



**Arbitration CAS 2015/A/4254 El Gouna Sporting Club v. El Dakhlia Sporting Club & Egyptian Football Association (EFA), award of 1 February 2016**

Panel: Mr Manfred Nan (the Netherlands), President; Mr Mohamed Abdel Raouf (Egypt); Ms Rabab Yasseen (Switzerland)

*Football*

*Disciplinary claim against a club for filing an ineligible player*

*Admissibility of new documents*

*Inadmissibility of a defense of lack of jurisdiction*

*Competence of a federation's appeal body regarding a disciplinary claim introduced in the context of another dispute*

1. **New documents submitted during a CAS hearing should not be admitted to the case file if the requirements of article R56 of the CAS Code were not complied with; in particular if nothing prevented the parties from submitting these documents earlier. Therefore only documents deemed by the panel relevant for the outcome of the case such as the competition regulations of a federation should be accepted.**
2. **Jurisdictional objections shall be made before entering into the merits of the dispute or together with the answer at the latest as expressly provided at Article R55 of the CAS Code. According to CAS jurisdiction and to Swiss scholars, the party who challenges the jurisdiction of CAS should do so before entering into the merits of the CAS proceedings otherwise it will be deemed to have accepted the jurisdiction and will therefore no longer be admitted to raise the defence of lack of jurisdiction.**
3. **Appeal proceedings cannot be used to bypass the exclusive jurisdiction of the competent body of a federation to impose a disciplinary sanction by introducing a disciplinary claim within the context of a dispute regarding the registration of a player in appeal. Allowing a party to do so would be tantamount to an abuse of rights, in addition to rendering the federation's internal organization void of any sensible meaning. Consequently, the federation's appeals body has not committed, within the terms of its own jurisdiction, any relevant error in not imposing a disciplinary sanction on a club as specified in the relevant regulations.**

**I. PARTIES**

1. El Gouna Sporting Club (hereinafter: the "Appellant" or "El Gouna") is a football club with its registered office in El Gouna, Egypt. El Gouna is registered with the Egyptian Football Association.

2. El Dakhlia Sporting Club (hereinafter: the “First Respondent” or “El Dakhlia”) is a football club with its registered office in Cairo, Egypt. El Dakhlia is registered with the Egyptian Football Association.
3. The Egyptian Football Association (hereinafter: the “Second Respondent” or the “EFA”) is the national governing body of football in Egypt. The EFA is affiliated to the Confederation Africaine de Football (hereinafter: the “CAF”) and the Fédération Internationale de Football Association (hereinafter: “FIFA”).

## **II. FACTUAL BACKGROUND**

### **A. Background Facts**

4. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the parties and the evidence examined in the course of the proceedings and the hearing. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.
5. On 5 June 2015, a football match (hereinafter: the “First Match”) took place between El Dakhlia and WadiDegla, which ended in a draw (3-3). The First Match was played in the 33<sup>rd</sup> round of the 2014/2015 Egyptian Premier League. During this match, the player S., born in 1995 (hereinafter: the “Player”) was fielded by El Dakhlia.
6. On 1 July 2015, a football match (hereinafter: the “Second Match”) took place between El Dakhlia and El Assiouty, which match was won by El Dakhlia (4-2). The Second Match was played in the 37<sup>th</sup> round of the 2014/2015 Egyptian Premier League. During this match the Player was fielded by El Dakhlia.
7. On 22 July 2015, a football match (hereinafter: the “Third Match”) took place between El Dakhlia and El Maqasa, which match was played in the Egyptian Cup Competition. During this match the Player was fielded by El Dakhlia.
8. At the end of the 2014/2015 season, El Dakhlia finished with 49 points, sufficient to stay in the EFA Premier League, and El Gouna finished with 46 points, and therefore relegated from the EFA Premier League to the Egyptian Second Division.

### **B. Proceedings before the EFA Players Affairs Status Committee**

9. On 26 July 2015, El Gouna lodged a complaint regarding the registration of the Player with El Dakhlia and his participation in matches with El Dakhlia during the season 2014/2015 as this would allegedly have been in violation of the applicable regulations, as the Player was already registered with the Military Production Sporting Club, also known as Entag Harby Club (hereinafter: the “Military Club”).

