



Arbitration CAS 2004/A/605 Pamesa Valencia v. Euroleague Basketball, award of 12 May 2005

Panel: Mr. François Carrard (Switzerland), President; Mr. José Juan Pintó (Spain); Mr. Peter Leaver QC (United Kingdom)

Basketball

Contractual duty to appear in a game

Failure to participate in a Euroleague game due to alleged security reasons

Lack of 'suitable justification'

Disciplinary sanction

- 1. On the basis of article 6.2.1. of the Protocol of Constitution of Euroleague, a basketball club has a contractual duty to appear at the game, unless excused by the Regulations. The existence of such an excuse has to be proved by the club. A “suitable justification” is not constituted by the situation in a country which although being far from being “normal” has not prevented the Euroleague competition from taking place in safe and undisturbed environments for the competition. The situation is considered to have been carefully evaluated by Euroleague, when it decided that the game at hand be played in a city such as Tel Aviv and took into account the security measures offered to prevent any risk and/or accident. There was no existence of a specific and individual threat to the life of the members of the Appellant’s team. As to the fact that Euroleague had convened an extraordinary meeting to discuss the venue of the Final Tour, such extraordinary meeting does not constitute a “suitable justification” on which the club could rely.**
- 2. The failure to appear at the game without justification constitutes an infringement submitted to sanction which should be limited to the possible expenses associated with refereeing the scheduled game.**

Pamesa Valencia Basketclub SAD (“Appellant”) is a Spanish basketball club. It is a member of the Spanish basketball league which in turn is a member of the Euroleague.

Euroleague Basketball SL (“Respondent”) is an organization with its seat in Barcelona, Spain, created by European professional basketball clubs and professional leagues through the Protocol of the constitution of the Euroleague Basketball.

Within the fourth round of the Euroleague competition, which gathered the best 16 qualified European basketball teams, a game between the Appellant and Maccabi Elite Tel Aviv (“Maccabi”) was scheduled to be played on 25 March 2004 in Tel Aviv, Israel.

On 22 March 2004, a special operation implemented by Israeli services resulted into the death of Sheik Yassin in Gaza, Palestine. Sheik Yassin was a leader of the Palestinian Hamas movement. As a consequence of his death, Israel feared terrorist attacks on its territory.

In view of the situation described above, the Appellant requested from the Respondent, by letters of 24 and 25 March 2004, the postponement or change of venue of the game scheduled on 25 March 2004 against Maccabi in Tel Aviv. In particular, by letter dated 24 March 2004, which followed preceding telephone conversations, the Appellant had expressed to the Respondent its concern about the existence of safe conditions for the game to take place in light of the situation in Israel. This was expressed in a letter dated 24 March 2004 from the Appellant to the Respondent, in which the Appellant was requesting that either another date be set for the game or that such game should take place in another area which would guarantee the necessary stability for such game to take place.

On the same day, namely 24 March 2004, the Minister of Education, Culture and Sports of Israel, informed of *“the announcement by Pamesa Valencia Basketball team that, due to the security situation, it will not participate in the Euroleague game here against Maccabi Tel Aviv”* wrote to the Spanish Minister of Education, Culture and Sports, asking that the said ministry does *“everything in your power to ensure that Pamesa Valencia comes to Israel”*.

On the same day, which was in fact 24 March 2004, the CEO of the Respondent replied to the Appellant that Euroleague decided neither to change the date of the game, nor its venue. The Respondent further notified to the Appellant that the latter should play the game as instructed, it being clear that if it were not the case, a disciplinary procedure would be undertaken in accordance with the Bye-laws of the Respondent.

On 25 March 2004, the Appellant confirmed to the Respondent that it was maintaining its decision not to travel to Tel Aviv to play the game on 25 March 2004. Following such announcement, the game between the Appellant and Maccabi was suspended by the Respondent for non-appearance of the Appellant’s team.

On 31 March 2004, after considering the arguments which had been submitted by the Appellant, the Euroleague Disciplinary Judge issued the decision 25/2003-2004 in which, applying article 35 of the Euroleague Regulations as well as article 34a and 37 of the Euroleague Disciplinary Regulations, the said disciplinary Judge held that the Appellant had not given a *“suitable justification”* for its failure to appear at the game and adjudicated as follows:

“... we determine that the game is considered lost to the infringing club - Pamesa Valencia- by the result of twenty to zero (20-0).

... We also decide that Pamesa Valencia is responsible for compensation of all the expenses associated with refereeing and other costs that the organization of the games might have caused that are duly justified before the Euroleague.

... (T)aking into consideration the special circumstances surrounding this case, we determine the application of a fine of 5,000 Euros to Pamesa Valencia, for the infringement described in article 34, Paragraph a)".

