



Arbitration CAS 2011/A/2439 Football Association of Thailand v. Fédération Internationale de Football Association (FIFA), award of 17 June 2011

Panel: Mr José Juan Pintó (Spain), Sole Arbitrator

Football

Forfeit of a game due to the fielding of an ineligible player

Time limit to file an appeal with the CAS against FIFA disciplinary decisions

Conformity of article 116 FDC with the rights of the appellants

Conformity of article 116 FDC with fundamental legal principles

Explicit consequences of the failure to request a reasoned decision

1. The parties willing to appeal a FIFA disciplinary decision to the CAS shall take into consideration the time limits foreseen in article 63.1 of the FIFA Statutes as well as in article 116 of the FIFA Disciplinary Code (FDC). The 10-days time limit to request the grounds of a decision provided for in article 116 FDC shall be deemed complementary to the deadline of 21 days foreseen in article 63 of the FIFA Statutes. It neither enters into contradiction with, nor implies a material change of, the 21-days general deadline. Rather, article 116 FDC is to be considered as part of the development of general provisions ruling the appeal of decisions to the CAS.
2. Article 116 FDC indeed foresees an additional requirement not mentioned in the FIFA Statutes to accede to the appeal (request for the grounds of the decision within a time limit). However the compliance of this requirement is so simple that it cannot be considered a real burden or a limitation of rights for the appellants. Furthermore, the general deadline of 21 days is in practice extended, given that the time limit to lodge the appeal begins upon receipt of the motivated decision (article 116 par. 2 FDC), which will only take place after the request of the grounds within the 10 days time limits. Not only does the term of 21 days to lodge an appeal remain the same, but also, in practice, it is extended depending on the time that FIFA takes in issuing the full motivated decision. This reinforces the opinion that article 116 FDC does not constitute an unavoidable restriction of the appellants' rights, at least provided that FIFA does not take so long in the issuance of the grounds of the decision in such a way that could damage the referred right to appeal.
3. The duty to request a motivated reason within 10 days of its notification in order to be able to appeal it before CAS does not infringe fundamental legal principles, as little is required from the appellant within the 10-days time frame (only to solicit a reasoned decision). The 10-days deadline to request the grounds of the decision does not shorten the deadline which is applicable for filing an appeal. The articles providing for such a request of grounds serve a legitimate purpose, i.e. to cope with the heavy caseload of FIFA and contribute to the goal of an efficient administration of justice.

- 4. The wording and consequences (“*failure* [to request the grounds of the decision] *will result in the enforcement of the decision*”) foreseen in article 116 FDC are clear. The expression “*enforcement*” has a clear component of final and binding nature of the decision which is not likely to reasonably induce a member of FIFA, which is supposed to know the rules, to think otherwise. Furthermore, as the appeal was filed ca. two and a half years after article 116 FDC entered into force, the element of novelty or lack of familiarity with the “*appeal mechanism*” cannot be put forward.**

The Football Association of Thailand (the “Appellant” or the “FA Thailand”) is a national football association with seat in Bangkok (Thailand), affiliated to Fédération Internationale de Football Association.

Fédération Internationale de Football Association (FIFA; the “Respondent”) is an association submitted to Swiss Law governing the sport of football worldwide with seat in Zurich, Switzerland.

On 23 February 2011 the national football teams of Thailand and Palestine played a match corresponding to the first leg of the men’s preliminary round of the U-23 Olympic Football Tournament London 2012 which finished with a result of 1-0.

The player Mr Sutjarit Jamtakol (the “Player”), born on 4 March 1989, took part in the game defending Thailand’s national team.

On 3rd March 2011 the Asian Football Confederation (AFC) provided FIFA with a list of suspended players having yet to serve their suspensions, in accordance to which the Player was suspended for one match due to his violent conduct during the game played on 5 November 2008 between the national teams of Thailand and Uzbekistan, corresponding to the AFC U-19 Championship 2008.

