



Arbitration CAS 2007/A/1206 Milan Zivadinovic v. Iraqi Football Association (IFA), award of 2 April 2007

Panel: Prof. Luigi Fumagalli (Italy), President; Mr Luc Argand (Switzerland); Mr Gordon Rapp (Germany)

Football

Disciplinary sanction for failing to comply with the decision of a FIFA body

Object of the proceedings before the Disciplinary Committee

Standing to be sued

1. The proceedings before the DC intend to protect primarily an essential interest of FIFA, i.e. the full compliance by the affiliates of the decisions rendered by its bodies. In other words, the core of a DC decision, and of the appeal possibly brought against it, regards only the existence of a disciplinary infringement and the power of FIFA to sanction it.
2. Although disciplinary proceedings may be initiated by FIFA to sanction a person for not complying with the decisions of its bodies, or of CAS, finally settling a dispute between this person and a national federation, the latter is not a party to the disciplinary proceedings. Therefore, the national federation cannot be considered as the “passive subject” of the claim brought before the CAS by way of appeal against the DC decision, as its rights are not concerned by the DC decision and as it has no power whatsoever to sanction the person’s failure to comply with FIFA bodies’ and CAS decisions. It is hence clear that the national federation does not have any standing to be sued (*légitimation passive*) and cannot, as such, be identified as a respondent in the arbitration.

Mr Milan Zivadinovic (“Mr Zivadinovic” or the “Appellant”) is a professional football coach of Serbian nationality.

The Iraqi Football Association (the “IFA”) is the national football association for Iraq and is a member of the Fédération Internationale de Football Association (“FIFA”).

On 30 November 2006 the FIFA Disciplinary Committee (the “DC”) issued a decision (the “DC Decision”) holding that:

- “1. The debtor is pronounced guilty of failing to comply with a decision of a FIFA body in accordance with art. 68 FDC.
2. The debtor is ordered to pay a fine to the amount of CHF 15,000. The fine is to be paid within 30 days of notification of the decision. Payment can be made either in Swiss francs (CHF) to account [...] or in US dollars

(USD) to account [...].

3. *The debtor is granted a final period of grace of 30 days as from notification of the decision in which to settle its debt to the creditor.*
 4. *If payment is not made by this deadline, the creditor may demand in writing of the FIFA Disciplinary Committee that the debtor shall be banned on taking part in any football related activity until the full amount is paid.*
 5. *The costs of these proceedings amounting to CHF 2,000 are to be borne by the debtor.*
- (...)
8. *The creditor is directed to inform the Disciplinary Committee of every payment received”.*

The DC Decision was rendered on the basis of Article 68 of the FIFA Disciplinary Code, adopted on 29 June 2005 and in force since 1 September 2005 (the “FDC”), providing for sanctions on “*anyone who fails to pay another person (such as a player, a coach or a club) a sum of money in full, even though instructed to do so by a body of FIFA*”. The DC, in fact, noted that Mr Zivadinovic had failed to comply with a decision issued by the FIFA Players’ Status Committee (the “PSC”) on 13 April 2004 (the “PSC Decision”), whereby Mr Zivadinovic was ordered to pay to the IFA an amount of money.

More specifically, the DC remarked that:

- “1. *On 13 April 2004, the Single Judge of the Players’ Status Committee decided that Milan Zivadinovic, represented by Milan Vujin (hereinafter: the debtor), has to pay USD 125 000 to the Iraqi Football Association (hereinafter: the creditor).*
2. *On 4 July 2005, the Court of Arbitration for Sport (CAS) dismissed an appeal lodged by the debtor.*
3. *On 7 July 2006, the secretariat of the Disciplinary Committee opened disciplinary proceedings against the debtor and asked him to immediately pay the outstanding amount as well as to send a payment proof.*
4. *On 13 July 2006, the debtor informed FIFA that he was ready to settle his debts but he needed the creditor’s bank details.*
5. *On 14 July 2006, the secretariat of the Disciplinary Committee asked the creditor to provide the debtor with the bank details.*
6. *On 9 August 2006, the secretariat of the Disciplinary Committee sent a reminder to the debtor and asked him to immediately pay the outstanding amount as well as to send a payment proof.*
7. *On 18 August 2006, the debtor informed FIFA that he was ready to settle his debts but he still has not gotten the creditor’s bank details.*
8. *On 20 August 2006, the secretariat of the Disciplinary Committee asked the creditor again to provide the debtor with the bank details.*
9. *On 23 August 2006, the secretariat of the Disciplinary Committee declared the case suspended and withdrawn from the agenda of the meeting of the Disciplinary Committee on 29 August 2006, until the creditor provides the debtor with its bank details.*
10. *On 25 August 2006, the debtor informed FIFA of the receipt of an e-mail containing the creditor’s bank details. According to the debtor, e-mails are not a save way to transfer such information, as e-mails do not contain any signature or seal.*

