the points are to be mandatorily deducted in any case.

In case Perspolis Club fails to pay the amount due even after deduction of the points, the first team will be relegated to the next lower division.

Moreover, the DC Decision also states that “*as a Member of FIFA, the IR Iran Football Association is responsible for implementing [the] decision, if necessary, and is obliged to deduct the points. If the member fails to fulfil this obligation, the FIFA Disciplinary Committee will pronounce an appropriate sanction against it. This can lead to expulsion from all FIFA competitions*”.

On 13 May 2007, pursuant to art. 71 para. 5 of the FIFA Disciplinary Code and art. 61 para. 1 of the FIFA Status, the Perspolis Club filed a “Statement of Appeal” with the CAS, against the DC Decision.

On 3 September 2007, the CAS Court Office issued, on behalf of the President of the Panel, an Order of Procedure which was signed by the Respondent on 12 September 2007.

On 13 September 2007, and with respect to the Order of Procedure, the Perspolis Club sent to CAS a letter informing the following:

*“Respectfully, in reference to the sent fax dated Dec. 3, 2007 including an attached order of Procedure; the following matters are informed:*

*1 – As mentioned in the letter No. 86/1 – 1097 dated August 26, 2007 from this club, we expected decision in the further court of appeal regarding verdict issued by players’ status committee dated October 17, 2006, and not verdict issued by disciplinary committee dated April 13, 2007. Therefore, the object of mission mentioned in Paragraph 2 of the order of Procedure shall be amendable as abovementioned.*

*2 – Considering the date of communication of decree by players’ status committee (Dec. 12, 2006) and date of statement for appeal by this club (Jan. 1, 2007) will distinguished that appellant is in the right entitled to request investigation in the court of cassation with regard to the issued verdict.*

*3 – The letter dated Jan. 8, 2007 by the court of Arbitration for Sport (CAS) involving the request for sending the verdict issued by players' status committee has been received by us on January 23 and such delays has been justified by CAS (especially the letter dated August 28, 2007). Therefore, delay in its arrival can not cause non acceptance of the appeal.*

*4 – The other steps of this club concerning remittance of the payment and presentation of an Arbitrator shows decision of the club for investigation in the court of appeal regarding the issued verdict.*

*Thus, this club asks to be held the subject of investigation on the issued verdict dated October 17, 2006 by players' status committee in FIFA in session of the panel of Arbitrators dated October 30, 2007 and amended order of Procedure is sent for signing by this club. It is clear that all required documents will be presented as soon as demand.*

*Yours sincerely”.*

On 17 September 2007, following the Perspolis Club's observations on the proposed Order of Procedure, FIFA informed to be against the Perspolis Club's intention to direct its appeal against the decision of the Players' Status Committee dated 17 October 2007 and underlined CAS position expressed in its letter dated 23 January 2007, “(...) according to which the conditions to initiate an appeals arbitration procedure against the mentioned decision of the Players' Status Committee were not met and hence the appeal not entertained”.

On 4 October 2007, the Perspolis Club sent to the CAS another letter, which states the following:

*“With reference to the letter from FIFA to CAS on 17 September 2007, we would like to mention the followings to make the subject more clear:*

*On 23 January 2007 Court of Arbitration for Sport, by letter which was dated 8 January 2007, asked Perspolis Club to send a copy of the decision of Players' Status Committee to the CAS court office (appendix no. 1).*

*On the same day (23rd Jan 2007), Court of Arbitration for Sport forwarded its letter sent to FIFA to this club, declaring this matter that CAS could not initiate any arbitration procedure because it had not received a copy of the abovementioned decision (appendix No. 2).*

*Following Perspolis club's notification and in reply to CAS, the CAS' requested decision was sent.*

*Therefore, there won't be any acceptable reason in disregarding Perspolis Club's right for investigation of its appeal against the decision of Players Status Committee.*

*So, this club insists on the change of the instruction for the meeting of CAS arbitration panel.*

*Yours sincerely”.*

On 17 October 2007, CAS Court Office, on behalf on the President of the Panel informed the parties that “(...) all issues raised in the parties' recent submissions will be discussed at the oral hearing”.

On 30 October 2007, the hearing took place in Lausanne, Switzerland.

On 16 November 2007, the Perspolis Club sent to CAS Court Office a set of documents that have been considered inadmissible by the Panel due to their late submission and lack of relevance, in accordance with articles R56, R44.3 *ex vi* R57 of the Code of Sports-related Arbitration.

