

4A_560/2018¹

Judgment of November 16, 2018

First Civil Law Court

Federal Judge Kiss, Presiding,
Federal Judge Klett,
Federal Judge Hohl
Clerk of the Court: Carruzzo.

International Federation of Football Association (FIFA),
represented by Antonio Rigozzi and Mario Gallavotti,
Appellant,

v.

1. X. _____,
represented by Alexandre Zen-Ruffinen and Laurent Crevoisier, as well as Juan De Dios Crespo, and

2. World Anti-Doping Agency (WADA),
represented by Mr. Ross Wenzel and Mr. Nicolas Zbinden,
Respondents

Considerations in Fact and Law:

1.

1.1. In a decision of December 7, 2017, the Disciplinary Committee of the International Federation of Football Association (hereinafter: FIFA) suspended the professional football player X. _____ (hereinafter: the Player), found to have violated Art. 6 of the FIFA Anti-Doping Regulations, for a period of one year, minus the period of provisional suspension he had already served since November 3, 2017.

On December 20, 2017, the FIFA Appeals Committee, partially admitting the Player's appeal, reduced the suspension period to six months, after deducting the period of provisional suspension previously served.

1.2. On February 26 and March 9, 2018, the Player and the World Anti-Doping Agency (hereinafter: WADA) appealed against this decision.

¹ Translator's Note:

Quote as FIFA v. X. _____ and WADA, 4A_560/2018.

The decision was issued in French. The original text is available on the website of the Federal Tribunal, www.bger.ch

By Award of July 30, 2018, the operative part of which was notified to the parties on May 14, 2018, a Panel of three arbitrators of the Court of Arbitration for Sport (CAS), rejected the appeal of the Player and partially admitted that of WADA, fixing the duration of the suspension at fourteen months from the notification of the award, minus the period of provisional suspension that was already served.

1.3. On May 25, 2018, the Player lodged a civil law appeal with the Federal Tribunal against the Award (case 4A_318/2018). The case is still pending.

1.4. FIFA (hereinafter: the Appellant) has done the same, by a motion filed on October 17, 2018 (case 4A_560/2018²).

The Player, WADA and the CAS have not been invited to file an answer.

2.

2.1. According to art. 76(1) LTF,³ applicable to both domestic and international arbitration under Art. 77(2) LTF (*a contrario*), anyone who has taken part in the proceedings before the tribunal/court of previous instance or has been deprived of the opportunity to do so is entitled to appeal in civil matters (letter a), provided that he or she is particularly affected by the contested decision and has an interest worthy of protection in its annulment or amendment (letter b). If the standing to appeal is not obvious, it is incumbent upon the Appellant to demonstrate that the conditions are met and, to that end, to provide all the necessary facts (Judgment 5A_439/2009 of September 14, 2009 at 1.2.3; Bernard Corboz, in *Commentaire LTF*, 2nd ed., 2014, No. 6a ad art 76 LTF). The legal standing is determined exclusively according to Art. 76 LTF (above reference, at 1.2.2, with reference to ATF 126 I 43 at 1).

In accordance with Art. 76(1)(b) LTF, the Appellant must, in particular, have an interest worthy of protection in the annulment of the contested decision. An interest worthy of protection consists of the practical value that the admission of the appeal would bring to the one who filed the appeal, by avoiding economic, ideal, material, or other prejudice that the appealed decision would otherwise cause (ATF 137 II 40 at 2.3 (page 43). The interest must be current (Judgment 4A_426/2017⁴ of April 17, 2018, at 3.1 and the judgments cited). Moreover, the Appellant must have a personal legal interest. According to the principle *nul ne plaide par procureur*, it is in principle not permitted to take legal action by pleading not in one's personal interest but in the interest of others (Corboz, *op.cit.*, No. 22 ad art 76 LTF).

2.2. FIFA formally took part, as a defendant, in the proceedings before the CAS (Award, para. 3). It thus fulfills the condition laid down in art. 76(1)(a) LTF.

Art. 75(3)(1) of the Rules does indeed confer on FIFA the right to appeal to the CAS for international-level players. However, that option does not presuppose the quality of that association in bringing an action in civil matters against the CAS Award under appeal, as that is a question to be decided under Art. 76 LTF, as shown above.

