

# A review of CAS Arbitration in Financial Fair Play disputes

The Financial Fair Play ('FFP') regulations were enacted as a recourse to guarantee the sustainability of European football. Although their impact is seen as positive for football finances in Europe, their interpretation and application has been subject to scrutiny. Juan de Dios Crespo and Paolo Torchetti of Ruiz-Huerta & Crespo Abogados, review FFP jurisprudence from the Court of Arbitration for Sport ('CAS') and discuss the interpretation of CAS on matters such as jurisdiction, the referral to domestic regulations and the concept of reporting perimeter.

The history of financial mismanagement in EU club football has been well documented. Analysts have claimed that unless UEFA imposed cost controls the English, Italian and Spanish leagues would be bankrupt<sup>1</sup>. 22 Spanish clubs entered into bankruptcy protection between 2004 and 2010<sup>2</sup>. UEFA's Club Licensing Benchmarking Report for 2009 found that 37% of EU clubs in a first division reported net negative equity with a total of €1,179,000,000 of debt. EU clubs were spending more than double that which they held as tangible fixed assets and 73 EU clubs playing in a first division were spending more than 100% of their gross revenues on player salaries<sup>3</sup>.

UEFA's report, 'Club Licensing: 10 years on... Evolvement of the Club Licensing System since its Introduction in 2004,' paints a much more optimistic picture and hails FFP as a 'widely recognised system with a proven track record that has done much to improve the financial sustainability of European football clubs.'<sup>4</sup> FFP now finds itself

entrenched in UEFA's legal and regulatory scheme governing club football. EU clubs have been sanctioned for FFP transgressions and have been excluded from competing in both the Champions and Europa Leagues.

Within this context, CAS has issued decisions and awards applying and FFP regulations contributing to a developing body of jurisprudence. This article reviews some issues arising in FFP disputes before CAS.

## Jurisdiction

It is important to consider what type of FFP disputes can be heard by CAS. Decisions of the Adjudicatory Chamber of the UEFA Club Financial Control Board ('CFCB') can be appealed to CAS as a right<sup>5</sup>. The UEFA FFP regulations also delegate the licensing function to national football associations, or in certain situations, to the leagues<sup>6</sup>. The decisions of national licensing organisations can only be appealed to CAS if the national regulations explicitly confer the CAS appeal jurisdiction over such decisions. CAS has ruled that the licensing regulations of Real Federación Española de Fútbol ('RFEF') and Federazione Italiana Giuoco Calcio ('FIGC') do not allow appeals against FFP licensing decisions of the Second Instance Licensing Committee of Spain<sup>7</sup> and the Alta Corte di Giustizia Sportiva in Italy<sup>8</sup>. However CAS has determined that it does have jurisdiction to hear the FFP appeals concerning decisions of the Romanian licensing committee<sup>9</sup>. Whether CAS has the ability to hear the appeal of a decision of a national licensing body depends on the wording of the federation's regulations.

## Application of domestic law

One recurring issue within FFP disputes is whether domestic law is

applicable. Many of the clubs sanctioned for FFP violations are either undergoing bankruptcy protection or owe money to domestic tax authorities. As a result this issue has involved the application of domestic bankruptcy law or tax law.

The Romanian Club Licensing Commission denied F.C. Universitatea Cluj ('Cluj') a First League licence for overdue payables. The key issue in this case before CAS was whether the club submitting to bankruptcy proceedings affected the outstanding overdue payables that the club accumulated by suspending whether outstanding debts were in fact 'overdue' within the meaning of the Romanian FFP licensing regulations.

Cluj appealed the decision of the Romanian commission to CAS<sup>10</sup> and argued that it was necessary to examine Romanian bankruptcy law and that initiating Romanian bankruptcy proceedings had the effect of delaying the timing of when the debts were due. As the pursuit of the debts was suspended it was argued that they were not yet overdue and the licences ought to be granted. Cluj also claimed that the domestic licence ought to be granted because the Romanian Football Federation informed all clubs that the Romanian FFP regulations would not be considered when issuing domestic competition licences.

With respect to jurisdiction the CAS Panel determined that the applicable laws were the rules of the Romanian Licensing Commission and Romanian bankruptcy law<sup>11</sup>. The Panel agreed with the club that the initiation of bankruptcy proceedings does have the legal effect of suspending the debt and that the licences should be granted<sup>12</sup>. The Panel concluded that because the bankruptcy court approved the reorganisation and a



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corporate recovery plan was passed without the liquidation of Cluj's assets, the club had the ability to carry on "as a going concern" under Romanian FFP regulations<sup>13</sup>. CAS allowed Cluj's appeal and ordered the Romanian Football Federation to issue the licence authorising the club to participate in the Romanian Liga I.

