



**Arbitration CAS 2014/A/3838 Perry Overeem v. PAOK F.C., award of 13 July 2017**

Panel: Mr Lars Hilliger (Denmark), Sole Arbitrator

*Football*

*Contract of agency*

*CAS' jurisdiction as FIFA's appeal body*

*CAS' jurisdiction as ordinary arbitration body*

*"Transformation" of proceedings started as appeal proceedings into ordinary proceedings*

1. **The general rule under which one decision from a first-instance body is required to have been rendered for the CAS to exercise its jurisdiction as appeal body implicitly implies that the appeal against said first instance body's decision relates to the issue(s) which were determined in said decision. Faced with a situation where a first-instance body deemed itself incompetent to decide a case, the CAS, as appeal body, is itself incompetent to deal with one appellant's prayers for relief presented before it since all said prayers are related to the merits of the dispute at hand. Should it consider itself competent to decide the case as to its merits, the CAS would thus permit a circumvention of the first body's (undisputed) lack of jurisdiction by dealing with a somewhat pretended appeal.**
2. **Pursuant to articles R38 and R39 of the CAS Code, an express condition for the CAS jurisdiction in an ordinary procedure is the existence of a valid arbitration agreement that makes the CAS competent to hear and decide the dispute in question.**
3. **An appeal to the CAS filed under the rules governing appeal proceedings set out in the CAS Code cannot merely be "transformed" into a request for arbitration according to the rules of the Code on ordinary procedures. Irrespective of whether a common intent of the parties to have the dispute resolved by a Swiss arbitration court with specific knowledge of sports law could be assumed to exist, the differences between FIFA's judicial bodies and the CAS are so substantial that a reference to FIFA as a first-instance body cannot necessarily be implied to mean that the parties, if applicable, would also want the CAS to act as a first-instance body.**

**1. THE PARTIES**

- 1.1 Perry Overeem (the "Appellant" or the "Agent") is a professional football player's agent of Dutch nationality, licensed by the Royal Dutch Football Association.

1.2 PAOK F.C. (the “Respondent” or the “Club”) is a Greek football *société anonyme*, which runs a professional football team currently participating in the Greek Super League. The Club is affiliated with the Hellenic Football Federation (the “HFF”), which in turn is a member of the Fédération Internationale de Football Association (“FIFA”).

## 2. FACTUAL BACKGROUND

2.1 The following considerations set out below are a summary of the main relevant facts as established by the Sole Arbitrator on the basis of the written and oral submissions of the Parties and the exhibits filed. Additional facts may be set out, where relevant, in the legal considerations of the present Award.

2.2 In May 2012, the Appellant represented the professional football coach D. (the “Coach”) and the coach assistants M., G. and S. (the “Assistant Coaches”) as their agent in the contractual negotiations with the Respondent.

2.3 In this context, the Parties, on 31 May 2012, signed a Private Agreement (the “Agreement”) setting out, in essence, the terms and conditions on which the Respondent should pay the Appellant for his services in facilitating the signing of the contracts between the Respondent and the Coach and the Assistant Coaches.

2.4 The Agreement stated, *inter alia*, as follows:

“(…)

3. *It is agreed by the contracting parties that the Agent will receive as a fee for its mediation in the signing of the contracts of PAOK F.C. with the coach and the assistant coaches a percentage of ten percent (10 %) of the amounts of the above contracts, which, for the first year come up to the amount of 360.000,00 euros for the coach D., the amount of 90.000,00 euros for the coach assistant S., the amount of 90.000,00 euros for the coach assistant M., namely the total amount of 600.000,00 euros, and for the second year come up to the amount of 460.000,00 euros for the coach D., the amount of 90.000,00 euros for the coach assistant S., the amount of 90.000,00 euros for the coach assistant G. and the amount of 60.000,00 for the coach assistant M., namely the total amount of 700.000,00.*
4. *According to the above, the Agent is entitled to receive for the season 2012/2013 the net amount of sixty thousand (60.000,00) euros (namely 36.000,00 euros for the coach D., 9.000,00 euros for the coach assistant S., 9.000,00 euros for the coach assistant G. and 6.000,00 euros for the coach assistant M.), which will be paid on the 15.10.2012, and for the season 2013/2014 the net amount of seventy thousand (70.000,00) euros (namely 46.000,00 euros for the coach D., 9.000,00 euros for the coach assistant S., 9.000,00 euros for the coach assistant G. and the 6.000,00 euros for the coach assistant M.), which will be paid on 15.10.2013.*
5. *In case the contract between the coach or any of the coach assistants and PAOK F.C. is terminated before the end of the regular duration of their contracts, namely before 30.06.2014, and the termination is made either by PAOK F.C. for a just cause due to the coach or the coach assistants or by the coach*