10. On 5 August 2015, the EFA Players Affairs Status Committee issued its decision, approved by the Board of the EFA, (hereinafter: the “EFA PASC Decision”), concluding the following:

- “1. *To suspend the player for six (6) months as from 5/8/2015.*
2. *To enforce financial fine of One Hundred Thousand Egyptian Pounds (L.E. 100,000) against the Player for the favor of Military Production Sporting Club.*
3. *To continue registering him with ElDakhliya Sporting Club.*
4. *To refer the concerned Football EFA Branch to Branch Affairs Committee”.*

### **C. Proceedings before the EFA Appeals Committee**

11. On an unspecified date in 2015, El Gouna filed an appeal with the EFA Appeals Committee against the EFA PASC Decision, submitting that all matches in which the Player was fielded by El Dakhliya should be considered as lost 2-0, to impose a 4 points deduction on El Dakhliya and reinstate El Gouna in the EFA Premier League.
12. On 5 October 2015, the EFA Appeals Committee rendered its decision (hereinafter: the “Appealed Decision”), whereby it decided as follows:

*“To Accept the Appeal in form, to refuse it in Subject and Support the Appealed Decision”.*

### **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

13. On 26 October 2015, El Gouna filed a Statement of Appeal with the Court of Arbitration for Sport (hereinafter: the “CAS”), in accordance with Article R48 of the Code of Sports-related Arbitration (edition 2013) (hereinafter: the “CAS Code”). In this submission and pursuant to Article R37 of the CAS Code, El Gouna applied for a stay of the Appealed Decision, requested CAS to issue appropriate directions for an expedited procedure in accordance with Article R52 of the CAS Code<sup>1</sup>, and submitted a request for disclosure regarding documents allegedly being in the EFA’s possession. In addition, El Gouna nominated Dr Mohamed Abdel Raouf, Attorney-at-Law in Cairo, Egypt, as arbitrator. The Statement of Appeal was accompanied by a power-of-attorney dated 22 October 2015, signed by Mr Ahmed Elsehafy, board member of El Gouna.
14. The Respondents failed to expressly agree to an expedited procedure within the deadline prescribed by the CAS Court Office. Therefore, no such procedure could be implemented.
15. On 4 November 2015, the EFA filed its answer to El Gouna’s application for a stay, requesting that it be rejected. El Dakhliya did not file any answer thereto.

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<sup>1</sup>The Panel notes that the Appellant incorrectly referred to Article R44.2 of the CAS Code in its statement of appeal. Such latter provision applies in ordinary arbitration procedures.

16. On 10 November 2015, El Gouna filed its Appeal Brief, in accordance with Article R51 of the CAS Code. This document contained a statement of the facts and legal arguments. El Gouna challenged the Appealed Decision, submitting the following requests for relief:

- “1. *To accept this appeal against the Decision of the EFA Appeal Committee,*
2. *To declare the stay of the Appealed Decision,;*
3. *To adopt an award annulling said decision and establishing that:*
  - a. *the Player was registered for the First Respondent in violation of the EFA Regulations*
  - b. *the registration of the Player for the First Respondent was not correct;*
  - c. *the Player was not eligible to play for the First Respondent;*
  - d. *the Player was irregularly fielded by the First Respondent as per the applicable EFA Regulations, as he was registered with another club*
  - e. *condemn the First Respondent to defeat by 2:0 in all matches in which the Player was fielded while his registration was incorrect according to Article 87.*
  - f. *to order the Second Respondent to draw again the final ranking of the Egyptian Premier League further to the 4-point deduction to be imposed on the First Respondent, after declaring their loss 2:0 in the two matches that the Player illegally participated in and where the First Respondent gained 4 points in these matches*
    - g.1. *as a consequence of the above, to order the Second Respondent the reinstatement of the Appellant in the First Division of the current Egyptian League season 2015/2016*
    - g.2. *in case the request for conservatory measures is not granted and the sporting season 2015/2016 has already elapsed by the time an award in the present appeal arbitration proceedings is rendered to recognize the right of the Appellant to be reinstated in the Egyptian Premier League (First Division) and declare said reinstatement to be automatically produced for the subsequent sporting season, i.e. 2016/2017*
4. *To condemn the EFA to pay the Appellant an amount which will be duly detailed within the next 10 days by the Appellant in order to compensate the financial, sporting and social damages provoked to the latter as a result of the first and second-instance biased proceedings,<sup>2</sup>*
5. *To fix a sum of 25,000CHF to be paid by the Respondents to the Appellant to help the payment of its legal fees and costs.*
6. *To condemn the Respondents to the payment of the whole CAS administration costs and the Arbitrators fees.*
7. *Awarding any such other relief as the Panel may deem necessary or appropriate”.*

17. On 12 November 2015, the President of the Appeals Arbitration Division dismissed the application for a stay.

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<sup>2</sup> At the occasion of the hearing, this request for relief was explicitly withdrawn by El Gouna.

18. On 17 November 2015, El Dakhliya filed its Answer, in accordance with Article R55 of the CAS Code, whereby it requested the CAS to decide the following:

*“to refuse the appeal submitted from El-Gouna sporting club, and to support the arbitration issued from players affairs committee and Supreme Appeal Committee affiliated to the Egyptian Football Association”.*

19. On 17 November 2015, the EFA filed its Answer, in accordance with Article R55 of the CAS Code. Although the EFA did not file any specific requests for relief, the Panel understands that it objects to the CAS jurisdiction and that it requests CAS to decide the following:

*“(…) to neglect the appeal (…)*

*(…) all procedure to register the player Samir Fekry for El Dakhliya club was right (…)*

*From all the above, EFA the second respondent refuse and deny all allegations presented by El Gouna club as it is all against the regulations and reality also all arguments, presented are not right concerning the registration of the player”.*

20. On 1 December 2015, pursuant to Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to decide the present matter was constituted by:

- Mr Manfred Nan, Attorney-at-Law in Arnhem, the Netherlands, as President;
- Dr Mohamed Abdel Raouf, Attorney-at-Law in Cairo, Egypt, and;
- Ms Rabab Yasseen, Attorney-at-Law in Geneva, Switzerland, as arbitrators.

