



Arbitration CAS 2001/A/324 Addo & van Nistelrooij / Union des Associations Européennes de Football (UEFA), order of 15 March 2001

CAS jurisdiction

Decision of a sporting nature

Late registration of players for the UEFA competitions

In view of the request for arbitration filed by Eric Addo and Ruud van Nistelrooij on 14 March 2001, against the decision pronounced by the Appeals Body of the UEFA on 14 March 2001;

In view of the application for provisional measures also dated 14 March 2001;

In view of the answer to this application for provisional measures filed by UEFA on 15 March 2001;

In view of art. R37, R48 and R52 of the Code of Sports-related Arbitration;

In view of the urgency of the case;

The Deputy President of the CAS Appeals Arbitration Division, ruling in camera, hereby considers

Whereas Eric Addo and Ruud van Nistelrooij are football players employed by PSV Eindhoven, club taking part in the Champions League / UEFA Cup during the season 2000/2001;

Whereas both players were injured and unable to play at least since the beginning of the current season;

Whereas on 20 and 21 February 2001, PSV Eindhoven requested the UEFA to register the players Addo and Van Nistelrooij in order to be able to play in the final rounds of the UEFA Cup;

Whereas by letter of 22 February 2001, the Manager of UEFA Competition Services informed PSV Eindhoven that the registration of the two players could not be accepted, the deadline for such registration being the 1st February 2001;

Whereas, in his decision, the Manager of the Competition Services stated that the deadline of 1st February 2001 was provided by art. 15.02 of the 2000/01 UEFA Champions League and UEFA Cup Regulations, as well as by the circular letter N° 25 dated 5 May 2000 concerning player eligibility and player lists for both UEFA Champions League and UEFA Cup.

Whereas on 6 March 2001, PSV Eindhoven challenged this decision before the Control and Disciplinary Body of the UEFA;

Whereas by decision of 7 March 2001, the Control and Disciplinary Body of UEFA dismissed the application of PSV Eindhoven confirming that the club failed to respect the deadlines provided by the UEFA rules and guidelines;

Whereas on 9 March 2001, PSV Eindhoven challenged the decision made by the Control and Disciplinary Body before the Appeals Body of UEFA;

Whereas on 14 March 2001, the UEFA Appeals Body decided to reject the appeal and to confirm the decision of the Control and Disciplinary Body;

Whereas on 14 March 2001 Eric Addo and Ruud van Nistelrooij filed a “request for arbitration” against this decision before the Court of Arbitration for Sport;

Whereas the two players request the CAS to order provisional measures in order to be allowed to play in the next stages of the UEFA Cup and in particular in the quarter finals second leg of that competition (against 1.FC Kaiserslautern);

Whereas the UEFA filed its reply to the request for provisional measures on 15 March 2001 and requested the CAS, firstly, to declare the request not admissible and, secondly, to declare it ill-founded;

Whereas the UEFA considers that the CAS does not have the jurisdiction to handle the present matter which is, according to UEFA, of a sporting nature only;

LAW

Whereas art. 58 of the UEFA Statutes provides that: “1. *The Organs for the Administration of Justice shall have exclusive jurisdiction to deal with all disputes of a sporting nature relating to UEFA matters which arise between UEFA and Member Associations, clubs, players or officials.* 2. *The decisions of the Organs for the Administration of Justice shall be final and binding. There shall be no recourse to legal action in the ordinary courts of law in relation to such matters*”.

Whereas art. 60 of the UEFA Statutes provides that: “*CAS shall have exclusive jurisdiction to deal with any challenge against a decision under civil law (of a pecuniary nature) of the organs for the administration of justice [of UEFA]. Any such challenge must be made at CAS within ten days of the notification of the decision which is challenged. A decision of the organs for the administration of justice of a sporting nature, or any parts of a decision that is of a sporting nature, may not be challenged in civil law*”.

Whereas in the light of these provisions, the jurisdiction of CAS can be admitted or denied depending on the nature of the dispute;

Whereas, in the award CAS 98/199 *Real Madrid v. UEFA*, the Panel considered that the CAS had full competence to assess the nature of a dispute;

Whereas it appears clearly that the registration of players is a matter of sporting nature as it is related exclusively to the administration of a sports competition;

Whereas in the Real Madrid case, the use of the Santiago Bernabeu Stadium was banned for 2 UEFA matches and whereas the CAS concluded that such decision was a sporting sanction and that the consequences of such ban were primarily of a sporting nature;

Whereas, in the present case, although the non-qualification of two players is a decision of a sporting nature, it can be also argued that such decision may have consequences of a pecuniary nature;

Whereas, given the outcome of this interim procedure, the issue of the CAS jurisdiction can remain undecided for the time being;

Whereas, consequently, it will be for the Panel to rule on its own jurisdiction (see art. 186 of the Swiss Act on Private International Law);

Whereas the CAS Court Office decided to allocate the present case to the CAS Appeals Arbitration Division;

Whereas, in view of art. 59 and 60 of the UEFA Statutes and of art. R47 of the Code of Sports-related Arbitration, this decision shall be confirmed;

Whereas although the Appellants suggest that their “request for arbitration” must be first considered as a request on its own and secondly as an appeal, it is not possible to consider the present matter as a “new case” which could be submitted to the CAS Ordinary Arbitration Procedure; in such a situation, the two players would have to initiate a new procedure before the UEFA authorities and then go to CAS; furthermore, in view of the wording of the art. 58, 59 and 60 of the UEFA Statutes, it would not be possible to submit the present case directly to CAS without any prior decision of UEFA, unless a specific arbitration agreement is signed between the two parties (like in the case CAS 98/200 *AEK Athens & Slavia Prague v. UEFA*);