*or coach assistant without just cause, as it is specified in the above contracts, the Agent is entitled to receive the amount attributable until the date of the termination of the contract / contracts. In case only one or some of the coach or coach assistants leave from PAOK F.C. for the cause referred and under the conditions of the above passage, the Agent is entitled to receive the amount attributable for every coach or coach assistant until the dates of the terminations of their contracts. If however the termination is due to fault of PAOK F.C., then the whole amount will be due and payable.*

(...)

9. *Finally, the parties also expressly agree that the competent Committee of FIFA will have jurisdiction to decide for any and all disputes that might arise from or in relation to the present agreement and that the FIFA Regulations will apply to any such dispute”.*

2.5 On 1 June 2012, the Respondent signed a contract with the Coach (the “Coach Contract”) and with each of the Assistant Coaches (the “Assistant Coach Contracts”), all valid as from the date of signing until 30 June 2014.

2.6 Article 5 of the Coach Contract stated as follows:

*“Violation of the terms and agreements – Denouncement (terminations) – Compensation – Formalities.*

5.1. *Any material breach of the terms and agreements of this contract grants the other party the right to terminate the present of just cause at any time. To exercise this right, the interested party must officially notify through a bailiff the denouncement to the other party competently. The same stands in case the Coach resigns. The denouncement by any of the parties shall result in the immediate termination of the contract. At the time of denouncement all amounts referred to the present accrued at that day (salaries, fees, bonuses) become due, unless otherwise agreed in written between the parties.*

5.2. *If PAOK F.C. denounces the present for just cause or due to fault of the Coach, it will not owe to him any amount as compensation apart from the amounts accrued. Especially it is foreseen that just cause, beyond the generally accepted as such, is constituted, indicatively, in case, due to medical reasons, the Coach cannot provide his services to PAOK F.C. for a period more than four (4) weeks.*

5.3. *It is explicitly agreed that the Coach is entitled to denounce the present at any time for just cause or due to fault of PAOK F.C. Just cause due to fault of PAOK F.C., beyond the generally accepted as such or as referred to elsewhere in the present, is constituted, indicatively, in case PAOK F.C. delays the payment of any amount for more than sixty (60) days from the due date. Especially in this case, after a period of sixty (60) days, the Coach must inform in writing the PAOK F.C. by providing a period of three (3) days to pay the amount due. If PAOK F.C. does not pay the amount due on the above deadline, the Coach is entitled to denounce the present.*

5.4. *In the event of denouncement of the present from PAOK F.C. without a just cause or by the Coach for just cause due to fault of PAOK F.C., PAOK F.C. will owe as compensation due to penalty the following amounts:*

a) if the denouncement takes place up to 28.02.2013, PAOK F.C. will owe the totality of the amounts ought to be paid according to the present until 31.05.2013, subject to the provisions of the above paragraph 4.4.C.

b) if the denouncement is made from 01.03.2013 and onwards, PAOK F.C. will owe as compensation the totality of the amounts ought to be paid according to the present until the end of the present, subject to the provision of the above paragraph 4.4.C.

*All the above amounts are automatically due at the time of the denouncement, unless there is a different written agreement between the parties.*

5.5. *It is explicitly agreed that the Coach has the right to denounce at any time the present contract, even without just cause, by paying PAOK F.C. the amount of the three hundred thousand (300.000,00) euros net as penalty, which is considered by the contracting parties as fair and just. The above amounts is automatically due at the time of the denouncement, unled there is a different writing agreement between the parties. The amount shall become automatically due at the time of termination, unled otherwise writing agreement of the Parties.*

5.6. *It is expressly agreed and accepted by the parties that the unfortunate results in matches do not constitute just cause for denouncing the present.”*

2.7 Article 5 of each of the Assistant Coach Contracts stated, *inter alia*, as follows:

*“5.7 In case PAOK F.C. denounces for just cause or due to fault of the Coach the contract with D., or in case the Coach D. makes use of the provision 5.5. of his contract or denounces it due to fault of PAOK F.C., both sides have the right to denounce the present without any obligations for compensation”.*

2.8 On 27 February 2013, the Respondent and the Coach agreed on certain amendments to the initial Coach Contract. These amendments included the deletion of the originally agreed Art. 5.6 (as quoted under para 2.6 above).