21. Even though no expedited procedure had been implemented, the Panel decided to proceed in a swift manner and, as requested by the Appellant, suggested to hold a hearing on 22 December 2015. The EFA indicated it would be available on such date while El Dakhliya did not object to the suggested date. The hearing was therefore formally convened by way of a letter of 7 December 2015. Thereafter, El Dakhliya confirmed it could attend the hearing on 22 December 2015.

22. On 8 December 2015, the Panel granted the EFA a deadline until 14 December 2015, which deadline was extended until 17 December 2015, to file its comments on El Gouna’s request for disclosure and/or to provide the requested documents, which it failed to do. Furthermore, and in accordance with Article R55 of the CAS Code, the Panel granted El Gouna the same deadline to file its comments on EFA’s objection to the CAS jurisdiction.

23. On 11 December 2015, El Gouna duly returned a signed copy of the Order of Procedure.

24. On 14 December 2015, El Gouna filed its answer on jurisdiction concluding that CAS has jurisdiction to hear the present dispute.

25. On 16 December 2015, the EFA duly returned a signed copy of the Order of Procedure. El Dakhliya did not return a signed copy of the Order of procedure.

26. On 16 December 2015, El Dakhliya submitted a request for postponement of the hearing, due to visa problems.
27. On 16 December 2015, the CAS Court Office, on behalf of the President of the Panel, informed the parties that El Dakhliya's request for postponement was not granted in view of El Gouna's request for a decision to be taken as soon as possible and El Dakhliya's indication that it would be available for a hearing on 22 December 2015. El Dakhliya was invited to provide the CAS Court Office with its phone number to attend the hearing by telephone.
28. On 20 December 2015, El Dakhliya provided the CAS Court Office with a "*pleading memo (...) to be submitted to the Jury composed to consider the referred dispute (...)*".
29. On 22 December 2015, a hearing was held in Lausanne, Switzerland. At the outset of the hearing all parties confirmed that they had no objection to the constitution and composition of the Panel.
30. In addition to the Panel and Mr Antonio De Quesada, Counsel to the CAS, the following persons attended the hearing:

For El Gouna:

- Mr Juan de Dios Crespo Perez, Counsel;
- Mr Nasr Eldin Azzam, Counsel;
- Mr Gianpaolo Monteneri, Counsel;
- Mr Alfonso Leon Lleo, Counsel;
- Mr Said Hanafi, El Gouna Member of the Board.

For El Dakhliya:

- Major General Osman Mohamed Dessouki, Executive Director, by telephone
- Mr Mohamed Elbayoumi, technical consultant/legal advisor, by telephone,
- Ms Heba Ezzeddin, interpreter, by telephone.

For the EFA:

- Mr Magdy Ibrahim El Metnawy, Board Member;
- Mr Mohamed Mostafa Darwish Elmashta, Counsel;
- Mr Walid Salah El Din Abdallah El Attar, Counsel.

31. The Panel heard evidence of Mr Salah Ramadan, former vice-president of the EFA Players Affairs Status Committee, both as a lay witness as well as an expert witness called by El Gouna. Mr Ramadan's evidence was translated into English by an interpreter.
32. Mr Ramadan was invited by the President of the Panel to tell the truth subject to the sanctions of perjury. Each party and the Panel had the opportunity to examine and cross-examine Mr Ramadan. The parties then had ample opportunity to present their case, submit their arguments and answer the questions posed by the Panel.
33. Before the hearing was concluded, all three parties expressly stated that they did not have any objection to the procedure adopted by the Panel and that their right to be heard had been respected.
34. The Panel confirms that it has carefully heard and took into account in its discussion and subsequent deliberations all of the submissions, evidence and arguments presented by the parties, even if they have not been specifically summarized or referred to in the present award.

