



Arbitrations CAS 2010/A/2170 Iraklis Thessaloniki FC v. Hellenic Football Federation (HFF) and CAS 2010/A/2171 OFI FC v. Hellenic Football Federation (HFF), award of 23 February 2011

Panel: Mr Lars Hilliger (Denmark), President; Prof. Luigi Fumagalli (Italy); Prof. Ulrich Haas (Germany)

Football

Characteristics of a Termination Order

Administrative nature of the management of the advance of costs

Purpose of Article 63 FIFA Statutes and CAS jurisdiction

Control by FIFA of the jurisdictional system of a national association

1. **A Termination Order binds the Panel in the same way as an award. Because of these legal effects, a Termination Order must fulfill the same legal prerequisites enshrined in Art. 189 par. 2 of the Swiss International Private Law as an arbitral award. A letter by the CAS Court Office does not constitute a Termination Order if it differs in layout and design considerably from awards or Termination Orders by CAS or if it does not show the signature of the competent body authorized to issue such an Order (Panel or Chairman). Moreover, a Termination Order should be issued in a proceeding-like context, since a Termination Order can only be issued if the right to be heard of the parties has been respected.**
2. **The management of the advance of costs is an administrative issue which is dealt with by the CAS Court Office. The deadline fixed by the CAS Secretary General to proceed with the payment of the advance of costs is only an indicative time limit and not a mandatory time limit. The non-payment of the advance of costs within the deadline prescribed by the Secretary General cannot be invoked by a party to request that an appeal or a claim be automatically considered as inadmissible. The deadlines which are fixed for the payment of the advance of costs only allow the CAS Court Office to terminate a procedure in the absence of payment. In a case where the delay in the payment of the advance of costs was due to technical problems within the bank itself, it would be disproportionate and overly formalistic for the CAS Court Office to terminate the procedure on the basis of article R64.2 of the CAS Code.**
3. **The purpose of article 63 FIFA Statutes is to ensure that in principle any decision in the matter of football can be appealed before an independent and duly constituted arbitration tribunal. If CAS is designated by FIFA as the competent arbitration tribunal in football related matters, the FIFA Statutes provide for a series of exceptions, notably the possibility for associations and confederations to designate another independent and duly constituted arbitration tribunal. Therefore, the system proposed by FIFA leaves a room for manoeuvre to the national associations which can**

decide whether they want to recognize another arbitration tribunal than CAS for their domestic disputes. Nothing in article 63 FIFA Statutes can lead to the conclusion that it is directly applicable and therefore forms part *per se* of the national association's rules. The members of FIFA remain independent legal entities with their own sets of rules and Article 63 FIFA Statutes needs to be taken over in the federation's rules either word by word or per reference to apply to domestic matters.

4. If FIFA finds that the jurisdictional system of a national association does not comply with article 63 of its Statutes, it will then take the necessary measures towards the national association in order for it to introduce a valid jurisdiction clause in favor of CAS and/or establish an arbitration court which meets FIFA's criteria on independence and impartiality. In the meantime, it will be a matter of domestic law to decide whether a party concerned by a decision issued by the national association's body has the right to appeal against such decision before a competent state court. Therefore, even if the national association's regulations exclude an appeal before the national association's tribunal, this cannot create *a nihilo* a CAS jurisdiction. It is the role of the national legal system to preserve the parties' constitutional rights for legal protection and it will be up to FIFA to act towards its member in order to have the national regulations adapted, should it deem it to be necessary.

Iraklis Thessaloniki FC ("Iraklis") is a football club registered with the Hellenic Football Federation and playing in the Hellenic premier division called Super League.

OFI FC (OFI) is a football club registered with the Hellenic Football Federation and playing in the Hellenic second division.

The Hellenic Football Federation (HFF) is the Greek national football federation based in Athens, Greece, and is affiliated with FIFA since 1927.

On 2 June 2010, the HFF's First Instance Licensing Committee notified Iraklis that it had decided to reject its application for a license to participate in the Greek Super League for the season 2010-2011. Iraklis filed an appeal against this decision.