2.9 On 27 April 2013, the Respondent’s team was defeated 0-2 in the second leg of the semi-finals of the Greek Cup after having already won 2-1 in the first leg, thus not qualifying for the Greek Cup Final.

2.10 On 29 April 2013, the Coach, via his legal representative, forwarded an extrajudicial declaration to the Respondent, stating, *inter alia*, as follows:

*“(…)*

*As you are well aware of, for some time now I have been repeatedly the target of vulgar insults/ attacks by people bearing the insignia of PAOK FC. Nevertheless, in execution of the agreement between us, as amended and currently in force, I have been properly provided with all necessary and applicable means to carry out my contractual duties, suggestively including an average of three (3) bodyguards as personal security, who accompanied me especially in my arrival and departure from the team practice sessions, as well as in every other commitment of the team.*

*On Saturday, April 27<sup>th</sup>, 2013 after the unfortunate and unsuccessful result of our team, the President Mr. Vryzas and the Technical Director Mr. Tsistiakov called me and told me the PAOK FC owner ordered me to resign. Otherwise, as they informed me, I would have problems with the team fans that would come not only to the practice sessions but also to my house as well. However, I've made it crystal clear to them that I am not recreant to leave my team, and my intention is to continue carrying out my contractual duties. I also requested them to provide me with the appropriate means and conditions as they did up to that moment.*

*Whereas a few hoarser later, at around 5 am (on Sunday 28/4/2013), some strangers invaded my property, climbing on the balcony and attempting to enter my house, they grossly insulted me asking me to resign from my office with PAOK FC;*

*Whereas my intention is to continue carrying out my contractual duties;*

*Whereas my next scheduled commitment is the team practice I myself set for Tuesday April 30<sup>th</sup>, 2013 at 17.99 pm;*

*I request, for the next team practice on Tuesday, April 30<sup>th</sup>, 2013 to duly provide me with all necessary and appropriate means to carry out my contractual duties.*

*A competent bailiff is ordered to serve hereof to the addressee, to become acquainted with the legal consequences, by copying hereof as a whole in the performance report”.*

- 2.11 Later on the same day, the Respondent submitted its Extrajudicial Answer, Declaration and Denouncement to the Coach, in which, *inter alia*, the Respondent terminated the Coach Contract, stating, *inter alia*, as follows:

*“Surprisingly we received today your extrajudicial declaration – invitation, in which, amount others, you refer “This Saturday, 27 April 2013, after the unfortunate result of our team, the president Mr. Vryzas and the technical director Mr. Christyakov called me and told me that it is an order of PAOK F.C. owner to resign. Otherwise, I was informed that I would have problems with the fans who will come not only to the trainings but also to my house”. You also refer to an incident fro invasion of strangers in your house, implying that we are related to this.*

*The above, as you know, are completely false and offend the reputation of our company as well as the reputation and value of the persons referred to in the extrajudicial declaration, for whom you clearly indicate that they blackmailed you to resign. The facts referred in your Declaration became known at least the lanyer who drafted it, to the bailiff who served it and to an unknown number of other individuals. In this way you committed the crimes of defamation of societe anonyme and defamation of persons, for which we reserve the right to exercise all out legal rights before the competent courts.*

*Since, while until today, as you confirm in your extrajudicial declaration, PAOK F.C. has fulfilled all its obligations towards you but even further it has supported you in various ways and in difficult situation, your above unlanwful conduct, apart from constituting the above penal crimes, has already irreparably undermined you credibility and relationship of trust between us, which is necessary for the performance by you of your tasks*

*as the Head Coach of the football team, and therefore the continuation of our cooperation considered as impossible.*

*Since for the above reasons your above unlawful conduct constitutes a just cause for the denouncement of our contract by our part.*

*By the present, and subject to all out legal right, including out right to demand compensation for any damage we suffered from your above conduct, we DENOUNCE the contract for the professional football coach services dated 01.06.2012, as it was amended and is valid, for just cause due to your fault, we DECLARE that you cease from today to be head coach of our football team, and we INVITE you to come immediately to the account department of our company to be paid owed to your until today (...)*”.

