



Arbitration CAS 98/202 Peristeri A.C. / International Basketball Federation (FIBA), order of 13 July 1998

CAS jurisdiction

Exhaustion of the internal legal remedies prior to the appeal to CAS

On 19 June 1998, the FIBA Commission of Eligibility issued the following decision:

“We herewith confirm – as requested – that the athlete G. has the Hellenic basketball nationality for club purposes, and the Yugoslav basketball nationality for national team purposes for having played on the Yugoslav national team.

The outcome of our investigations regarding the athlete’s national status is as follows:

In August 1993 your federation sent us a request for the athlete G. to acquire the Hellenic basketball nationality. The corresponding “Certificate of Citizenship” granted the player “full eligibility” as a result of not having previously played on the Yugoslav national team.

In 1995, the Yugoslav Federation registered an athlete with the name J.M. for the Qualifying and Challenge Rounds of the 17th European Championship for Junior Men 1996, providing all the required documentation, including a valid Yugoslav passport. J.M. played on the Yugoslav national team in the said competitions.

At the time there was no evidence whatsoever that G.M. and J.M. were one and the same person.

It stands to reason that taking into consideration the new state of affairs, the athlete who decided to play for the Yugoslav and not for the Hellenic national team consequently has at present, “limited eligibility” for Greece. The athlete’s Certificate of Citizenship will be amended accordingly”.

On 8 July 1998, Peristeri Athletic Club. lodged a statement of appeal and a request for interim measures with the Court of Arbitration for Sport. In its statement, the Appellant requests “*that the CAS declares null and void the appealed FIBA decision and forbids the participation of the player J.M. or G.M. to the National Basketball Team of the Yugoslavian Federation, in any category and for any basketball game*”. The Appellant seeks provisional measures “before 14 July 1998, date of the beginning of the official competition of FIBA in Trapani – Italy (European Championship for Men “22 and under”).”

In its answer of 10 July 1998, the FIBA requests that the CAS dismisses the appeal brought by Peristeri A.C. The Respondent puts forward that the action brought by the Appellant is improper because the Appellant has failed to exhaust the internal remedies available to it according to the FIBA regulations.

LAW

In accordance with art. R37 of the Code, it is for the President of the CAS Appeals Arbitration Division, or its Deputy, to decide on requests for interim measures.

Pursuant to art. R47 of the Code, a party may appeal from the decision of a disciplinary tribunal or similar body of a federation, association or sports body, insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports body.

Pursuant to art. R37 §1 of the Code, no party may apply for provisional or conservatory measures under these Procedural Rules before the request for arbitration or the statement of appeal, which implies the exhaustion of internal remedies, has been filed with the CAS.

Both parties agree that the FIBA Regulations governing the national status of players are applicable to the present dispute. It appears that the decision challenged was rendered in accordance with the section 11 of the said Regulations (*“All decisions regarding the application of these regulations are taken by the Commission for Legal Matters and Eligibility acting through the Secretary General or the person designated by him”*).

The section 12 of the Regulations governing the national status of players provides that *“decisions according to section 11 above are subject to appeal by the interested parties to the Central Board within 30 days of receipt of the decision”*. In the present case, the decision challenged has not been submitted to the Central Board prior to the appeal to the Court of Arbitration for Sport.

The Appellant puts forward that the jurisdiction of CAS is based on the art. 53 of the General By-Laws of FIBA which states that *“Any dispute arising from these General By-Laws or the Internal Regulations of FIBA which cannot be reconciled shall be definitively settled by a tribunal constituted in accordance with the Statute and Regulation of the Court of Arbitration for Sport, Lausanne, Switzerland”*. However, in view of the section 12 of the FIBA Regulations governing the National Status of Players, it appears clearly that the art. 53 of the FIBA General By-Laws is not a relevant arbitration clause *in casu*. Therefore the appeal filed by Peristeri A.C. is premature and the Court of Arbitration for Sport has no jurisdiction to hear the present appeal and the attached request for interim measures.

Moreover, supposing the CAS would have had jurisdiction in this case, the Appellant has not brought sufficient elements at this stage to justify that interim measures be ordered by the CAS. It shall be noted that the Appellant does not put forward any argument explaining why the decision challenged would affect its interests.

Due to the lack of jurisdiction of the Court of Arbitration for Sport, the appeal and request for interim measures filed by Peristeri A.C. on 8 July 1998 shall be dismissed.

The Deputy President of the Appeals Arbitration Division of the Court of Arbitration for Sport rules:

1. The CAS has no jurisdiction to hear the appeal filed by Peristeri A.C. on 8 July 1998.
 2. The statement of appeal and the request for interim measures filed by Peristeri A.C. on 9 July 1998 are not admissible.
 3. The arbitration procedure N° 98/202 Peristeri A.C. v. FIBA is deleted from the CAS roll.
- (...)