On 25 June 2010, the HFF's Second Instance Licensing Committee issued a decision whereby it admitted the appeal and granted Iraklis the license for the participation in the Greek Super League for the season 2010-2011. By the same decision, the Second instance licensing body imposed a fine of one hundred and fifty thousand Euros (EUR 150,000) on Iraklis. If Iraklis' licence application had been rejected and if, by way of consequence, Iraklis had been relegated, OFI, which was the runner up for promotion to the Greek Super League, would have been promoted.

On 16 July 2010, Iraklis filed a statement of appeal with the Court of Arbitration for Sport (CAS) pursuant to Article R47 of the Code of Sports-related Arbitration (the “Code”) against the HFF with respect to the decision of the Second Instance Licensing Body of the HFF of 25 June 2010 (the “Decision”). It requests that the Decision – as far as the imposed fine is concerned – be “*stayed and annulled*”.

On the same date, OFI filed a statement of appeal with the CAS pursuant to Article R47 of the Code against the HFF, Iraklis and the Super League with respect to the Decision.

On 27 July 2010, the Deputy President of the CAS Appeals Arbitration Division decided that those two appeals proceedings would be consolidated and dealt with concurrently.

On 2 August 2010, OFI withdrew its appeal against Iraklis and the Super League.

On 5 August 2010, Iraklis filed its appeal brief. On 6 August 2010, OFI filed its appeal brief, and a request for provisional measures, requesting the CAS to order the HFF to postpone the games of Iraklis in the premier division and the ones of OFI in the second division until the issuance of an award. Pursuant to Article R37 of the Code, by letter dated 10 August 2010, Iraklis and the HFF were invited to express their positions in relation to OFI’s request for provisional measures. On 20 August 2010 and on 24 August 2010 respectively, Iraklis and the HFF filed their responses.

On 27 August 2010, the Deputy President of the CAS Appeals Arbitration Division issued an order on provisional and conservatory measures (the “Order”) ruling that

- “1. The application for provisional and conservatory measures filed by OFI FC on 6 August 2010 in the matters CAS 2010/A/2170 Iraklis Thessaloniki FC v. Hellenic Football Federation and CAS 2010/A/2171 OFI FC v. Hellenic Football Federation, is rejected.*
- 2. The costs of the present order shall be determined in the final award or in any other final disposition of this arbitration”.*

In the reasoning of his Order, the Deputy President of the CAS Appeals Arbitration Division assessed the jurisdictional competence of CAS *prima facie* on the basis of article 186 of the Swiss International Private Law. It expressly reserved the final decision on jurisdiction to the panel of arbitrators to be designated to decide on the present arbitration proceedings (“the Panel”).

Under part 9 “Miscellaneous” of his Order, the Deputy President of the CAS Appeals Arbitration Division mentioned that “*this decision is a procedural order, not an award. As a result, it may not be challenged in court pursuant to Article 190 Swiss Private International Law Act*”.

On 30 August 2010, the CAS Court Office confirmed to the Parties that Prof. Luigi Fumagalli was the designated arbitrator for OFI and Iraklis, whereas Prof. Ulrich Haas was the designated arbitrator for the HFF.

On 31 August 2010, the HFF requested that “*the arbitration would be organised in two parts – the first part dealing only with the questions of jurisdiction and locus standi of the parties, followed, if necessary, by the second part,*

in which substantive arguments will be submitted and considered by the Panel, and a possible hearing organised". Under this proposal, the HFF suggested to first file an answer on the procedural and preliminary matters only.

On 3 September 2010, Iraklis asked that the HFF's request be rejected. On 6 September 2010, the CAS Court Office informed the parties that all deadlines were suspended until the Panel had taken decisions on the procedural issues raised by the Parties.

On 7 September 2010, the CAS Court Office sent to the Parties the notice of formation of the Panel. The CAS Court Office informed the parties that the Panel to hear the appeal had been constituted as follows: Mr Lars Hilliger, President of the Panel, Prof. Luigi Fumagalli, arbitrator designated by the Appellants and Prof. Ulrich Haas, arbitrator nominated by the HFF.