- 2.12 Following its termination of the Coach Contract, the Respondent also terminated the Assistant Coach Contracts by forwarding extrajudicial declarations to each of the Assistant Coaches dated 30 April 2013 stating, *inter alia*, as follows:

*“By our extrajudicial answer, declaration and denouncement to D. dated 29.04.2013 we denounced the contract between PAOK F.C. and D. for just cause due to fault of his.*

*According to Article 5.7. of the contract (...) dated 01.06.2012, “5.7. in case PAOK F.C. denounced for just cause or due to fault of the Coach the contract with D., or in case the Coach D. Makes use of the provision 5.5. of his contract or denounced it due to fault of PAOK F.C., both sides have the right to denounce the present without any obligations for compensation”.*

*Due to the above denouncement of the contract with D., and in execution of the provision of Article 5.7. of our contract dated 01.06.2012, we DENOUNCE the contract (...) dated 01.06.2012, as it was amended and is valid, we DECLARE that you cease from today to be coach assistant of our football team, and we INVITE you to come immediately to the account department of our company to be paid the amounts owed to you until today (...)*”.

- 2.13 Following the termination of the Coach Contract, the Coach filed a claim against the Respondent with the Financial Dispute Resolution Committee of the HFF (the “EEODEP”), submitting that the Respondent’s termination of the Coach Contract was without just cause, thus claiming the payment of all due salaries together with the remaining amounts to be paid in accordance with the contract for the rest of the remaining contractual period.
- 2.14 The EEODEP, in its decision No 482/2013, accepted the Coach’s claim that the termination was made without just cause, why the Respondent was condemned to pay to the Coach all due amounts up to the date of termination as well as other amounts for the remaining period of the contractual period.
- 2.15 In July 2013, the Respondent appealed decision No 482/2013 to the Appeal Division of the Arbitral Tribunal of the HFF, asking that the decision be partially reversed, awarding only the amount outstanding at the time of the termination of the Coach Contract. After the appeal was heard, the appeal was dismissed on the merits by decision No 36/2013.

- 2.16 The Respondent then appealed to the Civil Appeal Court of Athens decisions No 482/2013 and No 36/2013 for a range of formal reasons.
- 2.17 By decision No 6050/2014, published on 31 October 2014, the Civil Appeal Court of Athens partially accepted the appeal and reversed decision No 36/2013, thus remanding the case back to the Appeal Division of the Arbitral Tribunal of the HFF, where the case, after several postponements, is still awaiting a new hearing, now scheduled for March 2018.
- 2.18 On 16 September 2014, the Appellant filed his claim with FIFA, claiming the Respondent's payment of EUR 70,000 in accordance with the Agreement, equalling 10% of the income of the Coach and the Assistant Coaches for the second year of their contracts with the Respondent.
- 2.19 By letter of 11 November 2014 to the Appellant (the "FIFA Letter"), signed by Mr Marco Villiger, Director of Legal Affairs, and Mrs Maja Kuster Hoffmann, Head of Players' Status, FIFA wrote, *inter alia*, as follows:

*"Dear Sir,*

*We acknowledge receipt of your correspondence dated 16 September and 2 October 2014 regarding the above-mentioned matter, the content of which we duly noted.*

*In this respect, we would like to draw your attention again to art. 1 of the Players' Agents Regulations (hereinafter "the Regulations"), which stipulates that "These regulations govern the occupation of players' agents who introduce players to clubs with a view to negotiating or renegotiating an employment contract or introduce two clubs to one another with a view to concluding a transfer agreement within one association or from one association to another" (emphasis added). Moreover, art. 1 par. 2 of the Regulations stats that "The application of the regulations is strictly limited to players' agents activities described in the paragraph above".*

*In light of the aforementioned and by way of clarification, it would rather appear that your claim lacks legal basis, since the services provided by you and which are object to your claim i.e. providing "services on behalf of the coaching staff of PAOK FC: head coach D., coach assistant M. and coach assistant S.", are outside the scope of the abovementioned provisions.*

*Finally, please be informed that our statements made above are based on the information we received from you only and are therefore of a general nature and thus without prejudice whatsoever.*

*Lastly, we have taken note that you have paid the amount of CHF 2,000 as advance of costs in accordance with art. 17 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber.*

*In this respect, please be informed that we will proceed to refund the cited advance of costs (...).*

*We thank you for your kind attention to the above and trust in your understanding of the situation".*

### 3. SUMMARY OF THE ARBITRAL PROCEEDINGS BEFORE THE CAS

3.1 On 2 December 2014, the Appellant filed his Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (2016 edition) (the “Code”).

