



Arbitration CAS 2007/A/1404 Iran Football Federation (IFA) v. Fédération Internationale de Football Association (FIFA), award of 9 September 2008

Panel: Mr Chris Georghiades (Cyprus), President; Mr Jahangir Baglari (Iran); Mr Hendrik Willem Kesler (The Netherlands)

Football

Disciplinary sanction against a national federation

Breach of obligations of an affiliated member of FIFA

Enforcement of the FIFA Statutes and Regulations

- 1. A national football federation may not plead ignorance of its obligations towards FIFA and therefore renders itself liable to sanctions, if on the basis of the exchange of correspondence and particularly after the visit of its legal advisor to FIFA it is made aware of what is required, but still fails to honour its obligations and undertakings set forth in the FIFA Statutes and FIFA Disciplinary Code.**
- 2. If after having provided its member with the opportunity of responding to its request, its member ignores and/or fails to satisfy them, FIFA has no option but to take steps to enforce the relevant provisions of its Statutes and Regulations *vis-à-vis* its affiliate member.**

The Appellant is the Iran Football Federation (IFA) an affiliated member of FIFA.

The Respondent is the Fédération Internationale de Football Association. The governing body of international football, an association established pursuant to the laws of Switzerland (FIFA).

On the 21/11/2005 the Single Judge of the Players Status Committee of FIFA ruled that the affiliated club of the IFA namely SC Pasargad (the “Club”) was to pay the amount of EUR 42,500 plus an additional amount of IRR 67,500.000, plus interest to the football coach M.

On the 18/4/2006 the FIFA Disciplinary Committee acting through its secretariat (“FIFA D.C.”) commenced disciplinary procedures against the Club on the ground that the Club failed to pay the above-mentioned amount.

On the 30/5/2006 the FIFA D.C. addressed a reminder to the Club informing that if the amount due to the coach was not paid by 13/7/2006 the matter would be submitted to the next meeting of the FIFA D.C. to be held on the 18/7/2006.

The Club ignored the obligation created by virtue of the decision passed by the Single Judge of the Players Status Committee on the 21/11/2005 and consequently the matter was brought before the FIFA D.C. meeting of 18/7/2006.

According to Article 57(3) of the FIFA Statutes the FIFA D.C. has the power to pronounce the sanctions detailed in the Statutes and the FIFA Disciplinary Code with respect to members, clubs, officials, players, match and players agents.

Art 68(1) of the FIFA Disciplinary Code (the “FIFA Code”) provides that anyone who fails to pay another person (such as a player, coach or a club) having been instructed to do so by a body of FIFA (in the particular case the Single Judge of the Players Status Committee) is liable to the sanctions detailed therein.

Art 68(2) of the FIFA Code provides that if a club disregards the final time limit, the FIFA body will request the national association concerned to implement the threat.

The FIFA D.C. in its decision of 18/7/2006 considered the amount to be paid substantial and that non-payment could cause the coach financial difficulty. The Club withheld payment and FIFA’s attempts to have the Club satisfy its obligations failed and consequently considered the offence serious imposing a fine of CHF 10,000. The said fine is in line with the FIFA D.C. practice.

The IFA, in its capacity as a member of FIFA was held responsible for implementing the decision of the FIFA D.C. otherwise it would be sanctioned itself.

The FIFA D.C. decision of 18/7/2006 was duly communicated to the IFA and the coach (via the Slovenian FA).

By way of a letter dated 13/10/2006 the coach informed FIFA that the Club had not paid the amount due to him.

By way of a fax 13/11/2006 the Club informed FIFA that the Club’s “break up” was announced in June 2005.

As a result of the Club’s communication of 13/11/2006 the secretariat to the FIFA D.C. inquired from the IFA whether the Club was still affiliated to it and if it had competed in any of the IFA leagues during the last seasons.

The IFA failed to respond and/or otherwise reply to the communication of the secretariat of the FIFA D.C. whereupon the latter by a letter dated 27/11/2006 addressed to the IFA inquired whether the Club existed or whether it had been declared bankrupt by a competent Iranian court.