On 7 April 2004, the Appellant appealed from the decision rendered by the Disciplinary Judge of the Euroleague on 31 March 2004. The Appellant applied for the stay of such decision.

On 9 April 2004, the Appeals' Judge of Euroleague dismissed the application for a stay.

On 14 April 2004, the Appeals' Judge of Euroleague issued his decision ("the Decision"), whereby the appeal filed by the Appellant was dismissed and the decision of the disciplinary Judge of Euroleague confirmed. The disciplinary Judge of Euroleague held that *"the assurances given by Euroleague and the authorities of Israel as to measures to be adopted – failing a specific (not a generic) indication to the contrary, that the Appellant has not given – were sufficient to confirm their adequacies"*. The appeals' Judge further specified that *"he would have been led to a different evaluation of the situation if evidence had been given by the Appellant as to the existence of a specific and individual threats to the life of the members of its team. But this (was) not the case"*. Finally, the Appeals' Judge recalled that, at its extraordinary meeting held on 30 March 2004, the Euroleague had confirmed the holding of the Final Four in Tel Aviv, which precisely *"sound(ed) as direct denial of the existence of a suitable justification to postpone or to move the event"*.

The decision was notified to the Appellant by fax of 14 April 2004.

On 23 April 2004, the Appellant lodged with the Court of Arbitration for Sport (CAS) an appeal against the Decision, in which it applied for the stay of the Decision *"deeming Pamesa Valencia to have lost (and Maccabi Elite Tel Aviv to have won) the match, contained in paragraph 9 of the decision of the disciplinary Judge of March 31 2004, affirmed by the decision of April 14 2004 of the appeals' Judge of the Euroleague ..."*.

On 14 May 2004, the President of the CAS Appeals Arbitration Division, ruling in camera, pronounced that:

"The request for provisional measures made on 23 April 2004 by Pamesa Valencia Basketclub SAD, with respect to the decision issued on 14 April 2004 by the appeals' Judge of Euroleague is dismissed".

On 28 May, 2004, the Respondent filed its submission in which it requested CAS *"to dismiss the Pamesa Valencia's Appeal and confirm the Decision issued by the Euroleague Appeals Judge dated April 14, 2004 whereby each and every pronouncement of the Euroleague Disciplinary Judge was ratified through a resolution dated March 30"*. The Respondent further requested *"that Valencia be ordered to pay (our) legal costs and the CAS costs for this part of the procedure"*.

Both parties allowed the Panel to render an award on the sole basis of a written submission without holding a hearing.

LAW

CAS Jurisdiction and Admissibility of the appeal

1. Article R27 of the Code of Sport-related Arbitration (the “Code”) provides that the Code applies whenever the parties have agreed to refer a sports-related dispute to the CAS. Such dispute may involve an appeal against a decision rendered by a sports’ Body where the statutes or regulations of such Body provide for such remedy.
2. Article 64 of the Euroleague Disciplinary Regulations provides the following:
“All decisions of the Appeals’ Judge, or the Appeals’ Panel when appropriate, may be appealed against in a time of 15 natural days before the Court of Arbitration for Sport, in which case the parties will proceed in accordance with the Code of Sports-related Arbitration, with the applicable form and procedure established in articles R47 and following of the procedural rules”.
3. The appeal was filed within the deadline of 15 days as from the notification of the Decision, which occurred on 14 April 2004. It follows that the appeal is admissible, which is undisputed.
4. CAS has jurisdiction to decide the present dispute.
5. Under article R57 of the Code, the Panel has the full power to review the facts and the law.

Applicable law

6. Article R58 of the Code provides the following:
“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.
7. In the present case, the parties have not agreed on the application of any particular law to the present dispute, except for the regulations of the Euroleague, which shall primarily apply. As the Respondent has its seat in Barcelona, Spain, Spanish law may, if necessary, apply complementarily. The Panel has not found any reasons for application of other rules of law.