On 3rd March 2011 FIFA opened disciplinary proceedings against the Appellant for having used an ineligible player in the match between Thailand and Palestine.

On 9 March 2011 the national football teams of Thailand and Palestine played the second leg match of the men’s preliminary round of the U-23 Olympic Football Tournament London 2012. Thailand defeated again Palestine and therefore qualified to the next stage.

On 14 March 2011 the FA Thailand provided FIFA with its position with regard to the facts having given rise to the disciplinary proceedings opened against it. The FA Thailand argued that the Player had already fulfilled the sanction imposed on him in the match played on 5 November 2010 between the national teams of Thailand and Pakistan corresponding to the Asian Games. Furthermore during the team managers meeting that took place on 22 February 2011, the day before the match between Thailand and Palestine, no information was given by the officials in charge of the match regarding the players who were suspended for said match.

On 14 March 2011 FIFA sent a letter to the AFC requesting information regarding the Asian Games football competition and all AFC official competitions subject to an age limit.

On 21 March 2011 the AFC informed FIFA that the Asian Games Football Competition is not an AFC official competition.

This AFC's letter was then forwarded by FIFA to the Appellant in order to receive its comments.

On 24 March 2011 the Appellant alleged that the suspension that had been imposed to the Player during the AFC U-19 Championship 2008 should have been served in the frame of a competition subject to the same age limit. In addition it mentioned that the Asian Games football competition is a tournament fully organized and managed by the AFC and thus, shall be deemed as an AFC official competition. Moreover, it was restated that no list from the AFC regarding the players who were not eligible to play the match between Thailand and Palestine due to disciplinary suspension was provided. Finally, since the Player was suspended during an AFC competition, such suspension should have been served only during AFC competitions but not during FIFA competitions (i.e. the Olympic Football Tournament London 2012).

On 29 March 2011, the FIFA Disciplinary Committee passed the following decision regarding the above mentioned disciplinary proceedings:

1. *The Football Association of Thailand is liable for having breached art.55 par. 1 of the FDC.*
2. *The Football Association of Thailand is ordered to pay a fine of CHF 6.000. This fine is to be paid within 30 days of receipt of the ruling. [...].*
3. *The match Thailand – Palestine of 23 February 2011 is declared to be lost by forfeit by Thailand (0-3).*
4. *The costs of these proceedings of CHF 1,000 are to be borne by the Football Association of Thailand.*

The grounds of the referred decision read as follows:

1. *In accordance with art. 58 par. 3 of the FIFA Statutes the Disciplinary Committee (hereinafter: the Committee) may pronounce the sanctions described in the Statutes and the FIFA Disciplinary Code (hereinafter: FDC) on members, clubs, officials, players, match agents and players' agents.*
2. *According to art. 55 par. 1 of the FDC, if a player takes part in an official match despite being ineligible, his team will be sanctioned by forfeiting the match (cf. art. 31) and paying a minimum fine of CHF 6,000. According to art. 31 par. 1 of the FDC, teams sanctioned with a forfeit are considered to have lost the match by 3-0. According to par. 2 of the same article, if the goal difference at the end of the match in question is greater than 3-0, the result on the pitch is upheld.*
3. *The Committee took note of the various submissions and allegation brought forward by The Football Association of Thailand in its letter of 14 and 24 March 2011.*
4. *Regarding the claim according to which the suspension that had been imposed on the Player during the AFC Under 19 Championship 2008 should have been served in the frame of the same competition subject to age limit, the Committee noted that the Player was born on 4 March 1989 and that the next*

AFC Under 19 competition would have been the AFC Under 19 Championship 2010. However, according to art. 25 let. A of the Regulations AFC U19 Championship 2010 (Qualifiers), one of the mandatory conditions to be fulfilled in order for a player to be eligible for the said competition was to be born on or after 1 January 1991. Therefore, the Player was ineligible for the AFC Under 19 Championship 2010 and could not have served his suspension in that competition. Consequently, this argument is to be rejected.