On 13 September 2010, the CAS Court Office informed the Parties that it had not received "OFI FC's payment of the second share of the advance of costs within the given deadline, i.e. Friday 3 September 2010". Therefore it informed the Parties "that the procedure CAS 2010/A/2171 is deemed withdrawn and a Termination Order shall follow within ten days". OFI replied on 14 September 2010, explaining that its bank had committed a mistake, which was evidenced by a statement of its bank confirming the foregoing. On 15 September 2010, the CAS Court Office took good note of OFI's explanations and informed the Parties that its letter of 13 September 2010 should be disregarded. The HFF wrote the same day, asking the Secretary General or the Panel to reconsider the issue of OFI's late payment of the advance of costs and to regard OFI's appeal as having been withdrawn.

On 28 September 2010, the CAS Secretary General confirmed that the CAS Court Office was satisfied by the explanations given by OFI and that CAS did not intend to terminate the procedure CAS 2010/A/2171. The CAS Secretary General stressed notably that Article R64 of the Code of Sports-related Arbitration, which deals with the issue of the advance of costs, only gives the right to the CAS not to continue an arbitration procedure in the absence of payment of the arbitration costs.

On 20 October 2010, the CAS Court Office informed the Parties that the Panel had decided to continue the arbitration proceedings also in relation to OFI's appeal and that it issued the following directions:

- “- *The Respondent is requested, within 10 days from the receipt of the present letter to supplement its submission on (1) Iraklis Thessaloniki FC's and OFI FC's procedural requests, (2) its request concerning OFI FC's alleged non-payment of the advance of costs, and (3) the jurisdiction of CAS concerning both appeals.*
- *Iraklis Thessaloniki FC and OFI FC will be granted 10 days from the receipt of the Respondent's submission to reply on those specific points*”.

The Panel expressly reserved its right to decide on the above mentioned issues by way of a preliminary award on the basis of the parties' written submissions only.

The HFF filed its "Answer on Jurisdiction and Other Procedural Matters" on 1 November 2010. Iraklis and OFI filed their replies on 12 and 15 November 2010, respectively.

On 20 December 2010, the CAS Court Office informed the Parties that, as foreseen in the Panel's decision of 20 October 2010, the Panel would decide on the issue of jurisdiction by way of a preliminary award and on the basis of the parties' written submissions only. Depending on the outcome of such award, the Panel would invite the parties, if relevant, to file further submissions on the merits.

LAW

CAS Jurisdiction and admissibility

1. These proceedings comprise two statements of appeal, the one filed by Iraklis and the one filed by OFI. In both cases, CAS jurisdiction was challenged by the HFF. As to OFI's appeal, the HFF also questions its admissibility on the grounds that OFI did not pay its share of the advance of costs within the original deadline set by CAS.
 - A. *The alleged late payment of the Advance of Costs*
2. First of all the Panel notes that the letter of the Counsel to CAS dated 13 September 2010 cannot be construed as a Termination Order. The characteristics of a Termination Order are that the latter binds the Panel in the same way as an award. Because of these legal effects the legal literature correctly holds that a Termination Order must fulfill the same legal prerequisites enshrined in Art. 189 par. 2 of the Swiss International Private Law as an arbitral award. It is apparent from the outset, that the letter by the CAS Court Office does not fulfil these minimum requirements and differs in layout and design considerably from awards or Termination Orders by CAS. In particular the letter does not show the signature of the competent body authorized to issue a Termination Order (Panel or Chairman). Therefore, already from its outer appearance the letter differs so fundamentally from an award or a Termination Order that the letter cannot (mistakenly) be taken for a Termination Order. Moreover, the letter was not issued in a proceeding-like context, since a Termination Order can only be issued if, prior to taking it, the right to be heard of the parties has been respected. Since this is not the case here, all elements speak in favor of not qualifying the letter as a binding decision, i.e. as a Termination Order but instead as a non-binding "avis" by the CAS Court Office that - if no further circumstances come to the knowledge of CAS - the Panel will issue a Termination Order.
3. In accordance with the CAS case law (CAS 2010/A/2144), it must be emphasized that the management of the advance of costs is an administrative issue which is dealt with by the CAS Court Office. The deadline fixed by the CAS Secretary General to proceed with the payment

