



**Arbitration CAS 2008/A/1695 Samoa Football Federation (SFSF) v. Fédération Internationale de Football Association (FIFA), award of 5 May 2009**

Panel: Prof. Petros Mavroidis (Greece), President; Mr David Williams QC (New Zealand); Mr David Askinas (USA)

*Football*

*Validity of a FIFA decision to establish a normalization Committee*

*Lack of standing to appeal before the CAS*

**A decision of FIFA to establish a Normalization Committee (NC) in order to act provisionally in lieu of a federation is final and binding on its addressees, if no appeal had been validly lodged against it. The role and function of a NC is to act in lieu of the organs of a national federation. As from the entry into function of the NC, the federation's chairman is therefore automatically replaced by the NC and the replaced chairman, as an individual not subject to the FIFA Statutes, therefore cannot appear before CAS in his individual capacity as he lacks standing. The appeal should thus be rejected on these grounds without going into the merits of the case.**

Fédération Internationale de Football Association (FIFA) is the International Federation of Football with its registered office in Zurich, Switzerland.

The Samoa Football (Soccer) Federation (SFSF) is the national football federation in Samoa Islands and affiliated with FIFA since 1986.

On 9 June 2008, the FIFA Emergency Committee took note of the financial situation of the SFSF and considered that it was not only endangering the SFSF as such but also the FIFA Goal project. Hence, the FIFA Emergency Committee decided to establish Normalization Committee (NC) that would act provisionally in lieu of the SFSF, with the objective of restoring administration in line with FIFA management principles and of protecting the SFSF and its assets. Furthermore, Mr. David Brand was appointed interim chairman of the NC (with the consequent instruction to take over the Chairmanship of the SFSF with immediate effect). As a result, FIFA sent the following letter to Mr. Tautulu Roebeck, chairman of the SFSF, on June 11, 2008:

*"Dear Sir,*

*FIFA would like to inform the Samoa Football (Soccer) Federation and the football community of Samoa that the FIFA Emergency Committee has examined the situation of your federation.*

*After having taken note of the critical financial situation of the federation, endangering not only the federation as such but also the FIFA Goal project, the Emergency Committee took the following decision on 9 June 2008:*

- 1. In order to restore the proper administration of football in Samoa and to protect the federation and its assets, a Normalization Committee for the Samoan Football (Soccer) Federation will be appointed.*
- 2. The Normalization Committee will be composed of 5 members that will be nominated by FIFA and Oceania Football Confederation (OFC) in consultation with the Samoan authorities.*
- 3. The Normalization Committee will be installed for a duration of 12 months and will reorganize the administration of the federation and organize the settlement of all debts.*
- 4. At the end of the 12 months period elections will be organized.*

*As a first step, FIFA and the OFC have nominated Mr. David Brand as the interim chairman of the Normalization Committee. He will take over the administration of the federation immediately and work on the settlement of the debts.*

*The mandate of the Normalization Committee includes, among others:*

- the management of the current affairs,*
- the organization of football competitions,*
- the supervision of development projects (incl. footykids),*
- the protection of the assets of the federation,*
- the settlement of all debts and*
- the support of the FIFA missions to Samoa.*

*An joint FIFA/OFC delegation will visit Samoa in July in order to inform the Samoan authorities about the FIFA decision. The other four members of the Normalization Committee will be nominated after consultation with the authorities and the football stakeholders in Samoa.*

*We thank you for informing the football community in Samoa about the decisions taken by FIFA”.*

The SFSF lodged a statement of appeal against the FIFA decision to establish an NC before CAS on June 28, 2008 but as no nomination of an arbitrator was made by the SFSF within the prescribed deadline, CAS informed the SFSF per letter dated July 17, 2008, that its “*appeal is to be considered as withdrawn*”.

Mr. Tautulu Roebeck, however, did not agree with the decision of the FIFA Emergency Committee and refused to cooperate so as that the said decision be executed. Mr. David Brand, was thus not in position to effectively take over the Mr. Roebeck’s position as Chairman of the SFSF.

Various members of the SFSF’s Executive Committee disagreed with Mr. Roebeck’s behaviour and lodged a complaint to this effect before the Samoa Sports Disputes Tribunal on August 21, 2008.