## LAW

### Jurisdiction

1. The jurisdiction of CAS, which is not disputed, derives from art. 71 para. 5 of the FIFA Disciplinary Code, art. 61 para. 1 of the FIFA Statutes and R47 of the Code of Sports-related Arbitration (the “Code”).
2. The Perspolis Club refused to sign the Order of Procedure objecting the mission of the Panel with respect to the decision issued by the FIFA Disciplinary Committee dated 13 April 2007, since the Perspolis Club expected a decision regarding the verdict issued by the Players’ Status Committee dated 17 October 2007, on the grounds referred to *supra*).
3. Despite Perspolis Club’s position in regard to the mission of the Panel, the execution of an Order of Procedure is not relevant for the lawful determination of CAS jurisdiction to decide the present dispute.
4. It follows that the CAS has jurisdiction to decide the present dispute.

### Applicable Law

5. Art. R58 of the Code reads as follows:  
*“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”.*
6. Then, art. 60.2 of the FIFA Statutes provides as follows:  
*“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”.*
7. The Panel remarks that the “*applicable regulations*” are indeed all applicable FIFA rules and regulations material to the dispute at stake, and in particular the FIFA Disciplinary Code.
8. Therefore, the Panel holds that the dispute must be decided according to FIFA statutes and regulations and, complementarily, if necessary, to Swiss law.

## The Merits of the Dispute

9. As a general principle, the Panel has full power to review the facts and the law (Art. R57 of the Code) but, under this provision, the Panel's scope of review is limited to the issues arising from the challenged decision, *in casu* the DC Decision.
10. The Panel has full power to establish whether the challenged decision of the disciplinary body is lawful or not, if the sanctions are correct and whether they are fair and proportionate, but cannot extend beyond the limits of a review of the disciplinary sanction imposed by the Disciplinary Committee.
11. In the present case, the Appellant challenges the DC Decision based on the fact that FIFA Disciplinary Committee has considered the decision passed by the Players' Status Committee on 17 October 2006 as final and binding when, in accordance with the Appellant's position, it is still pending the appeal filed against such decision.
12. From the Appellant's submissions and subsequent correspondence it has been clear that the Appellant makes no claims against the amount of the fine, the threatened deduction of six points and/or against the relegation to the next lower division as imposed by the DC Decision.
13. In fact, as it is referred in the Appellant's letter to CAS dated 13 September 2007, the Appellant expects a decision "*regarding verdict issued by Players' Status Committee dated October 17, 2006 and not verdict issued by disciplinary committee dated April 13, 2007*". This position was also confirmed by the Appellant during the hearing.
14. The grounds and reasons invoked by the Appellant in its appeal brief against the DC Decision relate to the challenge of the Players' Status Committee's decision passed on 17 October 2006 and are not related to the DC Decision *per se*. As pointed out by the Respondent, the FIFA Disciplinary Committee is not allowed to analyse the case decided by the FIFA Player's Status Committee as to the substance. The FIFA Disciplinary Committee task is to control whether the Appellant had complied with the final and binding Players' Status Committee decision, as they did.
15. The Panel underlines the fact that the substance of the dispute related to the Players' Status Committee decision may not be reviewed anymore at this stage of the proceedings and this understanding is fully in line with the longstanding CAS jurisprudence (CAS 2004/A/1008).
16. In other words, the Panel underlines that it has no jurisdiction: (1) to analyse the question whether the appeal filed by the Appellant against the FIFA Players' Status Committee met or not the legal requirements provided by art. R48 of the Code; and/or (2) to review the Players' Status Committee decision passed on 17 October 2007, as the Appellant pretends and requests.
17. The Panel confirms that art. 71 of the FIFA Disciplinary Code allows a sanction to be imposed on a club that has failed to fully comply with the decisions of the bodies of FIFA.

18. As to the amount of the fine, the Panel confirms that the DC Decision is consistent with articles 15, section 2 and 71, section 1(a) of the FIFA Disciplinary Code. The Panel also confirms that the DC Decision is consistent with article 71, sections 1(c) and 3 of the FIFA Disciplinary Code in what concerns the deduction of six points and the relegation to the next lower division.
19. Consequently, the Panel dismisses the appeal brought by the Appellant and the DC Decision is confirmed.

**The Court of Arbitration for Sport rules that:**

1. The appeal filed on 13 May 2007 by the Perspolis Club against the decision passed on 13 April 2007 by the FIFA Disciplinary Committee is dismissed.
  2. The DC Decision passed on 13 April 2007 by the FIFA Disciplinary Committee is confirmed.
- (...).