of the advance of costs is only an indicative time limit and not a mandatory time limit. The non-payment of the advance of costs within the deadline prescribed by the Secretary General cannot be invoked by a party to request that an appeal or a claim be automatically considered as inadmissible. The deadlines which are fixed for the payment of the advance of costs only allow the CAS Court Office to terminate a procedure in the absence of payment, in accordance with article R64.2 of the Code. In the case at hand, the Panel noted the positions expressed by the parties and the decision of the CAS Court Office not to terminate the arbitration because *“the delay in the payment of the advance of costs was caused by the bank and not by OFI FC itself”* (CAS letter of 28 September 2010). It appeared indeed that the bank had confirmed that not only it had received the first payment instructions within the set deadline, as provided by article R32 of the Code, but that the bank had executed the payment the same day. The fact that the amount had not been credited on the CAS bank account was due to technical problems within the bank, where the bank account details had been wrongly reproduced on the banking payment system. In the present case, it would have been therefore not only disproportionate and overly formalistic, but simply wrong for the CAS Court Office to terminate the present procedure on the basis of Art. R64.2 of the Code.

B. *The Agreement to Arbitrate*

4. Both appeals being linked to the same decision, the question of CAS jurisdiction can be addressed similarly for both appeals.
5. Preliminarily, the Panel considered the Order and found that the Deputy President of the CAS Appeals Arbitration Division did not take a final decision on CAS jurisdiction and clearly reserved the Panel's competence to do so. As expressly mentioned in the Order and in application of Article R37 of the Code, which governs the proceedings related to provisional and conservatory measures, the Deputy President of the CAS Appeals Arbitration Division issued his Order as he did not find that CAS had manifestly no jurisdiction. Based on the foregoing it is now the Panel's duty to decide on the matter of CAS jurisdiction. This was actually not disputed by the Parties in their submissions filed at the Panel's request on 1, 12 and 15 November 2010.
6. The Decision, which is the source of the appeals, was taken on 25 June 2010 in relation with a license application from Iraklis for the Greek Super League season 2010/2011. The statements of appeal were filed before CAS on 16 July 2010.
7. Pursuant to article R67 of the Code (Edition 2010), the 2010 edition of the Code applies to the present proceedings, as they were initiated by the CAS after 1 January 2010. On the basis of article 83 of the FIFA Statutes adopted on 3 June 2009, which came into force on 2 August 2009, that version of the FIFA Statutes is applicable.

8. As to the matter of CAS jurisdiction, Article R47 of the Code provides that:

“Appeal

An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body. (...).”

9. There is no dispute on the fact that the Decision taken by the HFF’s Second instance licensing body is a final decision of an internal body of the HFF and it is not disputed that the Parties have not concluded any specific arbitration agreement on CAS jurisdiction.
10. Based on Article R47 of the Code, in order for CAS to have jurisdiction in the present proceedings, it is thus required that the statutes or regulations of the body, namely the federation, association or sports-related body, who took the Decision provide for an appeal before CAS.
11. As the Decision was taken by an internal body of the HFF, the Panel finds that only the provisions which are part, be it formerly or per reference, of the HFF Statutes and regulations are relevant in order to decide on the issue.
12. Iraklis submits in its statement of appeal and in its appeal brief that CAS jurisdiction is primarily given on the basis of article 60 of the FIFA Statutes. Obviously Iraklis refers to a previous version of the FIFA Statutes as under the applicable version of August 2009, article 60 refers to the FIFA Appeal Committee whereas article 63 governs the issue of CAS jurisdiction. For the sake of clarity, the Panel stresses that article 63 is the only clause which attributes jurisdiction to CAS in the FIFA Statutes. Article 62, which the Appellants also referred to in their submissions, does not attribute jurisdiction to CAS. It only recognizes CAS as an independent arbitration tribunal, and, by way of consequence, the decisions it may take if it has jurisdiction. Article 62 does therefore not provide *per se* an overall competence of CAS in football matters, domestic or international. Only the interpretation of the scope of application of article 63 of the FIFA Statutes is relevant in the present matter.
13. Article 63 FIFA Statutes reads as follows:
- “1. Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question.*
- 2. Recourse may only be made to CAS after all other internal channels have been exhausted.*
- 3. CAS, however, does not deal with appeals arising from:*
- (a) violations of the Laws of the Game;*
- (b) suspensions of up to four matches or up to three months (with the exception of doping decisions);*