3.2 On 17 December 2014, the Appellant filed his Appeal Brief in accordance with Article R51 of the Code.

In its Appeal Brief, the Appellant requested the CAS:

- 1) *To set aside the decision issued on 11 November 2014 by the FIFA;*
- 2) *To issue a (new) decision condemning Respondent to pay Appellant an amount of Euro 70.000,-- NET on outstanding commissions;*
- 3) *The above payment to Appellant shall be made on a net basis, free of any taxation, Respondent being responsible for the filing and payment of all taxes relating to this payment of compensation due to Appellant;*
- 4) *To condemn Respondent to pay Appellant default interest on the above amount of a rate of 5% per annum as from the initial date of the payment being due, being 15 October 2013 until the date of effective payment;*
- 5) *To order Respondent to bear all the costs incurred with the present procedure;*
- 6) *To order Respondent to pay Appellant a contribution towards his legal and other costs, in an amount to be determined at the discretion of the Panel.*

3.3 On 17 March 2015, the Respondent filed its Answer on jurisdiction in accordance with Article R55 of the Code.

In his Answer on jurisdiction, the Respondent requested the CAS to issue an award:

- 1) *Dismissing the appealed by Perry Overeem;*
- 2) *Alternatively, suspending the procedure before CAS until final decisions are issued by the competent HFF tribunal (for the Coach) and Greek courts (for the Assistant Coaches) regarding the existence of just cause for the Respondent’s unilateral termination of Coach D. and the Assistant Coaches, S., G., and M.; and*
- 3) *Condemning Perry Overeem to pay a contribution towards PAOK F.C.’s legal fee and any other arbitration-related costs.*

- 3.4 By letter dated 19 March 2015, the Parties were informed by the CAS Court Office that the Panel had been constituted as follows: Mr Lars Hilliger, attorney-at-law in Copenhagen, Denmark, as Sole Arbitrator.
- 3.5 By letter of 9 April 2015, the Parties were informed that in view of the Parties' common request, the proceedings were suspended.
- 3.6 By letter of 14 February 2017, the Parties were informed that due to the information received, the Sole Arbitrator had decided to resume this procedure.
- 3.7 On 3 March 2017, the Appellant filed his reply to the Respondent's objection to the jurisdiction of the CAS in accordance with Article R55 para. 5 of the Code. The Appellant maintained the competence of the CAS to decide the dispute.
- 3.8 On 15 March 2017, the Respondent filed its Answer on the merits in accordance with Article R55 para. 1 of the Code.
- 3.9 By letter of 4 April 2017, the Parties were informed that the Sole Arbitrator had decided to hold a hearing in this matter.
- 3.10 On 4 and, respectively, 5 May 2017, the Appellant and the Respondent signed and returned the Order of Procedure.

#### **4. HEARING**

- 4.1 On 9 May 2017, a hearing was held in Lausanne, Switzerland.
- 4.2 In addition to the Sole Arbitrator, the Appellant himself and Mr Fabien Cagneux, counsel to the CAS, the following persons attended the hearing:

For the Appellant:

Ms Kirsten Merk and Mr Roberto Branco Martins, attorneys-at-law, Amsterdam, The Netherlands.

For the Respondent:

Mr Heiner Kahlert, attorney-at-law, Munich, Germany, and Mr Achilleas Mavromatis, In-House Lawyer, Thessaloniki, Greece.

- 4.3 Mr Vryzaz, former president of PAOK F.C., was heard as a witness. He gave his testimony after being duly invited by the Sole Arbitrator to tell the truth subject to the sanctions of perjury under Swiss law. The Parties and the Sole Arbitrator had the opportunity to examine and cross-examine Mr Vryzaz.

