



Arbitration CAS 2006/A/1110 PAOK FC v. Union des Associations Européennes de Football (UEFA), award of 25 August 2006 (operative part of 13 July 2006)

Panel: Prof. Luigi Fumagalli (Italy), Sole Arbitrator

Football

Admission of clubs to the UEFA competitions

Extension of the deadline to communicate the list of the participating clubs

Force majeure

Responsibility for the acts or omissions of auxiliaries

1. **A single verbal communication cannot be invoked as a basis of a belief that a “silent” or implicit extension had been granted, contrary to repeated and consistent written communications denying the extension.**
2. ***Force majeure* implies an objective, rather than a personal, impediment, beyond the control of the “obliged party”, that is unforeseeable, that cannot be resisted, and that renders the performance of the obligation impossible. The conditions for the occurrence of *force majeure* are to be narrowly interpreted, since *force majeure* introduces an exception to the binding force of an obligation.**
3. **In the process of obtaining the licence to participate in a UEFA competition, the bank providing the letters of guarantee necessary for a club to obtain such license is to be considered the auxiliary of the club. Being responsible of the acts or omissions of its auxiliaries, the club has to bear the consequences of potential delays caused by the bank in providing such letters.**

The dispute between the parties concerns the application by the Greek football club PAOK FC (“PAOK” or the “Appellant”) for, and the issuance to PAOK of, the license to participate in the Union des Associations Européennes de Football (“UEFA” or the “Respondent”) organized European club tournaments in the season 2006/2007 (the “License”) pursuant to the UEFA Club Licensing Manual V1.0 (the “Manual”).

The circumstances of the dispute can be summarized as follows:

- i. on 25 May 2006, the Licensing Committee of the Hellenic Football Federation (the “HFF”) denied the application for the License submitted by PAOK;
- ii. on 31 May 2006, the HFF provided the UEFA Club Licensing Unit with the list of licensed clubs, informing that PAOK had been denied the License by decision of the

- Licensing Committee of the HFF, but that an appeal against that decision was pending;
- iii. on 2 June 2006, by decision No. 149, the Appeals Committee of the HFF rejected the appeal filed by PAOK against the decision of the Licensing Committee of the HFF, therefore confirming the denial of the License;
 - iv. on 2 June 2006, the UEFA Club Licensing Unit was informed by the HFF of the dismissal of the appeal brought by PAOK against the decision of the Licensing Committee of the HFF;
 - v. on 5 June 2006, PAOK filed with the Appeals Committee of the HFF a request for the re-examination of the decision No. 149 adopted on 2 June 2006;
 - vi. on 5 June 2006, the HFF notified to UEFA the names of the Greek clubs that, on the basis of the final domestic ranking, had qualified for the 2006/2007 UEFA competitions, informing UEFA that the case of PAOK was still pending before the Appeals Committee, and that “*in case of a negative decision*” PAOK would be substituted for by the club Atromitos Athens F.C. in the UEFA Cup;
 - vii. on 8 June 2006, Atromitos Athens F.C. wrote a letter to UEFA, urging UEFA to disregard all actions taken by PAOK in order to obtain the License on the basis of the request for re-examination filed with the Appeals Committee of the HFF;
 - viii. on 9 June 2006, the Appeals Committee of the HFF, by resolution No. 150, accepted the application filed by PAOK, revoking the decision No. 149 of 2 June 2006 and granting the License to PAOK;
 - ix. on 9 June 2006, the HFF informed UEFA of the decision No. 150 of the Appeals Committee of the HFF.

On 14 June 2006, by letter dated 9 June 2006, the Chief Executive Officer of UEFA informed the HFF of the decision (the “Decision”) holding that:

“UEFA is not in position to admit PAOK Salonika to the UEFA club competition for the season 2006/07”.

In support of the Decision, the Chief Executive Officer of UEFA invoked, *inter alia*, the following reasons:

- “- *the communication of the final decision of the Appeal Body was submitted to UEFA after the set deadline of 31st May (UEFA considers the information reported on the list of licensed clubs submitted on 31st May 2006 as final);*
- *the decision-making process run by the HFF is not in line with the rules fixed in the HFF club licensing manual (accredited by UEFA on October 2, 2003) according to which the Appeal Body must take its final decision by 15th May at the latest and the decision must be communicated to UEFA by 25th May;*
- *the communication of the decision of the Appeal Body to grant the licence to PAOK FC Salonika was submitted to UEFA after the confirmation by the same HFF that the Appeals Body had rejected the license to the same club. According to your correspondence this was due to the fact that the case of PAOK FC Salonika had been reconsidered by the HFF Appeals Body. We would like to stress that such a procedure is not foreseen by your national licensing manual and appears to be in violation of the existing*

HFF procedural rules”.