(c) decisions against which an appeal to an independent and duly constituted arbitration tribunal recognized under the rules of an Association or Confederation may be made”.

14. The Panel agrees that the purpose of article 63 FIFA Statutes is to ensure that in principle any decision in the matter of football can be appealed before an independent and duly constituted arbitration tribunal. If CAS is designated by FIFA as the competent arbitration tribunal in football related matters (par. 1), the FIFA Statutes provide for a series of exceptions, notably the possibility for associations and confederations to designate another independent and duly constituted arbitration tribunal (par. 3 lit. c).
15. Therefore, it is worth noting already that the system proposed by FIFA in its Statutes leaves a room for maneuver to the national associations which can decide whether they want to recognize another arbitration tribunal than CAS for their domestic disputes. Article 63 therefore refers to the association’s rules, namely its Statutes and regulations, to deal with the question of CAS jurisdiction on domestic disputes.
16. More importantly, nothing in article 63 FIFA Statutes can lead to the conclusion that it is directly applicable and therefore forms part *per se* of the national association’s rules. The members of FIFA remain independent legal entities with their own sets of rules. In other words, the regulations of FIFA, notably of article 63 FIFA Statutes, need to be taken over in the federation’s rules either word by word or per reference to apply to domestic matters. This is the object of the FIFA circular nr. 50 dated 6.7.2006 and of the specific letter sent by FIFA to the HFF on 14 February 2007, which was produced by Iraklis with its appeal brief. Under article 2.3.A lit. j, FIFA clearly requests the HFF to amend its Statutes and insert the following provisions:
 - “i) to recognize the jurisdiction and observe the decisions of the Court of Arbitration for Sport (CAS) in Lausanne (Switzerland), as specified in the relevant provisions of the FIFA and UEFA Statutes;*
 - k) to refer in the last instance any dispute of national dimension arising from or related to the application of the HFF’s statutes or regulations only to an independent and impartial court of arbitration, which will settle the dispute to the exclusion of any ordinary court, unless expressly prohibited by Greek law.;*
 - l) to ensure that its leagues, clubs, players, officials, match and player’s agents – through their statutes, license, registration or any other written document – acknowledge and accept the two above-mentioned obligations as well as agree to be bound by the Statutes, regulations, directives and decisions of FIFA, UEFA and HFF”.*
17. As confirmed by the above instructions and by numerous CAS precedents (see notably CAS 2004/A/676 quoted by the HFF as well as CAS 2005/A/952, CAS 2004/A/676 and CAS 2002/O/422), article 63 par. 1 FIFA Statutes does not by itself grant jurisdiction to CAS over appeals against decisions passed by national federations or leagues. Moreover no reference is made in the FIFA letter to the jurisdiction clause in favor of CAS under article 63 par. 1 FIFA Statutes. FIFA only requests that the HFF Statutes provide for a jurisdiction clause in favor of an independent and impartial court of arbitration.