- 4.4 At the outset of the hearing, the Parties confirmed that they had no objections to the constitution of the Panel.
- 4.5 The Parties were afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the Sole Arbitrator. After the Parties' final submissions, the Sole Arbitrator closed the hearing and reserved his final award. The Sole Arbitrator took into account in his subsequent deliberations all the evidence and arguments presented by the Parties although they may have not been expressly summarised in the present Award.
- 4.6 Upon the closure of the hearing, the Parties expressly stated that they had no objections in respect of their right to be heard and to have been treated equally and fairly in these arbitration proceedings.

## **5. CAS JURISDICTION AND ADMISSIBILITY OF THE APPEAL**

- 5.1 The following outline of the Parties' positions regarding the issue of CAS jurisdiction is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Sole Arbitrator has, however, carefully considered all the submissions and evidence filed by the Parties with the CAS, even if there is no specific reference to those submissions or evidence in the following summary.

### **5.2 The Respondent**

- 5.2.1 In support of his requests for relief regarding the lack of CAS jurisdiction, the Respondent submitted, *inter alia*, as follows:
- a) In order for the CAS to have jurisdiction to hear a case, the CAS must have either ordinary jurisdiction or appellate jurisdiction.
  - b) First of all, the CAS has no ordinary jurisdiction over the dispute since there is no arbitration agreement conferring ordinary jurisdiction in favour of the CAS as required by Article R38 of the Code.
  - c) In any case, FIFA should be a part of a possible arbitration clause, in order for the CAS to be able to decide the dispute.
  - d) Even if the Parties to the Agreement agreed on having any dispute decided by FIFA, this does not have the consequence that any dispute between the Parties deriving from the Agreement automatically falls under the ordinary jurisdiction of the CAS in case FIFA is not competent to decide the matter.
  - e) It is not possible to transform the appeal filed by the Appellant to a request for arbitration as an ordinary procedure.

- f) The formal rules regarding ordinary procedures and appeal procedures are not only strictly formal rules, but also, *inter alia*, take into consideration and protect the autonomy of the federations.
- g) The fact that FIFA refused jurisdiction to decide the present dispute does not make the clause in the Agreement regarding the competence of FIFA to decide such disputes a pathological arbitration clause.
- h) In fact, in accordance with the FIFA Regulations, which state that the laws applicable in the territory of the association should govern the dispute, the present dispute should, in accordance with Greek law, instead be filed with either the HFF Arbitral Tribunals or the state courts.
- i) Any intent by the Parties to have the case decided by specialised sports lawyer judges may still be honoured that way since the HFF Arbitral tribunals consist of arbitrators specialising in sports-related matters.
- j) Moreover, no provision in the Agreement can be understood to exclude any other kind of dispute resolution procedure.
- k) Even if the relevant clause in the Agreement was to be considered a pathological arbitration clause, under principle of contract interpretation, especially the principle of *contra stipulatorem*, the provision should be interpreted against the Appellant, whose Greek lawyer drafted the Agreement.
- l) Furthermore, the CAS has no appeal jurisdiction to hear the present dispute.
- m) An appeal can only be filed against a final decision.
- n) The FIFA Letter is only an administrative letter and does not constitute an appealable final decision, nor does it contain any kind of decision that may be appealed before the CAS.
- o) According to the FIFA Statutes, an appeal can only be filed against a final decision passed by FIFA's legal bodies and in this case, the FIFA Letter does not constitute a final decision.
- p) The FIFA Letter is merely a non-appealable administrative letter which, based on the information received, indicated that FIFA did not find itself in a position to handle the case, however, without precluding the possibility of dealing with the case in the future.
- q) As such, the FIFA Letter cannot be considered as a decision, since it did not materially affect the legal position of the Parties.

- r) Furthermore, the Appellant does in fact not challenge that FIFA is not competent to decide the present dispute, which is why the appeal of the FIFA Letter actually does not cover an appeal of the alleged decision by FIFA.
- s) The CAS is not able to render an appeal decision on matters that the alleged first instance body was not competent to decide.
- t) Finally, in any case, the CAS cannot rule on FIFA's competence without FIFA being named as a respondent to the dispute, which the Appellant failed to do in his appeal.