#### IV. SUBMISSIONS OF THE PARTIES

35. The submissions of El Gouna, in essence, may be summarised as follows:
  - As to the jurisdiction, El Gouna submits that pursuant to Article R47 of the CAS Code, article 67.1 of the FIFA Statutes, article 55 of the Statutes of the CAF and articles 44 and 46.3 of the EFA Statutes, CAS has jurisdiction because the mentioned statutes and regulations so provide and because El Gouna has exhausted the legal remedies available to it prior to the appeal. El Gouna argues that the EFA informed El Gouna of its possibility to appeal to CAS through its letters dated 21 and 25 October 2015. Furthermore, El Gouna maintains that the Appealed Decision is subject to an appeal before CAS because the EFA Appeal Committee is "*not an independent and duly constituted arbitration tribunal*". Finally, El Gouna emphasised that "*the Panel is bound by the general legal principle of "contra preferendum"*".
  - As to the standing to appeal, El Gouna points out that the EFA accepted El Gouna's claims submitted to the EFA PASC and to the Appeals Committee. Further, the EFA, by letters dated 21 and 25 October 2015, informed El Gouna "*on his right to take further steps in light of the applicable regulations and file an appeal against the Decision*".
  - As to the legal capacity of Mr Ahmed El Sehefy. El Gouna argues that he was fully empowered to represent El Gouna.
  - As to the merits, El Gouna submits that El Dakhliya violated the EFA regulations and should have been fined and sanctioned by the EFA with a 4-points deduction because it registered and fielded the Player who was already registered with the Military Club without consent of the latter.
  - Following such interpretation, El Gouna argues that the EFA shall review the final standing of the Egyptian Premier League for the current sporting season.

36. The submissions of El Dakhlia, in essence, may be summarised as follows:

- As to the standing to appeal, El Dakhlia argues that *“El-Gona Sporting Club has no right for appeal to the International Court for the following reasons:*
  1. *The main reason in the lawsuit is El-Entag El-Harby sporting club;*
  2. *Player is amateur player and not professional player;*
  3. *The player status in season 2013/2014 is amateur player and not professional player”.*
- As to the merits, El Dakhlia purports that it *“took all procedures and steps that has been identified by Egyptian Football Association and International Association regarding the transfer for any player from club to another, the club had took all proper administrative and legally procedures followed in this concern according to the organizing bylaws and applicable in this regard”.*
- In its “pleading memo” and at the outset of the hearing, El Dakhlia supplemented its defence by arguing that CAS has no jurisdiction.

37. The submissions of the EFA, in essence, may be summarised as follows:

- As to the jurisdiction, in its Answer, the EFA found that CAS does not have jurisdiction to deal with the present matter *“as it is against article 67 from the FIFA status and the CAS procedures, as this article states that we cannot appeal against the final decisions issued from any juridical body affiliated to FIFA”.* However, at the outset of the hearing, the EFA withdrew its objection to the jurisdiction of CAS and explicitly confirmed the jurisdiction of CAS in the present dispute.
- The EFA maintains that Mr Ahmed Al Sehefy did not have the legal authority to represent El Gouna, by signing a power-of-attorney on behalf of the Club in favour of the counsel representing El Gouna before CAS.
- As to the standing to appeal, the EFA argues that only *“Entag Harby Club”* had the right to appeal to CAS.
- As to the merits, the EFA argues that *“the player was registered for El Dakhlia with the right procedures”.*

## V. PRELIMINARY ISSUES

38. At the outset of the hearing, the Panel invited the parties to comment on El Gouna’s request for disclosure and translation by the EFA *“of the decision rendered by the EFA Judicial Bodies on the match in between Imbaba Sporting Club and Kafr Hakim Club”* where the latter allegedly fielded an ineligible player, Omar Elsayed Abdel Sattar.
39. After having heard the parties’ views, particularly the EFA’s objections thereto, the President of the Panel informed the parties that the Panel dismissed El Gouna’s request for disclosure as it was not convinced of its relevance for the pertinent points in the present appeal arbitration proceedings.

40. Further, the Panel invited the parties to comment on El Dakhliya's request to admit to the file the "*pleading memo*" by which it – for the first time – objected to the jurisdiction of CAS.
41. After having heard the parties' views on the admissibility of this document, particularly El Gouna's objection to the admissibility of the part of the "*pleading memo*" in respect of El Dakhliya's defence on lack of jurisdiction, and pursuant to Article R56 of the CAS Code, the President of the Panel informed the parties that the memo was admitted to the file, except for the part dealing with the defence on lack of jurisdiction, which was declared inadmissible. In fact, any defence of lack of jurisdiction should have been raised by El Dakhliya together with its Answer, within the deadline prescribed at Article R55 of the CAS Code, which it failed to do.
42. Finally, both El Gouna and the EFA submitted several new documents during the hearing, the EFA even submitted new documents during the closing statements. The Panel decided not to admit any of these documents to the case file, as the requirements of Article R56 of the CAS Code were not complied with; in particular the Panel was of the view that nothing prevented the parties from submitting these documents earlier. The Panel only accepted the EFA Competition Regulations submitted by the EFA, because the Panel deemed these documents relevant for the outcome of the dispute, and were publicly available to all parties.

