



Arbitration CAS 2009/A/1850 Stefan Crisan v. S.C. F.C. Universitatea Craiova, award on jurisdiction of 19 January 2010

Panel: Mr Hendrik Willem Kesler (The Netherlands), President; Mr Christian Duve (Germany); Mr Tal Lavie (Israel)

Football

CAS Jurisdiction

Consent to arbitrate

Exhaustion of internal legal remedies

Admissibility of a later decision in a pending appeal before the CAS

- 1. In order for the CAS to have jurisdiction to hear an appeal, CAS jurisdiction must necessarily be recognised in the statutes or regulations of the sports-related body from whose decision the appeal is being made.**
- 2. The appellant has not exhausted all internal legal remedies available to him if an appeal to an independent and duly constituted arbitration tribunal recognized under the rules of an Association or Confederation may be made.**
- 3. It is inadmissible to include a later appeal in an already existing procedure before CAS. The nature of an appeal proceeding requires that the appealed decision is identified in the Statement of Appeal. Thus, it is equally inadmissible to include a later decision in an earlier appeal.**

Stefan Crisan is a professional football coach of German nationality (the “Coach” or “Appellant”).

S.C. F.C. Universitatea Craiova is a football club with its registered office in Craiova, Romania (the “Club” or “Respondent”). It is a member of the Romanian Football Federation (FRF).

On 9 October 2006, Appellant and Respondent concluded and signed an employment agreement (the “Agreement”). According to the Agreement Appellant was employed as coach by Respondent from 1 October 2006 until 30 June 2008.

On 16 August 2007, the Parties concluded and signed an additional contract (the “Addendum”) which extended Appellant’s employment contract until 30 June 2010.

On 30 January 2009, allegedly without any further explanation by Respondent, Appellant was laid off.

To settle the dispute that had arisen between the Parties over outstanding salaries, Appellant filed a claim on 17 March 2009 to the Camera Nationala Pentru Solutionarea Litigiilor – the National Chamber for the Settlement of Disputes within the Romanian Football Federation (the “CNSL”). In his claim, Appellant requested the payment of an amount of USD 73,500 based on due salaries and damages for the alleged breach of contract by Respondent.

On 23 April 2009, the CNSL rendered a decision, partially granting Appellant’s request. Respondent was ordered to pay a residual value of the contract in the amount of Romanian lei 35,158 (USD 11,774.67) and procedural costs in the amount of Romanian lei 430 (USD 144.01).

Around this time (specific date unknown), Respondent appealed the decision of the CNSL of 23 April 2009 before the Court of Arbitration for Football of the Romanian Football Federation (the “CAF”). However, the Club did not pay the required court fee, although it was notified by the court twice. As a result, the appeal was dismissed on 21 May 2009.

At that time (specific date unknown), also Appellant filed a motion to the Comisia Pentru Solutionarea Litigiilor – the Commission for Solving the Litigations within the Romanian Professional Football League (the “CSL”), requesting the court to determine the termination of the contractual relationship between the Parties and to order Respondent to pay all outstanding salaries for the remaining contractual period until 30 June 2010.

On 16 May 2009, Appellant challenged the decision of the CNSL of 23 April 2009 before the Court of Arbitration for Sport (CAS).

On 25 August 2009, the Appellant’s claim before the CSL was rejected.

On 2 September 2009, Appellant lodged an appeal against the decision of the CSL dated 25 August 2009 before the Comisia de Recurs – the Appeal Commission of the Romanian Professional Football League (the “ACSL”). This appeal was rejected on 18 September 2009.

In a letter dated 9 October 2009, Appellant declared that his appeal to CAS of 15 May 2009 should also comprise the decision of the ACSL dated 18 September 2009.

Summary of the proceedings: Appellant instigated two first instance proceedings before the CNSL on 17 March 2009 and before the CSL (date unknown). The CNSL decision of 23 April 2009, Appellant appealed before the CAS on 16 May 2009. The CSL decision of 25 August 2009, Appellant appealed before the ACSL on 2 September 2009. On 9 October 2009, Appellant declared that the decision of the ACSL of 18 September 2009 should be treated as a part of his earlier appeal before CAS dated 15 May 2009. Respondent instigated only one proceeding before the CAF (date unknown). In this regard, a decision was rendered on 21 May 2009.

