



Arbitration CAS 2009/A/1984 Ankaraspor A.S. v. Turkish Football Federation, award on jurisdiction of 26 February 2010

Panel: Mr José Juan Pintó (Spain), President; Prof. Denis Oswald (Switzerland); Mr Michele Bernasconi (Switzerland)

Football

CAS Jurisdiction

Decisions of national dimension taken by an independent and duly constituted arbitration tribunal

If there is no provision within the deciding body's statutes or regulations providing for an appeal with the CAS of a decision of national dimension taken by a national arbitration tribunal or if such possibility of appeal is expressly ruled out in the statutes and regulations, the CAS has no jurisdiction to entertain the case.

Ankaraspor A.S. ("Ankaraspor" or the "Club" or the "Appellant") is a Turkish football club with seat in Ankara (Turkey), affiliated to the Turkish Football Federation.

The Turkish Football Federation (TFF) is a national football association affiliated to FIFA, with seat in Istanbul (Turkey).

On 30th August 2009 the General Assembly of the Turkish football club MKE Ankaragücü SC decided to appoint new members in its Board of Directors.

On 7th September 2009 the TFF sent a letter to Ankaraspor in the following terms:

"At the meeting of the Board of Directors of Turkish Football Federation dated 06.09.2009 and numbered 57, it was determined that as a result of the resolutions taken at the Extraordinary Meeting of the General Assembly of MKE Ankaragucu Sports Club Association on 30th August 2009, the relation evolved between Ankaraspor A.S. and MKE Ankaragucu Sports Club is in such quality to prevent sportive competition and that it is in violation of TFF Status Articles 18 and 76 as well as Article 17 of the Club Registry Directive.

In order to dissolve the said violations, we hereby inform you as a warning that you should remove such resolutions taken at the General Assembly of MKE Ankaragucu dated 30th August 2009 which cause the violation, in 3 days or the shares of Ankaraspor A.S. should be transferred to third parties in such a manner not to prevent sportive competition and to compensate for the public conscious, otherwise the said clubs will be transferred to the Football Disciplinary Board as per the provisions of Football Disciplinary Directive and in order to enable the fair playing order Ankaraspor A.S. will not be accepted in the competitions as a precaution".

The provisions mentioned in the referred letter have to do with the control of several football clubs by the same persons, which is prohibited by the above-mentioned multi-ownership rules of the TFF.

On 9th September 2009 the Club answered to the mentioned letter rejecting the alleged statutory infringement.

On 11th September 2009 the TFF informed the Club about

- (i) the transfer of its case to the TFF Disciplinary Committee,
- (ii) its suspension to take part in the Turkish football competitions from then on, and
- (iii) about the fact that accordingly, the match against Kayserispor scheduled for the following day would not be played.

On 11th September 2009 the Club asked the TFF Disciplinary Committee to leave the mentioned cautionary measure without effect. Such request was rejected.

On 14th September 2009 the Club asked again the TFF Disciplinary Committee to remove the referred cautionary measure and to dismiss and close the pending proceedings against the Club as no evidence of statutory infringement committed by the Club existed.

On 15th September 2009 the TFF Disciplinary Committee decided to impose the following sanction to the Club in relation with the above mentioned statutory infringements:

“As the relationship between ANKARASPOR A.S. and MKE Ankaragücü Sport Club, two of which compete in the same league, possess an obstruct for athletic competition, harms the honesty of the league, and the belief of society upon league’s honesty as per 18th and 76th articles of TFF Status and Club Registry Instruction article 17, our Board has decided to FALL ANKARASPOR A.S. TO A LOWER LEAGUE as per the 45/1st article of Football Discipline Board”.

Such decision did not include the grounds on which it was based.

On 16th September 2009 the Club filed an appeal against the referred decision before the TFF Arbitration Board, even if the grounds of the decision were not already known by the Club.

On 30th September 2009 a hearing before the TFF Arbitration Board took place. The grounds of the appealed decision were notified to the Club therein. The hearing was then suspended to be re-taken on 6th October 2009.

On 5th October 2009, and in light of the grounds of the appealed decision received on 30th September 2009, the Club filed new written submissions to defend its position in the case.

The hearing’s development continued on 6th October 2009.