## VI. JURISDICTION

43. In keeping with article 176 of the Swiss Private International Law Act (hereinafter: the "PILA"), Chapter 12 of the PILA governs this arbitration as the *lex arbitri*, i.e. the law governing the arbitral proceedings, since the seat of the arbitral tribunal is located in Switzerland and since at least one of the parties is neither domiciled nor habitually resident in Switzerland.
44. The Panel has the so-called *Kompetenz-Kompetenz*, i.e. the authority to determine whether it has jurisdiction to adjudicate the merits of the case (CAS 2005/A/952).
45. This principle is reflected in Article R55 (4<sup>th</sup> paragraph) of the CAS Code, determining that "[t]he Panel shall rule on its own jurisdiction".
46. The Panel observes that El Dakhliya in its Answer did not object to CAS jurisdiction and addressed the merits of the dispute. However, two days before the hearing, El Dakhliya submitted a "*pleading memo*" in which it objected to CAS jurisdiction, which objection was reiterated during the hearing.
47. As stated above, the Panel finds that jurisdictional objections shall be made before entering into the merits of the dispute (see CAS 2007/A/1395, para. 7) or together with the Answer at the latest as expressly provided at Article R55 of the CAS Code. The Panel refers also to a case brought before the Swiss Federal Tribunal (hereinafter: the "SFT") in which the jurisdiction of CAS was contested (DFT 4P.105/2006, at 6.3). The SFT found that the appellant's defence of lack of jurisdiction was no longer admissible because the appellant should have contested CAS' jurisdiction until its answer on the merits at the latest (in accordance with Article 186 para. 2 PILA).

48. The Panel concurs with this jurisprudence and finds that the party who challenges the jurisdiction of CAS should do so before entering into the merits of the CAS proceedings: once it has submitted its Answer and expressed itself on the merits of the case, it is deemed to have accepted the jurisdiction and is therefore no longer admitted to raise the defence of lack of jurisdiction (“*Einlassung auf das Verfahren*”, see BERTI/SCHNYDER in: HONSELL *et al.*, *IPRG Kommentar*, Art. 190 N.32; DFT 120 II 155 at c.3a; DFT 121 III 495 at c.6d; POUDRET/BESSON, *Comparative law of international arbitration*, 2nd ed., para. 796.; MAVROMATID., *Selected issues related to CAS jurisdiction in the light of the jurisprudence of the Swiss Supreme Court*, Bulletin TAS/CAS Bulletin 1/2011, p. 34; MAVROMATI/REEB, *The Code of the Court of Arbitration for Sport*, 2015, p. 254).
49. The Panel observes that El Dakhliya only raised the defence of lack of jurisdiction after the filing of its Answer, whereas it already entered into the merits of the dispute in its Answer without objecting to the jurisdiction of CAS. As such, the Panel does not admit El Dakhliya’s defence of lack of jurisdiction.
50. In continuation, the Panel observes that the EFA in its Answer initially objected to CAS jurisdiction, but that the EFA withdrew this objection at the outset of the hearing, explicitly confirming CAS jurisdiction.
51. Consequently, the Panel finds that CAS is competent to entertain the present appeal regarding the present sport-related dispute.

## VII. ADMISSIBILITY

52. Article R49 of the CAS Code provides the following:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from receipt of the decision appealed against”.*
53. As no time limit is provided in the statutes or regulations of the EFA, the appeal was to be filed within twenty-one days following the date of receipt of the Appealed Decision. It is not disputed that El Gouna filed its Statement of Appeal within this deadline of twenty-one days. The appeal complied with all other requirements of article R48 of the CAS Code, including the payment of the CAS Court Office fee.
54. It follows that the appeal is admissible.

## VIII. APPLICABLE LAW

55. As set out above, Chapter 12 of the PILA governs this arbitration as the *lex arbitri*, *i.e.* the law governing the arbitral proceedings. With respect to the *lex causae*, *i.e.* the substantive rules and/or laws to be applied to the merits of the dispute, article 187(1) of the PILA provides:

*“The arbitral tribunal shall rule according to the rules of law chosen by the parties or, in the absence of such choice, according to the law with which the action is most closely connected”.*

56. Article R58 of the CAS Code provides the following:

*“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

57. El Gouna maintains that the various rules and regulations of the EFA shall apply.

58. El Dakhliya maintains that the regulations of the EFA and specifically the Statutes shall apply, as well as *“local bylaws of players affairs”*.

59. The EFA did not submit any position in this respect.

60. The Panel observes that it is undisputed that the alleged violation regarding the registration of the Player took place in a national dimension. The decision rendered by the EFA Appeals Committee relates only to domestic Egyptian competitions.

61. Consequently, the Panel finds that the primary rules to be applied are the relevant rules and regulations of the EFA. In case of a *lacuna* in the relevant rules and regulations of the EFA, in principle Egyptian law shall be applied subsidiarily, but only in the event the interpretation or construction of the EFA rules and regulations is required.