### 5.3 The Appellant

5.3.1 In support of his requests for relief regarding CAS Jurisdiction, the Appellant submitted, *inter alia*, as follows:

- a) The CAS is competent to decide this dispute.
- b) The Agreement, which was drafted by the Parties in coordination, states that any dispute between the Parties should be decided by the "*competent committee of FIFA*", which would then have the competence to decide the dispute.
- c) As such, both Parties were of the erroneously opinion that FIFA would in fact be competent to decide the dispute.
- d) Due to the circumstance that the Appellant was in fact acting as an agent for a coach and not for a player, FIFA denied competence since the FIFA regulations does not apply to this situation.
- e) The Appellant was informed about this decision by the FIFA Letter, which thus constitutes a formal and appealable decision regarding lack of competence.
- f) The FIFA Letter was duly signed by FIFA officials and also included information regarding the reimbursement of the advance of costs already paid by the Appellant when filing his claim with FIFA.
- g) As the FIFA Letter constitutes a final decision of FIFA, an appeal of the said decision to the CAS is possible in accordance with the FIFA Statutes and the CAS Code.
- h) In any case, since the Parties apparently agreed on an arbitration clause that turned out to be erroneous, the CAS should allow the Appellant's appeal in accordance with the jurisprudence of the Swiss courts, supplementing the arbitration clause in a way that ensures its effectiveness based on the common intent of the Parties to have any dispute solved by a Swiss arbitration court with specific knowledge on sports law.
- i) Following FIFA's denial of competence, the appeal to the CAS was a logical procedural decision, since in any case the dispute would finally be appealable before the CAS.

- j) The Appellant was not obliged to include FIFA as a respondent to the appeal, since the CAS cannot create competence for FIFA if the regulations of FIFA do not foresee competence and FIFA would never accept such competence.
- k) Furthermore, the Appellant was correct in appealing the FIFA Letter under the rules of an appeal procedure.
- l) In case, as the FIFA Letter is not appealable before the CAS, the appeal should be considered as a request for arbitration in an ordinary procedure based on the clause in the Agreement which should be considered as an arbitration clause before the CAS.
- m) As an arbitration court, the CAS is entitled to be flexible and pragmatic and handle the procedural rules in a reasonable manner in order to protect the interests and common will of the Parties.
- n) Finally, since FIFA lacks competence, the FIFA regulations, which, according to the Respondent, have the consequence that the Appellant's claim, in accordance with Greek law, should instead be filed with either the HFF Arbitral Tribunals or the Greek state courts, are not applicable to this dispute.
- o) The Appellant has no connection to Greece, and such competence would consequently not make any sense.
- p) Moreover, it would be clearly against the common will of the Parties if the dispute should be decided either by the HFF Arbitral Tribunals or by the Greek state courts.

### ***DISCUSSION ON JURISDICTION***

5.4 The Sole Arbitrator initially notes that Article R47 of the Code states as follows:

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

5.5 Furthermore, pursuant to Article 67 (1) of the FIFA Statutes (2014 edition), *“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”.*

5.6 Based on the foregoing, it is undisputed between the Parties that the CAS has jurisdiction to hear appeal cases only under the condition that a “decision” has been rendered, in which connection the Appellant argues that the FIFA Letter satisfies the requirement for constituting a “decision”, whereas the Respondent denies that this is the case.

