



Arbitration CAS 2009/A/1830 Adrian Mititelu Marin v. Romanian Football Federation (RFF), award of 14 April 2011

Panel: Mr Bernhard Welten (Switzerland), Sole Arbitrator

Football

Disciplinary sanctions due to public statements

Statements affecting a referee's honor or reputation

Declarations bringing "prejudice to football in any manner"

- 1. Statements made by a team's President referring to the game of his team against another club and the mistakes made by the referee in specific situations of the game, as long as the critics on the referee's performances are related to specific facts and situations in the game, cannot be seen as affecting the referee's honor or reputation. Different persons with different interests see such scenes in a different light and such discussions led within certain boundaries are part of the football game.**
- 2. According to the RFF Disciplinary Regulations, "*declarations concerning the unfairness of football matches, the ones concerning the referee's performances, breaches of regulations, etc.*" are considered as declarations bringing prejudice to football in any manner. However, the majority of these statements are statements often seen and heard by frustrated coaches of losing teams in searching for an excuse by criticizing the performances of the referee or its assistants, and can be criticised as outrageous but not as bringing prejudice to football in accordance with the RFF Disciplinary Regulations.**

Adrian Mititelu Marin (the "Appellant") is the President of Football Club Universitatea Craiova (the "Club"), a Romanian football club. In the season 2008/09 the Club played in the league A of the Romanian Football Federation of which it is a member.

The Romanian Football Federation (the "Respondent" or RFF) governs the sport of football in Romania and is a member of the Fédération Internationale de Football Association (FIFA).

On 21 November 2008 Football Club Universitatea Craiova played the RFF league A game against Steaua Bucuresti. The game ended 0:0; the referee was Alexandru Tudor together with Aurel Onita as one of his linesmen.

On 21 November 2008 the newspaper “Prosport” published on its website statements as being made by the Appellant regarding the performance of the referee Alexandru Tudor and the linesman Aurel Onita as follows:

“Steaua is on its knees if it needs help from the referees!”

“... What can I say about the refereeing? The assistant referee Onita took the entire stadium for fools and ruined the match. We were denied a clear penalty after the foul on Wobay. I am sorry that Steaua has fallen so much that it needs help from referees ...”.

“I am sorry that Steaua is in such a desperate situation that it seeks the help of referees! Fortunately for us, however, the times have changed. It is no longer the way it used to be in the past, when province teams would kneel in front of the big Bucharest teams”.

On 22 November 2008 the newspaper “Gazeta Sporturilor” published on its website statements as being made by the Appellant on Sport.ro channel regarding the performance of the referee Alexandru Tudor and the linesman Aurel Onita as follows:

“We are on third place in the championship, although nobody wants us there. All the talk is about Steaua. People should also take us into account. Steaua did not play alone last night. Bucharest teams always have problems when they face us. Last night we played against Steaua “Tudor” Bucuresti. ... We were robbed of at least seven or eight points by refereeing teams ... Onita was Steaua’s thirteenth player. There is no point to lodge any petition, because nothing will be solved. Bucharest teams are always favored”.

On 22 November 2008 the newspaper “Prosport” published on its website a statement as being made by the Appellant on Sport.ro channel:

“... Didn’t you see what Onita did? The player was offside by three meters! ... A referee like Onita becomes the fifteenth player on the field”.

On 23 November 2008 the newspaper “Gazeta Sporturilor” published a statement on its website as being made by the Appellant during the “Recursul Etapei” football show:

“I am sick of Steaua winning at Craiova with the help of referees. Every time we play against Steaua, the same happens. Do I look like a sucker?”.

On 1 December 2008 the Secretary of the RFF Disciplinary Commission informed the Appellant that Mr. Adalbert Kassai, Secretary General of the RFF, filed a report and therefore disciplinary proceedings were initiated against the Appellant.

On 10 December 2008 the Appellant filed a petition to the President of the RFF and complained about the unjustified and unequal treatment of the different club owners by the RFF Disciplinary Commission and the poor quality of refereeing in the RFF league.

With decision no. 541 of 10 December 2008, signed on 15 December 2008, the RFF Disciplinary Commission sanctioned the Appellant based on art 52 par. 5 of the RFF Disciplinary Rules with a seven months suspension and a fine of RON 300’000.

