



Arbitration CAS 2007/A/1251 Aris FC v/ FIFA, award of 27 July 2007

Panel: Mr Quentin Byrne-Sutton (Switzerland), President; Mr Rui Botica Santos (Portugal); Mr José Juan Pintó (Spain)

Football

Denial of justice

Notion of “final decision”

FIFA’s practice to decide issues of competence

- 1. When FIFA enumerates several reasons for which it deems its decision bodies lack competence to entertain the Appellant’s request and invites the latter to seek relief in front of the competent national authorities, it clearly manifests that it will not entertain the request, thereby making a ruling on the admissibility of the request and directly affecting the Appellant’s situation. Thus, despite being formulated in a letter, such a refusal is, in substance, a decision.**
- 2. Any FIFA decision which is intended to be made on behalf of the DRC and/or the PSC, and which is formulated as a final decision must be deemed subject to an appeal in front of CAS. By referring in the plural to the lack of jurisdiction of its “*decision-making bodies*” and by inviting the Appellant to turn to a different authority, FIFA is making clear that it deems there is no other recourse for the Appellant within FIFA, i.e. that its decision on lack of jurisdiction is final.**
- 3. To be handled validly in accordance with the rules and regulations, any claim received at FIFA must, if it meets the required form, be dispatched by FIFA’s general secretariat to the PSC and the DRC for them to decide on their own competence. The general secretariat has no competence to decide questions of jurisdiction and the PSC and DRC have the duty to decide on their own competence in accordance with substantive issues that fall within their jurisdiction according to the rules and regulations. This also implies that the PSC and DRC must be properly constituted when making their decisions on their own competence.**

Aris FC (the Appellant) is a football club with its registered office in Greece. It is a member of the Hellenic Football Federation, which is affiliated to FIFA.

The Fédération Internationale de Football Association (FIFA; the Respondent) has its registered seat in Switzerland.

There exists an underlying dispute between Aris FC and its former Argentinean player F. (the “player”).

In that dispute, the player was claiming wages from Aris FC on the basis of his employment contract. It led the player to lodge a claim against Aris FC in front of the Greek Sports Court.

On 27 July 2006, the Greek Sports Court found in favour of the player and decided Aris FC must, inter alia, pay him an amount of EUR

As a result, on 30 November 2006, Aris FC filed a claim with FIFA, asking it in substance to render a new decision on the matter previously decided by the Greek Sports Court. The claim was addressed to the Players’ Status Committee to the attention of Mr. Omar Ongaro.

In December 2006, the Hellenic Football Federation wrote to FIFA on behalf of Aris FC to confirm the claim.

In a first letter dated 15 February 2007, FIFA replied as follows to the Hellenic Football Federation:

“Club Aris FC, Greece / Player F., Argentina

Dear Sir,

With reference to the above-mentioned matter we acknowledge receipt of your correspondence 6 December 2006 and have taken due note that your affiliate Aris FC intends to lodge a complaint against the Argentinean player F.

According to your clubs correspondence, it appears that, a decision has been passed by the Greek Sports court on 27 July 2006. In this respect, we kindly ask you to inform your affiliate that it should provide us with a copy of the said decision along with a translation into one of the four official FIFA languages (English, French, Spanish or German).

As soon as we receive the said documentation we will evaluate any further possible step.

We thank you for your kind attention to the above and for informing your affiliate accordingly.

Yours faithfully,

On behalf of the Dispute Resolution Chamber

Maja Kuster Hoffmann

Players’ Status”

On 16 March 2007, after receiving, as requested, a copy of the Greek Sport Court’s decision, FIFA addressed a second letter to the Hellenic Football Federation, formulated as follows:

“We refer to the above-mentioned matter as well as to our previous correspondence dated 15 February 2007 and acknowledge receipt of your latest correspondence dated 8 March 2007, by means of which you provided us with a copy of the decision passed by the Greek Sports court dated 27 July 2006.

From the documentation in our possession, we understand that an employment related dispute arose between your affiliated club, Aris FC, and the Argentinean player, F. and that the said player lodged a compliant with

the competent decision-making bodies in Greece on 14 July 2006, by means of which the complaint of the player was accepted and your affiliate was obliged to pay him the amount of EUR

In this context, we have taken due note that your affiliate intends to lodge a complaint with FIFA against the said player, since in its opinion one document, a private agreement signed between the parties dated 23 May 2006, was apparently not submitted to the Greek Sports court and therefore the said court upheld the player's claim.

