

Morocco and Tunisia Appeal Before the Court for Sports Arbitration

April 2015

They are appealing against sanctions and disciplinary orders made by the African Football Confederation ("CAF") in relation to the 30th Africa Cup of Nation which was held in Guinea earlier this year (the "Appeals").

The claims are of interest because they illustrate the role of CAS in the region, a role that is set to become more important with the ever-growing amount of sporting events taking place in the Middle East and North Africa, not least the 2022 World Cup in Qatar.

Morocco

Morocco was meant to host the 30th Africa Cup of Nations but decided to withdraw due to the spread of the Ebola virus epidemic in West Africa. The FRMF had requested from the CAF a postponement of the 2015 tournament, but CAF rejected the idea. FRMF then withdrew from hosting the tournament, which prompted CAF to move the tournament to Guinea. CAF also banned Morocco from taking part in the next two tournaments and imposed a fine of USD 1 million and the payment of Euro 8 million in compensation to CAF and its stakeholders.

FRMF seek to appeal these decisions by CAF made against it. It is expected that an award in connection to the appeal will be issued within about three months.

Tunisia

The appeal by the FTF relate to sanctions that were ordered by CAF as a result of incidents that took place on the pitch at the end of a quarter final match of the Africa Cup of Nations between Tunisia and Equatorial Guinea. The incidents were mainly actions directed against the match referee and CAF officials.

CAF condemned FTF for the incidents, fined them USD 50,000, and invited them to send an apology to CAF for accusations of bias against the Tunisian team, or to present a letter with irrefutable and tangible evidence proving FTF's claims of CAF's bias. CAF also endorsed the decision to suspend the FTF president, Mr. Wardie Jari. CAF fixed a deadline of 31 March 2015 for the FTF to conform with the CAF directives, failing which Tunisia would be disqualified from the following Africa Cup of Nations in 2017.

The CAF announced on 1 April 2015, that during a meeting on 13 March 2015 with the FTF, the FTF started its presentation with a formal apology. However, in its press release, CAF did not state that the apology complies with the decision of the disciplinary board of 6 February 2015. Moreover, it has been announced in a Nigerian newsletter that the FTF sent an apology to CAF, however the announcement has not been officially confirmed till date.

In its statement of appeal the FTF enclosed a separate request to stay the decisions relating to the suspension of Mr. Jari and the disqualification of Tunisia from the 2017 Africa Cup of Nations pending the appeal. However, on 5 March 2015 CAS issued an order rejecting the request for a stay based on its non-urgency. CAS stated that there was no irreparable damage attached or to be suffered by FTF given that the tournament is taking place in the year 2017.

It is expected that an award in connection to the appeal will be issued within about three months.

The role of CAS

CAS is an independent institution based in Switzerland. It was initially created in 1984 as part of the International Olympic Committee to deal with disputes arising during the Olympics in an impartial and non-political way. In 1994 it was reformed and became independent of the International Olympic Committee.

CAS is able to consider any sports-related disputes provided there is an agreement to submit such disputes to it. This agreement may be incorporated in a contract between the parties (either before or after the dispute arises) or more often it may be stated in the statutes and regulations of the relevant sports organization. As described more fully below, this is the case in relation to CAF.

The dispute resolution mechanism used at the CAS may be a regular arbitration proceeding, mediation or an appeal arbitration procedure. The appeal arbitration procedure is applicable for disputes resulting from decisions taken by the internal bodies of sports organizations, such as CAF.

Since 1994 CAS has become increasingly popular as a way of independent resolving sports-related disputes. It has resolved thousands of cases and has a list of arbitrators from all regions of the world.

CAS and CAF

The jurisdiction of CAS in relation to the appeals failed by Tunisia and Morocco is derived from, amongst other things, Article 49 of the CAF Statute dated 11 February 2007. Paragraph 1 of Article 49 states that CAF shall allow appeals to CAS "to resolve any disputes between CAF, national associations, members, leagues, clubs, players, officials, match agents and licensed players' agents". Moreover, paragraph 2 of the same article states that the Code of Sports-related Arbitration shall be the procedural rules governing the arbitration proceedings while the substantial rules shall be "the various regulations of CAF and FIFA or, if applicable, of national associations, members, leagues and clubs and, as a last resort, Swiss law" .

The appeals procedure may be filed only after exhausting all the internal remedies of the sports organization concerned. Moreover, according to Article 49(3) of the CAF Statute, the appeals must be filed with CAS within 10 days of the decision being communicated to the concerned party.

Conclusion

It remains to be seen how the Tribunal's appointed in relation to the two appeals will resolve them, though their decisions should be made later this year. However whatever the decisions, the role of CAS in the region is likely to increase with the growing number of sporting events. CAS provides a neutral and efficient mechanism by which sports disputes can be resolved, and its growing popularity is a testament to its effectiveness. In the coming years we can expect a growing role for CAS in the Middle East and North African region. To accommodate for such growth and facilitate access to the CAS in both regions, two cooperation agreements were signed in 2012, launching alternative hearing centres ("AHC") in Cairo and Abu Dhabi. The first cooperation agreement was signed with the Cairo Centre for International Commercial Arbitration-CRCICA for the *Cairo AHC* and the second cooperation agreement was signed with the Abu Dhabi Judicial Department for the *Abu Dhabi AHC*. The presence of the CAS in both regions through the AHCs will simplify procedures and save costs as parties will no longer be required to travel to Switzerland for their CAS appeals, arbitrations or mediations.