



Arbitration CAS 2003/O/508 FC Anzhi Makhachkala v. FC Factor & Fédération Internationale de Football Association (FIFA), award of 16 June 2004

Panel: Mr Bernhard Welten (Switzerland), Sole Arbitrator

Football

Transfer

Appeal filed after the expiration of the deadline set in the applicable FIFA regulations

An appeal against a decision issued by the Single Judge of the Players' Status Committee is inadmissible if it is filed after the expiration of the deadline set in the applicable FIFA Regulations and if no appeal fee is paid at all.

FC Anzhi Makhachkala ("the Claimant") is a professional football club in Russia.

FC Factor Ljubljana ("FC Factor") is a professional football club in Slovenia who transferred the player E. in 1999 to the Claimant.

Fédération International de Football (FIFA) is the governing body of football throughout the world. FIFA is an association domiciled in Zurich (Switzerland) and organized in accordance with art. 60 ff. of the Swiss Civil Code.

On 1 March 1999 the player E. was transferred from FC Factor to the Claimant before he was further transferred in July 2001 from the Claimant to FC CSKA Moscow (Russia) for a sum of USD 800,000.

On 6 March 2002 the Football Union of Russia informed FC Factor about this transfer of the player E. to FC CSKA Moscow.

After FC Factor has asked the Claimant in writing - however without any success - to pay the in 1999 agreed amount of USD 240,000, it sent a request to the FIFA's Players' Status Committee in order to get help for the payment of this amount.

The Head of the FIFA's Players' Status Legal Services asked the Claimant through a letter addressed to the Football Union of Russia to pay the claimed amount until 31 January 2003 or to give reasons within the same deadline why not doing so.

Already on 30 January 2003 the Head of the FIFA Players' Status Legal Services informed both clubs through their national football federations that the FIFA's Players' Status Committee would decide

this case during its next meeting on 21 February 2003 and the parties should no more submit any further documentation or comment on this matter.

On 11 March 2003 the General Secretary of FIFA informed the clubs that the Chairman of the Players' Status Committee had decided that the Claimant had to pay the full amount of USD 240,000 to FC Factor within 30 days.

On 31 March 2003 the Football Union of Russia asked from FIFA for a second time after its letter of 12 February 2003 for copies of the documents based on which the decision of 11 March 2003 was taken.

On 8 April 2003 FIFA sent for a second time copies of the documents to the Football Union of Russia and emphasized that the Claimant had to pay the amount of USD 240,000 within 30 days of the notification of the decision on 11 March 2003.

By fax dated 18 April 2003 and received by FIFA on 22 April 2003, the Football Union of Russia, acting on behalf of the Claimant, challenged the decision issued by the Single Judge of the Players' Status Committee and maintained that the Claimant did never agree or sign a document giving FC Factor the right to ask for a payment of USD 240,000.

On 28 June 2003 the FIFA Executive Committee decided as a body of appeal that the appeal filed by the Football Union of Russia on behalf of the Claimant on 22 April 2003 was inadmissible for not having complied with the 20 days deadline prescribed in art. 24 par. 1 of the FIFA Regulations for the Status and Transfers of Players (edition October 1997, hereinafter referred as "the Regulations") and for not having paid the appeal fee of CHF 2,000 within the same deadline (art. 24 par. 3 of the Regulations).

The decision of the FIFA Executive Committee (the "Decision") was notified to the national football federations of the parties on 18 August 2003 and to the Claimant on 25 August, 2003.

On 12 September 2003 the Claimant sent a request for arbitration to the Court of Arbitration for Sport (CAS), in basically applying to cancel the Decision and not having to pay anything to FC Factor.

On 15 October 2003 FC Factor filed its response whereby it asked to dismiss FC Anzhi's applications and to confirm the Decision that the Claimant had to pay the amount of USD 240,000 to FC Factor.

On 4 November, 2003 FIFA filed its response whereby it specified that FIFA was "*of the firm opinion that in the present matter the CAS may only examine the question as to whether certain formalities for submitting an appeal at FIFA's competent body had in fact not been fulfilled and that therefore, the decision of our Body of Appeal to reject the appeal for formal reasons is justifiable. In other words, should the CAS decide that the formal requirements regarding the procedure of appeal to the FIFA Executive Committee (...) were fulfilled, we obviously deem that this has not been the case, we consider that the CAS may not enter into the substance of the matter and that it refers the present affair back to FIFA.*"

After having consulted the Parties, the Sole Arbitrator deemed himself to be sufficiently informed by the written submissions, to be able to issue the present award without holding a hearing.

LAW

Applicable law and regulations

1. Art. R58 of the Code of Sports-related Arbitration (“the Code”) provides that the Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in absence of such a choice, according to the law of the country in which the federation, association or sports body which has issued the challenged decision is domiciled.
2. The decision challenged was issued by the FIFA Executive Committee. FIFA has its seat in Zurich, Switzerland.
3. In the present case the Parties did not formally chose any law to be applicable. However they both referred in their statements to FIFA Regulations, which means that they agreed by their conduct that the FIFA Regulations should be applied.
4. FIFA Regulations are therefore the primary set of rules to be applied. Therefore Swiss law will only be applied as is necessary and in a complementary manner.
5. Besides, it is worthwhile to note that the transfer contract between FC Factor and the Claimant was closed in March 1999. The player E. was then transferred from the Claimant to FC CSKA Moscow in July 2001. Both contracts were therefore clearly closed before 1 September 2001. As art. 46 para. 3 of the Regulations, edition 2001, provide that the contracts between players and clubs concluded before 1 September 2001 would continue to be governed by the previous version of the regulations, namely the FIFA Regulations for the Status and Transfers of Players, edition October 1997 (“the Regulations 1997”), such Regulations 1997 apply in the present case.