On October 24, 2008, FIFA informed the SFSF that it had decided to suspend the SFSF’s FIFA membership with immediate effect; the consequence was that the SFSF lost its membership rights and would neither be able to take part in any FIFA competitions nor participate in FIFA’s assistance and development programs. As to the reasons for such decision, Mr. Jérôme Valcke, Secretary General of the FIFA Executive Committee mentioned in essence that:

*“Mr. David Brand, nominated by FIFA as the interim chairman of the Normalisation Committee, and Mr. Glenn Turner, FIFA Development Officer, went to Apia to organise a smooth transition of powers and to take over the administration. However, despite their effort, the former president of your Federation and other members of the Executive Committee have refused to collaborate and have worked against the implementation of the decision of the FIFA Emergency Committee. This constitutes a serious violation of the members obligation to respect the Statutes and the decisions of FIFA bodies at any time”.*

The Prime Minister of Samoa referred the internal dispute affecting the SFSF to the Samoa Sports Disputes Tribunal. On November 20, 2008, the Samoa Sports Disputes Tribunal confirmed the decision of the FIFA Emergency Committee of June 9, 2008 that SFSF was being represented by the NC established to this effect, and that Mr. Tautulu Roebeck was not entitled to legally represent the SFSF anymore. The Samoa Sport Disputes Tribunal’s order reads as follows:

*“(1) The Normalisation Committee proposed by FIFA shall be allowed to take over immediately the administration of the Federation for a period of up to 12 months during which time it will arrange for the settlement of the Federation debts.*

*(2) The President of the Federation upon the arrival in Samoa of the members of the Normalisation Committee shall resign his post, hand over all keys of the Federation complex at Tuanaimoto, hand over all Federation vehicles and all other Federation properties not within the Tuanaimoto complex to the chairman of the Normalisation Committee (or his nominee).*

*(3) The President shall relinquish all Federation files to the Normalisation Committee.*

*(4) At the conclusion of the 12 months period, or of the Normalisation process, whichever happens first, the Normalization Committee shall organize and call a general meeting of the Federation to amend the Federation Statutes to facilitate the appointment of new officers, organize and call a meeting to appoint new officers, and attend to any other agenda item they consider necessary to benefit the Federation.*

*(5)The Tribunal will consider further orders in the event that FIFA elects to withdraw the Normalization Committee”.*

On November 21, 2008, the Prime Minister of Samoa communicated the judgment to FIFA confirming that Mr. Roebeck had been ordered to resign. The FIFA Executive Committee subsequently lifted the SFSF’s suspension on December 20, 2008. In its letter addressed to *“Mr. David Brand, President, Samoa Football Soccer Federation Normalisation Committee”*, Mr. Jérôme Valcke, Secretary General of the FIFA Executive Committee explained:

*“Dear President,*

*The FIFA Executive Committee met in Tokyo on 19 and 20 December. I have the pleasure to inform you that following the report from OFC President Reynald Temarii on his recent mission to Samoa, the Executive Committee agreed to lift the suspension imposed on the Samoa Football Soccer Federation(SFSF) at its last meeting (23-24 October).*

*This decision was taken in view of recent positive developments within the Samoan football family. However, it is subject to the SFGS’s ongoing adherence to the road map for restoring order to the association’s internal affairs as laid down by FIFA and the OFC.*

*On my side, I wish to commend you for the good work done so far by the Normalisation Committee. I am confident that under your leadership this process can be completed successfully by the end of 2009 (...)*”.

On November 11, 2008 Mr. Tautulu Roebeck filed a complaint before the CAS.

In his complaint, Mr. Roebeck submitted to CAS the following requests for relief:

*“(i) A declaration that the decision by the FIFA Executive Committee to suspend Samoa is unfair and injustice, therefore should be withdrawn.*

*(ii) A direction that all financial entitlements of SFSF be paid out promptly.*

*(iii) An order for costs including solicitor’s costs and expenses”.*

In the same complaint, Mr. Roebeck then applied for a stay of the execution of the decision claiming in essence (i) that the challenged decision had been taken without granting the SFSF the right to be heard; (ii) that the case was pending before the Samoan Sports Tribunal; and (iii) that the SFSF originally had on June 28, 2008 lodged a complaint before the CAS.