- Proceedings instigated by Appellant
 - CNSL, application of 17 March 2009, decision of 23 April 2009
 - CSL, application (date unknown), decision of 25 August 2009
 - CAS, appeal dated 15 May 2009, but filed on 16 May 2009

- ACSL, application of 2 September 2009, decision of 18 September 2009
- CAS, second ‘implied’ appeal of 9 October 2009
- Proceedings instigated by Respondent
 - CAF, application (date unknown), decision of 21 May 2009

On 16 May 2009, Appellant lodged an appeal before CAS against a decision rendered by the CNSL of 23 April 2009.

In his Statement of Appeal, Appellant requests to

- set aside the decision by the CNSL of 23 April 2009;
- order Respondent to pay to Appellant for the time period from January 2009 to April 2009 a salary in the net amount of USD 17,500;
- order Respondent to pay to Appellant compensation in the net amount of USD 56,000;
- order that an interest rate of 5 % per year for an amount of USD 73,500 will be applicable, if Respondent does not adhere to the ruling within 30 days; and
- declare that Respondent shall bear all costs of their dispute including the cost of the arbitration proceedings.

In his Statement of Appeal, Appellant bases CAS jurisdiction on Article 89 of the Statutes of the FRF.

The Appeal Brief was submitted on 25 May 2009.

Respondent filed its Statement of Defence on 22 June 2009 requesting the Panel to declare the appeal inadmissible.

By letter of 14 August 2009, the CAS Court Office asked Appellant for an English translation of Article 89 of the Statutes of the FRF, along with any other provisions (with the relevant English translation) which would establish CAS jurisdiction. In the same letter, Appellant was invited to submit briefly the reasons why he filed another appeal before a different tribunal with respect to the same first instance decision.

On 27 August 2009, Appellant provided the CAS Court Office with the requested translation of Article 89 of the Statutes of the FRF and his response to the aforementioned question. According to his submissions, the CNSL decision of 23 April 2009 erroneously did not refer to the outstanding salaries from March 2009 until June 2010. Therefore, Appellant filed another motion before the CSL.

On 1 October 2009, the CAS Court Office, once again, invited the Parties to explain which provisions would establish CAS jurisdiction by sending a letter to the Appellant and the Respondent putting forward the following questions:

- “- *What are precisely the provisions that foresee the competence of the CAS in the present matter?*

- *What other appeals or legal remedies were submitted (both at a national and international level), with the indication of the institution before which they were submitted?”.*

On 9 October 2009, both Appellant and Respondent answered the aforementioned questions of CAS. In his submission, Appellant derived CAS jurisdiction from Articles 88, 89, 56, 57 of the Statutes of the FRF, whereas Respondent rejected CAS jurisdiction on grounds of Articles 56 and 57 of the Statutes of the FRF, Article 22 of the Regulations for the Organization and Functioning of the National Chamber for Settlement of Disputes, Article 59 of the Regulations for the Organization and Functioning of the Court of Arbitration for Football of the FRF and Article 30 of the Regulations on the Status and Transfer of Players of the FRF.

Additionally, in his letter dated 9 October 2009, Appellant declared that his appeal to CAS of 15 May 2009 “shall also include and attend the decision of the Appeal Commission of the Romanian Professional Football League” referring to the decision of the ACSL dated 18 September 2009 (see above).

On 13 November 2009, the CAS Court Office informed the Parties that the Panel might consider rendering a preliminary award on jurisdiction solely based on the written submissions. Appellant agreed to the aforementioned approach by letter dated 17 November 2009, Respondent by letter dated 18 November 2009.

LAW

Jurisdiction of CAS

1. The Panel was constituted to decide over an appeal before CAS against a decision of the CNSL of 23 April 2009. However, on 9 October 2009, Appellant asked the Panel to evaluate also – and within the pending appeal – on another decision of the ACSL of 18 September 2009. For the sake of formality and clarity, the Panel decides to address the original appeal and the second ‘implied’ appeal separately.

A. The Original Appeal of 15 May 2009

2. The jurisdiction of CAS to hear the present dispute derives from articles 62 and 63 of the FIFA Statutes, edition 2008, and Article R47 of the Code of Sports-related Arbitration (the “CAS Code”).

