



**Arbitration CAS 2008/A/1571 Nusaybindemir SC v. Turkish Football Federation (TFF) & Sirnak SC, award of 15 December 2008**

Panel: Mr Romano Subiotto (United Kingdom), President; Mr Türker Arslan (Turkey); Mr Stuart McInnes (United Kingdom)

*Football*

*Sanctions against a club for incidents occurring during a game*

*CAS power to rule on its own jurisdiction*

*Conditions for the CAS jurisdiction to hear an appeal*

*Interpretation of the CAS reference included in the FIFA and the UEFA Statutes*

*CAS jurisdiction according and the statutes of a national federation*

1. Given that CAS has its seat in Switzerland, a CAS panel is subject to the Swiss Private International Law, and may accordingly rule on its own jurisdiction. A CAS panel is only competent to decide upon appeals to the extent that the appeal arises out of a decision of, among other things, a federation insofar as the statutes or regulations of that federation provide for appeal to the CAS. If the statutes or regulations of that federation do not provide for appeal to the CAS, the CAS cannot decide the dispute.
2. In order to have jurisdiction to hear an appeal, the statutes or regulations of the sports-related body from whose decision the appeal is being made must expressly recognize CAS as an arbitral body of appeal. The CAS Code requires a direct reference to CAS contained in the statutes or regulations of the body whose decision is being appealed. CAS has no *omnibus* jurisdiction and the jurisdiction of the CAS can only be recognized or acknowledged if a statute or agreement has conferred jurisdiction on the CAS to decide disputes. In this respect, an express wording conferring jurisdiction to decide a certain dispute on the CAS is necessary and a vague reference is not sufficient.
3. The FIFA Statutes, like the UEFA Statutes, do not confer upon the CAS an unqualified jurisdiction to decide national level disputes. Accordingly, the UEFA and FIFA Statutes do not require the law of a national federation to confer appeal jurisdiction for all national level cases on CAS.
4. If the law of the national federation expressly provides that the CAS has jurisdiction to consider appeals against decisions, only if they concern *“disputes arising from transfer, license and contracts of players and contracts of technical directors and trainers”* and the appeal brought before the CAS does not concern any of these matters, it cannot be held to be admissible.

The Appellant, Nusaybindemir Sport Club (“Nusaybin”), is a third division football club located in southeast Turkey that participates in football through the organization of the First Respondent, the Turkish Football Federation (TFF).

The First Respondent, the TFF, is the organizing body for football in Turkey. The TFF is established and granted authority for organizing football in Turkey by the Law of Establishment and Objectives of the Turkish Football Federation, Law No. 3813, passed by the Grand National Assembly (the “legislature”) of the Republic of Turkey on June 17, 1992, and last amended on November 29, 2007 by Law No. 5719/1 (the “TFF Law”).

The Second Respondent, Sırnak Sport Club (“Sırnak”), is a third division football club located in southeast Turkey that also participates in football through the organization of the TFF.

On May 4, 2008, Nusaybin and Sırnak met to contest a football match at Nusaybin District Stadium (the “match”). The score after a tense first half of play was 1-1, and Sırnak returned to its dressing room. Due to concerns about the security of Sırnak’s players, Sırnak did not return to the field of play for the second half. The match did not resume.

As the match was not completed, pursuant to the TFF Law the Executive Committee of the TFF met on May 6, 2008, to decide upon the match’s outcome. By decision dated May 7, 2008, the Executive Committee found that the match had been disturbed “*due to incidences caused by its [Nusaybin’s] spectators*”, and that “*the safety of the visitor teams could not be provided as necessary by Nusaybinspor, and club administrators did not do their best for this*”. The Executive Committee issued an order stipulating that the outcome of the match would be 3-0 in favor of Sırnak, and that Nusaybin’s points total be reduced by three points.

As was their right under the TFF Law, Nusaybin appealed the Executive Committee’s decision to the Appeal Board of the TFF (the “Appeal Board”). The Appeal Board convened an oral hearing on May 13, 2008, and heard evidence from Nusaybin, Sırnak, the TFF and two of the match’s referees. The Appeal Board issued its decision on May 14, 2008. The operative part of the award is as follows:

*“According to national and international legislation, the host clubs are responsible for the form and safety of the stadium and its periphery, that the clubs, players, officers and spectators were objectively responsible for their acts and behaviors, and with such framework, the incidences in the field before, during and after the first half of the game between Nusaybin Demirspor and Sırnakspor, the game was not safe due to the severe incidences on the field as well as attacks committed to the players, and it was impossible to carry out the game safely, the decision of 3-0 defeat of Nusaybin Demirspor be approved with the majority of the vote (with counter-opinion of Member Tanju Guvendiren), but the decision for deleting 3 points of Nusaybin Demirspor has been cancelled, with the unanimity of the vote”.*

By letter dated June 2, 2008, representatives on behalf of Nusaybin filed an appeal of the Appeal Board’s decision with the Court of Arbitration for Sport (CAS). Nusaybin requested that the dispute be resolved by a single arbitrator, and nominated Mr. Türker Arslan as arbitrator.