Jurisdiction

6. Art. R27 of the Code provides that the Procedural Rules apply whenever the parties have agreed to refer a sports-related dispute to the CAS. Such disputes may arise out of a contract containing an arbitration clause or be the subject of a later arbitration agreement or involve an appeal against a decision of a federation, association or sports body where the statutes or regulations of such bodies, or a specific agreement provides for an appeal to the CAS.

7. The FIFA executive committee decided on 28 June 2003 that the appeal filed by the Claimant against the decision issued by the Single Judge of the Players' Status Committee was inadmissible for not fulfilling the formalities and it provided:
"3. This decision may be appealed before the Court of Arbitration for Sport (CAS) within 20 days of receiving notification of this decision by contacting the court directly in writing".
8. FC Factor and FIFA did not challenge or dispute the jurisdiction of the CAS in their respective answers.
9. In accordance to art. R27 of the Code CAS has therefore jurisdiction to decide the present dispute.

Admissibility

10. The Football Union of Russia forwarded the decision of the FIFA Executive Committee on 25 August 2003 to the Claimant.
11. The request for arbitration, lodged on 12 September 2003, was filed within the deadline of 20 days set by the FIFA Executive Committee in the Decision.
12. As the request for arbitration complied with the other requirement set forth by art. R47 ff. of the Code, it is to be considered as admissible.

The proceedings

13. In the circumstances of this case, the Sole Arbitrator is prepared and decided to rule on the issues raised in the case without holding a hearing and solely based on the statements and documents filed by the parties.

Merits

14. The FIFA Executive Committee rejected the appeal made by the Claimant based on art. 24 of the FIFA Regulations for the Status and Transfers of Players, because the appeal had been lodged beyond the deadline of 20 days and the appeal fee of CHF 2,000 had not been paid within the same deadline.
15. The Claimant contends that neither the Football Union of Russia nor the Claimant knew about the formalities for an appeal against the decision of the Single Judge of the FIFA Players' Status Committee.

16. The FIFA Statutes provide in art. 13 par. 1 lit. a and d that members like the Football Union of Russia have the duty to meet all rules and regulations set by FIFA and its authorities as well as to get all these rules and regulations accepted by its own members.
17. It is therefore mainly the task of the Football Union of Russia and its member clubs like the Claimant to get all the necessary information regarding the formalities set by FIFA in order to appeal against a decision in accordance with the rules. To contend to not having known about such formalities does not protect or help the Claimant in any way.
18. Article 24 of the Regulations 1997 provides:
 - ⁴ An appeal shall be lodged within 20 days from the day on which the decision to which an objection is being raised has been notified to the parties involved by the FIFA general secretariat.*
 - ² FIFA shall only consider appeals which are lodged through the national associations. The written appeal shall be duly signed by the party or parties who are appealing against the decision.*
 - ³ A fee for the appeal amounting to CHF 2'000.-- shall be paid to the FIFA general secretariat within the period mentioned in § 1 above. If the appeal is upheld, the fee shall be reimbursed. If the appeal is rejected, the fee shall be forfeited.*
 - ⁴ If an appeal is patently unjustified, the appeal body may in addition penalise the guilty party by pronouncing a fine as a disciplinary measure.*
 - ⁵ The appeal body may pronounce whatever decision it wishes regarding the responsibility for payment of the costs of the appeal meeting”.*
19. FIFA's Regulations do not provide for the requirement in a decision to mention legal remedies. Under Swiss Law such a requirement is only given for the administrative law. However the Swiss Supreme Court has denied the existence of a general non written principle of law which would impose that the decisions issued by public authorities (cantons and municipalities) must mention the legal remedies (ATF 101 III 97; ATF 98 Ib 333). However the Swiss Supreme Court recommends to the authorities rendering decisions to give such information to the parties.
20. To avoid further discussions about the admissibility of appeals within FIFA as well as the respective formalities and consequences it would be advisable that FIFA follows the recommendation given by the Swiss Supreme Court too.
21. In these circumstances and consistently with the jurisprudence of CAS (CAS 2003/O/481; CAS 2003/O/483; CAS 2003/O/509), the Sole Arbitrator has to confirm that the FIFA Executive Committee correctly held that the appeal against the decision issued by the Single Judge of the Players' Status Committee was inadmissible because it was filed after the expiration of the deadline set in art. 24 of the Regulations and no appeal fee was paid at all.
22. In looking at the whole procedure within FIFA the Sole Arbitrator regrets the many mistakes that have been made – starting with the initialisation of the procedure already one day before the deadline expired and continuing with not respecting the parties' right to be heard (s. letter

of January 30, 2003) and finally bringing the formal case to instances which was not even asked by FC Factor – that the whole procedure could easily seen as null and void.

The Court of Arbitration for Sport rules:

1. The application by FC Anzhi Makhachkala is dismissed.

(...).