5. *The Committee addressed the allegation of The Football Association of Thailand according to which the Asian Games football competition was an Under 23 football tournament fully managed and in-charge by a full team of AFC officials appointed by AFC, the organisation who also subsidized the tournament and that, therefore, the Player had already purged his suspension during the Asian Games in the match between Thailand and Pakistan played on 7 November 2010. In this regard, the committee referred to the letter received from AFC on 21 March 2011, whereby AFC clearly stated that the "Asian Games Football Tournament (Under 23) is not an AFC official competition.*
6. *According to art. 38 par. 2 let. B of the AFC Disciplinary Code (hereinafter: ADC) for AFC competitions subject to an age limit, match suspensions in relation to an expulsion pronounced on a player not served during the competition for which they were intended (elimination or the last match in the competition), they are carried over to the representative team's next official match in the same age group, it shall be carried over to the next highest age category. Furthermore, according to art. 5 par. 5 of the ADC, an official match is a match organised under the auspices of a football organisation for all of the teams or clubs in its sphere of operations; the score has an effect on the rights of participation in other competitions unless the regulations in question stipulate otherwise. Therefore, since the Asian Games Football Tournament (Under 23) is not a competition organized by AFC (nor FIFA), its matches are not considered to be official according to art 5 par. 5 of the ADC and the suspension of the Player cannot be considered as carried over to the aforementioned competition. In conclusion, the claim of The Football Association of Thailand according to which the Player had served the suspension in a match of the Asian Games must be rejected.*
7. *The Committee then examined the claim of The Football Association of Thailand according to which no list of suspended players was provided to the team officials of Thailand by the relevant AFC officials prior to the match between Thailand and Palestine of 23 February 2011. In this regard, the Committee observed that The Football Association of Thailand did not mention any legal provision according to which providing the team officials of Thailand with such information prior to the match would be an obligation of AFC, or a condition for any existing suspensions to deploy its effect in the match.*
8. *Moreover, the Committee referred to two important provisions of the ADC with regard to the effect of an expulsion/suspension. According to art. 18 par. 4 of the ADC, an expulsion automatically incurs suspension from the subsequent match, even if imposed in a match that is later abandoned and/or annulled. Furthermore, according to art. 35 par. 1 of the ADC, expulsions and match suspensions are stored in the central computer system of AFC. The AFC Disciplinary Committee secretary confirms them in writing to the Member Association concerned or, in the case of final competitions, to the head of the delegation concerned. Paragraph 2 of the same article adds that this communication serves only as confirmation and that sanctions (cautions, expulsions, automatic match suspensions) have an immediate effect on subsequent matches.*

9. *In view of the above, the Committee concluded that the sanction that had been imposed on the Player deployed its effects fully and automatically during the match of 23 February 2011, even in the absence of any information being provided by AFC to the team officials of Thailand prior to the match, all the more since no proof on the existence of such an obligation for AFC was presented by The Football Association of Thailand to the Committee.*
10. *Finally, the Committee examined the allegation of The Football Association of Thailand according to which the Olympic Football Tournaments London 2010 (and their respective preliminary competitions) are FIFA and not AFC competitions, which implied that the suspension of the Player should only be served in an AFC competition, and not in a FIFA competition. In this regard, the Committee agreed that the match between Thailand and Palestine of 23 February 2011 was, as stated above, part of the men's preliminary competition for the Olympic Football Tournaments London 2012, which is organized by FIFA. However, art. 38 par. 2 let. B of the ADC mentioned above, stipulates that any suspension that cannot be served in the same age group shall be carried over to the next highest age category, without specifying that it has to be carried over to an AFC competition of excluding a FIFA competition. Moreover, in this regard the Committee pointed out that it is very common that suspensions imposed on a player during a continental competition (such as the AFC Under 19 Championship, for example) are carried over to a FIFA competition (such as the FIFA U-20 World Cup, for example). In conclusion, and taking into consideration all the facts and the legal arguments in context with the matter at hand the suspension of the Player had to be carried over and served in a competition subject to the next highest age category after Under 19, which in the present case was the men's preliminary competition for the Olympic Football Tournaments London 2012, an Under 23 competition.*
11. *In view of the above, the Committee finds that The Football Association of Thailand is guilty of an infringement of art. 55 par. 1 of the FDC.*
12. *The Committee therefore declares that the match Thailand – Palestine of 23 February 2011 is lost by forfeit by Thailand (0-3), in accordance with art. 31 of the FDC.*
13. *The minimum fine to be imposed under the above-referenced art.55 par.1 a) of the FDC is CHF 6000. In view of the particular circumstances of the present case, the Committee deems that the minimum fine to be imposed in accordance with art.55 par.1 of the FDC is appropriate.*
14. *In accordance with article 105 of the FDC, the Committee decides to impose costs and expenses of CHF 1000 on the Football Association of Thailand.*