In view of all of the above and after a careful study of all documents remitted we would like to inform your affiliate of the following.

*As a general rule, please be informed that in accordance with the general principle of **res iudicata** our services and decision-making bodies are not in a position to deal again with the substance of the present matter, since it has already been dealt with by the Greek Sports court.*

*Furthermore, please take due note that, in principle, our decision-making bodies are not competent to review **per se** any decision passed by another competent body.*

In view of all of the above, we regret having to inform your affiliate that we are unable to intervene on its behalf in this affair and kindly invite your affiliate to seek assistance at the competent Greek authorities for the proper solution of the present dispute and to exhaust the relevant remedies.

Finally, please take note that this information is of a general nature and without prejudice to any decision that may be passed by the competent deciding body in this or similar cases at a later stage.

We thank you for taking note of the above and for informing your affiliate accordingly.

*Marco Villiger
Director a.i., Legal Division*

*Omar Ongaro
Head of Players' Status"*

Given the foregoing refusal by FIFA to adjudicate the claim, Aris FC filed a Statement of Appeal with the Court of Arbitration for Sport (CAS) invoking, among others, a denial of right.

On 30 March 2007, Aris FC filed its Statement of Appeal with CAS against what it named the "Decision pronounced by the Legal Division of FIFA of 16th of March 2007" and requesting the following relief:

"A) That FIFA is a competent Body to resolve the dispute between the Club Aris FC, Greece and the player F., B) That any decision pronounced by the Greek Sports Court can be held before FIFA and C) That the parties have already exhaust the relevant remedies before the Greek Sports Court".

On 14 April 2007, Aris FC filed its Appeal Brief confirming its grounds for appeal and also underlining it deemed FIFA had committed a denial of justice.

On 10 May 2007, FIFA filed its Response, which contained the following prayers for relief:

"1. To declare that the present appeal against the correspondence issued by the administration of FIFA on 16 March 2007 is inadmissible due to the lack of a challengeable decision.

2. Alternatively, to reject the present appeal against the mentioned correspondence issued by the administration of FIFA.

3. *To order the Appellant to bear all the costs incurred with the present procedure.*
4. *To order the Appellant to cover all legal expenses of the Respondent related to the present procedure”.*

On 5 July 2007, CAS informed the parties that the Panel deemed the nature of the questions in dispute would allow it to render a final award without a hearing.

LAW

Jurisdiction

1. In this case the jurisdiction of CAS, if admitted, would be based, inter alia, on article 61§1 of the FIFA Statutes and art. R47 of the Code of Sports-Related Arbitration (“the Code”).
2. FIFA contends that CAS lacks jurisdiction under article 61§1 of the FIFA Statutes because there was no “final decision” by FIFA in the meaning of that provision.
3. Consequently, the Panel shall examine whether FIFA’s letter of 16 March 2006 can be deemed to contain a decision and, if so, whether such decision can be considered final.
4. With respect to the characterization of a decision, the Panel agrees with the criteria laid down in CAS 2005/A/899, referred to by the Respondent, insofar as CAS considered that “... *the form of a the communication has no relevance to determine whether there exists a decision or not. In particular, the fact that the communication is made in the form of a letter does not rule out the possibility that it constitutes a decision subject to appeal*” and that “*In principle, for a communication to be a decision, this communication must contain a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties. However, there can also be a decision where the body issues a ruling as to the admissibility or inadmissibility of a request, without addressing the merits of such request*”.
5. The Panel finds that in determining, on the basis of the foregoing criteria, whether or not FIFA’s letter of 16 March 2006 must be deemed a decision rather than a mere written communication, the following circumstances are relevant:
 - Aris FC’s initial application to FIFA of 30 November 2006 was not addressed to FIFA as a request for information. On the contrary, it contained arguments, prayers for relief and exhibits and was addressed to FIFA’s Players’ Status Committee, i.e. was formulated as a form of claim or appeal requesting FIFA to make a new decision on the merits of the employment-related dispute between Aris FC and its player, which the Greek Sports Court had adjudicated in its decision of 27 July 2006.
 - In its letter of 16 March 2007, with reference to the Greek Sports Court’s decision and after stating that it understood Aris FC was applying to FIFA for relief, FIFA enumerated several reasons for which it deemed FIFA’s decision-making bodies lacked

competence to entertain Aris FC's request and invited the latter to seek relief in front of the "*competent Greek authorities*".

