



**Arbitration CAS 2018/A/5500 Lao Toyota Football Club v. Asian Football Confederation (AFC), award of 12 June 2018 (operative part of 17 January 2018)**

Panel: Mr Marco Balmelli (Switzerland), President; Prof. Massimo Coccia (Italy); Mr Mark Hovell (United Kingdom)

*Football*

*Eligibility*

*Ineligibility of a club involved in match-fixing activities to participate in AFC competitions*

*Res iudicata principle*

*Ne bis in idem principle*

*Exceptions to the ne bis in idem principle*

1. If, on the basis of all the factual circumstances and information available to the AFC, the AFC concludes to its comfortable satisfaction that a club has been directly and/or indirectly involved, since the entry into force of Article 73.6 of the AFC Statutes on 8 June 2010 (or its future equivalents), in any activity aimed at arranging or influencing the outcome of a match at national or international level, such club shall be declared ineligible to participate in AFC competitions. Such ineligibility is effective for only one (1) football season.
2. The procedural concept of *res iudicata* is composed of two elements. First the “*Sperrwirkung*” (prohibition to deal with one matter = *ne bis in idem*), the consequence of such effect being that if one matter (with *res iudicata*) is brought again before one judge, the latter is not allowed to look at it and must dismiss the matter (insofar) as inadmissible. Secondly, the “*Bindungswirkung*” effect (binding effect of one decision), according to which one judge in a second procedure is bound to the outcome of the matter decided in *res iudicata*.
3. The basic legal principle of *ne bis in idem* generally states that one cannot be judged for the same charges again after a legitimate judgement in the first place. For this principle to be fulfilled, three requirements need to be given: an identity of the parties, of the facts and of the object. The principle of *ne bis in idem* is also known as “double jeopardy” in common law countries. As an illustration of said principle, sports disciplinary bodies cannot try one person or one entity again for one offence in relation to which that person or entity has been acquitted already by a final decision of another body based on the same regulatory framework.
4. There are two exceptions to the *ne bis in idem* principle. The first one relates to different levels of the competent authorities – *i.e.* one first decision on the basis of national regulatory framework can still be looked at differently by one international authority. The second exception concerns the so called “two-stage process”. If the nature of the

**suspensions sought in the two proceedings was different, the first one being a minimum administrative measure – which in fact could be compared to an interim measure – and the second one being one final disciplinary measure, then another judgement in the second procedure is in general possible. The chronology of the two procedures might exceptionally be inverted in certain cases, but not without any reservation or hint at all to a possible administrative eligibility issue arising.**

## **I. PARTIES**

1. Lao Toyota Football Club (hereinafter referred to as the “Appellant”) is a professional football club from Laos competing in the Lao Premier League. The Appellant is affiliated to the Lao Football Federation (the “LFF”), which in turn is affiliated to the Asian Football Confederation and the Fédération Internationale de Football Association (the “FIFA”).
2. The Asian Football Confederation (hereinafter also referred to as “the Respondent” or the “AFC”) is the governing body of Asian football and has its registered headquarters in Kuala Lumpur, Malaysia. It exercises regulatory, supervisory and disciplinary functions over national federations, clubs, officials and players in Asia.

## **II. FACTUAL BACKGROUND**

3. 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. This background is set out for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be referred to, where relevant, in connection with the later legal discussion.
4. In February 2017, the Appellant was involved in a disciplinary procedure regarding allegations of match-fixing during the AFC Cup Seasons 2015 and 2016. Several former players of the Appellant were judged guilty for match-fixing and banned for life. The AFC Disciplinary and Ethics Committee (“AFC DC” or “DC”) however dismissed all the accusations towards the Appellant without reservations in a decision dated 15 February 2017 (“AFC DC decision”).
5. The Appellant won the national Laotian football championship by the end of 2017 season and therefore qualified for the playoff-round of the AFC Cup 2018. On 6 December 2017, the Appellant was drawn to play against Home United FC from Singapore on 22 and 29 January 2018 for the said playoff-round.
6. On 13 December 2017, the AFC Entry Control Body (“AFC ECB” or “ECB”) decided in its decision VTC 20171213ECB01 (the “Appealed Decision” or “ECB decision”) that the Appellant was ineligible to participate in the AFC Cup 2018 due to an involvement in match-fixing according to art. 12.8. of the Entry Manual for AFC Club Competitions 2017-2020

(“Entry Manual”). The Appealed Decision was rendered without grounds on 13 December 2017 and the grounds for this decision followed on 4 January 2018.