The FA Thailand appealed the above mentioned decision before the FIFA Appeal Committee.

On 20 April 2011, the FIFA Appeal Committee rejected the appeal filed by the FA Thailand in the following terms:

1. *The Appeal lodged by the Football Association of Thailand is rejected and the decision of the FIFA Disciplinary Committee passed on 29 March 2011 is confirmed.*
2. *The costs and expenses of these proceedings in the amount of CHF 3,000 are to be borne by the Football Association of Thailand in accordance with article 105 par.1 of the FIFA Disciplinary Code. This amount is set off against the appeal fee of CHF 3,000 already paid by the Football Association of Thailand in application of art.123 par. 3 of the FIFA Disciplinary Code.*

[...]

Note relating the terms of the decision

The judicial bodies may decide not to communicate the grounds of a decision and instead communicate only the terms of the decision. Any request for the grounds of the decision must be sent in writing to the secretariat to the FIFA Appeal Committee, within ten days of receipt of notification of the terms of the decision (art. 116 par.1 of the FIFA Disciplinary Code). Such a request does not affect the terms of the decision, which come into force with immediate effect (art. 106 of the Disciplinary Code).

If a party requests the grounds of a decision, the motivated decision will be communicated to the parties in full, written form. The time limit to lodge an appeal, where applicable begins upon receipt of this motivated decision (art.116 par.2 of the FIFA Disciplinary Code).

On 10 May the FA Thailand filed a Statement of Appeal before the CAS against the referred Decision of the FIFA Appeal Committee of 20 April 2011 (the Appealed Decision), asking the CAS:

1. *to accept the present appeal against the challenged decision;*
2. *to set aside the challenged decision;*
3. *to reintegrate the Appellant's team in the Men's Olympic Football Tournaments London 2012 Asian Qualifiers Round 2;*
4. *to condemn the Respondent to the payment in the favour of the Appellant of the legal expenses incurred;*
5. *to establish that the costs of the arbitration procedure shall be borne by the Respondent.*

On 20 May 2011 the Appellant filed its Appeal Brief, in which it basically argued the following:

- The suspension of the Player should only have been served during an AFC competition but not during a FIFA competition (i.e. the U-23 Olympic Football Tournament London 2012) in accordance with article 38.2.b. of the AFC Disciplinary Code.
- FIFA did not provide any legal provision in which it is pointed out that *"it is very common that suspensions imposed on a player during a continental competition (such as the FC U19 Championship, for example) are carried over to a FIFA competition (such as the FIFA U-20 World Cup, for example)"*. The imposition or execution of a serious sanction cannot be based on assumptions since all the sanctions and their execution shall be based on a legal provision.

In the meantime the Appellant sent a letter to the AFC informing said association about the appeal before the CAS, and asking the AFC if the Asian Games football competition is an AFC official tournament or not and, therefore, if the match played between the national teams of Thailand and Pakistan during said competition shall be deemed as an official match or not.