18. As mentioned above, the present proceedings are linked to a national dispute. In order for CAS to have jurisdiction, there must thus be a specific jurisdiction clause providing it in the relevant provisions of the HFF Statutes and regulations.
19. Iraklis and OFI claim that CAS jurisdiction can be based on article 53 par. 1 of the HFF Statutes, which provides that:
“Any natural person or legal entity involved in football in any way, is obligated to recognize the jurisdiction and observe the decisions of the Court of Arbitration for Sport (CAS) in Lausanne (Switzerland), as specified in the relevant provisions of the FIFA and UEFA Statutes; (...)”.
20. According to Iraklis, CAS jurisdiction is given in the present matter because the Decision is final and binding according to article 35 par. 4 KAP and because CAS is recognized by the HFF under article 53 par. 1 of the HFF Statutes. Iraklis draws this conclusion from the fact that nothing allegedly prohibits CAS from dealing with the Parties’ dispute. OFI’s position is that article 53 HFF Statutes consists in a real and unconditional arbitration clause based on FIFA’s and UEFA’s instructions to have domestic disputes decided by independent and impartial courts.
21. The Panel rejects those submissions. Article 53 par. 1 of the HFF Statutes is not a clause which attributes jurisdiction to CAS. It only recognizes CAS jurisdiction and decisions when CAS jurisdiction is given. In this respect, article 53 par. 1 is similar, at the HFF level, to article 62 par. 1 of the FIFA Statutes and the Panel refers to the developments made before on this article. The Panel finds consequently that the only purpose of article 53 par. 1 of the HFF Statutes is to preclude the HFF and the other entities or individuals involved in Greek football from raising any objection against CAS with respect to its independence or any other formal objection when CAS takes a decision where it finds that it has jurisdiction. The purpose of this article cannot be to compel the HFF to admit in all types of disputes that CAS has jurisdiction. This cannot be interpreted from a literal and teleological point of view and even from the jurisdictional system put in place by the HFF. According to the instructions of FIFA, the HFF indeed set up an arbitration tribunal at national level, as this is reflected in the HFF Statutes and regulations. The Panel will come back to this last point later in the award.
22. Based on the foregoing, the Panel finds that nothing in the HFF Regulations speaks for an application per reference of article 63, notably article 63 par. 1 of the FIFA Statutes. The same reasoning and the same conclusion apply to OFI’s submissions related to article 2 par. 3 lit. k of the HFF Statutes which provides that:
“The Hellenic Football Federation (H.F.F) as member of FIFA and UEFA is obligated:
(...)
k) to recognize the jurisdiction and observe the decisions of the Court for Arbitration for Sport (CAS) in Lausanne (Switzerland), as specified in the relevant provisions of the FIFA and UEFA Statutes; (...)” .
23. It is worth noting that OFI itself admits that *“UEFA and FIFA Statutes do not oblige a national football association to name CAS as the final appellate body for domestic disputes”*. The Panel cannot

then follow OFI's reasoning when it deducts from the alleged lack of independence and impartiality of the HFF Court of Arbitration that this automatically leads to give CAS jurisdiction on the HFF domestic disputes. Again, article 63 of the FIFA Statutes – OFI does not make any reference to any specific clause of the UEFA Statutes which should be considered in the present proceedings – is not directly applicable. Therefore, if the rules of a national association do not provide jurisdiction to CAS or to an independent and impartial arbitration court, this cannot as such create a CAS jurisdiction by default. There must be a specific jurisdiction clause in the national federation's statutes and regulations as this is reflected under Article R47 of the Code.