Regarding the complaint lodged on June 28, 2008, Mr. Roebeck mentioned that *“This appeal was withdrawn due to minor technical issues with CAS for late submission of information required in accordance with the Code of Sports – related Arbitration (sic). In addition the Government of Samoa with the support of the OFC President and FIFA representatives decided in July 2008 to refer the SFSF’s case to the local Sports Tribunal to find a solution for the dispute between OFC/FIFA and SFSF. The decision of the Tribunal is yet to be delivered, however the FIFA Executive Committee has already decided to suspend SFSF”.*

Together with a request for relief and a request for stay, Mr. Roebeck’s complaint contained a “request for urgent relief” under which Mr. Roebeck requested an urgent order for release of funds due for the Football for Hope Project approved by FIFA in December 2007, and for reimbursement of costs incurred for the maintenance of football facilities.

To support his “request for urgent relief”, Mr. Roebeck submitted that the Football for Hope Project had started in January 2008 and lasted until June 2008, the SFSF having assumed several obligations with stakeholders and suppliers on the assurance of FIFA and OFC’s support, which was subsequently suspended. This situation led, according to Mr. Roebeck, to an urgent need of liquidities on the SFSF’s side. As evidence, Mr. Roebeck offered correspondence between FIFA or OFC, on one side, and the SFSF, its attorneys or the Government of Samoa, on the other side. This correspondence refer to the implementation of the so called “footykids program” of the SFSF supported by FIFA under the Football for Hope Project, and on the circumstances of the nomination by FIFA’s Executive Committee of an NC. Mr. Roebeck filed extracts from the FIFA and SFSF statutes and a copy of the appeal brief filed with CAS on June 28, 2008 as well.

Mr. Roebeck then filed a brief on November 25, 2008. The cover letter bears the SFSF’s logo and is signed by Mr. Roebeck as “President” of the SFSF. The last page of the brief refers to Mr. Toailoa, a barrister and solicitor in Apia as “person representing the applicant”.

FIFA replied to Mr. Roebeck's submissions with a first answer dated November 21, 2008, on the requests for stay and "urgent relief".

FIFA first claims that Mr. Roebeck has no power to represent the SFSF and has, therefore, no standing. Indeed, according to FIFA, Mr Tautulu Roebeck cannot represent legally the SFSF; he lost the legal power to do so as a result of the FIFA Emergency Committee's decision of June 9, 2008 to establish an NC. FIFA points out that this decision was never appealed before the CAS, and was, therefore, final and binding on its addressees. FIFA further stresses that the Samoa Sports Disputes Tribunal, an independent national arbitration court, confirmed on November 20, 2008 that Mr. Roebeck could not legitimately represent the SFSF. According to FIFA, the complaint lodged by Mr. Roebeck must be rejected.

FIFA also concludes that the request for stay and other provisional measures must be rejected as well: the three conditions to grant provisional measures were not met, namely (i) the likelihood of success on the merits of the appeal; (ii) the demonstration that the measure is useful to protect the complainant from irreparable harm; and (iii) the demonstration that the interests of the complainant outweigh those of the defendant.

On December 23, 2008, FIFA filed a second brief on the merits of the case

The CAS held a conference call on March 23, 2009. The three members of the Panel arrived at a unanimous decision during this conference call.

## **LAW**

### **CAS Jurisdiction and admissibility**

1. The jurisdiction of CAS is disputed by FIFA on the ground that Mr. Roebeck, who filed a complaint on November 11, 2008, on behalf of the SFSF, was not its chairman at that moment and, thus, not subject to the FIFA Statutes, notably to the jurisdiction clause of the CAS. As no arbitration clause was agreed between the parties to the present case, the condition of application of the Code of Sports-related Arbitration ("the Code") as mentioned under article R27 of the Code was not met, and CAS lacked jurisdiction on this matter. Subsidiarily, FIFA claims that Mr. Roebeck was in any case not allowed to file an appeal on behalf of the SFSF, which through Mr. David Brand, whom FIFA describes as the Chairman of the SFSF at the moment of the filing of the statement of appeal, expressed that he did not support the initiative taken by Mr. Roedecke on its behalf.
2. Should these submissions of FIFA be admitted, the complaint should be rejected without going into the merits of the case.