- 5.7 The Sole Arbitrator initially notes, however, that the rule under which a “decision” is required to have been rendered for the CAS to exercise jurisdiction over appeal cases implicitly implies that the appeal against the decision in question relates to the issue(s) which, under the circumstances, must be considered to have been determined in the said decision. In other words, it is irrelevant whether a “decision” can formally be assumed to have been rendered or not if the issue covered by the appeal is not the same as the issue that must be assumed to have been determined in a “decision”.
- 5.8 In the case at hand, FIFA states in its Letter that, in the circumstances of the present case, *“FIFA does not see itself as having jurisdiction to hear and decide the claim lodged by the Appellant against the Respondent since the services provided by the Appellant are not seen to be covered by the then current FIFA Players’ Agent Regulations”*.
- 5.9 In light of these circumstances, FIFA announces that the advance of costs paid by the Appellant will be reimbursed, and FIFA also elects not to deal with the substantive claim.
- 5.10 It appears explicitly from the Statement of Appeal that the appeal is *“regarding a decision by FIFA of 11 November 2014”* (i.e. the FIFA Letter).
- 5.11 However, the Appellant does not deny the accuracy of FIFA’s (alleged) decision regarding lack of jurisdiction and does not really want to have this issue verified by the CAS, but, on the other hand, states in the Appeal Brief that the *“Appellant seeks to receive an award on the basis of the merits and essentials of the case here presented, despite the fact that the appealed decision did not entail an elaboration on the essential content of the dispute”*.
- 5.12 In such situations where FIFA’s declaration concerning lack of jurisdiction is not at all covered by the appeal, it is in fact irrelevant whether the FIFA Letter satisfies the requirements for being considered as “a decision” since it is only (at least in this connection) relevant to have the satisfaction of this requirement established in cases where the point(s) at issue addressed in the (alleged) decision entirely or partially are the points appealed, which is not the case here.
- 5.13 On the contrary, the Sole Arbitrator regards the appeal as the Appellant’s attempt to circumvent FIFA’s lack of jurisdiction – which is not contested by the Parties – and, in this manner, to make the CAS, as an appeals body, hear and decide on the substantive aspects of the dispute, notwithstanding that FIFA, as the first-instance body chosen by the Appellant, did not consider itself to have jurisdiction.
- 5.14 Since it neither is, nor should be possible to circumvent a first-instance judicial body’s undisputed lack of jurisdiction to hear and decide on a substantive issue by merely attempting to refer such a decision to the appeals body (in this case the CAS) through a more or less fictitious appeal, the Sole Arbitrator is of the opinion that at the CAS, in its capacity of an appeals body, has no jurisdiction to hear the appeal.
- 5.15 In the event that CAS has no jurisdiction to hear the dispute as an appeal, the Appellant submits that the appeal should instead be considered as a request for arbitration in an ordinary procedure.

- 5.16 In support of this, the Appellant states, *inter alia*, that the CAS, as an arbitration court, is entitled to be flexible and pragmatic and that the “arbitration clause” in the Agreement, which turned out to be erroneous, should be supplemented in a way that ensures its effectiveness, based on the common intent of the Parties to have the dispute resolved by a Swiss arbitration court with specific knowledge of sports law.
- 5.17 The Sole Arbitrator initially notes that, in accordance with Articles R38 and R39 of the Code, an express condition for CAS jurisdiction in an ordinary procedure is the existence of a valid arbitration agreement that makes the CAS competent to hear and decide the dispute in question.
- 5.18 Based on a review of the content of the Agreement, the Sole Arbitrator finds that such a sufficiently clear arbitration agreement that gives the CAS jurisdiction to hear and decide the dispute in an ordinary procedure is not available in the present case.
- 5.19 Irrespective of whether a common intent of the Parties to have the dispute resolved by a Swiss arbitration court with specific knowledge of sports law could have been assumed to have existed, the Sole Arbitrator finds the differences between FIFA’s judicial bodies and the CAS are so substantial that a reference to FIFA as a first-instance body cannot necessarily, in the present matter, be implied to mean that the Parties, if applicable, would also want the CAS to act as a first-instance body.
- 5.20 For instance, the Sole Arbitrator notices differences in composition, costs and the possibility, *via* FIFA, of arranging for the enforcement of CAS decisions in disputes which have not first been heard and decided by FIFA as a first-instance body.
- 5.21 Moreover, the Sole Arbitrator notes that the appeal was filed as an appeal by application of the rules governing appeals (Article R47 *et seq.* of the Code) and that it is not possible, despite a potential pragmatic approach, to set aside the formal rules of the Code as it should be noted that these rules have been laid down with a view to protecting, for instance, the autonomy of FIFA and, accordingly, not only based on purely formal considerations.
- 5.22 An appeal to the CAS filed under the rules governing appeal proceedings set out in the Code therefore cannot merely be “transformed” into a request for arbitration according to the rules of the Code on ordinary procedures (Articles R38 *et seq.* of the Code).
- 5.23 Hence, the Sole Arbitrator finds that the CAS does not have jurisdiction either to hear and decide the dispute in an ordinary procedure, at least not on the basis of the appeal.
- 5.24 Based on the above, the Sole Arbitrator finds that the CAS does not have jurisdiction to hear and decide the present dispute.

## **ON THESE GROUNDS**

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

1. The Court of Arbitration for Sports does not have jurisdiction to deal with the appeal filed by Mr Perry Overeem on 2 December 2014 against PAOK F.C.
2. (...).
3. (...).
4. All further and other requests for relief are dismissed.