This issue also arose regarding the application of domestic tax law. The UEFA CFCB Adjudicatory Committee fined Malaga €300,000 and prohibited it from competing in the next UEFA club competition for which it would otherwise qualify, and conditionally for a second competition, for overdue payables to the Spanish tax authorities. Malaga appealed this decision to CAS<sup>14</sup>. The club argued that Malaga's debts were not overdue because, according to Spanish tax law, the amounts resulting from a self-assessment are actually 'voluntary terms of payment' and if the debtor submits a request for deferral of payment the tax authorities are prevented from pursuing any enforcement measures for the collection of the outstanding amounts until the tax authorities have decided on the request for deferral<sup>15</sup>. As a consequence Malaga claimed that the amounts were not 'overdue' within the meaning of the UEFA FFP regulations because it had made a request for deferral prior to the overdue payable date and the amounts were not overdue at that time, even though the Spanish tax authorities had not yet decided on the request. UEFA took the opposite view and argued that Spanish law is not applicable and that the amounts were overdue further to UEFA regulations and subsidiarily Swiss law<sup>16</sup>.

The CAS Panel ruled that the FFP regulations were intended to apply uniformly throughout Europe and that "Spanish law does not apply

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within the definition at UEFA level of the expression overdue payables."<sup>17</sup> The Panel reasoned that the application of national law "is legitimate only (i) if necessary for the application of the CL [club license] & FFP [regulations] and (ii) where recourse to national laws does not undermine the very purpose of the CL & FFP[R]" and concluded that "(n)either prerequisite is fulfilled in the case at hand."<sup>18</sup> Malaga's appeal was dismissed and the UEFA sanctions stood because the Panel was of the view that applying national law undermined the purpose of the UEFA FFP regulations.

It is possible that this inconsistent application of domestic law may result in inconsistent results. As mentioned above, UEFA delegates the licensing process to national associations under FFP regulations<sup>19</sup>. If a club is granted a national licence by the national licensing committee which applies domestic law and that club applies for and is admitted to either the UEFA Champions<sup>20</sup> or Europa<sup>21</sup> League on the basis of that national licence, then the precise problem that the Malaga Panel intended to avoid continues to exist. We note that this possibility is contingent on whether UEFA exercises its independent power to review the propriety of the issuance of a national licence within the context of a review of a club's application to compete in a UEFA competition<sup>22</sup>.

#### **The 'reporting perimeter'**

Despite qualifying to compete in the Europa League, the Romanian club FC Petrolul Ploiesti was experiencing financial difficulties which resulted in the club's inability to meet its financial obligations. Amid public reports that members of the club's leadership were put under house arrest for unpaid taxes and fraud<sup>23</sup>

the club accumulated overdue payables to other football clubs and social/tax authorities.

Previous to this period the club and three partners established 'Lupii Galbeni 2012,' an association to further the practice of sport in Ploiesti. The municipality of Ploiesti entered into a contract with the association where it agreed to transfer €4,000,000 per year for five years to the association to pay the club's players on behalf of the club. The Chief Investigator of the CFCB ordered the club to disclose the financial statements of the association under the 'reporting perimeter' provision of Article 46bis of the FFP regulations. The club did so which revealed that the association owed a further €200,000 for unpaid player bonuses. The club argued before the Adjudicatory Chamber of the CFCB that the additional €200,000 should not be included in the club's overdue payables. This argument was rejected and the CFCB found that the accumulation of overdue payables of €519,000, including amounts owed by 'Lupii Galbeni 2012' violated FFP regulations. The club was sanctioned and excluded from participating in the next UEFA club competition that it would otherwise have qualified for.

The club appealed the decision of the CFCB to attribute the €200,000 owed by 'Lupii Galbeni 2012' to the accounts of the club to CAS<sup>24</sup>. CAS affirmed the decision of the CFCB. The Panel concluded that Article 46bis(2) of the UEFA FFP regulations was correctly applied as the bonuses owed by 'Lupii Galbeni 2012' qualified as "compensation paid to employees [...] arising from contractual or legal obligations" and fell within the 'reporting perimeter.'<sup>25</sup> A plain reading of this Article reveals that it applies whether or not the entities are related. The CAS Panel



did not apply the related parties provision of Article 46bis(3) of the UEFA FFP regulations even though it may have had the opportunity to do so as the club was a partner in the association.