Discussion

8. The Decision recites all relevant rules of the Euroleague, namely the following excerpts:

- article 2 of the Euroleague Disciplinary Regulations:
“The exercise of the Disciplinary System will be governed by the provisions established in the articles hereof, the Protocol of Constitution and all additional provisions that in the absence of these might be determined by jurisdictional bodies, in accordance with principles of right and equity”.
- article 6 para. 2 of the Protocol of Constitution of the Euroleague:
*“The clubs participating in the Euroleague have the following obligations:
6.2.1. To accept and comply with the rules regulating the Euroleague...”.*
- article 35 of the Euroleague Regulations, which deals with *“non-appearance of a team”*:
“When a game is suspended due to the failure of one of the teams to appear and in the opinion of the Disciplinary Judge a suitable justification for the non-appearance was given within forty-eight hours following the non-appearance, the Judge will have the game replayed, with the club that initially failed to appear covering all the costs of travel of the team that had initially appeared, the expenses associated with refereeing and other costs that the holding of the new game might cause. If, on the other hand, the Disciplinary Judge should fail to consider the failure to appear as justified, he will give the game as lost to the infringing club by the result of zero to twenty (0-20) and will decide on any compensation and/or sanctions that might apply”.
- article 10 of the Euroleague Disciplinary Regulations:
“In no case may two sanctions be imposed at the same time for the same action, except when one of them is a fine and is imposed as an accessory”.
- article 21 of the Euroleague Disciplinary Regulations:
“When determining the sanction, attention must be paid to the objective and subjective elements constituting the infringement and also the damage that the sanctioned behaviour has caused to the image of the Euroleague, EB, the other associates and the sport of basketball in general. In the same way, the disciplinary bodies may evaluate any aggravating and/or extenuating circumstances that might be related”.
- article 22 of the Euroleague Disciplinary Regulations:
“Exculpatory circumstances include fortuitous events, force majeure and legitimate self-defence to avoid aggression”.
- article 23, 24 and 25 of the Euroleague Disciplinary Regulations, which deal with extenuating and aggravating circumstances;
- article 26 of the Euroleague Disciplinary Regulations:
“In any case, within the limits, it is the responsibility of the disciplinary bodies to determine the sanction that has to be imposed in each case, attending to the seriousness of the facts and other related circumstances and applying the principle of proportionality”.

When applying fines, the disciplinary bodies will set the amount up to the maximum established for each case at their own discretion, attending to the related facts and circumstances and applying the principle of proportionality”.

- article 34 of the Euroleague Disciplinary Regulations concerning the infringements committed by the member associations or clubs:

“The following are considered infringements:

Failure to appear at a game or refusal to participate in it, in both cases without justification, by the team of the club...”.

- article 35 of the Euroleague Disciplinary Regulations:

“The above-mentioned infringements will be the object of the following sanctions:

- a) *Warning*
- b) *A fine of up to € 30.000*
- c) *Definitive expulsion*
- d) *Loss of the game, or if it be the case, round*
- e) *Disqualification from the competition*
- f) *Loss of points in the classification*
- g) *Exclusion from the current and/or future competitions*
- h) *Closure of the playing area for a period of one or more games or a period of two months*
- i) *Replay of the game in a third country or behind closed doors*
- j) *Games played behind closed doors”.*

9. The Decision recites that it is undisputed that the rule relevant to the evaluation of the non-appearance of a team at the game is contained in article 35 of the Euroleague Disciplinary Regulations. The issue at hand is clearly whether, in this case, there was a *“suitable justification for the non-appearance...”* of the Appellant’s team. The Decision rightly points out that on the basis of article 6.2.1. of the Protocol of Constitution of Euroleague, the Appellant had a contractual duty to appear at the game, unless excused by the Regulations, and that the existence of such an excuse has to be proved by the Appellant. The Appellant submits that the situation in Israel, chiefly after the events of 22 March 2004, was a *“suitable justification”* for the non-appearance of its team. The Appeals’ Judge and the Decision both disagree with the Appellant and consider that the latter has not established any *“suitable justification”*. The Decision further recites that the concept of *“suitable justification”* shall be narrowly interpreted in that it represents an exception to a fundamental obligation in the sporting system, i.e. the obligation to appear and compete at the dates and in the venues indicated in the calendar.
10. The Decision considers that the situation in Israel is far from being *“normal”*. It further recites that, sadly enough, a *“normal”* situation no longer exists, not only in Israel, but also in other countries. Such abnormal conditions have not prevented the Euroleague competition from taking place in safe and undisturbed environments for the competition. The Decision

further recites that, for instance, Maccabi played in Tel Aviv two games of the Euroleague top sixteen and seven games of the regular season, and that on all such occasions, the security measures implemented by the Israeli authorities proved to be sufficient. The fact that tragic and violent events took place in Israel did not prevent other teams from travelling there and competing in Tel Aviv. Such events are considered to have been carefully evaluated by Euroleague, when it decided that the game at hand be played in Tel Aviv and took into account the security measures offered to prevent any risk and/or accident. Both the Appeals' Judge and the Disciplinary Judge found that the assurances given by Euroleague and the authorities of Israel as to the measures to be adopted, failing a specific – and not generic – indication to the contrary – were sufficient to confirm their adequacy. The Decision further notes that there was no existence of a specific and individual threat to the life of the members of the Appellant's team. As to the fact that Euroleague had convened an extraordinary meeting to discuss the venue of the Final Four, the Panel shares the opinion of the Decision that such extraordinary meeting does not constitute a “suitable justification” on which the Appellant could rely.