By letter dated June 18, 2008, the TFF objected, pursuant to Article R50 of the Code of Sport Related Arbitration (the “Code”), and requested that a panel of three arbitrators resolve the present dispute.

The TFF nominated Mr. Stuart C. McInnes as its party appointed arbitrator. Sirnak confirmed the TFF's appointment of Mr. McInnes as arbitrator on behalf of both respondents by letter dated June 20, 2008.

By letter dated June 26, 2008, counsel for the CAS confirmed that the Deputy President of the Appeals Arbitration division of the CAS, in absence of agreement of the parties as to the number of arbitrators, elected not to exercise his discretion to order that this dispute be resolved by a single arbitrator.

By letter dated July 4, 2008, the TFF submitted its response to the appeal filed by Nusaybin. The TFF's response raised two preliminary issues (the "preliminary issues"). First, the TFF submitted that the CAS lacked jurisdiction to consider Nusaybin's appeal. Second, the TFF requested that an oral hearing be conducted to resolve this dispute. By letter dated July 14, 2008, Sirnak repeated the TFF's request that an oral hearing be conducted. Sirnak has not participated further in these proceedings.

By letter of August 22, 2008, the TFF requested the CAS to consider the appeal as not admissible because of the non-payment of the additional advance of costs requested by the CAS Secretary General. The CAS answered to and dismissed this request by a letter of October 17, 2008.

By letter dated September 12, 2008, counsel for the CAS advised the parties that the arbitration panel (the "Panel") in this dispute had been appointed and would be composed of Mr. Arslan and Mr. McInnes as party appointed arbitrators, with Mr. Romano Subiotto serving as President of the Panel.

By letter dated September 24, 2008, counsel for the CAS wrote to the parties indicating that the Panel would consider and decide upon the preliminary issues at the outset of these proceedings.

Nusaybin submits, essentially, that the CAS and this Panel have jurisdiction to decide this dispute on account of the wording of the TFF Law, which it alleges confers jurisdiction on the CAS. The TFF Law provides, in part:

*Article 2*

*The objectives of the Turkish Football Federation are as follows:*

...

*(g) To recognize the jurisdiction of courts of arbitration indicated in the FIFA and UEFA statutes and the jurisdiction of the Court of Arbitration for Sport (CAS).*

*Article 10*

*The objectives of the Executive Committee are as follows:*

...

*(b) to ratify the result of matches, to postpone matches, to adjust the dates, to decide on the matches which are unfinished, fixed and with incidents.*

*Article 14*

*The Appeal Board shall examine and finally decide on.*

*(a) the decisions made by the Executive Committee on disputes arising between the Federation and clubs, referees, football players, technical directors, trainers, players' agents and other officials,*

*(b) the decisions of the amateur and professional disciplinary boards,*

*(c) the decisions of the Dispute Resolution Committee,*

*upon the appeal of the parties.*

*The rights of the parties to refer to the Court of Arbitration for Sport is reserved against the decisions of the Appeal Board on disputes arising from transfer, license and contracts of players and contracts of technical directors and trainers.*

Nusaybin submits that the location of Article 2 within the TFF Law, appearing as it does before Article 14, means that Article 2 is indicative of the intention of the Turkish legislature. Nusaybin submits that the Turkish legislature intended Article 2 to confer upon the CAS jurisdiction to decide all disputes adjudicated at first instance by the TFF decision-making bodies, including decisions of the Appeal Board. Nusaybin submits that Article 14 does not narrow the class of cases that may be appealed from the TFF decision-making bodies to the CAS; instead Article 14 merely “stresses” that certain “special cases” can also be appealed from the TFF decision-making bodies to the CAS.

In reply, the TFF submits that the jurisdiction of the CAS to rule on disputes that have been previously adjudicated by the Appeal Board is limited by the terms of Article 14. In other words, the CAS has no jurisdiction to rule upon an appeal from the Appeal Board unless the decision relates to the “transfer, license and contracts of players and contracts of technical directors and trainers”. As this dispute does not concern the transfer, license or contract of a player or technical directors or trainers, the CAS has no jurisdiction to rule.

In addition, the TFF submits that the decision of the Executive Committee to award victory to Sırnak was made pursuant to the TFF Competition Regulations. The TFF Competition Regulations, which have not been provided in either original Turkish or translated format to this Panel, allegedly state that, “Rulings made by the Appeals Body with regard to disputes of international dimension arising from the contracts of players, coaches and trainers may be appealed to CAS as specified in the related regulations and directives of FIFA and UEFA”. The TFF submits that as the present dispute does not possess an international dimension, it cannot be appealed to the CAS.