On 23 May 2011 FIFA sent a letter to the CAS challenging the admissibility of the appeal filed by the FA Thailand and requesting:

1. *The CAS – preferably a Sole arbitrator – firstly rules on the admissibility of the appeal and declares the present appeal lodged by the Appellant inadmissible, which is, in our view, a preliminary issue that has to be dealt with separately and before FIFA remits its position as to the substance.*

2. *The CAS already suspends the time limit that will be granted to FIFA to submit its answer as to the substance of the matter until a decision regarding the admissibility of the appeal is reached and, in the unlikely event the CAS would consider the present appeal admissible in its preliminary decision. To be granted a new deadline to submit our position as to the substance of the matter following the notification of the said preliminary decision.*
3. *Finally, all costs related to the present procedure shall be borne by the Appellant.*

FIFA mainly grounded its position on inadmissibility in article 116 of the FIFA Disciplinary Code (the “FDC”) and the fact that, given that the FA Thailand did not request the grounds of the decision within the 10 days time foreseen in this article 116 FDC, the Appealed Decision has become final and binding.

On 30 May 2011 the CAS sent a letter to the parties informing that, after having considered the particular circumstances of the case and in accordance with article 50 of the CAS Code of Sports-related Arbitration, it was decided to refer the present dispute to a Sole Arbitrator. Furthermore, the CAS also informed to the parties that it received the Appeal Brief and, consequently, the Respondent was granted with a deadline of 20 days to submit its answer to the appeal since the Appellant did not agree to conduct the present proceedings in an expedited manner.

On 10 June 2011 FIFA filed a partial answer to the appeal focused on the issue of admissibility of the present appeal.

Also on 10 June 2011, the CAS took note of such partial answer, granted the FA Thailand a term to allege on the admissibility of the appeal and informed both parties that once the Appellant’s position was received, the Sole Arbitrator would take a decision on the admissibility of the appeal.

On 15 June 2011 the FA Thailand filed the relevant written submissions on the admissibility of the appeal.

LAW

CAS Jurisdiction

1. Jurisdiction of the CAS (which has not been challenged by any of the parties) results from articles 62 and 63 of the FIFA Statutes (version 2010) and article R47 of the CAS Code.
2. Therefore the Sole Arbitrator considers that the CAS is competent to rule on this case.

Applicable law

3. Article R58 of the CAS Code reads as follows:

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.

4. Article 62.2 of the FIFA Statutes states the following:

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.

5. According to the mentioned provisions, FIFA regulations and additionally Swiss Law are applicable to this case.

6. Therefore, the Sole Arbitrator considers that the present dispute shall be resolved according to FIFA Regulations and additionally Swiss Law.

Admissibility

7. To determine if the present appeal is admissible or not, the Sole Arbitrator shall firstly examine the content of certain CAS and FIFA provisions referred to time limits for filing the appeals with the CAS.

8. Pursuant to article R49 of the CAS Code, the appeal of a decision before the CAS shall be lodged within a certain time limit:

In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.

9. Concerning the decisions of FIFA, the appeal shall be filed with the CAS within 21 days of the notification of the decision (article 63.1 of the FIFA Statutes):

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.

10. However in disciplinary matters (as the one dealt with in the Appealed Decision) there is another article (116 of the FDC) that shall be taken into account:

1. *The judicial bodies may decide not to communicate the grounds of a decision and instead communicate only the terms of the decision. At the same time, the parties shall be informed that they have ten days from the receipt of the terms of the decision to request, in writing, the grounds of the decision, and that failure to do so will result in the enforcement of the decision.*