3. The Panel stresses Mr. Roebeck's request for relief related to the financial entitlements of the SFSF towards FIFA. The decision of FIFA to establish an NC was final and binding on its addressees, since no appeal had been validly lodged against it.
4. Having admitted that FIFA's decision to establish an NC was valid and binding, the Panel then considered the scope of this decision and its enforceability at the level of the national federation of Samoa, namely the SFSF. As to the scope of the decision, the Panel took into consideration the explanation provided by FIFA on January 26, 2009 as well as the arguments raised by Mr. Roebeck. The Panel considered the purpose of establishing the NC and came to the conclusion that the role and function of an NC is to act in lieu of the organs of a national federation.
5. The NC has indeed the mission to restore corporate governance standards, quality management and financial balance. These objectives cannot be reached without a total control of the executive powers of the national federation.
6. The Panel then studied carefully the question of the enforceability of this decision. The replacement of the national executive committee by an NC is indeed a direct interference in the work of an association/federation organized under national laws. FIFA justifies this measure on the basis of "*devoir d'ingérence*" that it has in order to address bad management issues. Since the Panel considers FIFA decision to establish an NC in this case as final and binding, it will not consider the reasons that led FIFA to take this decision.
7. The FIFA claimed that article 31.1 of the 2007 FIFA Statutes is the legal basis for the establishment of an NC. This provision reads as follows:  
*"The Executive Committee shall pass decisions on all cases that do not come within the sphere of responsibility of the Congress or are not reserved for other bodies by law or under these Statutes".*
8. On the basis of this provision, the FIFA has adopted many decisions. In response to a specific question to this effect by the Panel, the FIFA held that similar decisions were taken to address worrisome situations, *inter alia*, in the federations of the American Samoa, Senegal and Burkina Faso.
9. The Panel stressed that an NC must deal with an emergency situation on a provisional basis. After the period set by FIFA's Executive Committee, the NC must be replaced by a duly elected executive committee that will be acting in the name of the national federation.
10. In the case at hand, it is beyond dispute that the NC entered into function on June 11, 2008, the Emergency Committee's decisions having immediate effect. From that date onwards, Mr. Roebeck was automatically replaced by Mr. Brand, who was empowered to act as (interim) chairman of the SFSF. No appeal was validly lodged before CAS against this decision. Mr. Roebeck and the other members of the SFSF's executive committee were deprived from 11 June 2008 onwards of their powers and functions of members of the SFSF's Executive Committee.

11. Mr. Roebeck, as an individual is not subject to the FIFA Statutes and, therefore, cannot appear before CAS in his individual capacity since he lacks standing.
12. The Appeal must thus be rejected on these grounds: Mr. Roebeck has no standing before the CAS since only the NC had standing and could lawfully represent the SFSF at the time the complaint by Mr. Roebeck had been lodged.
13. The Panel would like to add, nonetheless, that, it is greatly concerned that sweeping powers such as those that the NC possesses (see above) are not explicitly mentioned in the FIFA Statutes. Indeed, even the name “NC” is nowhere mentioned in Art. 31.1 of the FIFA Statutes which, in FIFA’s view represents the legal basis for the establishment of an NC. Such practices do not promote transparency, legality and consistency. The Panel does not put into question to have, occasionally, recourse to the establishment of an NC. The Panel does feel however, that legal security would be best served if the conditions, under which an NC will be established, as well as its powers and eventually withdrawal, are spelled clearly in the law. A survey of practice in this context is an *ex post facto* exercise which falls short of warning *ex ante* all potential addressees as to the dangers inherent in bad administration of national federations. It is through *ex ante* warnings that fairness and natural justice is promoted, and not through *ex post facto* rationalizations.

### **Applicable law**

14. 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 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”.*
15. The Panel notes that the Parties agree on the fact that FIFA Statutes and regulations, which the SFSF Statutes explicitly refer to, are applicable but there is no agreement between the Parties as to the rules of law or national laws applicable to the present case. It notes that FIFA issued the challenged decision and that FIFA is domiciled in Switzerland. Considering that none of the Parties claimed in their written submissions that another national law should be applicable, the Panel decided the present case on the basis of the FIFA Statutes and Regulations and in accordance with Swiss law.

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

1. The appeal filed by Mr. Tautulu Roebeck is rejected.
  2. All motions or prayers for relief are dismissed.
- (...).