On 19 December 2008 the Appellant appealed against the decision of the RFF Disciplinary Commission of 10 December 2008.

By decision of 20 March 2009 the RFF Appeals Commission completely dismissed the appeal as being ungrounded and it confirmed the decision of the RFF Disciplinary Commission of 10 December 2008.

On 16 April 2009, the Appellant filed a statement of appeal with the Court of Arbitration for Sport (CAS) pursuant to Article R47 of the Code of Sports-related Arbitration (the "Code") against the decision of the RFF Appeals Commission (the "Decision") of 20 March 2009. Together with this statement of appeal the Appellant requested for a stay of the appealed decision.

On 20 April 2009 the CAS informed the Appellant regarding the deadline to file the appeal brief in accordance with Art. R51 of the Code and set the Respondent a deadline of five days to agree that the case be submitted to a Sole Arbitrator respectively seven days to send an answer to the requested provisional and conservatory measures.

On 23 April 2009 the Appellant filed its appeal brief in accordance with art. R51 of the Code. He requested to annul the decision no. 1 of the RFF Appeals Commission of 20 March 2009 and therefore lift the ban of seven months regarding any football related activity as well as the obligation to pay a fine of RON 300'000.

On 28 April 2009 the CAS set the Respondent a deadline of 20 days to file its answer to the appeal.

By letter of 29 April 2009 the CAS stated that it did not receive any letter from the Respondent regarding its choice on the formation of the Panel. The parties were advised that the President of the CAS Appeals Arbitration Division would decide whether the matter should be submitted to a Sole Arbitrator.

By letter of 5 June 2009 the CAS stated that it did not receive any answer from the Respondent to the appeal filed. The parties were advised that pursuant to art. R55 of the Code the arbitration procedure would proceed ahead nevertheless. The parties were asked to inform the CAS by 12 June 2009 whether they wished a hearing to be held in this case.

On 17 September 2009 the Respondent filed a copy of its complete case file in relation to this matter.

By letter of 2 December 2010 the Appellant sent back the signed Order of Procedure which stated that the Sole Arbitrator had decided that he was sufficiently well informed not to hold a hearing.

The Respondent did not send any communication.

LAW

CAS Jurisdiction / Admissibility

1. The jurisdiction of the CAS, which is not disputed by the parties, derives from Art. R47 of the Code and Art. 57 RFF Statutes: *“CAS has competence to resolve any disputes between FIFA, UEFA, regional confederations, national federations, leagues, clubs, players, officials, licensed player’s agents or match agents, if FIFA/UEFA/RFF statutes do not provide otherwise. The appeal must be lodged with CAS within 21 days from communication of the decision”*.
2. Art. 88 RFF Disciplinary Regulation states: *“The competence regarding the settlement of disciplinary cases belongs to the commissions with jurisdictional attributions of RFF/CFA, as follows:*
...
d) the decisions of the Appeal Commission of RFF may be appealed against before CAS within a deadline of 21 days of the date of the ruling of the decision”.
3. Based on the RFF Statutes respectively art. 88 RFF Disciplinary Regulations the final line of the Appeals Commission’s decision of 20 March 2009 states: *“Appealable before TAS within 21 days from communication of the decision”*. Based on the above, the Sole Arbitrator is satisfied that the CAS has jurisdiction to hear this matter.
4. Based on art. R57 of the Code the Sole Arbitrator has full power to review the facts and the law of the case. Furthermore, the Sole Arbitrator may issue a new decision which replaces the decision challenged or may annul the decision and refer the case back to the previous instance.
5. The contested decision was rendered on 20 March 2009 and according to the copy of the decision in the file and the Appellant’s response and proofs sent on 11 September 2009 this decision was sent to the Appellant by fax on 26 March 2009. The statement of appeal was filed on 16 April 2009 to the CAS and therefore within the 21 day deadline. Accordingly, the appeal is admissible.

Applicable law

6. Based on art. R58 of the Code, the Sole Arbitrator is required to 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”.
7. In this case, the Sole Arbitrator shall primarily apply the provisions of the RFF Statutes and Regulations. In the absence of a choice of rules of law by the parties and pursuant to article R58 of the Code, the Sole Arbitrator shall subsidiary apply Romanian law.