24. If FIFA finds that the jurisdictional system of a national federation does not comply with article 63 of its Statutes, it will then take the necessary measures towards the national association in order for it to introduce a valid jurisdiction clause in favor of CAS and/or establish an arbitration court which meets FIFA's criteria on independence and impartiality. In the meantime, it will be a matter of domestic law, Greek law in the present case, to decide whether a party concerned by a decision issued by a HFF body has the right to appeal against such decision before a competent state court.
25. Therefore, even if the HFF regulations exclude an appeal before the HFF Court of Arbitration, as OFI claims to be the case in disputes related to the HFF licensing procedures, this cannot create *a nihilo* a CAS jurisdiction. It is the role of the national legal system to preserve the parties' "*constitutional rights for legal protection*" mentioned by OFI and it will be up to FIFA to act towards its member in order to have the HFF regulations adapted, should it deem it to be necessary.
26. Based on the same reasoning, the Panel finds that OFI cannot deduct from article 35 par. 1 KAP, which excludes any recourse to civil or administrative courts of law, the existence of a jurisdiction clause in favor of CAS. It will be a matter of Greek law to decide whether such exclusion is valid or not in cases where no appeal to an independent court is open by the HFF regulations.
27. Eventually, the Panel reviewed carefully article 35 par. 4 KAG which provides that "*the reference to the Court of Arbitration for Sport (CAS) is permitted past the conclusion of all levels of jurisdiction of the Hellenic Football Bodies, under the terms and conditions stated in the Statutes of the HFF and UEFA*". Contrary to the Appellants, the Panel does not find in it a general jurisdiction clause in favor of CAS. The reference to the Statutes of the HFF and UEFA indicates that when adapting the KAP, the HFF decided to take into consideration any specific jurisdiction clause in favor of CAS which may be found in the HFF and UEFA Statutes, and specifically reserve the possibility of an appeal to CAS on the basis of the relevant clauses of those Statutes.
28. Considering all the above, the Panel finds that the Appellants Iraklis and OFI did not bring forward in their statements of appeal, appeal briefs and subsequent written submissions, any valid argument evidencing that there is a clause in the HFF Statutes and regulations which

provides that an appeal can be filed with CAS against the Decision, as requested by Article R47 of the Code.

29. After due consideration of all the elements of the case, notably of the HFF Statutes, the HFF KAG regulations and the HFF Licensing Manual, the Panel is actually convinced that CAS has no jurisdiction to decide on the present disputes.
30. The Panel refers first to the HFF Licensing Manual, more specifically to article 3 par. 2 lit. D nr. 6 of part A *in fine* (“*the decision of the ALC [Appeals Licensing Committee] is final and binding*”), to article 2 par. 2 (“*The Appeals Licensing Committee of the Hellenic Football Federation is competent for the second, and final, degree trial of the case*”) and article 28 (“*the decision of the Licensing First Instance Body, (...), is final and binding*”) of part C of the Licensing Manual. Based on these articles, the Panel finds that the licensing procedure is conducted before two internal jurisdictional bodies of the HFF, the First Instance Licensing Committee and the Second Instance Licensing Committee, which are specifically competent to decide on license applications. The Decision was taken by the Second Licensing Committee. This Decision is thus final and binding. Then arises the question of the right to appeal against this Decision before an external body.
31. Article 7 par. 10 of part A of the HFF Licensing Manual provides for CAS jurisdiction with respect to disputes on licensing procedures. However, as this comes from the title of article 7 (“*Extraordinary application of the club licensing system for entering UEFA club competitions*”), the latter is clearly limited to cases where applications were made for entering UEFA competitions, which is undisputedly not the case here. The Panel thus finds that this article cannot open an appeal before CAS. No other specific clause in the Licensing Manual provides for CAS jurisdiction.
32. As to the reference made to the KAG regulations, the Panel is of the opinion that one cannot exclude that such regulations could apply to licensing procedures as the KAG regulations deal with various jurisdictional matters. However, the interpretation of the KAG regulations must nevertheless be made in due consideration of the provisions of the HFF Licensing Manual, which is clearly a *lex specialis*. In other words, it is only if the interpretation of the Licensing Manual leaves the door open for an appeal that a jurisdiction clause based on the KAG regulations could be applied.
33. The Panel is however convinced that there is not such an open door. Indeed, the HFF Licensing Manual deals with the question of the CAS jurisdiction, as it clearly refers to it for “UEFA applications”. For pure domestic applications, the Licensing Manual does not provide for a similar clause. On the contrary it provides, under article 2 par. 2 of part C, that the decisions of the Second Licensing Committee are final and binding. This cannot be considered as a *lacuna* of the Manual. The Panel is therefore convinced that with “final and binding”, the Licensing Manual does not only exclude any recourse to an internal body but as well to an external arbitration court like CAS. This explains in particular why no reference to

any appeal, notably before CAS, was made by the HFF in the Decision or the notification letter.