The IFA once again failed to reply to the above-mentioned communication obliging the secretariat to FIFA D.C. to address a further letter dated 19/12/2006 inquiring again as to whether the Club existed or whether it was declared bankrupt by a competent Iranian court setting the 6/1/2007 as the deadline for a reply.

No reply was received by the deadline of 6/1/2007 whereupon the secretariat to FIFA D.C. on the 8/1/2007 addressed a letter requesting it be informed of the issues detailed in its previous communication, by the 18/1/2007.

The only information available to FIFA D.C. was the communication of the Club dated 13/11/2006 informing and/or stating of "*the club's breakup in June 2005*". FIFA did not find this satisfactory as to the true state of the Club as a result of which by virtue of a letter dated 18/1/2007 addressed to IFA requested it be informed of the Club's state by the 25/1/2007 underlying that the information requested should be given by IFA itself.

On the 25/1/2007 IFA responded by way of a fax attaching its Club's response which it considered self explanatory.

The Club in its reply dated 24/1/2007 (addressed to the General Secretary of the IFA) informed the latter that the Ministry of Economy & Finance had acknowledged the Club's losses for the years 2003-2004 which led to its bankruptcy. The said letter specifically states that, the Club is not operating and the only reason the Club has not been dissolved is the fact the said Ministry is examining its books of the first half of 2005. The letter concludes mentioning that the Club is not involved in any activities whatsoever.

The secretariat to the FIFA D.C. did not consider the Club's response as sufficient and by way of a letter dated 8/2/2007 asked the IFA to inform it as to whether the Club still existed, whether it had been sold or declared bankrupt.

The IFA was requested to respond by the 15/2/2007 latest and highlighted or otherwise stressed that if no answer was received by the said date disciplinary proceedings involving IFA would be taken.

No reply was received as a result of which on the 8/3/2007 the secretariat to the FIFA D.C. sent a letter providing a new deadline, that of 22/3/2007. The IFA was warned that if it failed to reply within the deadline fixed it would be fined as per the relevant provisions of the FIFA Code (Article 118).

Once again the IFA failed to reply and the Chairman of the FIFA D.C. took action imposing upon the IFA a fine in the amount of CHF 10,000 invoking in this respect the provisions of Article 118 para. 3 of the FIFA Code requesting the IFA submit the information requested latest by 16/4/2007.

The IFA was informed of the Chairman's decision by way of a fax dated 2/4/2007.

On the 8/5/2007 the FIFA D.C. received in Zurich the legal adviser of the IFA (Dr Hossein Mohammad Nabi). The legal adviser to the IFA agreed and/or undertook to provide the requested information shortly.

On 22/5/2007 the secretariat to the FIFA D.C. addressed a letter to IFA referring to the visit of its legal adviser, the promise and/or undertaking given with respect the requested information, the failure to receive the same and set a new deadline to receive the requisite information i.e. 8/6/2007.

By the said communication, the IFA was warned of the commencement of disciplinary proceedings if a reply was not received within the deadline fixed.

No reply was received and on the 14/6/2007 the Chairman of the FIFA D.C. commenced disciplinary proceedings against IFA in respect of the violation of Article 13 of the FIFA Statutes.

The IFA was given a right to be heard (Art 101 par 1 of the FIFA Code) and was requested to submit its standpoint in connection with the matter by 23/6/2007 warning that failure to do so would result in the Disciplinary Committee deciding the matter on the basis of the documents available (Article 118 para. 4 of the FIFA Code).

The IFA by way of a fax dated 21/6/2007 informed the FIFA D.C. that it was prepared to mediate between the parties (i.e. the Club and the coach) in order to resolve the dispute in Iran within 10 days.

On the 10/8/2007 the FIFA D.C. took a decision on the matter pronouncing the IFA guilty of failing to meet its obligation arising from Article 118 para 1 of the FIFA Code and Article 13 para 1 of the FIFA Statutes and ordered IFA to pay a fine of CHF 20,000. Furthermore IFA was ordered to respond to a number of specific questions concerning the matter and its affiliated Club.