Article 62 of the FIFA Statutes – 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 63 of the FIFA Statutes – 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 recognized under the rules of an Association or Confederation may be made”.*

Article R47 of the CAS Code - 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”.

3. In accordance with the aforementioned provisions and in line with constant CAS jurisprudence (especially CAS 2007/A/1254, para. 5.3), for CAS having jurisdiction in an appeals procedure, it is required that:
 - a) there is a “decision” issued by a federation, association or another sports-related body;
 - b) the statutes or regulations of the body which rendered the decision under appeal or a specific submission agreement provide that the above decision can be challenged before the CAS; and
 - c) the available internal legal remedies available to the appellant under such statutes or regulations have been exhausted prior to the appeal.
- a) Decision issued by a federation
4. In the case at hand, an appeal was lodged before CAS against a decision by the CNSL, a first instance dispute resolution body of the FRF. Thus, the first requirement for CAS to have jurisdiction in the present matter is met.
- b) Reference of the dispute to the CAS
5. As there is no agreement between the Parties to submit the case to the jurisdiction of CAS, the Panel shall examine if the Statutes or Regulations of the FRF provide that an appeal against a decision rendered by the CNSL can be filed before CAS.

6. CAS jurisprudence has repeatedly confirmed this approach, especially with regard to the necessary recognition of CAS jurisdiction in the regulations of the deciding body itself. For instance, in an award on jurisdiction rendered in the case *CAS 2005/A/952*, the court found:
“In order for the CAS 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 recognise the CAS as an arbitral body of appeal” (CAS 2005/A/952, para. 7).
7. In the case at hand, Appellant deems Article 89 of the Statutes of the FRF, edition 2008, to provide the required reference. As was mentioned above, the provision reads:
The Court of Arbitration for Sport
“TAS shall not try appeals which were brought against decisions regarding:
 - a) *issues of application of the sporting rules, such as the Rules of the Game or the technical issues of the competitions;*
 - b) *suspending a natural person up to two games or including one month”.*
8. Article 89 of the Statutes of the FRF, edition 2008, does not provide for a ‘positive’ jurisdiction clause, as it does not spell out which cases are to be dealt with by CAS. Instead, it states in the ‘negative’, which cases are *not* to be dealt with by the CAS.
9. In this regard, the Panel observes that the Statutes of the FRF, edition 2008, set forth an explicit reference to the jurisdiction of CAS. In particular, Article 57 of the FRF Statutes, edition 2008 (see above), mentions CAS as the competent court to deal with disputes of an international character involving
“FIFA, UEFA, regional confederations, national federations, leagues, clubs, players, officials, licensed players’ agents or match agents, unless FIFA/UEFA/FRF Statutes provide otherwise”.

(emphasis added by the Panel)
10. Indeed, the Statutes of the FRF confirm in Article 56 (1) c) (see above para. 38) that the CAF is in charge of appeals lodged against decisions by the CNSL, not the CAS. In its relevant part, the provision stipulates:
“(1) ...
 - c) *Football Arbitration Court, as the last Court of sporting jurisdiction, for the appeals against CSJ, CNL [CNSL], and FRF decisions, as well as against AJF appeal commissions decisions.**Football Arbitration Court [CAF] is made up as an independent arbitration law court, organized according to FIFA dispositions. The decisions ruled by CAF cannot be given for solution to TAS [CAS]”.*

(¶ added by the Panel)
11. In addition, according to Article 22 of the Regulations for the Organization and Functioning the National Chamber for Settlement of Disputes [CNSL], edition 2008 (see above), the

decision of the CNSL dated 23 April 2009 should have been appealed to the CAF and not to the CAS.

12. As a consequence, the Panel deems that the Statutes and Regulations of the FRF do not provide for the required reference to CAS jurisdiction.

c) Exhaustion of legal remedies

13. Moreover, the Panel also finds that Appellant has equally not fulfilled the third requirement for CAS to have jurisdiction in the present matter: The Appellant has not exhausted all legal remedies available to him.

14. According to Article 56 (1) c) of the Statutes of the FRF, edition 2008, first instance decisions by the CNSL can be appealed to CAF. As Appellant has not done so before turning to CAS, he has not exhausted all legal remedies available to him at the time.