2. *The time limit to lodge an appeal, where applicable, begins upon receipt of this motivated decision.*
11. The parties willing to appeal a FIFA disciplinary decision to the CAS shall then take into consideration the time limits foreseen in both provisions (article 63.1 of the FIFA Statutes and article 116 of the FDC).
12. Even admitting that it may be a debatable question from the hierarchy of norms point of view, the Sole Arbitrator considers that the 10 days time limit to request the grounds of a decision shall be deemed complementary to the deadline of 21 days foreseen in article 63 of the FIFA Statutes. Such 10-days time limit neither enters into contradiction with, nor implies a material change of, the 21-days general deadline. In the Sole Arbitrator's opinion, article 116 FDC is to be rather considered as part of the development of general provisions ruling the appeal of decisions to the CAS.
13. It is true that article 116 FDC foresees an additional requirement not mentioned in the FIFA Statutes to accede to the appeal (request for the grounds of the decision within a time limit). However the compliance of this requirement is so simple that it cannot be considered, in the Sole Arbitrator's opinion, a real burden or a limitation of rights for the appellants. It is enough for these appellants to just send a letter to the relevant body of FIFA stating "*we request for the grounds of the decision*" or the like to meet the requirement foreseen in article 116.1 FDC. No extra load of work, no disproportionate or excessive commitments are involved.
14. It shall be also mentioned that, as regards of the existence of article 116 FDC, the general deadline of 21 days is in practice extended, given that the time limit to lodge the appeal begins upon receipt of the motivated decision (article 116.2 FDC), which will only take place after the request of the grounds within the 10 days time limits, which always takes some time. It is not only that the term of 21 days to lodge an appeal remains the same, but also that in practice, it becomes enlarged as regards of the time that FIFA takes in issuing the full motivated decision. This reinforces the opinion that article 116 FDC does not constitute an unavoidable restriction of the appellants' rights, at least provided that FIFA does not take so long in the issuance of the grounds of the decision in such a way that could damage the referred right to appeal.
15. With regard to the compatibility of the described FIFA appeal system with article 75 of the Swiss Civil Code, the Sole Arbitrator shares the view and thoughts in this respect contained in the award in the case CAS 2008/A/1705, to which the Sole Arbitrator refers and which pertinent part reads as follows (emphasis added by the Sole Arbitrator):

It has been stated before that Swiss Law only applies subsidiarily to the merits of this case, i.e. if the rules and regulation of FIFA contain lacunae (see supra no. 7.5). If, however, a certain issue is dealt with by the rules and regulations of FIFA then Swiss law does not apply. This is – as stated above – even true if the otherwise applicable provision of Swiss law is mandatory. Hence, in the case at hand it is irrelevant whether or not there is a contradiction between the time limits in the rules and regulations of FIFA and Art. 75 CC since the latter provision is – in the context of arbitrations conducted according to the Code – superseded by the relevant provisions in the statutes and regulations of FIFA (cf. also Bernasconi/Huber, SpuRt 2004, 268, 270;

Nater, SpuRt 2006, 139, 143 f; Rigozzi, L'arbitrage international en matière de sport, 2005, marg. no. 1041).

[...]

To sum up, therefore, the Panel concludes that Art. 15 of the DRC Procedural Rules is neither incompatible with Art. 75 CC nor with the fundamental legal principles belonging to the ordre public.

16. It is to be noted that some CAS decisions, on the occasion of ruling on other similar cases (related to article 15.1 of the FIFA Rules Governing the Procedures of the Player Status Committee and the Dispute Resolution Chamber; the “PSC-DRC Procedural Rules”, which is similar but not identical to article 116 FDC), have determined that:
- (i) The duty to request a motivated reason within 10 days of its notification in order to be able to appeal it before CAS does not infringe fundamental legal principles.
 - (ii) Little is required from the appellant within the 10 days time frame – just solicit a reasoned decision.
 - (iii) The 10 days-deadline to request the grounds of the decision does not shorten the deadline which is applicable for filing an appeal.
 - (iv) The articles providing for such a request of grounds serve a legitimate purpose, i.e. to cope with the heavy caseload of FIFA and contribute to the goal of an efficient administration of justice.