In reply, Nusaybin submits that it is illegal as a matter of Turkish law for a regulation made by the TFF to limit or narrow the TFF Law or its operation, which is an act of the Turkish legislature (it is contrary to the “hierarchy of laws”).

## LAW

### CAS Jurisdiction

1. Article R47 of the Code provides, in part, as follows:

#### *Appeal*

*An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as 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. Neither party submits that the CAS and this Panel have jurisdiction to decide the present dispute arising out of an agreement between them, or that Nusaybin has not exhausted the legal remedies available to it.
3. Article R28 of the Code provides that this Panel's seat is in Lausanne, Switzerland. As this Panel's seat is in Switzerland, this Panel is subject to the Swiss Private International Law, which stipulates that this Panel shall rule on its own jurisdiction (See also CAS 2006/A/1190, paras. 6.3 and 6.4). As noted above, Article R47 of the Code provides that the CAS and this Panel is only competent to decide upon appeals to the extent that the appeal arises out of a decision of, among other things, a federation insofar as the statutes or regulations of that federation provide for appeal to the CAS. If the statutes or regulations of that federation do not provide for appeal to the CAS, the CAS cannot decide the dispute.
4. There is now an established body of CAS jurisprudence that affirms that in order to have jurisdiction to hear an appeal, the statutes or regulations of the sports-related body from whose decision the appeal is being made must expressly recognize CAS as an arbitral body of appeal (See CAS 2002/O/422; CAS 2005/A/952; CAS 2007/A/1395).
5. In the present case, the TFF Law states that it is the "objective" of the TFF to recognize the jurisdiction of, among other bodies, the CAS. This Panel notes, as is the case with all other private dispute resolution bodies, that as a matter of private international law it and the CAS do not have any jurisdiction inherent to it that is capable of recognition. Recognizing the jurisdiction of the CAS is, as a matter of law, pointless, because the CAS has no *omnibus* jurisdiction. The jurisdiction of the CAS can only be recognized or acknowledged if a statute or agreement has conferred jurisdiction on the CAS to decide disputes. This Panel does not read Article 2 as containing the express wording necessary to confer jurisdiction to decide the present dispute on the CAS. An example of the express wording required to confer jurisdiction on the CAS is the final passage of Article 14 of the TFF Law quoted above.
6. To the extent that it was the intention of the Turkish legislator to confer jurisdiction on the CAS through Article 2, that intention is too vague to discern from the mere words of Article 2, and the Panel has not been presented with any evidence (such as *travaux préparatoires*, committee

reports, speeches in the Turkish legislature concerning the TFF Law, or any other such material) that would support such an argument.

7. Even a purposive reading of Article 2 does not lead to the conclusion that it was the intention of the Turkish legislature to confer jurisdiction upon the CAS to decide disputes like the dispute in the present case. This Panel notes that Article 2 refers to the recognition of jurisdiction of arbitration courts that appear in the UEFA and FIFA statutes. Like the Code, the UEFA and FIFA statutes do not require that national football related disputes, such as the present one, be open to appeal to the CAS.
8. Article 59 of the UEFA Statutes (2007 Edition) requires that each member of UEFA (which includes Turkey in its membership), *“include in its statutes a provision whereby it, its leagues, clubs, players and officials agree to respect at all times the Statutes, regulations and decisions of UEFA, and to recognise the jurisdiction of the Court of Arbitration for Sport (CAS) in Lausanne (Switzerland), as provided in the present Statutes”*. The UEFA Statute goes on to require that disputes of a national dimension be referred *“in the last instance”* to an independent and impartial court of arbitration, but does not make reference to the CAS or require that appeal lie in such cases to the CAS (Article 60 of the UEFA Statutes). The UEFA Statute then confers jurisdiction upon the CAS, as Ordinary Court of Arbitration, to resolve a number of types of disputes not at issue in the present case, and, as an Appeals Arbitration Body, to review any decision taken by a UEFA organ (Article 62 of the UEFA Statutes), and then provides:

*Article 63*

1. *The CAS is not competent to deal with [...]*
  - c) *awards issued by an independent and impartial court of arbitration in a dispute of national dimension arising from the application of the statutes or regulations of an association.*