IFA appealed against the said Decision before the FIFA Appeal Committee. On the 28/9/2007 the FIFA Appeal Committee considered and rejected the appeal.

On the 29/9/2007 the Appellant filed its Statement of Appeal with the CAS, appealing against the decision of the FIFA Appeal's Committee dated 28/9/2007 to be followed by its Appeal Brief dated 25/10/2007.

The Appellant's submission as set out in the Statement of Appeal and Appeal Brief can be summarized as follows:

- (i) the Appellant has been fined for its non compliance to FIFA requests when it could not comply with the same since the obligor (i.e. the Club) was not under its control;
- (ii) the Club is a legal entity independent of the Appellant, not bound and responsible towards the Appellant;
- (iii) The Appellant never refused to comply with the orders and requests of FIFA it exerted its best efforts to oblige the management of its former Club to settle the dispute, achieving to be accepted to act as a mediator to resolve the dispute advising FIFA of this.
- (iv) Non-compliance occurs when the Appellant itself or its affiliated clubs and officials have been ordered to act in a certain manner and they fail or refuse to do so.

On the 14/11/2007 the Respondent filed its answer, its submissions being summarized as follows:

- (i) The Respondent has the right as an association established in accordance with Article 60ff of the Swiss Civil Code, to impose sanctions under the law of associations, and/or to impose disciplinary measures on members who are in breach of their duties.

- (ii) The Appellant being a member of FIFA has duties towards it (Article 13 of the FIFA Statutes).
- (iii) By virtue of the doctrine of membership a member of an association has an obligation of loyalty to the association as a result of which the Appellant was obliged to inform FIFA about issues within its knowledge and/or jurisdiction. One of the Appellants objects is to control every type of association football (Article 2(d) of the FIFA's Statutes) as a result of which the Appellant was obliged to answer requests concerning one of its affiliated clubs.
- (iv) The Appellant's obligations emanate also from the provisions of Article 118 para. 1 of the FIFA Code, which establishes that the parties are obliged to collaborate to establish facts by complying with requests for information by judicial bodies of FIFA.
- (v) The Appellant apparently failed to provide FIFA with the requested information rendering itself guilty of the violation of Article 13 of the FIFA Statutes and Article 118 par 1 of the FIFA Code.
- (vi) The issue as to the status of the Club was of importance as a condition whether the FIFA D.C. decision of 18/7/2006 could be implemented or not.
- (vii) The information provided by the Club was not reliable and it was held necessary to have the information conveyed directly by the Appellant. The information required was of crucial importance nevertheless the Appellant failed to provide.
- (viii) The Appellant is wrong in stating that it was fined for non-compliance to the requests of the Players Status Committee, it was fined for failing to satisfy its own obligations as set out in the FIFA Statutes and Code.

The Parties agreed that the matter be dealt with on the basis of documents only.

LAW

CAS Jurisdiction

1. The jurisdiction of the CAS, which is not disputed, derives from Articles 59ff of the FIFA Statutes and Article R47 of the Code of Sports-related Arbitration ("the CAS Code"). It is further confirmed by the Order of Procedure duly signed by the parties.
2. It follows that the CAS has jurisdiction to decide the present dispute.
3. Under Article R57 of the CAS Code, the Panel has the full power to review the facts and the law.

Applicable Law

4. Article R58 of the CAS Code specifies that 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”*.
5. In the present case, there was no agreement among the parties regarding the application of any particular law.
6. In the absence of an agreement as regards the applicable law it follows that the FIFA rules and regulations and Swiss law are applicable to the present case.

Admissibility

7. The appeal was filed within the applicable deadline provided by Article 60 of the FIFA Statutes.
8. It follows that the appeal is admissible.