Ad exemplum, the awards in the cases CAS 2008/A/1705 or CAS 2008/A/1708 read as follows in their pertinent part:

The question to be raised, therefore, is whether or not the provisions in Art. 15 of the DRC Procedural Rules is in breach with fundamental legal principles. The Panel is of the view that this is not the case. The duty to solicit a reasoned decision within 10 days of its notification in order to be able to appeal it before CAS may be seen as affecting the Appellant's access to the courts and legal protection. The Panel holds, however, that this limitation is not disproportionate. It is true that the time limit of ten days is short. However, little is required from an appellant within this time frame. He doesn't need to file a full brief that outlines his legal position. He is not even required to file specific motions or requests. The only thing he has to do in order to preserve his right of appeal is to solicit (in writing) a reasoned decision. In addition, the provision applies to all appellants and, thus, guarantees equal treatment among all (indirect) members of FIFA. Additionally, the 10 days-deadline of Art. 15(1) of the DRC Procedural Rules does not shorten the deadline which is applicable for filing an appeal, once the grounds of the decision are served to the parties. Indeed, the relevant 21 days-deadline remains untouched by Art. 15(1) of the DRC Procedural Rules. Furthermore, the provision serves a legitimate purpose, i.e. to cope with the heavy caseload of FIFA and contributes to the goal of an efficient administration of justice. Even the European Court of Human Rights has all along allowed the right of access to the courts to be limited "in the interests of the good administration of justice" (cf. Briner/von Schlabrendorff, in: Liber amicorum Böckstiegel, 2001, p. 89, 91). It does not come as a surprise, therefore, that similar restriction as the one in the DRC Procedural Rules can be found also in relation to the access to state courts. An example of this is sec. 158 of the law governing the organisation of the judiciary of the canton of Zurich, around which Art. 15(1) of the DRC Procedural Rules has evidently been crafted. Sec. 158 of the law governing the organisation of the judiciary of the canton of Zurich reads:

“In decisions of first instance relating to civil matters and the enforcement of monetary judgements the courts may renounce to provide the reasons for the decision and communicate the operative part only to the parties. Instead of advising the parties of the appropriate recourse against the decision the court informs the parties that they may ask for the reasons of the decision within 10 days of the notification, failing which the decision becomes final and binding [...] Does a party request the reasons of the decision, the full decision is served with the reasons to the parties in writing. The deadlines for filing any appeal or any action to negate the claim shall start to run with such notification of the full decision with the reasons”.

17. Applying the above mentioned provisions and considerations to our case, the Sole Arbitrator has noticed that:

- The Appealed Decision was notified to the FA Thailand on 20 April 2011.
- The grounds of such Appealed Decision were not communicated to the FA Thailand, but it was expressly mentioned in the Appealed Decision that (emphasis added by the Sole Arbitrator):

Note relating the terms of the decision

The judicial bodies may decide not to communicate the grounds of a decision and instead communicate only the terms of the decision. Any request for the grounds of the decision must be sent in writing to the secretariat to the FIFA Appeal Committee, within ten days of receipt of notification of the terms of the decision (art. 116 par.1 of the FIFA Disciplinary Code). Such a request does not affect the terms of the decision, which come into force with immediate effect (art. 106 of the Disciplinary Code).

If a party requests the grounds of a decision, the motivated decision will be communicated to the parties in full, written form. The time limit to lodge an appeal, where applicable begins upon receipt of this motivated decision (art.116 par.2 of the FIFA Disciplinary Code).

- In spite of such a note, the Appellant did not request the grounds of the decision to FIFA, but filed with the CAS a Statement of Appeal against the “non-grounded” Appealed Decision.
- The consequences of such decision of the FA Thailand not to ask for the grounds of the decision are stipulated in article 116.1 FDC *in fine* (emphasis added by the Sole Arbitrator):

At the same time, the parties shall be informed that they have ten days from the receipt of the terms of the decision to request, in writing, the grounds of the decision, and that failure to do so will result in the enforcement of the decision.

