



Arbitration CAS 2006/A/1008 Rayo Vallecano de Madrid SAD v. Fédération Internationale de Football Association (FIFA), preliminary decision of 16 March 2006

Panel: Mr Luigi Fumagalli (Italy), President; Mr Martin Schimke (Germany); Mr Michele Bernasconi (Switzerland)

Football

Deadline to file an appeal against a disciplinary decision

Principle “tempus regit actum”

As a general rule, transitional or inter-temporal issues are governed by the principle “*tempus regit actum*”, holding that any deed should be regulated in accordance with the law in force at the time it occurred. As a consequence, procedural actions, such as the filing of an appeal, should be done in compliance with rules and time limits in force when they are performed, unless a transitory rule provide otherwise.

Rayo Vallecano de Madrid SAD (the “Club” or the “Appellant”) is a Spanish football club existing under the laws of Spain and has its headquarters in Madrid, Spain. The Club is affiliated to the *Real Federación Española de Fútbol* (the “Spanish Football Federation”), which in turn is a member of FIFA. As a result, the Club is subject to and bound by the applicable rules and regulations of the FIFA.

On 31 October 2005 the FIFA Disciplinary Committee (the “DC”) issued a decision (the “DC Decision”) holding that:

- “1. *The debtor is pronounced guilty of failing to comply with a decision of a FIFA body in accordance with art. 68 FDC.*
2. *The debtor is ordered to pay a fine to the amount of CHF 25,000. The fine is to be paid within 30 days of notification of the decision. Payment can be made either in Swiss francs (CHF) to account [...] or in US dollars (USD) to account [...].*
3. *The debtor is granted a final period of grace of 30 days as from notification of the decision in which to settle its debt to the creditor.*
4. *If payment is not made by this deadline, the creditor may demand in writing of the FIFA Disciplinary Committee that 6 points be deducted from the debtor’s first team in the domestic league championship. Once the creditor has made this request, the points are to be deducted mandatorily in any case.*
5. *If the debtor still fails to pay the amount even after deduction of the points in accordance with point 4, the first team will be relegated to the next lower division.*

6. *As a Member of FIFA, the Real Federación Española de Fútbol is reminded of its duty to implement this decision and, if necessary, to produce proof to FIFA that the points have been deducted or the team has been relegated. If the Real Federación Española de Fútbol does not comply with this decision despite being ordered to do so by the FIFA Disciplinary Committee, the latter will inflict an appropriate sanction on the Member. This can lead to expulsion from all FIFA competitions.*
7. *The costs of these proceedings in the amount of CHF 1,000 are to be borne by the debtor.*
8. *The creditor is directed to inform the Disciplinary Committee immediately of every payment received”.*

The DC Decision was rendered on the basis of Article 68 of the FIFA Disciplinary Code (FDC) adopted on 29 June 2005, in force since 1 September 2005, providing for sanctions on “*anyone who fails to pay to pay another person (such as a player, a coach or a club) a sum of money in full, even though instructed to do so by a body of FIFA*”. The DC in fact noted that the Club had failed to pay to the Asociación Deportiva Sao Caetano of Brazil an amount of money, as declared to be due by the decision rendered by the FIFA Dispute Resolution Chamber on 15 February 2005.

The DC Decision was notified on 6 December 2005 to the Spanish Football Federation and to the counsel assisting the Club in the proceedings before the DC. On 9 December 2005 the DC Decision was transmitted by the Spanish Football Federation to the Club, which received another copy of the same DC Decision on 20 December 2005.

On 30 December 2005 the Appellant filed a statement of appeal, dated 29 December 2005, with the Court of Arbitration for Sport (CAS), pursuant to the Code of Sports-related Arbitration (the “Code”), to challenge the DC Decision.

On 13 January 2006 FIFA filed its answer, containing the following requests to the CAS:

1. *The time limit for the Respondent to lodge his answer to the appeal as to the substance shall be suspended with immediate effect.*
2. *The appeal lodged by the Appellant shall be disregarded for formal reasons.*
3. *In case this formal request should be dismissed, the Respondent shall receive a new deadline to send his answer to the appeal as to the substance.*
4. *The consequential costs and damages are to be borne by the appellant”.*

In support of its request, that “*the appeal lodged by the Appellant ... be disregarded for formal reasons*”, FIFA is invoking Article 60.1 of the FIFA Statutes adopted on 19 October 2003, entered into force on 1 January 2004 (the “FIFA Statutes 2004”). Pursuant to such provision, in fact, “*the appeal shall be made to CAS within 10 days of notification of the decision*”. As a result, in the Respondent’s opinion, the Club’s appeal has been filed – on 30 December 2005 – after the deadline provided in the FIFA Statutes 2004 had expired, the DC Decision having been served upon the Club on 6 December 2005 by transmission to its counsel and on 9 December 2005 by direct transmission of the Spanish Football Federation.