This decision is significant because (1) the 'materiality' exception to the 'reporting perimeter' has been clarified; (2) the Adjudicatory Body of the CFCB has relied on the Panel's decision with respect to the purpose of the FFP regulations; and (3) the Panel made specific comments with respect to third party entities.

The exception contained in Article 46bis(4)(a) excludes entities from the 'reporting perimeter' if the amount is 'immaterial compared with the overall group.' The Panel declared that the party seeking the exception bears the onus of demonstrating whether this exception has been satisfied<sup>26</sup>. The Panel further clarified that the term 'immaterial' must be interpreted narrowly and that it can refer to both the amount at issue as well as the scope of influence<sup>27</sup>. The Panel agreed with the CFCB that a €20,000,000 commitment over four years was not immaterial<sup>28</sup>.

In addition CAS echoed that the objectives of the UEFA FFP regulations includes the protection of creditors by ensuring that clubs settle their liabilities punctually and, thus, the protection of the viability and sustainability of EU football<sup>29</sup>. This declaration has been applied by the CFCB Adjudicatory Chamber<sup>30</sup>.

Finally, the Panel made specific comments with respect to the use



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of third party entities created for the purposes of circumventing FFP regulations. More specifically, the Panel mentioned that the FFP objectives would be vitiated if clubs were able to transfer obligations outside of core club structures and that the 'reporting perimeter' must be interpreted in such a way as to ensure that clubs cannot do this<sup>31</sup>.

The result is that the definition of 'reporting perimeter' has been interpreted narrowly and strictly which may result in the denial of future UEFA licences should other clubs attempt to transfer obligations to third parties.

## Conclusion

With the advent of FFP, CAS has expanded its influence over the financial regulation of EU club football placing new responsibilities on CAS as the final arbiter of FFP regulations in certain cases. The authors welcome this development. However, in order to ensure consistency in the application of football law across Europe the authors hope that (a) all national licensing committees ensure that their regulations allow for the appeal of decisions to the CAS; and (b) in the future CAS panels hold that domestic bankruptcy and tax law is applicable to decisions not only concerning UEFA FFP regulations but to those decisions of national FFP licensing federations involving national licensing regulations.

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1. AT Kearney, 'Is Football too Big to

Fail?' 2010.

2. Associated Press, 'Twenty-Two Spanish Soccer Clubs Have Entered Bankruptcy Protection,' 11 July 2011.

3. The European Club Footballing Landscape: Club Licensing Benchmarking Report Financial Year 2009. UEFA: Nyon 2009, at p. 17.

4. Club Licensing: 10 years on... Evolvement of the Club Licensing System since its Introduction in 2004, UEFA: Nyon 2015, at p. 43.

5. Procedural Rules Governing the UEFA Financial Control Body Edition 2015. UEFA: Nyon. Article 34(2).

6. UEFA Club Licensing and Financial Fair Play Regulations: Edition 2015. UEFA: Switzerland. Article 5.

7. CAS 2013/A/3199 Rayo Vallecano de Madrid SAD v. RFEF.

8. CAS 2014/A/3629 Parma FC v. FIGC & Torino FC.

9. CAS 2013/A/3194 S.C. F.C. Universitatea Cluj S.A. v. RFF & RPFL.

10. Ibid.

11. Ibid at paras. 39 and 54.

12. Ibid at para. 56.

13. Ibid at para. 62.

14. CAS 2013/A/3067 Málaga CF SAD v. UEFA.

15. Ibid at para. 4.1.2.

16. Ibid at para. 4.2.2(a).

17. Ibid at para. 9.5.

18. Ibid at para. 9.6.

19. UEFA Club Licensing and Financial Fair Play Regulations: Edition 2015. UEFA: Switzerland. Article 5.

20. Regulations of the UEFA Champions League 2015-18 Cycle: 2015/16 Season. UEFA: Switzerland. 2015. Article 4.01(c).

21. Ibid.

22. Ibid; Regulations of the UEFA Europa League 2015-18 Cycle: 2015/16 Season. UEFA: Switzerland. 2015. Article 4.01(c).

23. Petrolul's president Dan Capra and general director Marius Bucuroiu, arrested for 24 hours!, DigiSport (in Romanian), 25 November 2014.

24. CAS 2013/A/3453 FC Petrolul Ploiesti v. UEFA.

25. Ibid at para. 71.

26. Ibid at para. 74.

27. Ibid at para. 77.

28. Ibid at para. 78.

29. Ibid at para. 79.

30. UEFA CFCB Adjudicatory Chamber AC-01/2015 Pellohonka Oy, at paragraph 51.

31. See footnote 24, at para. 79.

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