18. The FA Thailand is a member of FIFA. As such it is supposed to know (and of course, to comply with) the FDC rules (which current version is in force from 1st January 2009). In addition, in the present case the FA Thailand was expressly and particularly warned in the one-page Appealed Decision about article 116 FDC’s terms, being it irrelevant to these effects if such warning is in the ruling part of the decision or in another place of the referred one-page decision.

19. Notwithstanding this, the FA Thailand, for some reason (apparently the extended absence of a person of such FA, which in the Sole Arbitrator's view, is absolutely irrelevant and cannot constitute a valid excuse of any kind), decided not to request the grounds of the Appealed Decision. The FA Thailand was of course free to act this way, but shall bear the consequences of such decision as per article 116 FDC *in fine*: "*failure to do so [request the grounds] will result in the enforcement of the decision*".
20. The wording and consequences foreseen in the referred article are clear for the Sole Arbitrator. The inactivity of FA Thailand, which did not the request the grounds of the Appealed Decision, provoked that this Decision became final and binding. The expression "*enforcement*" in article 116.1 FDC has a clear component of final and binding nature of the decision which in the Sole Arbitrator's view, is not likely to reasonably induce a member of FIFA, which is supposed to know the rules (i.e. the FA Thailand), to think otherwise.
21. Therefore the Sole Arbitrator, on the basis of the above mentioned reasons, considers that the present appeal is inadmissible.
22. To finalise, the Sole Arbitrator notes that in another CAS related case (CAS 2008/A/1708, in which article 15.1 of the PSC-DRC Procedural Rules was analyzed), the Panel ruled on the admissibility of the appeal in a different way.
23. However it is important to note that in such case, the Panel stressed, as part of the grounding of its decision on admissibility, on certain confusing aspects of the decision concerning its appeal before the CAS which do not exist, in the Sole Arbitrator's view, in the present case.
24. In particular, in the case CAS 2008/A/1708 reference was made to the lack of clarity of the expression "*decision coming into force*" contained in the appealed decision (and in said article 15 of the PSC-DRC Procedural Rules) and to the corresponding potential confusion for the appellant on the final and binding nature of the decision, especially in a situation in which the "appeal mechanism" laid down under such article 15 of the PSC-DRC Procedural Rules was brand new (it entered into force on 1st July 2008, and the appealed decision was dated 23 September 2008). Thus, clearer and more precise information on the appeal procedure would have been expected in such appealed decision.
25. Notwithstanding this, in the Sole Arbitrator's opinion this situation of potential confusion does not occur in our case, mainly for two reasons:
 - First of all, article 116.1 FDC's wording does not include the expression "*decision coming into force*" of article 15 of the PSC-DRC Procedural Rules and which in that Panel's opinion, could have created some confusion on the appellant. In lieu of it such article 116.1 FDC states that "*failure to do so [request the grounds of the decision] will result in the enforcement of the decision*", which as mentioned before, shall be considered clear enough.
 - Secondly the appeal against the Appealed Decision was filed by the FA Thailand ca. two and a half years after article 116 FDC entered into force (1st January 2009), so the element of novelty or lack of familiarity of the appellant with the new "appeal mechanism" cannot be argued in this case in favour of the Appellant. It is perhaps

comprehensible that the Panel in the case CAS 2008/A/1708, in which the appealed decision was issued only two and a half months from the entry into force of the new “appeal mechanism”, considered the novelty of the system in its decision as an issue to admit the appeal, but this shall not at all apply to the present case.

The Court of Arbitration for Sport rules:

1. The appeal filed by the Football Association of Thailand against the Decision of the FIFA Appeal Committee dated 20 April 2011 (Decision 110048 APC THA ZH) is inadmissible.

(...).