LAW

Jurisdiction

1. The jurisdiction of CAS *in casu* is based on Article 59 ff of the FIFA Statutes 2004 and has not been objected by FIFA. Therefore, the jurisdiction of CAS shall be admitted.
2. As these proceedings involve an appeal against a disciplinary decision issued by a federation (FIFA), whose statutes provide for an appeal to the CAS, they are considered and treated as appeal arbitration proceedings, in a disciplinary case, in the meaning and for the purpose of the Code.

Applicable law

3. According to Article R58 of the Code, the Panel 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".
4. In the present matter the Panel shall apply the FIFA regulations and, complementarily, Swiss law.

On the preliminary objection

5. The Respondent, as already mentioned, has applied for a dismissal of the appeal "for formal reasons". FIFA, in fact, alleges that the Club has filed its appeal after the 10-day deadline provided in Article 60.1 FIFA Statutes 2004 had expired.
6. Contrary to such objection, the Appellant submits that the DC Decision has been properly received only on 20 December 2005. As a result, in its opinion, the appeal has been timely filed.
7. FIFA is basing its objection as to the admissibility of the Club's appeal on Article 60.1 ["Jurisdiction of CAS"] of the FIFA Statutes 2004, which so provides:
"Only CAS is empowered to deal with appeals against decisions and disciplinary sanctions of the last instance, after all previous stages of appeal available at FIFA, Confederation, Member or League level have been exhausted. The appeal shall be made to CAS within 10 days of notification of the decision".
8. The Panel remarks, however, that Article 60 of the FIFA Statutes 2004 has been amended by deliberation of the FIFA Ordinary Congress on 12 September 2005. The new version of Article 60 of the FIFA Statutes 2004, in force since 1 December 2005 (hereinafter referred to

as “Article 60 – New Version”), reads as follows:

“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”.

9. In other words, the Panel notes that the deadline for appeals to CAS set forth in the FIFA Statutes 2004 has been extended, in Article 60 – New Version, to 21 days, from the preceding 10 days. The question, then, turns out to be whether the admissibility of the appeal, brought on 30 December 2005 against the DC Decision, rendered on 31 October 2005 and notified during the month of December 2005, has to be evaluated on the basis of Article 60 – New Version, in force since 1 December 2005, or in the light of the preceding version of such provision.
10. In accordance with the CAS jurisprudence (CAS 2004/A/635), the Panel underscores that, as a general rule, transitional or inter-temporal issues are governed by the principle *“tempus regit actum”*, holding that any deed should be regulated in accordance with the law in force at the time it occurred. As a consequence, procedural actions, such as the filing of an appeal, should be done in compliance with rules and time limits in force when they are performed, unless a transitory rule provide otherwise. Undisputedly, the DC Decision was notified and the appeal brought when Article 60 – New Version had entered into force.
11. In light of the above and absent any specific transitory rule in the FIFA Statutes or in the FIFA Regulations, the time limit issue should be governed by Article 60 – New Version.
12. In order to determine whether the time limit set forth by Article 60 – New Version has been respected, attention has to be paid also to the relevant provisions of the FDC, and more specifically to the following:

Article 94 [“Calculation”]:

- “1. *Time limits to which associations shall adhere commence the day after they have received the relevant legal document.*
2. *Time limits to which other persons shall adhere commence four days after receipt of the document by the association forwarding it.*
3. *If the last day of the time limit coincides with a public holiday in the place of domicile of the person required to comply with the document by a certain deadline, the time limit will expire on the next day that is not a public holiday.*
4. *Otherwise, the provisions of the Swiss Code of Obligations apply to calculate the time limits”.*

Article 96 [“Interruption”]:

- “1. *Time limits are interrupted:*
 - a) *from 20 December to 5 January inclusive;**[...]”.*

13. In accordance with Article 94.2 FDC, therefore, the time limit set forth in Article 60 – New Version started to run on 10 December 2005, i.e. four days after the receipt of the DC Decision by the Appellant from the Spanish Football Federation; in addition, pursuant to Article 96.1(a) FDC, the same time limit has been interrupted on 20 December 2005. It follows that the appeal has been filed by the Appellant, on 30 December 2005, before the time limit of 21 days had expired.
14. The same conclusion, it is to be noted, would be reached even applying the 10-day rule provided for by the FIFA Statutes 2004 before the entry into force of Article 60 – New Version. In fact, also in that case, the time limit would have started to run on 10 December 2005, to be interrupted on 20 December 2005 – day which is included in the period of interruption, as made clear by Article 96.1(a) FDC) until 5 January 2006 included, with one day left for an appeal to be submitted. As a result, the appeal filed on 30 December 2005 would have been in any case timely filed.
15. In light of the foregoing, the Panel holds that objection raised by FIFA, regarding the non-compliance with the time limit for an appeal to be filed, has to be rejected.

The Court of Arbitration for Sport rules:

1. The request of the FIFA to dismiss the appeal for formal reasons is rejected.