The Decision was received by PAOK on 15 June 2006.

On 16 June 2006 the HFF wrote to UEFA in reply to the Decision,

i. submitting that:

- “a) The players of FC PAOK have acquired in the field of play during the championship the right to participate in the UEFA Cup 2006-2007 and it is extremely unpleasant for them that the administrative weaknesses of FC PAOK, which are totally different from the competitive success of the players, have cancelled their right.*
- b) The procedures for the reconsideration of the case were decided and the decisions were taken by the Appeals Committee, a body of senior judges, and the Federation cannot deny the procedures and the decisions of a committee that is constituted by senior judges”, and*

ii. asking:

“you to take into consideration these two criterias in your final decision and to inform us whether they are acceptable or not”.

On 22 June 2006 PAOK filed a statement of appeal with the Court of Arbitration for Sport (the “CAS”), pursuant to the Code of Sports-related Arbitration (the “Code”), to challenge the Decision, requesting the CAS

“to declare the LSPO/par/tra – 9.6.2006 decision of the UEFA void and not binding”.

A hearing was held in Lausanne on 13 July 2006. At the conclusion of the hearing, the parties, after making submissions in support of their respective case, confirmed that they had no objections in respect of their right to be heard and to be treated equally in the arbitration proceedings. In addition, the parties requested the Sole Arbitrator to issue the operative part of the award prior to the reasons supporting it.

LAW

Jurisdiction

1. The jurisdiction of CAS, which is not disputed, derives from Article 62 of the UEFA Statutes, Article 2.3.6.2 para. 9 of the Manual and Article R47 of the Code. It is further confirmed by the Order of Procedure duly signed by the Parties.

Appeal Proceedings

2. As these proceedings involve an appeal against a decision in a dispute relating to a license to participate in the UEFA organized European club tournaments, issued by a confederation (UEFA), whose statutes provide for an appeal to the CAS, they are considered and treated as appeal arbitration proceedings in a non-disciplinary case, in the meaning and for the purposes of the Code.

Admissibility

3. The statement of appeal was filed within the deadline set down in the UEFA Statutes. No further recourse against the Decision is available within the structure of UEFA. Accordingly, the appeal is admissible.

Scope of Arbitrator's review

4. According to Article 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. In any case, pursuant to Article 62.6 of the UEFA Statutes

“The CAS shall not take into account facts or evidence which the appellant could have submitted to an internal UEFA body by acting with the diligence required under the circumstances, but failed or chose not to do so”.

Applicable Law

6. Pursuant to Article 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, accordingly, the UEFA rules and regulations fall to be applied primarily, with Swiss law applying subsidiarily.

The Merits of the Dispute

8. The main issue that has to be determined in this arbitration concerns the effects of the decision No. 150 rendered on 9 June 2006 by the Appeals Committee of the HFF, that, accepting the

application filed by PAOK, revoked a preceding denial and granted the License to PAOK. On one side, in fact, the Appellant maintains that as a result of such decision PAOK should be admitted to the UEFA 2006/2007 competitions, and therefore that UEFA erred when it did not recognize the granting of the License by the Appeals Committee of the HFF on 9 June 2006. On the other side, the UEFA confirms its Decision not to admit PAOK, and in this respect submits that at the deadline of 31 May 2006 for the admission of clubs to the UEFA 2006/2007 competitions, PAOK had not been granted the License, and that such situation was not affected by the 9 June 2006 decision of the Appeals Committee of the HFF, rendered after the deadline for the admission of clubs to the UEFA 2006/2007 competitions had expired.