² Translator's Note:

This is the present case.

³ Translator's Note:

LTF is the abbreviation for the Law of the Federal Tribunal.

⁴ Translator's Note:

The English translation of this decision is available here:

<http://www.swissarbitrationdecisions.com/atf-4a-426-2017>

The Appellant states that it raises arbitrariness, even violation of the principle of public policy, and of the violation of its right to be heard (Appeal, No. 43(ii)). The mere listing of grievances against the Award does not in any way enable the Federal Tribunal to verify how FIFA has a personal, current, and protective interest in challenging the contested decision.

The same applies to FIFA's assertion that all of its findings were rejected by the CAS (Appeal, no. 43 (iii)).

The said requests were directed only at dismissing the appeals filed by the Player and WADA, as well as at the confirmation of the decision rendered on December 20, 2017, by the FIFA Appeals Committee or, subsidiarily, that of the FIFA Appeals Committee issued on December 7, 2017, by the FIFA Disciplinary Committee (Award, para. 47). The CAS Panel dismissed these requests, and, after rejecting the Player's appeal and partially admitting WADA's appeal, increased the duration of the suspension from six to fourteen months and modified the decision of the December 20, 2017, accordingly. Before the CAS, FIFA thus played, *mutatis mutandis*, the same role that is ordinarily given, in a cantonal procedure, to a court of first instance whose judgment is submitted to the competent appellate jurisdiction. It goes without saying that neither this tribunal, nor the public authority on which it depends, can rely on Art. 76(1)(b) LTF to challenge the appealed decision before the Federal Tribunal, solely on the ground that the appeal instance modified the operative part of its judgment. There is no reason to decide otherwise with regard to FIFA, in this case at least. Moreover, the association failed to demonstrate how the fact that the Player was punished more than what it considered justified would in any way prejudice FIFA.

In the order made on September 27, 2018 in the related case 4A_318/2018, X. _____ v. FIFA and WADA, the President of the First Civil Law Court, ruling on a request for suspensive effect of the Player's sanction, pointed out in its comments of September 18, 2018 on said request, that FIFA had indicated its intention to lodge a separate appeal – an intention which it has carried out since then – while declaring that it considers with a certain benevolence the arguments developed by the Player in part of his application (order, page 3, last paragraph). She also mentioned, in passing, the question of the legal standing of FIFA, without further comment. It is apparent from these remarks that FIFA intended to support, by its own future appeal, one or other of the arguments put forward by the Player in his own appeal. Such an intention, which corresponds more or less to pleading on behalf of others, was hardly compatible with the assertion by the association of the existence of a personal interest conferring upon it standing before the Federal Tribunal.

Moreover, in the aforementioned observations of September 18, 2018, the Appellant clearly indicated, in these terms, the aim being pursued via the separate appeal it was about to lodge (page 3, letter D.b):

FIFA intends to file a separate appeal on its own behalf because the reasoning behind the appealed Award raises a fundamental question from the point of view of the principle of proportionality on which it is in the general interest to obtain the opinion of the Federal Tribunal, even from the narrow angle of arbitrariness or public policy.

It goes without saying that the mere desire to obtain a reply from the Federal Tribunal to a legal question which FIFA considers to be fundamental, even if it was understandable, is not capable of conferring on FIFA the legal standing in the meaning of the Art. 76(1)(b) LTF.

Accordingly, the present appeal is inadmissible.

3.

The Appellant, who is unsuccessful in its appeal, must pay the costs of the federal proceedings (Article 66(1) LTF). On the other hand, it will not have to compensate its opposing parties, as they were not invited to file an answer in these proceedings.

For these reasons, the Federal Tribunal pronounces:

1.

The appeal is inadmissible.

2.

The legal costs, fixed at CHF 1'000, shall be borne by the Appellant.

3.

This judgment will be communicated to the representatives of the parties and to the Court of Arbitration for Sport.

Lausanne, November 16, 2018

On behalf of the First Civil Law Court of the Swiss Federal Tribunal

The President:

Kiss

Clerk:

Caruzzo