9. The FIFA Statute is similar to the UEFA Statute in that it does not indicate that the CAS has jurisdiction in all cases to decide football disputes (i.e. Article 63(3)c of the FIFA Statutes), or that members of FIFA or UEFA are required to include clauses in their statutes or regulations giving CAS jurisdiction to decide all disputes in all cases. While the FIFA Statute requires *“Confederations, Members and Leagues to recognize CAS as an independent judicial authority and to ensure that their members, affiliated Players and Officials comply with the decisions passed by CAS”* (Article 64 (1) of the FIFA Statutes), it requires only that its members, including the TFF, insert into their statutes a clause requiring that disputes be resolved by arbitration, either by an arbitration tribunal *“recognized under the rules of the Association or Confederation or to CAS”* (Article 64 (3) of the FIFA Statutes).
10. The FIFA Statute and membership of FIFA, like the UEFA Statute and membership of UEFA, do not therefore confer upon the CAS an unqualified jurisdiction to decide national level disputes. Accordingly, the UEFA or FIFA Statute does not require the TFF Law to confer appeal jurisdiction for all national level cases on CAS.
11. This Panel notes that this appeal is brought against the decision of the Appeal Board. Article 14 of the TFF Law expressly provides that the CAS has jurisdiction to consider appeals of

Appeal Board decisions, but only if they concern “*disputes arising from transfer, license and contracts of players and contracts of technical directors and trainers*”. The present appeal does not concern any of these matters, and cannot therefore be held to be admissible under Article 14 either.

12. Finally, this Panel is mindful of the TFF Competition Regulation, which the TFF alleges limits the CAS’ jurisdiction to decide certain cases only if they have an “*international dimension*”. Nusaybin alleges that the TFF Competition Regulation represents an illegal attempt by the TFF through regulation to limit the operation of the TFF Law, which was passed into law by the Turkish legislature, and that the TFF is not constitutionally capable of limiting the operation of laws passed by the Turkish legislature.
13. As this Panel has already ruled that the TFF Law does not confer upon it jurisdiction to decide this dispute, and Nusaybin has not alleged any other grounds upon which this Panel could find jurisdiction, it is not strictly necessary to comment further on the TFF Competition Regulation. However, in view of the fact that Nusaybin has warned this Panel that, “*the decision of your Court on the jurisdiction of CAS will be a landmark decision on the future cases for the Turkish Clubs*”, it is instructive to discuss briefly the jurisdictional framework for appeals of football related disputes.
14. As a member of UEFA and FIFA, the TFF is obligated to include in its statute certain jurisdictional provisions that give jurisdiction to the UEFA and FIFA arbitration courts in certain cases, but not in all cases. The UEFA and FIFA Statutes do not require that the TFF permit an appeal to lie to international dispute resolution bodies (such as those organized by UEFA and FIFA, or the CAS) in disputes of a purely domestic nature. It is open to the TFF to permit appeal of domestic disputes to the CAS, and the FIFA Statute requires that the TFF permit appeal to the CAS in case no other independent arbitral bodies are designated as appeal bodies (not applicable in this case), but the TFF has not done so and is not required to do so. This Panel takes notice of the fact that adopting last instance decisions related to domestic sports disputes at a national level is a common approach adopted by many sports regulatory bodies, and that this approach ensures that the resources of the CAS are not taxed unnecessarily by disputes without an international character or that do not concern matters of pressing international importance, such as the fight against doping in sports.
15. The attempt by the TFF to limit the CAS’s jurisdiction to cases with an international dimension is generally (although not perfectly) consistent with the UEFA and FIFA Statutes. Whether as a matter of Turkish law such regulations are constitutional is not a matter this Panel is required to consider.
16. In order for CAS to have jurisdiction to rule on an appeal, Article 47 of the Code requires that a direct reference to CAS be contained in the statutes or regulations of the body whose decision is being appealed.
17. The TFF Law only provides for a right of appeal from decisions of the Appeal Board to the CAS in cases that concern transfer, license and contracts of players and contracts of technical directors and trainers. There is no *omnibus* right of appeal to the CAS in the TFF Law for cases

such as the present dispute, and no such right can exist unless and until the TFF Law is amended to incorporate such a right of appeal.

18. The UEFA and FIFA Statutes do not require the TFF to include in the TFF Law a right of appeal to the CAS for cases such as the present dispute.
19. There is no specific agreement between the parties to allow CAS to rule on the merits of this particular dispute.
20. CAS therefore does not have jurisdiction to rule on the appeal filed by Nusaybin in the present arbitral proceedings.
21. As this Panel has concluded that the CAS does not have jurisdiction to consider this appeal, the question of whether an oral hearing is necessary or desirable does not arise, and is not addressed further.

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

1. The Court of Arbitration for Sport has no jurisdiction to decide the present dispute between Nusaybindemir Sport Club and the Turkish Football Federation and Sırnak Sport Club.
2. The appeal filed by Nusaybindemir Sport Club on June 2, 2008 is inadmissible.
3. The arbitration procedure CAS 2008/A/1571 Nusaybindemir SC v/TFF & Sırnak SC shall be removed from the roll of the Court of Arbitration for Sport.

(...).