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

7. On 22 December 2017, the Appellant filed its Statement of Appeal/Appeal Brief in accordance with art. R47, R48 and R51 the Code of Sports-related Arbitration (the “CAS Code”) with the Court of Arbitration for Sport (the “CAS”). It contained also a Request for Stay of Execution and the following prayers for relief:

*“The Appellant herein respectfully requests the Court of Arbitration for Sport:*

- a) to stay the Appealed Decision until a final decision is rendered;*
- b) to set aside the Appealed Decision;*
- c) to deem the Appellant eligible to participate in the AFC Cup 2018;*
- d) to order the Respondent to take all necessary measures to ensure the implementation of such decision;*
- e) to order the Respondent to bear the legal costs incurred by the Appellant”.*

8. On 10 January 2018, the Respondent filed its Answer, pursuant to art. R55 of the CAS Code, requesting CAS:

- “a) to reject the reliefs sought by the Appellant;*
- b) to confirm the Appealed Decision;*
- c) to order the Appellant to pay the full arbitration costs and the costs and expenses of the Respondent”.*

9. On 10 January 2018, the CAS Court Office informed the parties that the Panel appointed to decide this matter had been constituted as follows:

President: Mr Marco Balmelli, Attorney-at-Law in Basel, Switzerland;

Arbitrators: Prof. Massimo Coccia, Professor and Attorney-at-Law in Rome, Italy;

Mr Mark Hovell, Solicitor in Manchester, United Kingdom.

10. The parties agreed to an expedited procedure according to art. R52 para. 4 of the CAS Code, which is why the request for a stay of the execution of the Appealed Decision was moot.

11. The hearing of the present procedure took place via tele-conference on 16 January 2018. The following persons attended the hearing via tele-conference:

*For the Appellant: Mr Vitus Derungs, Attorney-at-law; and*

*For the Respondent: Mr Andrew Mercer, Deputy Director of Legal Affairs.*

12. In addition, Mr Antonio De Quesada, counsel to the CAS, assisted the Panel at the hearing.
13. Neither party had any objection regarding the way the proceedings were conducted. Both parties explicitly confirmed that their right to be heard had been duly respected.

#### **IV. SUBMISSIONS OF THE PARTIES**

##### **A. Appellant**

14. The Appellant's position in these arbitration proceedings can be summarised as follows:
- a) The AFC DC fully discharged the Appellant which is why there is no space for a contradictory decision by the ECB.
  - b) The fight against match-fixing is indeed an important task, some basic legal principles should however never be violated. In denying the Appellant to participate in the AFC Cup 2018, a clear violation of the *ne bis in idem* principle is given.
  - c) A two-stage process by the Federation, as a valid exception to the principle acknowledged by CAS (cf. *CAS 2013/A/3256*), is not visible at all. For these conditions to be met, there would have to be an "*administrative measure*" followed by a "*disciplinary measure*". The order in the present case however is the other way round and therefore resulting in an approach not protected by CAS.
  - d) The Appellant therefore concludes that he should be allowed to participate in the AFC Cup 2018.
15. The Appellant requested by way of relief that:
- a) The decision (...) by the AFC Entry Control Body dated 13 December 2017 be set aside;*
  - b) the Appellant be eligible to participate in the AFC Cup 2018;*
  - c) the Respondent be ordered to take all necessary measures to ensure the implementation of such decision;*
  - d) the Respondent be ordered to bear the legal costs incurred by the Appellant in relation with the present procedure".*