Request for provisional and conservatory measures

8. Similar to the related case *CAS 2008/A/1716 Adrian Mititelu Marin v. Romanian Football Federation*, the request for provisional measures in this case did not address the relevant criteria. Further the Appellant did not provide any detailed explanation or evidence of what harm he may suffer should the request not be granted. In such a case the result to dismiss the request of provisional measures was inevitable. The Sole Arbitrator decided, in saving the costs for the parties, to include the decision on provisional measures in the final award.
9. In light of the above, the request filed by the Appellant for a stay of the challenged decision is dismissed.

Merits of the Dispute

10. The whole disciplinary procedure against the Appellant started based on the statements made public by “Prosport” and “Gazeta Sporturilor” in relation to the football game of his team, FC Universitatea Craiova, against Steaua Bucuresti on 21 November 2008. The Sole Arbitrator did neither receive any copy of the said articles in its original language nor was a copy included in the case file sent from the Respondent; all which was included in the case file sent from the Respondent is a translation of the internet articles of “Prosport” and “Gazeta Sporturilor” websites of 21, 22 and 23 November 2008.
11. The RFF Disciplinary Commission and the RFF Appeals Commission did refer to art. 52 para. 5 RFF Disciplinary Regulations which was introduced by the RFF Executive Committee with its decision of 22 September 2008. This article states:
“The declarations made by the persons specified under art. 4.2 letter a) - g), of such a nature to bring prejudice to football in any manner (as: declarations concerning the unfairness of football matches, the ones concerning the referees’ performances, breaches of regulations, activities of persons falling under these regulations, payment of money to stimulate opponents or similar things), which are not substantiated shall be penalized, at first offence, with a suspension of 8 to 16 matches for the players or coaches and a suspension of 8 to 12 months for officials and a sporting fine of 300’000 RON. In case of second offence, the persons who making such declarations shall be declared persona non-grata, under the terms set out by art. 55 of the RFF Statutes, together with art. 28 of the Regulations for application of the Statutes”.
12. The Sole Arbitrator’s understanding of the decisions of the RFF Disciplinary Commission as well as the RFF Appeals Commission is that they considered the facts as first offence of the Appellant; however, both commissions declared to send their decision to the RFF regarding a second (future) offence which would lead to a decision to declare the Appellant as persona non-grata. This is supported by the fact that the new art. 52 para. 5 RFF Disciplinary Regulations was only introduced on 22 September 2008 and the facts to be considered in this case happened on 21, 22 and 23 November 2008, just two months after coming into force of the new Disciplinary Regulation.

13. The appealed decision bans the Appellant for seven (7) months and imposes a fine of 300'000 RON. As art. 52 para. 5 RFF Disciplinary Regulations provides for a ban of 8 to 12 months for officials for a first offence, in the absence of any reasons or explanation, the appealed decision does not comply with the cited art. 52 para. 5 RFF Disciplinary Regulations.
14. Most of the statements made by the Appellant refer to the game of his team against Steaua Bucuresti and the mistakes made by the referee or assistant referee in specific situations of the game. As the critics on the referee's performances are related to specific facts and situations in the game the Sole Arbitrator is of the opinion that such statements cannot be seen as affecting the referee's honor or reputation; different persons with different interests see such scenes in a different light and such discussions led within certain boundaries are a part of the football game. Art. 52 para. 1 to 4 RFF Disciplinary Regulations were not referred to by any of the two RFF commissions. The Sole Arbitrator does therefore not see any application of these rules in the case at hand.
15. In this matter the Sole Arbitrator has to decide if specific statements out of the statements cited on "Prosport" and "Gazeta Sporturilor" websites are to be considered as bringing prejudice to football based on art. 52 para. 5 RFF Disciplinary Regulations. This article mentions as examples that "*declarations concerning the unfairness of football matches, the ones concerning the referee's performances, breaches of regulations, etc.*" are considered as such declarations bringing prejudice to football in any manner.
16. The decision of the RFF Appeals Commission states that "*The manner in which the President of FC Universitatea Craiova publicly expressed his opinions and the accusations of theft and corruption to the referees represent an unequivocal prejudice to the football image*". The RFF Disciplinary Commission refers to statements like "*Last night we played against Steaua "Tudor" Bucuresti*", "*We were robbed of at least seven or eight points by refereeing teams*", "*Onita was Steaua's thirteenth player*", "*Bucharest teams are always favored*", "*Tudor was very disappointing. The assistant referee Onita took the entire stadium for fools and his refereeing ruined the match*". "*I am sorry that Steaua has fallen so much that it needs the help of referees*", "*The refereeing ruined the match*", "*I'm sick of Steaua winning at Craiova with the help of referees*", "*A referee like Onita becomes the fifteenth player on field*".
17. The majority of the statements referred to by the RFF Disciplinary and Appeals Commissions are statements often seen and heard by frustrated coaches of losing teams in searching for an excuse by criticising the performances of the referee or its assistants. The Sole Arbitrator is of the opinion that even if a referee and his linesman are criticised the majority of these statements listed in n. 16 above can be criticised as outrageous but are definitely not to be seen as bringing prejudice to football in a manner as it is stated in art. 52 para. 5 RFF Disciplinary Regulations. Such emotional statements are common in football and nobody would think that such statements are an expression of "*theft and corruption by the referees*" as the RFF Appeals Commission stated. The only statements which could be seen as slightly different from the pure (subjective) analysis of specific scenes out of the game respectively which are going beyond the game are: "*Bucharest teams are always favored*" and "*I'm sick of Steaua winning at Craiova with the help of referees*".