15. Also, Article 63 (3) c) of the FIFA Statutes, edition 2008, does not allow an appeal to CAS in the said case, as it stipulates:

“(3) CAS, however, does not deal with appeals arising from:

(a) ...

(b) ...

(c) decisions against which an appeal to an independent and duly constituted arbitration tribunal recognized under the rules of an Association or Confederation may be made”.

16. Article 56 (1) c) of the Statutes of the FRF, edition 2008, provides that CAF – as an independent arbitration law court, organized according to FIFA dispositions – is the only competent court to deal with appeals lodged against first instance decisions by the CNSL.

d) Conclusion

17. As it was not argued by Appellant that he was in any way excluded from lodging an appeal before the CAF, and while Appellant has not met two of the abovementioned requirements, the Panel finds that the present appeal before CAS needs to be dismissed on grounds of lack of jurisdiction.

B. *The Second ‘Implied’ Appeal of 9 October 2009*

18. Furthermore, the Panel has to examine whether the Appellant’s second ‘implied’ appeal submitted to CAS by letter dated 9 October 2009 can be deemed admissible.

19. As was mentioned above, the first appeal was lodged by Appellant on 15 May 2009. This appeal was filed under the docket number CAS 2009/A/1850.
20. During the course of the proceedings before CAS, the Appellant filed other motions before several different dispute resolution bodies of the FRF and the Romanian Professional Football League. In this regard, on 18 September 2009, the ACSL – the Appeal Commission of the Romanian Professional Football League rejected an appeal by Appellant against a decision of the CSL of 25 August 2009.
21. Thereafter, Appellant wrote to CAS on 9 October 2009:
“We hereby declare, that the Appeal filed to the Court of Arbitration of Sport by the Appellant on 15 May 2009 shall also include and attend the decision of the Appeal commission of the Romanian Professional Football League, dated 18 September 2009”.
22. The Panel concludes that this statement of appeal does not meet the requirements as provided in Article R48 of the CAS Code. The provision reads:
Statement of Appeal
“The Appellant shall submit to the CAS a statement of appeal containing:
 - *the name and full address of the Respondent;*
 - *a copy of the decision appealed against;*
 - *the Appellant’s request for relief;*
 - *the appointment of the arbitrator chosen by the Appellant from the CAS list, unless the parties have agreed to a Panel composed of a sole arbitrator;*
 - *if applicable, an application to stay the execution of the decision appealed against, together with reasons;*
 - *a copy of the provisions of the statutes or regulations or the specific agreement providing for appeal to the CAS.**Upon filing the statement, the Appellant shall pay the Court Office fee provided for under Article R65.2.*
If the above-mentioned requirements are not fulfilled when the statement of appeal is filed, the CAS Court Office shall grant once only a short deadline to the Appellant to complete his statement, failing which it shall be deemed withdrawn”.
23. In this regard, the Panel deems inadmissible to include a later appeal in an already existing procedure before CAS. The Panel emphasizes that this is not a case of consolidation of two already pending procedures before CAS.
24. The nature of an appeal proceeding requires that the appealed decision is identified in the Statement of Appeal. This is confirmed by Article R48 of the CAS Code. In the case at hand, the first ‘original’ appeal was lodged on 15 May 2009; however, the decision of the ACSL, which Appellant appealed against with his second ‘implied’ appeal of 9 October 2009, was not rendered before 18 September 2009. As a result, Appellant could not identify the ACSL decision

in his 'original' appeal. Thus, the Panel deems equally inadmissible to include a later decision in an earlier appeal.

25. The Panel concludes that a new Statement of Appeal to CAS should have been submitted according to R48 of the CAS Code.
26. In this regard, the Appellant also would have had to pay the Court Office fee provided for under Article R65.2 of the CAS Code.
27. As Appellant did not file a separate appeal with CAS, the Panel does not need to decide whether the court would have had jurisdiction for this second appeal in the light of the relevant provisions of the FRF and the Romanian Professional Football League.

The Court of Arbitration for Sport rules:

1. The appeals filed by Stefan Crisan on 15 May 2009 and 9 October 2009 are dismissed.
(...)
4. All other prayers for relief are dismissed.