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An Appealable 'Decision' Before CAS: What Exactly Are We Talking About?

S. Mohammadali Abdollahi (I.R. Iran Archery Federation) · Friday, March 12th, 2021

In accordance with S20.C of the Code of Sports-Related Arbitration (the Code), the Appeals Arbitration Division (AAD) of the Court of Arbitration for Sports (CAS) has jurisdiction "to resolve disputes concerning the decisions of federations, associations or other sports-related bodies insofar as the statutes or regulations of the said sports-related bodies or a specific agreement so provide." Almost identical wording is also repeated in R27 and R47 of the Code. The Code, however, is silent on the meaning and characteristics of a "decision" as referred to in relevant provisions of the Code, which has raised some controversies among scholars as to what may be called a 'decision' appealable before AAD and what formal or substantive requirements are necessary for a document to be considered as such.

Previously, CAS had dealt with the issue when deciding on its jurisdiction to engage with an appeal (see for example CAS 2009/A/2000, or CAS 2018/A/5933). Nevertheless, the most recent decision of the CAS in *Karim Safaei v. World Archery Federation & I.R. Iran Archery Federation (CAS 2018/A/5871)* – issued on 20 November 2020 – is a notable example as to what shall be considered as an 'appealable decision'.

Relevant Facts of the Case

The case concerned an appeal filed by Mr. Karim Safaei (Appellant), the former president of I.R. Iran Archery Federation, against World Archery (1st Respondent / WA) and I.R. Iran Archery Federation (2nd Respondent / IAF). The Appellant challenged a letter issued by WA on July 31st, 2018. In the letter, WA accepted the outcome of I.R. Iran Archery Federation presidential election, in which the Appellant had applied to be a candidate, but was not qualified as such.

The challenged letter was issued in response to Mr. Safaei's complaint to WA. Mr. Safaei believed that the election was not held in conformity with the WA rules and regulations and that he was wrongly disqualified to become a candidate in the election. The WA, after investigating the matter and studying all the relevant documents, issued a letter, which, in relevant parts, read as follows:

> *the World Archery Executive Board looked at all papers submitted and came to the conclusion noting especially that none of the people that submitted the complaints*

> *were present at the assembly.*

In his submissions, the Appellant referred to the letter as WA's "decision" (para. 43), while WA considered it as merely a "letter" and "not a "decision" (para. 44), and accordingly, WA requested the Soler Arbitrator to declare the appeal as inadmissible (para. 45).

The Appeal was rejected by CAS Sole Arbitrator, Michael Beloff QC, on the grounds of a lack of jurisdiction with regard to both Respondents, since the letter in dispute was not among the decisions subject to CAS jurisdiction under the Statutes of WA and IAF. Thus, the Sole Arbitrator did not deal with the substantive submissions of the Parties. The award, nevertheless, contains a remarkable ruling on the meaning of a "decision" which may be appealed before CAS AAD.

The Meaning of an Appealable Decision

In deciding on jurisdiction, the Sole Arbitrator referred to R47 of the Code and recalled that for the CAS AAD to have jurisdiction in a given case, there must be, inter alia, an "appealable decision" (para. 49.1). The Sole Arbitrator, therefore, as a primary requirement of its jurisdiction, was required to determine whether WA's letter of July 31st, 2018 could be qualified as an "appealable decision".

In doing so, the award is based on the criterion recognized in Swiss case law related to administrative procedure that a decision

> "*is an act of individual sovereignty addressed to an individual, by which a relation of concrete administrative law, forming or stating a legal situation, is resolved in an obligatory and constraining manner. The effects must be directly binding both with respect to the authority as to the party who receives the decision*." (para. 51)

Therefore, in the view of the Sole Arbitrator, for a document to be considered as a 'decision' it must have 'legally binding effect'. In other words, if a communication may have the effect to bind the addressee or the issuer in the legal sense of the word, it will be considered as a 'decision' appealable before CAS AAD.

On this basis, since WA's communication of July 31st, had, inter alia, confirmed the conformity of I.R. Iran Archery Federation election with WA's rules and regulations, it could be considered as a 'decision'. In the Sole Arbitrator's view, the fact that the letter constitutes a 'decision' would be better understood if one bears in mind that had the letter not approved the outcome of the election, IAF would have faced certain sanctions based on WA's Statute (para. 53).

Therefore, contrary to WA's submissions, the Soler Arbitrator ruled that the letter of July 31st, 2018 was a 'decision' within the meaning of R47, although he further held that the decision was not appealable due to limitations under article 1.30.1 of WA's statute.

A Step Too Far?

CAS jurisprudence, specifically in this most recent case of *Karim Safaei v. WA & IAF* has taken a substantive approach, rather than a formalistic one, when deciding on the nature of documents to be considered as a 'decision'. The logical implication of such approach is that unlike presumptions that a decision is a document which has satisfied some formal or administrative requirements, it suffices for the CAS panels that the said document may be characterized, in whole or in part, as a "legally binding" communication for the issuer or the addressee, regardless of its form as a letter, memo, report, notice or other similar forms.

In the author's view, although the formalistic approach is not defensible when dealing with appealable decisions before CAS, in the case of *Karim Safaei v. WA & IAF*, the sole arbitrator neglected the fact that the WA's communication of July 31st was addressed to IAF, and not to Mr. Safaei. Moreover, the WA's communication was only an administrative communication between WA and IAF without any *animus decidendi* (i.e. an intention to decide on the matter). In other words, the door was wide open for Mr. Safaei to raise his case before competent bodies within WA or before any other national or international judicial body, meaning that the said communication was not a decision of any kind, especially for the purposes of R47 of the Code. In *Al-Hilal Club v. FIFA*, for instance, the CAS panel held that a letter issued by FIFA for the execution of points deduction, would not constitute a 'decision', since it was merely an 'administrative letter' and "there was no *animus decidendi* in the said letter (para. 67). This was the same, at least in WA's view, for the letter of July 31st issued by WA's secretary, since it was only of an 'informative' nature without affecting the rights of the Appellant, or even IAF to follow the matter by resorting to competent bodies within WA. The fact that the WA's letter contained certain recommendations for IAF to improve clarity in the election was another indication that the letter was only an 'administrative' communication, without any *animus decidendi*.

In any event, the ruling in this case may be considered as a stricter approach when compared to the previous jurisprudence of CAS arbitrators mentioned above. It leaves no doubt for further cases that the term 'decision' must be construed in a broad sense and what is crucial in characterizing an instrument as a 'decision' is whether it affects, or intends to affect, the rights of the addressee(s). Therefore, sports bodies shall think twice of the content of their communications towards athletes, coaches or other recipients, since regardless of the form of such communications, and regardless of the genuine intention of the said sport body to issue a decision or not, in the view of CAS arbitrators, they may constitute a 'decision' appealable before CAS.

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The author of this post was a Legal Counsel for I.R. Iran Archery (second respondent) in the case discussed above.

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