11. *On 25 August 2006, the secretariat of the Disciplinary Committee asked the creditor to send its bank details by the means of fax or registered mail to the debtor.*
12. *On 26 August 2006, the creditor sent its bank details to FIFA by fax. The secretariat of the Disciplinary Committee forwarded this information to the debtor on 29 August 2006.*
13. *On 12 September 2006, the debtor informed FIFA that he will not pay the money to that bank account, since the bank was in Jordan and not in Iraq and consequently misuse or money laundry was possible.*
14. *On 19 September 2006 the case was reopened and the secretariat of the Disciplinary Committee asked the debtor to pay the full amount directly to FIFA which would then credit the sum to the creditor's bank account with FIFA in order to dispel the debtor's concerns regarding the bank details of the creditor.*
15. *On 13 November 2006, the secretariat of the Disciplinary Committee sent a reminder to the debtor and asked him to immediately pay the outstanding amount and to send a proof of payment.*
16. *In a fax received on 21 November 2006, the debtor informed FIFA that he was in a very difficult financial situation, as he had no engagement for over a year and that his mother was seriously ill and needed constant medical care by a nurse and that his wife was a refugee from Kosovo and that they had two unemployed children and that he would like to conclude a settlement agreement with the creditor.*
17. *On 21 November 2006, the secretariat of the Disciplinary Committee informed the debtor that the case will be submitted to the FIFA Disciplinary Committee at its meeting on 30 November 2006 if the outstanding amount has not been paid or a duly signed settlement agreement has not been submitted to FIFA within the deadline set.*
18. *On 23 November 2006, the Football Association of Serbia informed FIFA that they do support the debtor's request to postpone the execution of the decision of the Single Judge of the Player's Status Committee in order to find an agreement with the creditor.*
19. *On 23 November 2006, the secretariat of the Disciplinary Committee informed the Football Association of Serbia that the case keeps pending on the agenda of the Disciplinary Committee until an agreement has been concluded with the creditor or the outstanding amount has been paid".*

On the basis of the above, the DC noted that:

- “3. *As the debtor ignored the decision passed by the Single Judge of the Players' Status Committee on 13 April 2004 and is withholding money from the other party, it is considered guilty under the terms of art. 68 FDC. The alleged financial difficulties of the debtor are not a justification for his failure to pay his debt.*
4. *The fine to imposed is at least CHF 5,000. Consequently, the fine to be imposed shall be between CHF 5,000 and CHF 1,000,000 (cf. art. 16 par. 2 FDC). The debtor withheld the amount unlawfully from the creditor. The fine has been increased because the amount of money due is substantial. Non-payment of such amounts can cause an association financial difficulty. Even FIFA's attempts to urge the debtor to fulfil his financial obligations failed to induce him to pay. The debtor confirmed several times his willingness to settle his debts, but he never did so. The Committee questions the seriousness of the debtor's announcements to pay. In the circumstances, the Disciplinary Committee regards a fine amounting to CHF 15,000 as appropriate. This amount complies with the Disciplinary Committee's established practice.*
5. *In application of art. 68 par. 1 b) FDC, the Disciplinary Committee considers a final deadline of 30 days as appropriate for the amount to be paid.*
6. *If the sum due is not paid within the stipulated deadline, the debtor will be banned on taking part in any football*

related activity in accordance with art. 12 let. f and art. 68 par. 4 FDC, until the amount is paid. This will occur if the creditor informs the FIFA Disciplinary Committee of non-payment within the stipulated deadline and demands in writing that the debtor shall be banned on taking part in any football related activity.