## B. Respondent

16. The Respondent's main submissions on the other hand can be summarised as follows:
- a) The Appellant was declared ineligible to participate in the 2018 AFC Cup due to a violation of art. 12.8. of the Entry Manual. According to this article, a club can be prevented from participating if it has been directly and/or indirectly involved in arranging or influencing the outcome of a match.
  - b) The AFC follows a zero tolerance-policy with regard to match-fixing and also confirmed this approach in various judgments. The integrity and reputation of its competitions are key factors of this policy. The Respondent also builds his arguments on CAS cases regarding UEFA which knows a similar rule in its legal framework.
  - c) The two decisions have different objects, the DC Decision relating to a much more narrowly worded article than the one pertinent for the AFC ECB. The first requires an active role by the offender while the latter only requires an involvement.
  - d) The extensive amount of evidence collected in the disciplinary procedure clearly proves an involvement of the Appellant.
  - e) The ECB has discretionary power to decide on these cases and therefore denied the eligibility of the Appellant.
17. In its prayers for relief, the Respondent requests that CAS issues an award on the merits:
- a) rejecting the reliefs sought by the Appellant;*
  - b) confirming the ECB decision;*
  - c) ordering the Appellant to pay the full cost of this arbitration procedure; and*
  - d) ordering the Appellant to pay the costs and expenses of the Respondent”.*

## V. JURISDICTION

18. Article R47 of the CAS Code states:

*“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”.*

19. Articles 5 and 34 of the Procedural Rules governing the AFC ECB (“ECB Procedural Rules”) and art. 12. of the Entry Manual are conferring jurisdiction on CAS. As there is no internal

remedy at AFC level against decisions by the ECB, the jurisdiction of CAS was not contested by the Respondent.

20. The Procedural Rules governing the AFC ECB further hold in art. 5.2 that the appeal shall automatically be subject to an expedited procedure and be heard by three arbitrators.
21. The Panel therefore finds that CAS has jurisdiction to deal with the present case.

## **VI. ADMISSIBILITY**

22. Article R49 of the CAS Code provides as follows:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late”.*

23. The Appealed Decision was issued by the Respondent without grounds on 13 December 2017. Due to the urgency of the matter, the Appellant decided to lodge an appeal already on 22 December 2017. The grounds of the Appealed Decision were then communicated on 4 January 2018. In any case and in accordance with the AFC Statutes and CAS jurisprudence, the appeal is admissible.

## **VII. APPLICABLE LAW**

24. Article R58 of the CAS Code provides as follows:

*“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

25. Article 61 of the AFC Statutes states:

*“2. The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings.*

*3. The CAS shall apply the various regulations of the AFC, and additionally where relevant, the laws of Malaysia”.*

26. As a result, the Panel rules that AFC rules and regulations and additionally, if needed, Malaysian law shall be applicable in the case at hand.

## VIII. MERITS

### A. The AFC ECB and art. 12.8. of the Entry Manual

27. Before presenting the findings of the Panel in the present matter, the structure of the different judicial bodies of the AFC involved and the respective legal framework deserve a closer look.
28. The AFC DC which issued the first decision in this matter may pronounce sanctions described in the AFC Statutes and the Disciplinary and Ethics Code. According to the AFC Statutes (art. 60) and the Disciplinary and Ethics Code (art. 22), the AFC DC amongst other things also has the power to impose an exclusion from a future competition. The Appealed Decision was treated under the possibility of the violation of art. 66 of the Disciplinary and Ethics Code (“Unlawfully influencing Match results”).
29. The Appealed Decision was issued by the AFC ECB, another judicial body of the AFC and independent from the AFC DC. The AFC ECB has jurisdiction to determine the eligibility of clubs to participate in AFC club competitions, *inter alia* where the AFC or a Club alleges that a Club has been directly or indirectly involved in match-manipulation (cf. art. 4.1.1 of the ECB Procedural Rules). It applies the Entry Manual as the pertinent framework in the first place. The rules for the procedure itself before the AFC ECB are the ECB Procedural Rules.
30. The legal base for the decision of the AFC ECB in general seems to be clear under the mentioned structure.
31. It is on the grounds of art. 12.8. of the Entry Manual that the Appellant was prevented to enter the 2018 AFC Cup. Article 12.8. of the Entry Manual reads as follows:

*“Clubs directly or indirectly involved in match manipulation*

*12.8. If, on the basis of all the factual circumstances and information available to the AFC, the AFC concludes to its comfortable satisfaction that a club has been directly and/or indirectly involved, since the entry into force of Article 73.6 of the AFC Statutes on 8 June 2010 (or its future equivalents), in any activity aimed at arranging or influencing the outcome of a match at national or international level, such club shall be declared ineligible to participate in AFC Competitions. Such ineligibility is effective for only one (1) football season.*

*12.8.1. When making this administrative decision, the AFC can rely on, but is not bound by, a decision of a national or international sporting body, arbitral tribunal or state court.*

*12.8.2. The AFC can refrain from declaring a club ineligible to participate in the competition if the AFC is comfortably satisfied that the impact of a decision made in connection with the same factual circumstances by a national or international sporting body, arbitral tribunal or state court has already had the effect to prevent that club from participating in an AFC Competition.*

12.8.3. *Where a club is declared ineligible, it is considered to have not met the sporting criteria. Accordingly, the club that finished in the next highest position in the national top division league and is licensed shall replace it, subject to the operation of Articles 5.4 to 5.6 (for ACL) or Articles 7.1 to 7.3 (for ACC), read together with Article 12.6.*”.

32. Besides, art. 73.6 of the AFC statutes contains the following: *“The admission to an AFC competition of a Member Association or Club directly or indirectly involved in any activity aimed at arranging or influencing the outcome of a match at national or international level can be refused with immediate effect, without prejudice to any possible disciplinary measures”*.
33. This article is the general base for the more specified, above-mentioned art. 12.8. of the Entry Manual.
34. The Appellant does not even contest the opinion that an involvement according to art. 12.8. of the Entry Manual might be considered as given with 15 former players being involved in match-fixing. This is however not the predominant question in the present matter.
35. The Appellant was already discharged a few months earlier and therefore claims he should not be charged again. The relevant question needs to be if the procedure in the present case was carried out according to the basic principles of law and standing CAS jurisprudence.

## **B. *Ne bis in idem* and the two-stage process**

36. The basic legal principle of *ne bis in idem* generally states that one cannot be judged for the same charges again after a legitimate judgement in the first place. For this principle to be fulfilled three requirements need to be given: an identity of the parties, of the facts and of the object (cf. also *CAS 2007/A/1396 & 1402*). The principle of *ne bis in idem* is also known as “double jeopardy” in common law countries.
37. The procedural concept of *res iudicata* on the other hand has two elements: 1) the so-called “*Sperrwirkung*” (prohibition to deal with the matter = *ne bis in idem*), the consequence of this effect being that if a matter (with *res iudicata*) is brought again before the judge, the latter is not even allowed to look at it, but must dismiss the matter (insofar) as inadmissible; and 2) the so-called “*Bindungswirkung*” (binding effect of the decision), according to which the judge in a second procedure is bound to the outcome of the matter decided in *res iudicata* (cf. *CAS 2013/A/3256*). It is mainly the first concept which is pertinent in this case.
38. CAS has put it clearly in previous decisions where it was in a position to define the *ne bis in idem* principle in football law: Sports disciplinary bodies cannot try a person or an entity again for an offence in relation to which that person or entity has been acquitted already by a final decision of another body based on the same regulatory framework (cf. *CAS 2013/A/3256*).