Merits

9. The principle issues to be resolved are:
 - i) whether IFA by its conduct breached its obligations as a member of FIFA pursuant to the relevant provisions of the FIFA statutes and the Code.
 - ii) whether the acts and/or Decisions taken by the various FIFA organs i.e. the FIFA Disciplinary Committee and the FIFA Appeals Committee were proper and reasonable.
 - iii) whether IFA is justified in non-complying and/or satisfying the requests and/or instructions of FIFA.
10. The Panel reviewed carefully all documents made available and particularly the various letters and/or communications addressed by FIFA to IFA and identified a series of clear requests made and/or contained therein which in essence required the IFA advice and/or confirm to FIFA whether its Club was still affiliated to it, whether it existed or whether it was declared bankrupt by a competent court and whether it had any sporting activity.
11. The Panel is of the view that the information requested was straight forward and easily accessible there should be no difficulty for IFA to satisfy or otherwise respond to FIFA's request advising as to whether the Club was affiliated to it and whether it existed and had any sporting activity in short to provide FIFA with an account of the Club's legal and other status. Concerning the legal status of the Club IFA could undertake an inquiry and could advice FIFA accordingly. If for any reason IFA could not secure the information required it could advise

FIFA of the difficulties (if any) in so doing. On the contrary IFA ignored or failed to address FIFA's requests to the Club this being the case even after FIFA highlighted that it was IFA's responsibility to provide the information required.

12. Following the visit of the legal adviser of IFA to the FIFA offices and the undertaking made the doubts (if any) as to what was required by FIFA from IFA should have been removed. As of that instance IFA was made aware, beyond doubt as to what was required as well as of its obligations.
13. The Panel finds that up to a certain point in time the request might have been misunderstood however this was not the case following the above-mentioned meeting. Consequently the Panel is of the view that the issues detailed hereinabove under para. 9 can be replied as follows:
 - (i) IFA at the initial stage acted inadvertently with respect FIFA's request for the requisite information possibly not able to ascertain or understand its own obligations, however at a later stage on the basis of the exchange of correspondence and particularly after the visit of its legal adviser to FIFA was made aware of what was required but for reasons unknown failed to honor its obligations and undertakings as the same are detailed in the FIFA Statutes and FIFA Disciplinary Code rendering itself liable to sanctions.
 - (ii) FIFA throughout the process acted reasonably in an effort to secure the enforcement of a decision taken by its organ (Player's Status Committee) and thereafter in an effort to assess the situation *vis-à-vis* the obligor i.e. the Club, addressing as provided by its Statutes and Regulations a series of requests to its affiliate (IFA).
14. FIFA exerted all effort and patience and provided IFA with the opportunity of responding to its requests which unfortunately IFA ignored and/or failed to satisfy. Under the circumstances FIFA had no option but to take steps to enforce the relevant provisions of its Statutes and Regulations *vis-à-vis* its affiliate member.
15. The submission of the matter to the FIFA D.C. was the inevitable result of the conduct and/or behaviour of IFA. The validity of the FIFA D.C. decision was the subject of revision by its Appeal Committee which confirmed the same rejecting the IFA appeal.
16. There are no grounds and/or arguments that have been made or brought to the attention of the Panel in respect of the validity of the aforementioned decisions save that IFA submits that it had no control upon the Club however from the facts of the case it is evident that the matter relates to whether or not IFA satisfied its obligations as a FIFA member and whether its conduct as described hereinabove was such as to violate its obligations.
17. The Panel has already found that the IFA conducted itself in such a manner that there is no doubt that it violated its obligations as a FIFA member whereupon and pursuant to the FIFA Statutes and Regulations it rendered itself liable to the sanctions imposed.
18. Consequently the panel is of the opinion that IFA failed to satisfy its obligations under the FIFA Statutes and Regulations and generally acted in such a manner allowing the FIFA Disciplinary Organs conclude as to its fault and impose the sanctions detailed herein. There are

no apparent justifications as to the manner IFA choose to act and the decisions reached by the FIFA organs are hereby upheld.

The Court of Arbitration for Sport rules:

1. The Appeal filed by the Iranian Football Federation against the decision of the FIFA Appeal Committee issued on 28 September 2007 is rejected
2. The decision issued by the FIFA Appeal Committee is confirmed.
3. (...).
4. (...).
5. All other prayers for relief are dismissed.