7. *Art. 110 par. 1 FDC states that costs and expenses are to be borne by the unsuccessful party”.*

The DC Decision was notified to Mr Zivadinovic on 5 December 2006.

On 27 December 2006, Mr Zivadinovic filed a statement of appeal with the Court of Arbitration for Sport (the “CAS”), pursuant to the Code of Sports-related Arbitration (the “Code”), to challenge the DC Decision.

LAW

Jurisdiction

1. The jurisdiction of CAS to decide the present dispute between the parties has to be evaluated pursuant to Article R47 of the Code and Articles 60 ff. of the FIFA Statutes, in their version as of 1 August 2006, in force when the DC Decision was issued and the appeal was filed (the “FIFA Statutes”).
2. More specifically, the provisions of the FIFA Statutes that are relevant to that effect in these proceedings are the following:

Article 60 [“Court of Arbitration for Sport (CAS)”]:

- “1. FIFA recognizes 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 61 [“Jurisdiction of CAS”]:

- “1. 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.
2. Recourse may only be made to CAS after all other internal channels have been exhausted.
3. CAS, however, does not deal with appeals arising from:
 - (a) violations of the Laws of the Game;
 - (b) suspensions of up to four matches or up to three months (with the exception of doping decisions);

- (c) *decisions against which an appeal to an independent and duly constituted arbitration tribunal recognised under the rules of an Association or Confederation may be made.*
4. *The appeal shall not have a suspensive effect. The appropriate FIFA body or, alternatively, CAS may order the appeal to have a suspensive effect.*
5. *The World Anti-Doping Agency (WADA) is entitled to appeal against doping-related decisions which are deemed to be final under the terms of par. 1 above”.*
3. Pursuant to Articles 60 and 61 of the FIFA Statutes, therefore, CAS jurisdiction derives from the issuance by FIFA of a decision and is consequently limited to the scope of such decision and to the parties concerned by the same.
4. Under Swiss law, applicable pursuant to Article R58 of the Code, the defending party has standing to be sued (*légitimation passive*) if it is personally obliged by the “disputed right” at stake.
5. In the present case, the Panel notes that IFA, however de facto interested in the outcome of this appeal, was not a party to the FIFA proceedings leading to the DC Decision presently challenged, because said proceedings:
- (i) were not directed against IFA,
 - (ii) did not deal with IFA’s behaviour, and
 - (iii) were only and solely meant to sanction Mr Zivadinovic for not complying with the PSC and CAS decisions finally settling the dispute between Mr Zivadinovic and IFA (CAS 2004/A/625).
6. IFA’s rights, in other words, were not the object of the dispute before the DC: IFA was not a party to the FIFA proceedings leading to the DC Decision and is not concerned by said decision.
7. The proceedings before the DC, indeed, intended to protect primarily an essential interest of FIFA, i.e. the full compliance by the affiliates of the decisions rendered by its bodies. In other words, the core of the DC Decision, and of the appeal brought in these proceedings against it, regards only the existence of a disciplinary infringement by Mr Zivadinovic and the power of FIFA to sanction it.
8. Therefore, IFA cannot be considered as the “passive subject” of the claim brought before this Panel by way of appeal against the DC Decision, as IFA’s rights are not concerned by the DC Decision and IFA has no power whatsoever to sanction Mr Zivadinovic’s failure to comply with the PSC and CAS decisions. It is hence clear that IFA does not have any standing to be sued (*légitimation passive*) and cannot, as such, be identified as a respondent in the present arbitration.
9. For all these reasons, the Panel holds that CAS has no jurisdiction to hear a claim brought by way of appeal from a decision issued by a disciplinary body of FIFA against a subject that was not a party to the FIFA disciplinary proceedings, has no standing to be sued, and is not directly affected by the decision appealed from.

Conclusion

10. In light of the foregoing, the Panel confirms that CAS lacks jurisdiction to hear an appeal brought against IFA with respect to the DC Decision and holds that the appeal has to be dismissed.

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Milan Zivadinovic against the decision issued on 30 November 2006 by the FIFA Disciplinary Committee is dismissed.

(...).