## **IX. MERITS**

### **A. The Main Issues**

62. The main issues to be resolved by the Panel are the following:

- a) Did Mr Ahmed El Sehefy lack the legal authority to represent El Gouna?
- b) Has the EFA Appeals Committee committed, within the terms of its own jurisdiction, any relevant error in not applying article 87 of the Competition Regulations?
- c) If so, does El Gouna have standing to appeal?
- d) If so, should the Appealed Decision be set aside?

a) Did Mr Ahmed El Sehefy lack the legal authority to represent El Gouna?

63. In the present proceedings, the Statement of Appeal was accompanied by a power-of-attorney dated 22 October 2015, signed by Mr Ahmed El Sehefy, board member of El Gouna.

64. The EFA purports that Mr El Sehefy does not have the legal authority to represent El Gouna because only the President of an Egyptian football club is able to represent such club in legal proceedings. The EFA argues that Mr El Sehefy should have had "*a special letter of atorney for this appeal in specific, and the legal period to appeal did finish without doing the proper action*". Further, the EFA argues that the representing powers of the President of a club cannot be delegated to another person.
  65. El Gouna maintains that Mr El Sehefy is a board member of El Gouna and, as such, is fully empowered to represent El Gouna. In addition, El Gouna submitted documents related to the legal capacity of Mr El Sehefy.
  66. El Dakhliya did not submit any position in this respect.
  67. The Panel notes that the EFA referred to Egyptian law and case law in support of its defence on this issue only during its closing statements. It did not file any legal documents translated into English with regard to the applicable law on this issue beforehand. Therefore, the Panel lacks the necessary evidence in order to rule on this case in accordance with Egyptian law or case law with regard to the question whether Mr El Sehefy had the legal authority to represent El Gouna.
  68. The Panel observes that El Gouna submitted evidence that Mr El Sehefy is a board member of El Gouna and provided a power-of-attorney dated 22 October 2015 together with its Statement of Appeal, pursuant to which Mr El Sehefy empowered its lawyers to represent El Gouna in the present arbitration proceedings.
  69. The Panel is not convinced by the arguments of the EFA that Mr El Sehefy was not authorised to represent El Gouna and lacked the legal authority to sign a power-of-attorney on behalf of such club, particularly due to the fact that the EFA failed to establish that a board member of an Egyptian club is not entitled to sign a power-of-attorney, but only the president of such club.
  70. Consequently, the Panel finds that Mr El Sehefy did not lack the legal authority to represent El Gouna.
- b) Has the EFA Appeals Committee committed, within the terms of its own jurisdiction, any relevant error in not applying article 87 of the Competition Regulations?
71. The Panel observes that the EFA Appeals Committee confirmed the decision rendered by the EFA PASC, in which it sanctioned the Player and confirmed the continued registration of the Player with El Dakhliya. No sanction was imposed on El Dakhliya. In the Appealed Decision the EFA Appeals Committee considered that El Dakhliya "*has taken all correct procedures (...)*", that "*the player mislead both clubs (...)*" and that El Dakhliya "*did not fully knew that the player is registered with another club for the same season (...)*".
  72. The Panel observes that the EFA Appeals Committee confirmed that the Player was registered for El Dakhliya in violation of the EFA Player's Affairs Regulations, due to misleading

information given by the Player, but that El Dakhlia “*did not fully knew that the player is registered with another club for the same season*”. The EFA Appeals Committee explicitly stated that it did not respond to any further arguments raised by El Gouna.

73. El Gouna submits that El Dakhlia violated not only the EFA Players Affairs Regulations, but also the EFA Competition Regulations, and should have been fined and sanctioned by the EFA PASC with a 4-points deduction because it registered the Player without the consent of the Military Club and subsequently fielded the Player in two matches played in the 2014/2015 season of the Egyptian Premier League, although the Player was registered with the Military Club. As such, El Gouna maintains that El Dakhlia fielded an ineligible player in the First Match, the Second Match and the Third Match.
74. El Gouna further purports that the EFA Appeals Committee is “*an umbrella*” for all appeals within the EFA. As such, the EFA Appeals Committee has to apply all rules and regulations of the EFA, including article 87 of the EFA Competition Regulations, based on which provision, if it is established that a club fielded a player that was not registered in accordance with the legal requirements, this club must mandatorily be sanctioned by declaring such match lost by forfeit.
75. The EFA argued during the hearing that the EFA Players Affairs Regulations deal with the consequences of deficiencies regarding the registration of a player with a club and that the EFA Competition Regulations deal with the consequences of fielding a player whose registration conditions are not met. As such, the EFA purported that the EFA PASC could not apply article 87 of the Competition Regulations, but could only deal with the issue of registration.
76. The EFA maintains that in order for sanctions to be imposed on El Dakhlia in accordance with the Competition Regulations, El Gouna should have filed a complaint at the Tournament Committee within 48 hours after the specific match or during the season, referring to articles 68 and 69 of the Competition Regulations.
77. El Dakhlia did not submit any position in this respect.
78. The Panel observes that it is undisputed between the parties that the EFA Appeals Committee was competent to hear El Gouna’s appeal and that the Appealed Decision concerns an appeal against the EFA PASC Decision, and not an appeal against a decision of the EFA Tournament Committee, or any other (disciplinary) committee.
79. In light of the above, the Panel notes that the question to be answered is whether the EFA Appeals Committee has committed, within the terms of its own jurisdiction, any relevant error in not imposing a disciplinary sanction on El Dakhlia, as specified in article 87 of the Competition Regulations.
80. The Panel observes that the EFA Players Affairs Regulations – in its undisputed English translation – determine, *inter alia*, the following:

*“Article 5; Registration:*

*Par.2: it is not acceptable to register a player in more than one club in the same time;*

*Par.8: the player and the club are responsible for the validity of the data submitted to EFA and its branches.*

*[...]*

*Article 11; Sanctions*

*The committee has the right to impose the following sanctions on Clubs, Players,[...]:*

*[...]*

*2 If amateur player signs with more than one club for the same period:*

*The Player is to be suspended for a period, not less than (4) months and not more than one year.*

*All registration documents shall be cancelled. The player shall sign before the registration officer at premises of EFA for the club he wishes to join after the end of suspension period.*

*3 Amateur Player who signs for another club while he is still registered with his original club:*

*The new registration documents shall be discarded, in addition the new club shall be subject to penalty of fine if it is evidenced that the club knows of the registration of the player with his original club. [...]"*

81. The Panel observes that the EFA Competition Regulations – in its undisputed English translation – determine, *inter alia*, the following:

*“Article 3:*

*The Tournament Committee is the only authority that is responsible for applying the regulations and the rules that aim to the well regularity of the football tournaments that the Egyptian Football Association manages.*

*Article 4:*

*The Committee specializes in the competitions of the Egyptian Premier League, Cup of Egypt, (...).*

*Article 5:*

*This regulation is applied on all components of the football including the clubs, (...)players (...).*

*Article 9:*

*The decisions that the Committee releases are valid unless the Federation Board of Directors took decision to cancel or modify them.*

*Article 11:*

*The Committee notifies all the branches and the concerned clubs of the issued decisions.*

*Responsibilities and competences of the Tournaments Committee*

*Article 12:*

*The tournaments Committee specialized in applying this regulation and imposing sanctions mentioned in the regulation in case that its provisions are breached. (...).*

*Article 25:*

*The Committee can sign the following penalties as follows:*

*(...)*

*10- Deduct points*

*11- Cancel the result of the matches*

*(...)*

*Article 29:*

*It's conditioned for the club which joins any competition, to be fulfilled with the required conditions.*

*Also, it's conditioned the validity of the registration of the players at the Egyptian Football Association before the sporting season start.*

*Article 66:*

*The clubs pay the fees of the protests according to the categories of the competition that QFA board of Directors defines before the beginning of every season to be the protest acceptable formally In case that the protests against the incorrect data "falsification or fraud" the value of the protest fees will be redoubled (...)*

*Article 68:*

*The protesters are presented to competition of Committee with an attach of the values of the fees of protest according to the categories of the competitions that QFA Board of Directors defines before the start of every season. If the degree of the two contestants is different, the fee will be calculated on the higher grade of the team in a period never exceed 48 hours from the date of the end of the match, (...).*

*Article 69:*

*The clubs present the protests against (the incorrect data, falsification in the documents in the cards of players at any time when these acts are found out without considering the shown period of the previous duration on condition of being in the same season,*

*Article 70:*

*Any club has no right to address the FIFA directly but has the right to submit its protest to competition committee and it will discuss the protest and preparing the suitable decision and send it to FIFA if it needs and everything except this no acceptable according to FIFA instructions.*

*Article 71:*

*Competition committee adjudicates on the protests after paying the fees and respects the times by what it see suitable by a final and applicable decision unless otherwise issue a decision by the Appeals Committee and sports court. (...)*

*Article 87:*

*It is conditioned that the players participate in the competition organized by the Egyptian Football Association, to be correctly registered at the records of the EFA at the beginning of each season, (...).*

*The club is responsible for all data of the players submitted. Shall it is proven that a club fielded a player, whose registration legal conditions are not met or fulfilled, in a match with its team, the club shall be deemed defeated in the match (0/2), whatever the actual result of that match was, unless the team was defeated with bigger result. (...)"*

82. The Panel understands from the regulations provided that in order to impose the sanction of match forfeit in accordance with article 87 of the EFA Competition Regulations, a claim should be lodged at the EFA Tournament Committee in accordance with articles 66 *et seq.* of the EFA Competition Regulations, which decision can be appealed before the Appeals Committee. The Panel observes that the Competition Regulations do not seem to restrict the variety of clubs that are permitted to file a complaint to only the clubs involved in a particular match.
83. In continuation, the Panel observes that article 3 in conjunction with article 12 of the Competition Regulations stipulate that the Tournament Committee has exclusive jurisdiction to apply the sanctions incorporated in the Competition Regulations.
84. For the sake of good order, the Panel refers to the original Arabic language of articles 3 and 12 of the EFA Competition Regulations, determining the following:

المادة (3):

تختص لجنة المسابقات دون غيرها بتطبيق لائحة المسابقات ويكون هدفها حسن انتظام المسابقات التي يديرها الاتحاد المصري لكرة القدم.