6. The Panel finds that by responding in such manner to Aris FC's request for relief, FIFA clearly manifested it would not entertain the request, thereby making a ruling on the admissibility of the request and directly affecting Aris FC's legal situation. Thus, despite being formulated in a letter, FIFA's refusal to entertain Aris FC's request was, in substance, a decision.
7. That being said, the question remains whether FIFA's decision of 16 March 2006 can be deemed a "final" decision, in the meaning of article 61§1 of FIFA's Statutes.
8. FIFA's Statutes and regulations contain no general definition of what must be considered a "final" decision. However, various provisions of the regulations specify which body's decisions are subject to an appeal in front of CAS. Thus, for example, according to article 24§2 of FIFA's *Regulations for the Status and Transfer of Players* ("FIFA's Regulations"): "*Decisions reached by the Dispute Resolution Chamber or the DRC judge may be appealed before the Court of Arbitration for Sport*".
9. Consequently, the Panel finds that any FIFA decision which is intended to be made on behalf of the DRC and/or the Players' Status Committee (PSC) and which is formulated as a final decision must be deemed subject to an appeal in front of CAS.
10. The Panel finds that the following circumstances are relevant in determining whether or not FIFA's letter-decision of 16 March 2006 can be considered as made on behalf of the DRC and/or the PSC and as being final:
 - FIFA's letter of 15 February 2007 by which it acknowledged receipt of Aris FC's request was signed "*on behalf of the DRC*".
 - FIFA's letter-decision of 16 March 2007 was co-signed by the Head of the PSC.
 - FIFA's letter-decision of 16 March 2007 states that "*... in principle, our decision-making bodies are not competent to review per se any decision passed by another competent body*" and goes on to specify that, as a result, Aris FC must "*... seek assistance at the competent Greek authorities for the solution of the present dispute and to exhaust the relevant remedies*".
11. The Panel finds that in replying in this manner with those signatories to Aris FC's request, which had been addressed to the DRC, FIFA intended to rule on behalf of its two decision-making bodies the DRC and the PSC that neither of them had jurisdiction to entertain the request. This finding is reinforced by the fact that under 23§2 of the Regulations: "*In case of uncertainty as to the jurisdiction of the Players' Status Committee or the Dispute Resolution Chamber, the chairman of the Players' Status Committee shall decide which body has jurisdiction*", since the Head of the PSC co-signed the letter-decision of 16 March 2007. Furthermore, by referring in the plural to the lack of jurisdiction of FIFA's "*decision-making bodies*" and by inviting Aris FC to turn to a different authority, FIFA was making it clear that it deemed there was no other recourse for Aris FC within FIFA, i.e. that its decision on lack of jurisdiction was final.

12. For the above reasons, the Panel considers FIFA's letter-decision of 16 March 2007 to be a final decision within the meaning of article 61§1 of FIFA's Statutes.
13. Accordingly, CAS has jurisdiction to entertain the appeal against that decision.

Applicable Law

14. Art. R58 of 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 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".

15. Article 60§2 of the FIFA Statutes provides that: *"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".*
16. Consequently, the Panel considers the various regulations of FIFA to be applicable.
17. Among the provisions of the FIFA Statutes and regulations (referred to together as "FIFA's rules and regulations"), the following are particularly relevant:

FIFA Statutes

"Art. 61 Jurisdiction of CAS

1. *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".*

FIFA Regulations for the Status and Transfer of Players

"Chapter VII. JURISDICTION

Art. 22 FIFA Competence

Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, FIFA is competent for:

[...]

- b) *Employment-related disputes between a club and a player that have an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs has been established at national level within the framework of the Association and/or a collective bargaining agreement;*

Art. 23 Players' Status Committee

1. *The Players' Status Committee shall adjudicate on all disputes in accordance with Art. 22 c) and e) as well as on all other disputes arising from the application of these regulations, subject to Art. 24.*
2. *In case of uncertainty as to the jurisdiction of the Players' Status Committee or the Dispute Resolution Chamber, the chairman of the Players' Status Committee shall decide which body has jurisdiction.*

Art. 24 Dispute Resolution Chamber (DRC)

1. *The DRC shall adjudicate on any dispute in accordance with Art. 22 a), b) and d), with the exception of the issuance of the TTC.*
2. *The DRC shall adjudicate in the presence of at least three members, including the chairman or the deputy chairman, unless the case is of a nature that may be settled by a DRC judge. The members of the DRC shall designate a DRC judge for the clubs and one for the players from among its members. The DRC judge may adjudicate in the following cases:*
 - i) *all disputes up to a litigious value of CHF 100,000;*
 - ii) *disputes relating to the calculation of Training Compensation;*
 - iii) *disputes relating to the calculation of solidarity contributions.*

The DRC judge is compelled to submit fundamental issues to the chamber. The chamber shall consist of equal numbers of club and player representatives, except in those cases that may be settled by a DRC judge. Each party shall be heard once during the proceedings. Decisions reached by the Dispute Resolution Chamber or the DRC judge may be appealed before the Court of Arbitration for Sport (CAS).