11. Having noted that the Decision has thoroughly examined all circumstances offered by the Appellant that could constitute “a suitable justification”, the Panel sees no ground to depart from the findings of the Decision which should thus be confirmed in its principle, namely in that there was no suitable justification for the Appellant's team not to appear at the concerned game.
12. Thus, the Decision shall be confirmed in its principle. Thus, the Panel reaffirms a principle already developed by CAS in re CAS 2002/A/388, where the CAS Panel held in particular:
“... 9.5. It is a regrettable fact that in the modern world many places from time to time become acute trouble spots ... Terrorism is the scourge of our age. ... To that extent, this Appeal raised a matter of general importance in the sporting world ... but if possible, sport, like life, must go on. Despite the violence in Israel, there is no example of sportsman being either target or victim. Other teams visited Israel at the material time, and returned unscathed ...”.
13. The Decision being confirmed as to its principle, there remains for the Panel to examine the consequences of the Decision. These were already stated in the Disciplinary Judge's decision, which was itself confirmed by the Decision.
14. The first consequence of the lack of “suitable justification” found by both the Disciplinary Judge's decision and the Decision, is that the game is to be considered as lost by the Appellant by the result of twenty to zero (20-0). This results clearly from article 35 lit. d of the Euroleague Disciplinary Regulations, which, in accordance with article 34 of the same Regulations, is applicable to an infringement consisting of a failure to appear at the game without justification. The Panel considers that on this particular point, the Decision has been rendered in compliance with article 35 of the Euroleague Regulations and article 35 lit. d of the Euroleague Disciplinary Regulations.
15. The second consequence drawn from the lack of “suitable justification” in both the Disciplinary Judge's decision and the Decision is that the Appellant is declared responsible *“for*

compensation of all the expenses associated with refereeing and other costs that the organization of the games might have caused that are duly justified before the Euroleague". This is consistent with the contents of article 35 of the Euroleague Regulations which provides that, in the absence of a "suitable justification", *"the Disciplinary Judge ... will decide on any compensation and/or sanctions that might apply"*. As to the amount of such compensation, the Respondent, in its submission of 28 May 2004 to the CAS, did not mention any specific amount but limited itself to general considerations, in particular stating that *"failure to appear at the match clearly damages the professional image of the competition itself as whole, and basketball in general, which must be taken into account..."*. True, in its earlier submission of 27 April 2004, to the President of the Appeals' Arbitration Division of the CAS, the Respondent did provide a description of what the Respondent characterizes as *"the disastrous economic damages and image damages suffered by Euroleague"* in case of a hypothetical suspension of the Final Four in Tel Aviv. However, it is a fact that the Final Four did take place in Tel Aviv in due time and that the description of the costs offered by the Respondent does not apply to this case. In the absence of any specific amount mentioned by the Respondent, the Panel considers that the amount of the compensation due by the Appellant as a consequence of its failure to appear without "suitable justification" should be limited to the possible expenses associated with refereeing the game which was scheduled on 25 March 2004. In the absence of any evidence submitted by the Respondent as to the amount of such expenses, the Panel considers that an amount of EUR 1,000 is reasonable and shall be allocated.

16. The last consequence drawn by the Disciplinary Judge's decision and the Decision from the lack of "suitable justification" is the determination of the application of a fine of EUR 5,000 to the Appellant for infringing article 34a of the Euroleague Disciplinary Regulations. The Panel notes that article 35 of the Euroleague Regulations provides in its last sentence that when there is no "suitable justification", the Disciplinary Judge will decide *"on any compensation and/or sanctions that might apply"* (emphasis added). The Panel considers that this provision clearly entitles the Disciplinary Judge to decide on compensation and on sanctions. The sanction itself, namely the fine, is to be found in article 35 lit. d of the Euroleague Disciplinary Regulations, which provides for a fine of *"up to € 30,000"*. The Decision has noted that the infringement was clearly serious and that the Disciplinary Judge's decision had taken into account the special circumstances of the case. The Panel sees no ground to depart from such an assessment, and holds that a fine of EUR 5,000 appears to be adequate and thus should be confirmed.
17. In view of the above, the Decision issued on 14 April 2004 by the Appeals' Judge of the Euroleague is to be confirmed.

The Court of Arbitration for Sport rules:

1. The appeal filed by Pamesa Valencia Basket Club SAD on 23 April 2004 against the decision issued on 14 April 2004 by the Appeals Judge of the Euroleague is dismissed and such decision is confirmed, subject to the following specifications:
 - Pamesa Valencia Basket Club SAD lost the game scheduled on 25 March 2004 in Tel Aviv against Maccabi Elite Tel Aviv by 20:0 (twenty to zero);
 - Pamesa Valencia Basket Club SAD is responsible for compensation of the expenses associated with refereeing the game scheduled on 25 March 2004, for an amount of EUR 1,000 (one thousand Euros);
 - Pamesa Valencia Basket Club SAD is imposed a fine of EUR 5,000 (five thousand euros).

(...)