34. Based on the foregoing, the Panel finds that the recourse proceedings are exhaustively covered by the Licensing Manual and that one cannot base an appeal before CAS on the KAG regulations.
35. The question must be put differently when it comes to the HFF Statutes. Indeed, it must be considered that the HFF Statutes are ranked higher than the KAG regulations and the Licensing Manual. The Panel did therefore consider the few jurisdiction clauses of the HFF Statutes and found that no jurisdiction clause in favor of CAS exists with respect to domestic disputes.
36. Article 2 par. 3.A. lit k of the HFF Statutes provides certainly for the recognition of CAS jurisdiction. Yet this means, as already mentioned in the present award, that when CAS has jurisdiction, the HFF shall recognize its decisions. The jurisdiction clause in the HFF Statutes must be found under article 2 par. 3.A. lit l, which provides that any dispute of national dimension arising from the application of the HFF Statutes or regulations, as in the present case, will be referred to *“an independent and impartial court of arbitration, which shall settle the dispute to the exclusion of any ordinary court, unless expressly prohibited by Hellenic law”*. CAS is not expressly named in this article.
37. The *“independent and impartial court of arbitration”* is designated under article 41 lit G of the HFF Statutes which establishes an independent supreme Court of Arbitration. According to this provision, the HFF Court of Arbitration, more precisely its Ordinary Arbitration Division, is *“competent to resolve any dispute arising from the implementation of the provisions of the Statutes and Regulations of the Hellenic Football Federation (H.F.F.) at first and last instance”* (article 41 lit. G par. 2 lit. a of the HFF Statutes). Its jurisdiction extends notably to disputes arising between the Greek football clubs and the Hellenic Football Federation, as this is the case in these proceedings.
38. OFI claims that the HFF Court of Arbitration is not independent and impartial. Yet the Panel does not find any document in the file which substantiates those submissions. In any case, such alleged lack of independence and impartiality would have to be solved by FIFA with the HFF, respectively before Greek courts, if Greek law provides so. This cannot create *a nibilo* a jurisdiction case for CAS.
39. Based on the foregoing, if a party intends to make use of the HFF Statutes to file an appeal against decisions of the Second Instance Licensing Committee, although the Licensing Manual provides that those decisions are final and binding, it can only refer the case to the HFF Court of Arbitration, based on article 41 lit. G of the HFF Statutes. The latter would then have to decide whether it has jurisdiction or not on the basis of the Licensing Manual on the one hand, and on the basis of article 2 par. 3.A lit. l and article 41 lit. G of the HFF Statutes on the other hand.

40. The Panel is aware that CAS decided in another case that it had jurisdiction in a domestic dispute in Greek football (CAS 2008/A/1525), notably on the basis of article 35 par. 4 KAG as well as articles 2 par. 3 lit. k and 53 par. 2 lit. a of the HFF Statutes. The Panel first stresses that this dispute had nothing to do with a license application and that the specific rules of the Licensing Manual did not apply to it. The Panel then notes that obviously the existence of the HFF Court of Arbitration was not taken into consideration when the panel decided on CAS jurisdiction, notably because the parties did not refer to it. Eventually, the panel in the CAS award 2008/A/1525 did clearly show under nr. 42 that its decision was limited to “*this dispute*”, meaning therefore that this could not be taken generally as a precedent for other disputes based on other facts. Consequently, the Panel does not consider this CAS case relevant in the present proceedings.
41. Based on all the above, the Panel concludes that CAS has no jurisdiction to proceed on the appeal filed by Iraklis and on the appeal filed by OFI but to decide on the costs of the proceedings.

The Court of Arbitration for Sport rules:

1. The appeals of Iraklis Thessaloniki FC and OFI FC are inadmissible.

(...)