Whereas it appears that the Appellants were not parties to the procedure before the UEFA organs and that PSV Eindhoven, which was a party before the first and second instance of UEFA, is not a party anymore before CAS;

Whereas the Appellants consider that the UEFA Appeals Body denied “without any motivation” to include the players as Claimants;

Whereas it appears that the application to the UEFA Appeals Body has been signed by the President of PSV Eindhoven without any mention that the appeal was filed on behalf of the club and of the players;

Whereas, considering that the issue of the identity of the parties is disputed and taking into account the outcome of the present interim procedure, this question may remain unsettled and left to the appreciation of the Panel in this regard;

Whereas, despite the above reservations, the present appeal may, at this stage, be considered admissible, without prejudice to any contrary decision made by the Panel which could mean the end of the proceedings;

Whereas it is for the President of the CAS Appeals Arbitration Division or his Deputy to decide on the application for provisional measures, considering that the Panel has not been formed yet (art. R37 of the Code of Sports-related Arbitration);

Whereas the Appellants put forward that the decision made by UEFA is not correct, firstly because the requirement to register before 1 February 2001 was not stated sufficiently clearly to avoid any misunderstanding and secondly because no reasonable interest is served by excluding the Appellants from the UEFA Cup;

Whereas the Appellants consider that the UEFA acted with insufficient care in its duty to inform PSV of the requirements for participation but admit that they were not registered with UEFA before 1 February 2001 *"because of an unfortunate turn of events"*;

Whereas the Appellants request CAS to order UEFA to permit them to participate in the remaining part of the UEFA Cup in the season 2000/2001 and to order urgent measures to the effect that UEFA be instructed to permit them to take part in PSV's match of 15 March 2001 against 1. FC Kaiserslautern;

Whereas the UEFA puts forward that the conditions for the granting of provisional measures are not fulfilled in the present case: the club clearly failed to register the Appellants on time for the UEFA Cup; the Appellants failed to demonstrate that they were likely to suffer any serious personal or financial damage if the request for provisional measures was rejected and the interests of UEFA clearly outweigh the interests of the Appellants in the present matter;

Whereas, as a general rule (see procedural order on application for preliminary relief rendered in the arbitration CAS 98/200 *AEK Athens & Slavia Prague v. UEFA*), when deciding whether to grant provisional measures, it is necessary to consider the risk of irreparable harm to the Appellants, the likelihood of success on the merits of the appeal and whether the interests of the Appellants outweigh those of the Respondent (balance of interests);

Whereas it is necessary to compare the risks incurred by the Appellants in the event of immediate execution of the decision with the disadvantages for the Respondent in being deprived such execution;

Whereas the Appellants must give the impression that the facts have a certain probability, and must also make summarily plausible that the rights cited exist and that the material conditions for a legal action are fulfilled;

Whereas the eligibility/registration of players for the UEFA Champions League and UEFA Cup is governed by the *UEFA Champions League Regulations* and the *UEFA Cup Regulations* (art. 15 in both regulations) which are published by UEFA and available to all national federations, clubs and players;

Whereas art. 15.02 of the UEFA Cup regulations provide that *“only players who are eligible to play for the club concerned on the following dates, and who have been duly registered with the UEFA Administration by means of lists A and B, are eligible to play in this UEFA club competition (...) 1 February 2001 (24.00 hours CET): for players referred to in paragraph 15.07”* [new players];

Whereas, pursuant to art. 15.10 of the regulations, *“when submitting player registration lists, the national association and club concerned must vouch for the content and are responsible for ensuring that the [provisions of art. 15] are respected”*;

Whereas, although both Appellants played for PSV Eindhoven during the previous season, they were not officially registered for UEFA club competitions in the season 2000/2001 (however Eric Addo seems to have been temporarily registered in September/October 2000 according to the decisions of the UEFA organs) and must be considered as “new players” according to the UEFA Regulations;

Whereas the letter dated 5 May 2000 and sent by UEFA to the Member Associations confirms the provisions of the UEFA Cup Regulations and, in particular, the deadline of 1 February 2001 (eligibility date, UEFA Cup as from 4th round); the circular letter reminds that *“with respect to player eligibility, please note that players registered must be eligible to play for the club in question by the aforementioned effective dates”*; the same circular letter also reminds that it is the responsibility of the member associations and clubs to comply with the regulations regarding player eligibility;

Whereas no confusion between the UEFA Champions League Regulations and the UEFA Cup Regulations seems to be possible as both regulations provide for the same deadline of 1 February 2001 for the registration of new players;

Whereas, consequently, it appears that the interests of the Appellants to play in the last rounds of the UEFA Cup, despite the fact that the club did not comply with the deadline for registration of players, do not outweigh the interests of the UEFA to have the UEFA regulations equally applied to all participants qualified in the UEFA Cup;

Whereas, prima facie and at this stage of the proceedings, it is not likely that the decision appealed from is contrary to the UEFA Regulations;

Whereas, in view of the above reasons, the application for provisional measures shall be dismissed.

The Deputy President of the CAS Appeals Arbitration Division, ruling in camera:

1. Dismisses the application for provisional measures filed by Eric Addo and Ruud van Nistelrooij on 14 March 2001.
2. States that the present order is pronounced without costs.