9. In respect of the parties' submissions, the Sole Arbitrator first underlines that there is no dispute as to the fact that the deadline for the admission of the Greek clubs to the UEFA 2006/2007 competitions had been set for 31 May 2006 by the domestic licensing manual of the HFF as implemented in accordance with the Manual. The parties' dispute only relates to whether such deadline was postponed to a later date, so that the 9 June 2006 decision of the Appeals Committee of the HFF could be considered as timely rendered.
10. With respect to the postponement of the deadline, the Sole Arbitrator notes that the Manual specifically provides, at Article 2.3.6, for an "exception process", allowing for the exceptional deviation from the criteria and time limits set forth by the Manual and its national implementation, and therefore, inter alia, for the extension of the deadline for the issuance by a national football association of the licenses to the clubs belonging to that association. For such purposes, the Manual provides for a specific procedure, to be started by the national association with a "clear, written and well-founded request" (Article 2.3.6.2(1)(a) of the Manual), and indicates the condition upon which an "exception" can be granted.
11. In this framework, the Sole Arbitrator remarks that:
 - i. on 22 May 2006, the HFF requested UEFA, "*for reasons beyond its power and due to insuperable problems*", to be granted "*an extension of the existing deadline of May 31st until Friday June 16th 2006, in order to submit the list of licensed clubs for the season 2006/07*";
 - ii. on 23 May 2006, UEFA answered to such request, reminding the HFF that "*the 31st of May is the final deadline for the submission of the list of licensed clubs*" and informing the HFF that, "*due to administrative matters relating to the organisation of the Intertoto Cup Competition, ... we cannot grant you an extension of deadline*";
 - iii. on 30 May 2006, UEFA, after further discussions regarding the request of the HFF to submit the list of licensed clubs by 2 June 2006, informed the HFF that "*the definitive decision of prolongation will be made on 31 May 2006 at 14:00 hrs if the following condition is fulfilled: your association is once more to submit a new well-founded request mentioning the concerned club etc. to UEFA in the next 24 hrs (above deadline). Furthermore this request has to be forwarded to all your clubs undergoing the UEFA licensing system for the UEFA season 2006/06, which in turn have to confirm that they support the request with all its consequences; meaning that each club has to duly sign your request as well. If such a request is not available by tomorrow 14.00 hrs (CET) or not approved by all clubs, UEFA would insist to get the list of licensed clubs as foreseen (31 May 24.00 hrs CET)*";

- iv. no such request for extension, as indicated by UEFA, was submitted; instead, on 31 May 2006, the HFF provided UEFA with the list of the Greek clubs that had undergone the licensing procedure in order to participate in the UEFA club competitions 2006/2007, bearing the indication whether the club had been granted or not the license.
12. In other words, the HFF admittedly did not seek an “exception” pursuant to Article 2.3.6 of the Manual and did not follow the procedure therein described: it first attempted, outside the “exception” procedure, to have the deadline of 31 May 2006 postponed; but then complied with such deadline. In fact, the HFF requested an extension of the deadline for the communication to UEFA of the list of the clubs that had obtained the license. The UEFA expressed its availability to evaluate such request provided a specific condition was satisfied. The condition was not satisfied, and therefore UEFA did not grant the extension of the deadline, which remained finally set for 31 May 2006. As a result, the HFF, within the deadline of 31 May 2006, filed with UEFA the list of the licensed club.
13. The Appellant, indeed, submits that an extension of the deadline of 31 May 2006 had – at least apparently – been granted. The Appellant invokes, in support of such submission, the telephone conversation of 6 June 2006 between the HFF and the UEFA services, referred to in a letter dated 9 June 2006 from the HFF to UEFA. In such conversation – as reported in the mentioned letter – HFF indicates that *“we were told that UEFA will wait for our final announcement on the participation in UEFA Cup 2006 – 2007 competition of either PAOK F.C. or ATROMITOS F.C. until Friday June 9th 2006, depending on the decision of the Appeals Committee of the Hellenic Football Federation (senior judges)”*.
14. The Sole Arbitrator finds this submission unconvincing. Whatever the content of the telephone conversation between the HFF and the UEFA services, the Sole Arbitrator notes that contrary to the fact that a postponement of the deadline had been granted stand (i) the non-application of the formal “exception process” defined by the Manual (see para. 12 above) and (ii) the several letters of both UEFA and the HFF itself: as already mentioned, on 23 May 2006 UEFA denied an extension until 16 June 2006; on 30 May 2006 UEFA expressed its availability to consider an extension of the deadline until 2 June 2006 provided specific conditions were to be met; the HFF did not take steps to satisfy such conditions, but on 31 May 2006 – i.e. within the deadline – submitted its list of licensed club, which was confirmed on 2 June 2006 (see para. 11 above). In other words, the correspondence between the parties excludes the granting of a postponement of the deadline of 31 May 2006. The Sole Arbitrator therefore finds that a single verbal communication cannot be invoked as a basis of a belief that a “silent” or implicit extension had been granted, contrary to repeated and consistent written communications denying the extension.
15. In light of the foregoing, the Sole Arbitrator concludes that the decision No. 150 of 9 June 2006 of the Appeals Committee of the HFF was rendered, and communicated to UEFA, after the deadline had expired. No extension having been granted, the deadline, in fact, expired on 31 May 2006. In addition, no appearance of postponement, justifying an activity in good faith by PAOK, was created. The Appellant’s submission, therefore, that the decision No. 150 of the

Appeals Committee of the HFF was timely, has to be rejected.