Art. 25 Procedural Guidelines

1. *As a rule, the single judge and the DRC judge shall adjudicate within 30 days of receipt of a valid request and the Players' Status Committee or the Dispute Resolution Chamber shall adjudicate within 60 days. The proceedings shall be governed by the FIFA General Procedural Rules.*

[...]

5. *The Players' Status Committee, the Dispute Resolution Chamber, the single judge or the DRC judge (as the case may be) shall not hear any case subject to these Regulations if more than two years have elapsed from the event giving rise to the dispute. Application of this time limit shall be examined ex officio in each individual case.*
6. *The Players' Status Committee, the Dispute Resolution Chamber, the single judge or the DRC judge (as the case may be) shall, when taking their decisions, apply these Regulations whilst taking into account all relevant arrangements, laws and/or collective bargaining agreements that exist at national level, as well as the specificity of sport.*
7. *The detailed procedure for the resolution of disputes arising from the application of these Regulations shall be further outlined in the FIFA General Procedural Rules.*

Art. 27 Matters Not Provided for

Matters not provided for in these regulations and cases of force majeure shall be decided by the FIFA Executive Committee, whose decisions are final".

Annex 6 of the Regulations for the Status and Transfer of Players

“Art. 11 FIFA Competence

[...]

- 3. The Dispute Resolution Chamber or the DRC judge shall deal with disputes as provided for in Art. 24 of the Regulations for the Status and Transfer of Players.*
- 4. The decisions passed by the aforementioned bodies may be appealed to the Court of Arbitration for Sport (CAS)”.*

Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber

“Art. 1 Scope

- 1. The procedure of the Players’ Status Committee and the Dispute Resolution Chamber (DRC) shall be in accordance with the Rules laid down here.*

Art. 3 Jurisdictions

- 1. The Players’ Status Committee and the DRC shall examine their jurisdiction, in particular in the light of Articles 22 to 24 of the Regulations for the Status and Transfer of Players adopted in December 2004. In the event of any uncertainty as to the jurisdiction of the Players’ Status Committee or the DRC, the chairman of the Players’ Status Committee shall decide which body has jurisdiction.*

Art. 5 General procedural principles

- 1. The Players’ Status Committee and the DRC shall conduct the proceedings and monitor compliance with the procedural regulations”.*

Merits of the Appeal

18. The main issue which CAS needs to decide on the merits is whether FIFA’s decision of 16 March 2007, whereby it determined that its decision-making bodies lacked jurisdiction to entertain the employment-related dispute between Aris FC and its player, is valid or not in light of FIFA’s foregoing rules and regulations.
19. In deciding that issue, the Panel must base itself on FIFA’s internal procedural rules.
20. Upon examining the procedure followed by FIFA in rendering its decision of 16 March 2007, as well as the form of the decision, the Panel finds that FIFA has breached its own rules and regulations in a number of respects.
21. More specifically, the Panel finds that Aris FC’s request for relief of 30 November 2006 was not internally handled in accordance with FIFA’s rules and regulations, and that FIFA’s decision of 16 March 2007 was not rendered by a duly constituted body.