On 7th October 2009 the TFF Arbitration Board decided to dismiss the Club’s appeal (the “Appealed Decision”). This decision did not include the grounds on the basis of which it was taken, but just the pronouncement of dismissal of the appeal.

On 27th October 2009 the Club filed an appeal before CAS against the Appealed Decision, asking CAS to render an award in the following terms:

- “- *To set aside the decision issued by the Turkish Football Federation Arbitration Board on 6 August 2009.*
- *To reinstate Ankaraspor A.S. in the first professional football division of Turkey.*
- *To order the Turkish Football Federation to pay the costs of the present arbitration.*
- *To order the Turkish Football Federation to pay the legal fees and expenses of Ankaraspor A.S. to be determined at a later stage of the present arbitration.*
- *In the alternative, in case CAS finds that a violation of the multi-ownership rules occurred in this case, to provide Ankaraspor A.S. with a reasonable time-limit to take the necessary measures”.*

In the referred Statement of Appeal the Club announced its intention to apply for the granting of provisional measures.

On 5th November 2009 the Club filed the Appeal Brief in which the request for provisional measures was defined in the following terms:

- “- *To stay the execution of the decision issued by the Turkish Football Federation Arbitration Board on 6 August 2009.*
- *To order the Turkish Football Federation to take all appropriate measures for the Ankaraspor A.S. to play its missed games and smoothly catch-up with the schedule of the other teams of the Super League”.*

On 20th November 2009 the TFF opposed to the request for provisional measures as it understood that

- (i) such request was inadmissible as it should have been included in Statement of Appeal in accordance with article R48 of the CAS Code,
- (ii) CAS has no jurisdiction to deal with this case, and
- (iii) in any case the conditions for the granting of such measures are not met.

On 26th November 2009 the TFF asked CAS to organise the present proceedings in two parts, the first dealing with the question of CAS jurisdiction and a second part, if necessary, to deal and decide on the merits of the case.

On 30th November 2009 the Appellant asked the Panel to reject the mentioned proposal of proceedings organisation.

On 4th December 2009, the Panel agreed to decide first on CAS jurisdiction and if it was the case, on the request for provisional measures, and in the event it found that CAS had jurisdiction, the parties would be granted with a new deadline to argue about the merits. Moreover a 7 days term was given to the Respondent to file a statement regarding jurisdiction.

On 11th December 2009 TFF filed the relevant written submissions rejecting CAS jurisdiction in the case.

On 18th January 2009 the grounds of the Appealed Decision were filed before CAS.

LAW

Jurisdiction of the Court of Arbitration for Sport (CAS)

1. Article 186 of the Swiss *Loi sur le Droit International Privé* states that the arbitral tribunal shall rule on its own jurisdiction (*“le tribunal arbitral statue sur sa propre compétence”*).
2. Article R47 of the CAS Code reads as follows:
“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.”
An appeal may be filed with the CAS against an award rendered by the CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules applicable to the procedure of first instance”.
3. It is therefore clear that for CAS having jurisdiction in a matter it is required that either the parties have agreed on it or the statutes or regulations of the body issuing the decision foresee the possibility of appeal before CAS.
4. In ruling on CAS jurisdiction the Panel has firstly to state that it is evident that in the present matter there is no agreement between the parties to submit the case to the jurisdiction of CAS, as the TFF has expressly challenged such jurisdiction.
5. The Panel shall therefore examine if the statutes or regulations of the TFF provide that an appeal before the CAS can be filed against a decision of the kind of the Appealed Decision.
6. In this respect the Panel observes that indeed, article 2.1 of the TFF Statutes determines that one of the TFF objectives is *“to recognise (...) the jurisdiction of the Court of Arbitration for Sport (“CAS”) as specified in Articles 59 and 60 of the FIFA Statutes and Paragraph 1 of Article 59 of the UEFA Statutes”*.
7. However the referred provision shall be interpreted and considered in connection with the remaining provisions of the TFF Statutes, mainly with:

- (i) Article 64:
*“In accordance with the FIFA and UEFA Statutes, any appeal against a final and binding FIFA or UEFA decision shall be heard by the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland. **CAS shall not, however, hear appeals on violations of the laws of the game, suspensions according to relevant provisions of the FIFA and UEFA statutes or decisions passed by the independent and duly constituted Arbitration Committee of TFF**”* [emphasis added].
- (ii) Article 13f):
“Members’ obligations [...]
f) ***to apply to the Arbitration Committee as a last instance at all disputes of national dimension arising from or related to the application of the TFF statutes or regulations**, and not to take any dispute to any other judicial authorities”* [emphasis added].
8. Therefore the Panel notices that the TFF statutes contain on one hand a general reference calling for the recognition of CAS jurisdiction, and it is on such basis that the referred statutes, for instance, oblige the members to *“recognize the jurisdiction of the Court of Arbitration for Sport (CAS) in Lausanne (Switzerland) for any **international** dispute and as specified in the relevant provisions of FIFA and UEFA Statutes”* [emphasis added] (see article 13e) of the TFF Statutes). But on the other hand, the same statutes also foresee an express and specific exclusion of CAS jurisdiction on decisions of at least national dimension passed by the TFF Arbitration Board.
9. It is true that certain CAS jurisprudence (i.e. the case CAS 2007/A/1370 & 1376 mentioned by the Appellant) and even the Swiss Federal Tribunal has established that under certain circumstances general references to FIFA rules are sufficient to apply them and in consequence to call for CAS jurisdiction. But based on the evidence submitted, the Panel is satisfied that the present case differs from such other cases in which the jurisdiction by reference was accepted. This in particular because beside the reference to FIFA rules (and to CAS for certain matters), the TFF statutes and rules expressly exclude any appeal against national arbitral tribunals’ decisions, i.e. against such a decision like the Appealed Decision which is the object of the present case.
10. In the Panel’s opinion, the references in the TFF Statutes are, in general, sufficient to call for the application of the FIFA rules, but not to make prevail a specific FIFA rule when it is fully contrary to a specific and express rule of the TFF Statutes, and specially when we are, as in this case, before a conflict arisen in Turkey between Turkish parties.
11. In view of it the Panel understands that CAS cannot assume jurisdiction in this case. It is not only that there is no provision within the deciding body’s statutes or regulations providing the appeal to CAS of a decision of the kind examined in the present proceedings, but also that such possibility of appeal is expressly ruled out in such statutes and regulations.

12. This position is congruent with certain CAS related jurisprudence. In this respect, we shall refer for example to the award on jurisdiction rendered in the case CAS 2005/A/952 which in its relevant part reads as follows:

“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. [...]

In the present case, the statutes or regulations of the relevant body -the FALP- do not contain any reference to a right of appeal to the CAS. In fact, FALP Rule R63 states that the decision of an appeal board shall be final. The CAS therefore has no jurisdiction to hear an appeal from a decision of the FAPLAC, on the basis of the statutes or regulations of the FALP”.

And in the same line, CAS 2006/A/1190 or CAS 2004/A/676.

13. The Panel considers that a party can certainly question whether the TFF Arbitration Board is deemed to be an independent arbitral tribunal in the sense of article 64.3 of the FIFA Statutes, for instance by claiming that (i) the TFF Statutes itself expressly determine that it is one of the legal committees of the TFF (article 54) and (ii) the appointment of the members of such Board depend on the TFF Executive Committee and its President. Nonetheless this possible claim of lack of independence does not result, in the Panel’s opinion, in an automatic assumption of jurisdiction by CAS, because even if article 64.3 of the FIFA Statutes provides the possibility to appeal to CAS when the national arbitral tribunal is not independent, this provision fully contradicts articles 13f) and 64 of the TFF Statutes and we are before a conflict arisen in Turkey between exclusively Turkish parties. Therefore the Panel, without prejudice of the measures that a member of TFF could request and possibly obtain, or that FIFA could take in relation with an alleged lack of independence of a TFF body, shall not follow or extract from the criticism moved against such body that CAS shall assume jurisdiction in this case.
14. In summary, based on the above mentioned arguments and taking into account that the conditions foreseen in article R47 of the CAS Code are not met, the Panel considers that the Court of Arbitration for Sport has no jurisdiction to deal with this case. In consequence the Panel shall neither enter into the request for provisional measures nor into the merits of the case.

The Court of Arbitration for Sport rules:

1. CAS has no jurisdiction to decide the present dispute between Ankaraspor A.S. and the Turkish Football Federation.
2. The arbitration procedure CAS 2009/A/1984 Ankaraspor A.S. vs. Turkish Football Federation shall be removed from the CAS roll.

(...).