16. The next question to be examined by the Sole Arbitrator, then, turns to be whether the delay in the issuance of the License by the HFF to PAOK – that was granted on 9 June 2006 on the basis of the decision No. 150 of the Appeals Committee of the HFF – can be somehow justified. In this respect, the Appellant invokes the “force majeure” principle, while the Respondent denies its relevance.
17. Force majeure, indeed, implies an objective, rather than a personal, impediment, beyond the control of the “obliged party”, that is unforeseeable, that cannot be resisted, and that renders the performance of the obligation impossible (see CAS 2002/A/388, published in Digest of CAS Awards III 2001-2003, pp. 516 ff.) In addition, the conditions for the occurrence of force majeure are to be narrowly interpreted, since force majeure introduces an exception to the binding force of an obligation.
18. In the face of such definition, the situation invoked by the Appellant cannot be described as a case of force majeure: in the opinion of the Sole Arbitrator, the conditions concurring in the definition of force majeure are in fact not satisfied.
19. The Sole Arbitrator, in this respect, remarks that the failure of PAOK to timely satisfy the criteria to obtain the License was caused by reasons falling within PAOK’s sphere of responsibility. As correctly noted by the Respondent, and recognized in Swiss law and the CAS jurisprudence, the lack of financial means cannot be invoked as a justification for the non-compliance with an obligation (see CAS 2005/A/957, para. 56). At the same time, and in the same way, PAOK is to bear the consequences of the delays that may have been caused by the banks in providing the letters of guarantee necessary for PAOK to obtain the License: PAOK had the obligation to satisfy the criteria set forth in the Manual and its national implementation in order to obtain the License; the banks were auxiliaries of PAOK for the purposes of enabling PAOK to meet the above-mentioned criteria; and PAOK is to bear the responsibility of the acts or omissions of its auxiliaries.
20. The Decision is challenged by the Appellant in two other perspectives. The Appellant maintains in fact that the Decision has been rendered in violation of its right to be heard in fair proceedings, and of the principle of equal treatment.
21. The Sole Arbitrator does not agree with the submissions of the Appellant and finds that the Decision cannot be criticised under such points of view.
22. With respect to the violation of PAOK’s right to be heard in fair proceedings, the Sole Arbitrator notes that, according to Article R57 of the Code, he has full power to review the facts and the law. The Sole Arbitrator consequently hears the case *de novo*. This implies that, even if a violation of the principle of due process occurred in prior proceedings, it may be cured by an appeal to the CAS (CAS 94/129, published in Digest of CAS Awards I, 1986-1998, p. 187 at 203; CAS 2005/A/1001). In fact, the virtue of an appeal system which allows for a rehearing before an

appellate body is that issues relating to the fairness of the hearing before the tribunal of first instance “fade to the periphery” (CAS 98/211, published in Digest of CAS Awards II, p. 255 at 264, citing Swiss doctrine and case law).

23. The Appellant has had and used the opportunity to bring the case before CAS, where all of the its fundamental rights have been duly respected: in these proceedings, all the submissions of PAOK concerning the compliance with the deadline for the issuance of the License by the HFF have been heard and considered. At the end of the hearing, the Appellant expressly confirmed that the Appellant had no objections in respect of its right to be heard and to be treated equally in the arbitration proceedings. Accordingly, even assuming that PAOK’s rights have been violated by UEFA – but without conceding that they had actually been violated – the de novo proceedings before CAS has cured any such purported violations.
24. In any case, the Sole Arbitrator wishes to stress that the Decision has been rendered in accordance with the applicable provisions set forth in the Manual, and that the rights of the Appellant have been fully respected. PAOK has had the opportunity to have its application for the License examined by the HFF, through its internal bodies. When the deadline expired on 31 May 2006, PAOK had not obtained the License, and UEFA could not take other action but noting this situation. The subsequent Decision, whereby UEFA did not acknowledge the late granting of the License by the HFF, was a simple consequence of the HFF's communication of 31 May 2006 to UEFA that PAOK had not been granted the License, and that the deadline had expired. No room for further debate or argument was left.
25. With respect to the violation of the principle of equal treatment, the Sole Arbitrator notes that no specific criticism has been brought against UEFA, which appears to have treated all clubs equally. Indeed, the Appellant has not indicated any other case where the issuance of the License past the deadline has been accepted by UEFA. In addition, no element can be found in the current case indicating that a different treatment has been reserved to Atromitos Athens F.C. as compared to the Appellant. The letter sent by Atromitos Athens F.C. to UEFA on 8 June 2006, which was not requested or solicited by UEFA, was not even considered in the Decision. Well to the contrary, the Sole Arbitrator finds that the acceptance by UEFA of the issuance of a license after the expiry of the deadline would induce an unequal treatment amongst the clubs, and would create an unacceptable degree of uncertainty in the licensing system.

Conclusion

26. In light of the foregoing, the Sole Arbitrator dismisses the appeal brought by PAOK; the Decision is confirmed.

The Court of Arbitration for Sport rules that:

1. The appeal filed by PAOK FC against the decision dated 9 June 2006 of the UEFA Chief Executive Officer is dismissed.

(...).