39. There are however two exceptions established in the cited case *CAS 2013/A/3256*. The first one relates to different levels of the competent authorities – a first decision on the basis of national regulatory framework can still be looked at differently by an international authority.
40. The second exception concerns the so-called “two-stage process”. If the nature of the suspensions sought in the two proceedings was different, the first one being a minimum administrative measure – which, in fact, could be compared to an interim measure – and the second one being a final disciplinary measure. In such a situation, another judgement in the second procedure is in general possible.
41. The parties agree that the parties and the facts of the two cases (by the AFC ECB and the DC) are the same, but differ on the identity of the object. They agree however also on the qualification of the DC decision as a decision in a disciplinary procedure and the ECB decision as a decision in an administrative procedure. The parties in the end draw different conclusions as to the further qualification though.
42. The Appellant explicitly makes reference to the case *CAS 2013/A/3256* to set out that this is the order to be followed. The present case however is laid out exactly the opposite way: the Appellant was dismissed without reservation in a disciplinary procedure which resulted in a final and binding decision, after which a matter has to be deemed a *res iudicata*. Only about 10 months later, the ECB decision concerning the ineligibility for the AFC Cup followed. This is a clear violation of the two-stage process according to the Appellant, as the provided order was not respected.
43. The Respondent on the other hand made reference to its rules, outlining the independence of the different AFC bodies. Due to the different bodies resulting in a difference of the objects and its independence of each other, the question of *ne bis in idem* is not relevant in the present matter. The ECB safeguards the integrity of the competition by applying the pertinent criteria on who can enter a competition or not (“integrity admission process”). Such a procedure is in general also protected by CAS, e.g. in order “*not only to prevent a club which has violated such values from taking part in the competitions organized by UEFA (i.e. to protect the integrity of the competition), but to also dispel any shadow of doubt in the public about the integrity, the values and the fair play of its competitions i.e. to protect the reputation of the competition*” (*CAS 2014/A/3625, para. 123*).

### **C. Application in the present case**

#### **a) *Is there a violation of ne bis in idem?***

44. In this regard, art. 12.8. of the Entry Manual needs to be cited again:

*“12.8. If, on the basis of all the factual circumstances and information available to the AFC, the AFC concludes to its comfortable satisfaction that a club has been directly and/or indirectly involved, since the entry into force of Article 73.6 of the AFC Statutes on 8 June 2010 (or its future equivalents), in any activity aimed at arranging or influencing the outcome of a match at national or international level, such club shall*

*be declared ineligible to participate in AFC Competitions. Such ineligibility is effective for only one (1) football season”.*

45. The wording of the Entry Manual is clear. It is the AFC that decides – no distinction is made regarding the respective bodies, it just says the AFC. In the majority of the Panel’s opinion, a club that has been absolutely dismissed of all charges in a disciplinary procedure can in such a case not be charged again later by the very same federation on the same facts, even if it had been another body of said federation. This is all based “*on the same regulatory framework*”, as it was described in the case *CAS 2013/A/3256*.
46. Article 73.6 of the AFC Statutes heads in the same direction, stating in the end that an eligibility decision due to match-fixing goes “*without prejudice to any possible disciplinary measures*” and therefore has no influence on the disciplinary measure. The order in the AFC regulations, even if this provision was already enacted in 2010, is exactly the same as the one outlined in the case *CAS 2013/A/3256*. Article 73.6 of the AFC Statutes in addition also states that right to participate in a competition can be refused with “*immediate effect*”. This provision gives a clear hint as to the intended order as well.
47. The interpretation of these rules also lets the Panel assume that the disciplinary measure is a final and also binding decision in such a matter. There might additionally be an administrative measure which normally comes automatically and before a possible disciplinary procedure for which a case usually is treated more thoroughly. If an “*automatic suspension*”, as it was called by the Respondent itself, was to be pronounced, there is no point in issuing such a decision only ten months after the disciplinary sanction, even if a club only qualifies at a later stage. Various possibilities still exist like pronouncing an automatic exclusion in case of a qualification in the following years or at least a reservation in the DC decision. Generally said, an automatic suspension should follow within the frame of the disciplinary procedure at the latest.
48. This applies even more if you consider the Respondent’s further arguments. The administrative measure in this regard has a different object because it is much broader than for the disciplinary measure where the liability is less strict. Exactly as occurs for interim measures, a summary examination of the facts normally should take place quickly and, therefore, before the second, more thoroughly examined procedure.
49. In the majority of the Panel’s view, an identity of the objects is also given here, especially if you look at the fact that the DC could have pronounced an ineligibility for the AFC Cup as well (art. 60 AFC Statutes). Even if there was an autonomy between the AFC Committees and the AFC ECB, it is still the AFC on both ends that decides.