المادة (12):

تختص لجنة المسابقات دون غيرها بتطبيق أحكام هذه اللائحة وتوقيع الجزاءات المقررة بها على مخالفة أحكامها ويكون هدفها حسن تنظيم إدارة المسابقات التي يديرها الاتحاد المصري لكرة القدم.

Which, freely translated into English by the Arabic-speaking members of the Panel, means the following:

*Article 3:*

*The Tournaments Committee has exclusive jurisdiction to apply the competition regulation and its aim is the well regularity of the tournaments managed by the Egyptian Football Association.*

*Article 12:*

*The Tournaments Committee has exclusive jurisdiction to apply the provisions of the present regulation and to impose the sanctions stipulated therein upon the breach of its provisions, and its aim is the well regularity of the tournaments managed by the Egyptian Football Association.*

85. The Panel finds the original wording in Arabic even clearer than the English translation provided by the parties. More specifically, the Panel finds that the regulations are clear in the sense that only the Tournament Committee is competent to apply article 87 of the EFA Competition Regulations and, as such, that only the EFA Tournament Committee is competent to impose the sanction of declaring a match lost by forfeit.
86. This is logical given the importance of the sanction specified in article 87 of the EFA Competition Regulations and the fact that the EFA has deliberately created distinct specialized committees, each governed by its own regulations and composed of pertinently competent

persons, in order to enable such committees to discuss and decide matters falling within their respective jurisdictions.

87. However, the present proceedings are related to an appeal regarding a dispute that was originally lodged with the EFA PASC, *i.e.* El Gouna lodged a complaint regarding the Player's registration with El Dakhliya before the EFA PASC.
88. The Panel finds that the scope of El Gouna's complaint was therefore limited to the competence of the EFA PASC, *i.e.* whether the Player was registered with El Dakhliya in violation of the EFA Players Affairs Regulations.
89. As such, the Panel finds that the EFA PASC was only competent to apply the EFA Players Affairs Regulations and not the EFA Competition Regulations. As a matter of fact, the EFA PASC had the authority to impose disciplinary sanctions, but only the sanctions provided for in article 11 of the EFA Players Affairs Regulations.
90. The Panel finds that, since El Gouna failed to establish that the EFA PASC was competent to impose the sanctions set out in article 87 of the EFA Competition Regulations, also the EFA Appeals Committee was not competent to do so. The fact that the EFA Appeals Committee also acts as the appellate body in respect of decisions rendered by the EFA Tournament Committee does not make this any different. The scope of the present dispute is limited to the competence of the EFA PASC in first instance.
91. As such, the Panel can review the Appealed Decision to see whether the EFA Appeals Committee made, within terms of its own jurisdiction, a relevant error. However, the Panel's *de novo* power of review cannot be construed as being wider than that of the appellate body, just like the power of review of the EFA Appeal Committee cannot be construed as being wider than that of the EFA PASC.
92. Should El Gouna have desired for certain matches of El Dakhliya to be declared lost by forfeit, it should have filed a complaint with the EFA Tournament Committee in accordance with the EFA Competition Regulations. In any event, the Panel finds that the present appeal proceedings cannot be used to bypass the exclusive jurisdiction of the competent EFA committee by introducing such disciplinary claim within the context of a dispute regarding the registration of a player in appeal. Allowing El Gouna to do so would be tantamount to an abuse of rights, in addition to rendering the EFA's internal organization void of any sensible meaning.
93. Consequently, the Panel finds that the EFA Appeals Committee has not committed, within the terms of its own jurisdiction, any relevant error in not imposing a disciplinary sanction on El Dakhliya, as specified in article 87 of the Competition Regulations.
94. In view of the above-mentioned conclusion, the Panel does not deem it necessary to address the remaining questions, arguments and requests for relief submitted.

**B. Conclusion**

95. Based on the foregoing, and after having taken into due consideration both the regulations applicable and all the evidence produced and all arguments submitted, the Panel finds that:
- Mr El Sehefy did not lack the legal authority to represent El Gouna.
  - The EFA Appeals Committee did not commit, within the terms of its own jurisdiction, any relevant error in not applying article 87 of the Competition Regulations.
96. All other prayers for relief are dismissed.

**ON THESE GROUNDS**

**The Court of Arbitration for Sport rules that:**

1. The appeal filed on 26 October 2015 by El Gouna Sporting Club against the Decision issued on 5 October 2015 by the Egyptian Football Association Appeals Committee is dismissed.
2. The Decision issued on 5 October 2015 by the Egyptian Football Association Appeals Committee is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.