The rest of the statements are in the Sole Arbitrators opinion, based on art. 52 para. 5 RFF Disciplinary Regulations not bringing prejudice to football in any manner.

18. It is important to judge on the two statements mentioned in n. 17 above in considering all relevant facts. One important fact is that in spring 2009 a President of a Romanian football club, referees and the President of the Referee Central Commission within RFF were arrested in a scandal made public within Romanian football for bribing referees (see e.g. Southeast European Times; http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2009/05/05/feature-01). It is therefore possible, that persons involved in Romanian football were already guessing or heard rumors about such bribing of referees. Especially the Appellant who was already sanctioned by the RFF Appeals Commission for having made statements in this direction after a game against FC Arges of 3 October 2008 and the president of FC Arges was the president mentioned before who had been arrested (see CAS 2009/A/1716), was possibly more sensible to such poor performances of referees and its assistants. The relevant facts in this case happened on or after 21 November 2008 and therefore in a relatively close time relation to the bribery scandal being made public in the media in Romania.
19. In such a time period when involved parties are more sensitive to performances of referees and their assistants respectively are more easily suspicious regarding possible cheating and briberies offered to such referees and its assistants, it is necessary that statements made and judged under the meaning of art. 52 para. 5 RFF Disciplinary Regulations really refer to allegations of corruption in order to be possibly considered as "*bringing prejudice to football in a manner*" and sanctioned.
20. It is true that Alexandru Tudor, referee, and/or Aurel Onita, assistant referee, were in accordance with public information available today, not investigated nor arrested in the Romanian bribery scandal. However, the Appellant did not refer in his statements to referees being bribed or any other corruption in Romanian football. Accordingly, the Sole Arbitrator cannot follow the interpretations given to these statements by the RFF Disciplinary and Appeals Commissions.
21. The two statements mentioned in n. 17 above do not only criticize the referee's performance in the game between FC Universitatea Craiova against Steaua Bucuresti but they generally refer to the Bucharest teams being favored by the referees. Based on the above the Sole Arbitrator is of the opinion that these two statements do not bring prejudice to football in general as requested in art. 52 para. 5 RFF Disciplinary Regulations and therefore the Appellant cannot be sanctioned in any way. Therefore his Appeal is fully accepted.

The Court of Arbitration for Sport rules:

1. The application for provisional and conservatory measures filed by Adrian Mititelu Marin on 16 April 2009 in the matter *CAS 2009/A/1830 Adrian Mititelu Marin v. Romanian Football Federation* is dismissed.
2. The appeal filed by Adrian Mititelu Marin on 16 April 2009 is upheld and the decision issued by the RFF Appeals Commission on 20 March 2009 is annulled.
3. There is no sanction imposed on Adrian Mititelu Marin. Any fine paid to the Romanian Football Federation has to be returned to him.
4. (...).
5. All further and other claims for relief are rejected.