**b) *Can a violation of the ne bis in idem principle be healed?***

50. A violation of the *ne bis in idem* principle has been established according to the majority of the Panel. The question remains if this violation can be healed.

51. As already lined out, the two-stage process, as a possible exception, is applied the wrong way round. The ECB with competence for administrative eligibility decisions should not be able to amend a DC decision (however wrong it might be). The order of the two procedures (disciplinary and administrative) might exceptionally be also the other way round in certain cases, but definitely not without any reservation or hint at all to a possible eligibility issue arising. No such reservation was made in the present matter though.
52. There is a further difference to the already mentioned case *CAS 2013/A/3256* where a distinction is not only made between the order of the decisions but it needs to be added that the first, administrative measure was rendered by the national federation based on its regulations (TFF in that case) and the second, disciplinary one by the continental federation based on its regulations (UEFA). There was not only a distinction in the object regarding the nature of the decision but additionally also regarding the scope of the consequences or rather the issuing federation and the framework. A discharge by the continental federation as the issuer of the second decision never took place.
53. The case at hand has a different structure, with both regulations being issued by the AFC. There was no mention of another possible procedure arising and such a possibility was never made clear to the Appellant at any point during the Disciplinary Procedure or in the respective decision. The Appellant could count on not being charged again (cf. also *CAS OG 02/001*).
54. The DC decision leaves indeed a rather bad aftertaste. It is quite remarkable to deem a club not involved in match-fixing when 15 players of the same club were found guilty for this exact wrongdoing. Even if none of the officials knew about it, at least an indirect involvement normally cannot be disputed. But the DC decision is binding and cannot be reversed through the backdoor. The Respondent itself confirmed during the hearing that it had no possibility to appeal a decision by the AFC DC. The failure of the AFC DC with regard to the first decision and its respective framework however do not empower the AFC ECB to review such a decision. A harmonisation of a few legal coordination issues seem inevitable in order to avoid similar violations of *ne bis in idem*.
55. The Respondent further stresses that by signing the "*Participating Team Agreement*", the Appellant explicitly accepted the Entry Manual and confirmed to comply with it. The Appellant therefore had to be aware of art. 12.8. of the Entry Manual and should have been aware of a threatening ineligibility decision. A difference to the *CAS OG 02/001* case is given to the extent as in the present case, a system foreseeing such sanctions is given on principle. The appropriate application on the other hand is doubtful though.
56. In the present case, the Appellant could precisely not be aware of such a threat as the DC decision explicitly dismissed all the charges concerning an involvement in match-fixing. This happened without reservations which is why the Appellant could count on not being subject to another decision on this again and, according to the majority of the Panel, rightly so. This possibility was never mentioned at all throughout the whole disciplinary procedure. The

Appellant confirmed its compliance with the Entry Manual as it had justified reason to believe that art. 12.8. of the Entry Manual would not apply to them due to the previous acquittal.

57. Notwithstanding the fact that the Panel is upholding this appeal, it wishes to make clear that it has considerable sympathy with the AFC's position. The fight against match-fixing is indeed an important pillar of the global fair-play campaigns in the world of football. A failure by one of the AFC bodies, intensified by the missing possibility to appeal for themselves in the legal framework, cannot be imposed on the Appellant who could rely on the disciplinary decision, however doubtful it might have been. Furthermore, the Respondent itself confirmed though that none of the then involved players was still active for the Appellant; the opposite would have made it much more difficult to explain from that perspective.

#### **D. Conclusion**

58. Based on the foregoing, and after taking into due consideration all the evidence produced and all arguments made, the Panel finds that the Appeal should be upheld and the Appellant be deemed eligible to participate in the 2018 AFC Cup.

## **ON THESE GROUNDS**

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

1. The appeal filed on 22 December 2017 by Lao Toyota Football Club against the decision issued on 13 December 2017 by the Entry Control Body of the Asian Football Confederation is upheld.
2. The decision issued on 13 December 2017 by the Entry Control Body of the Asian Football Confederation is set aside.
3. Lao Toyota Football Club is eligible to participate to the AFC Cup 2018.
4. (...).
5. (...).
6. All other and further prayers or requests for relief are dismissed.