22. Given that a party filing a claim with FIFA will not necessarily be certain which body within FIFA is competent to decide the case and how that body will be constituted, FIFA's rules and regulations provide for a system whereby all petitions are submitted via the FIFA general secretariat (article 9§1 of the of the *Rules Governing the Procedures of the PSC and the DRC*: the "Procedural Rules"). The FIFA general secretariat then has the role of requiring any missing information/documents from the claiming party (article 9§2) and setting in motion the process for the case to be decided (article 9§3).
23. Furthermore, FIFA's rules and regulations specify how the cases filed with FIFA must be distributed between the PSC and the DRC, according to their respective areas of jurisdiction, and how the PSC and DRC must be constituted and proceed.
24. Article 3.1 of the Procedural Rules, articles 22-24 of FIFA's Regulations and article 11 of Annexe 6 thereto, define which of the PSC or the DRC is competent according to the nature of the dispute and specify that in case of any uncertainty in that respect the chairman of the PSC shall decide which body the case is attributed to.
25. In addition, articles 23-24 of FIFA's Regulations specify how the DRC and PSC must be constituted when making their decisions, while article 25 of FIFA's Regulations and articles 10-14 of the Procedural Rules describe how they must proceed.
26. Article 47 of FIFA's Statutes and articles 1 and 5§1 of the Procedural Rules underline that the PSC and DRC must ensure compliance with the Regulations and proceed according to the Procedural Rules.
27. In other words, FIFA has a clear system whereby its general secretariat has no authority to decide on issues of competence but must dispatch the claims to the DRC and the PSC according to their respective scope of jurisdiction under the rules and regulations; such bodies then deciding on their own competence and the chairman of the PSC determining which of the two bodies has jurisdiction in case of doubt.
28. The Panel finds that according to the foregoing FIFA procedural system, to be handled validly in accordance with the rules and regulations any claim received at FIFA must, if it meets the required form, be dispatched by FIFA's general secretariat to the PSC and the DRC for them to decide on their own competence. In other words, the general secretariat has no competence to decide questions of jurisdiction and the PSC and DRC have the duty to decide on their own competence in accordance with substantive issues that fall within their jurisdiction according to the rules and regulations. This also implies that the PSC and DRC must be properly constituted when making their decisions on their own competence.
29. With respect to the areas of competence of the two decision-making bodies, articles 22-24 of FIFA's Regulations and article 10 of Annexe 6 thereto leave no doubt that the DRC rather than the PSC has jurisdiction to adjudicate "*Employment-related disputes between a club and a player that have an international dimension*".

30. Thus, in order to conform with its own rules and regulations in the present case, FIFA general secretariat should have dispatched Aris FC's request for relief to the DRC, who should have duly constituted a panel (in accordance with article 24 of the Regulations) to determine, on the basis of the conditions stipulated under article 22 b) of the Regulations, whether or not it accepted jurisdiction to adjudicate the claim submitted by Aris FC.
31. If the DRC had accepted jurisdiction it should have proceeded on the merits. If the DRC had deemed it was not competent in light of the facts of the case, it should have rendered a formal decision on its lack of jurisdiction in keeping with the requirements of article 12 of the Procedural Rules, which, among others, require reasons to be given for the findings.
32. The Panel finds that the evidence adduced establishes that FIFA definitely violated its own foregoing mandatory procedure in several respects, since Aris FC's request was apparently never submitted to the DRC, which therefore never constituted itself to decide on the jurisdictional issues, while the signatories of FIFA's letter of 16 March 2007 decided the question in place of the FIFA's decision-making bodies, i.e. purportedly on their behalf.
33. In its main submission in this proceeding (its Answer of 8 May 2007), FIFA appears to recognize its own failure in this respect, by declaring that:

"As far as a possible refusal to pass a decision is concerned, we would also like to remark that, should the Appellant request and insist (which up to date has not been the case) on receiving a formal decision in the present matter from FIFA, the decision-making bodies of FIFA would pass a formal decision in this case as a matter of fact, while assessing also the question of their competence".
34. For the above reasons, the Panel considers that in making its decision of 14 March 2007, FIFA violated its own procedural rules, and that the decision is invalid insofar as the Appellant was thereby denied access to the competent body as defined by FIFA's rules and regulations.
35. That being said, the Panel considers it cannot rule on the competence of the DRC to entertain Aris FC's claim since, although it must be deemed a final decision, the FIFA decision of 16 March 2007 was not in effect made by the duly constituted and competent body within FIFA. In this respect, the Appellant's prayer for relief is not admitted. Instead, the Panel considers the decision of 14 March 2007 must be annulled and the case sent back to FIFA for the DRC to make a reasoned decision on its own jurisdiction to entertain or not the employment-related dispute submitted to FIFA by Aris FC.

The Court of Arbitration for Sport rules that:

1. The appealed decision of 16 March 2007 of FIFA is set aside.
2. The matter in dispute is remitted to the FIFA Dispute Resolution Chamber with the order for it to render a reasoned decision, within a reasonable timeframe, on its competence to entertain the employment-related dispute submitted to FIFA by Aris FC.
3. (...).
4. (...).
5. Any and all of the parties other prayers for relief are dismissed.