



**Arbitration CAS 2022/A/8664 Al Hilal Club v. Confédération Africaine de Football (CAF),
award of 20 March 2024**

Panel: Mr Manfred Nan (The Netherlands), President; Mr Michele Bernasconi (Switzerland); Mr Benoît Pasquier (Switzerland)

Football

Revocation of the authorisation to allow the presence of spectators in the club's stadium for safety reasons

CAS jurisdiction

Exhaustion of internal legal remedies as a matter of jurisdiction or admissibility

Jurisdiction of the CAF Appeal Board

- 1. The mere fact that the President of the Appeals Arbitration Division of CAS decides in an order on request for provisional measures that an application is to be dismissed on the basis of the “irreparable harm” test, does not mean that the jurisdiction of CAS is *per se* given. Indeed, in orders concerning provisional measures issued by the President of the Appeals Arbitration Division of CAS, the jurisdiction of CAS is only assessed on a *prima facie* basis and such finding is not binding on the CAS panel in charge of the case.**
- 2. The issue of whether a party exhausted the internal legal remedies available to it is not a matter of jurisdiction of CAS, but rather an admissibility requirement. Indeed, the requirement does not serve to distinguish the CAS panel’s mandate from the parties’ access to justice before state courts. By submitting to CAS jurisdiction, the parties wanted to exclude any kind of recourse to state courts. In particular, they did not want to enable a party to file an appeal before state courts in all matters, in which a CAS panel finds that the requirements for a “decision” within the meaning of Article R47 of the CAS Code are not fulfilled. Consequently, the issue whether or not a decision is appealable (within the meaning of Article R47 of the CAS Code) is not aimed at limiting the CAS jurisdiction vis-à-vis state courts. Instead, it is an admissibility issue, since the response to the question at stake is dictated by procedural principles such as procedural efficiency. In comparison with appeals before state courts, whether or not a (preliminary) decision from a previous instance is appealable or not to a higher instance is also a procedural matter of admissibility.**
- 3. The CAF Appeal Board is competent to adjudicate and decide on any decisions issued by CAF, unless any of the rules and regulations of CAF provides that such decision is final and binding or referable to another body. Indeed, Article 48(3) of the CAF Statutes specifically requires that “CAS shall be empowered to adjudicate on appeals against any decisions or disciplinary sanctions taken in the last instance by any legal body of CAF”, from which it derives that CAS can only entertain an appeal after at least a second instance within CAF has adjudicated and decided on the matter, i.e., a last instance of CAF, unless specifically indicated otherwise.**

I. PARTIES

1. Al Hilal Club (the “Appellant” or the “Club”) is a football club with its registered office in Omdurman, Sudan. The Club is registered with the Sudanese Football Association (the “SFA”), which in turn is affiliated to the *Confédération Africaine de Football*.
2. The *Confédération Africaine de Football* (the “Respondent” or “CAF”) is the administrative and governing body of African football with its registered offices in 6th October City, Egypt.
3. The Club and CAF are hereinafter jointly referred to as the “Parties”.

II. INTRODUCTION

4. These proceedings revolve around the decision of CAF dated 16 February 2022 (the “Appealed Decision”) not to allow spectators at the CAF Champions League match no. 85 between the Club and Al Ahly SC, which was played in the Al Hilal Stadium of the Club in Khartoum, Sudan, on 18 February 2022 (the “Match”).
5. In these appeal arbitration proceedings before the Court of Arbitration for Sport (“CAS”), the Club is challenging the Appealed Decision and requests to be awarded damages in the amount of USD 917,000, whereas CAF is challenging the jurisdiction of CAS and/or the admissibility of the appeal, since it alleges that the Club failed to exhaust the internal legal remedies available to it before appealing to CAS. In the event CAS is deemed to have jurisdiction and the appeal is declared admissible, CAF seeks a confirmation of the Appealed Decision.

III. FACTUAL BACKGROUND

6. Below is a summary of the main relevant facts, as established on the basis of the written and oral submissions of the Parties and the evidence examined in the course of the proceedings. This background information is given 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.

A. Background Facts

7. On 24 October 2021, the Club won the return match of the second preliminary round of the CAF Champions League against Rivers United and thereby qualified for the group stage of the CAF Champions League, an international club competition organised by CAF. While the match was organised by the Club, it was played in Suez, Egypt, not in Sudan.
8. As reported by The Guardian, on 25 October 2021, “Sudan’s military has seized power in a coup, arrested leading civilian politicians including the prime minister, Abdalla Hamdok, and declared a state of emergency as thousands of protesters flooded the streets of Khartoum in opposition”.

9. On 31 October 2021, CAF sent a communication concerning the procedure governing the presence of spectators in CAF competitions (the “Spectator Procedure”). This Spectator Procedure provides as follows:

“Following the experience in the recent CAF Interclubs and FIFA World Cup African qualifiers competitions related to spectators access to stadiums, CAF has decided to set up a new procedure to allow the presence of spectators in all CAF competitions.

Accordingly, kindly note that any member association wishing to admit spectators in the stadium during their home matches should comply with the following criteria, until further notice:

- 1. Be able to accommodate spectators in a stadium and meet all the requirements of FIFA/CAF (in the appendix as a reminder) and already be formally approved by CAF;*
- 2. Have Presented to CAF a letter from the local health authorities of the venue planned for the match that the presence of supporters is authorized and up to what number;*
- 3. Send to CAF evidences that all necessary measures to ensure compliance with the FIFA/ CAF Covid-19 match protocol have been taken;*
- 4. Have appointed a national safety and security officer (NSSO) for the organization of the match.*

*Related Information and supporting documents to verify compliance with these conditions must be communicated to CAF at the following address exclusively: spectators@cafonline.com, **at the latest 24 hours before the match in question.***

Upon arrival at the stadium, an official (from the federation or club concerned) will also present the documents confirming compliance with the requirements to the match commissioner or to the general coordinator appointed by CAF.

If the Member Association or club, demonstrates before the settled deadline that it meets all the above conditions, it is automatically authorized to allow spectators to the extent permitted by the local health authorities and the FIFA/ CAF Covid 19 protocol. No further CAF official written confirmation will be issued to authorize the presence of supporters.

On the other hand, any National Association who fails to provide to the the [sic!] above-mentioned email address all supporting documents required at least 24 hours before the match, will be prohibited from welcoming spectators for this match. In the event of non-compliance with this prohibition, the Member Association will be liable to disciplinary sanctions by CAF” [emphasis in original].

10. On 15 January 2022, a representative of CAF conducted an inspection visit of the Club’s stadium.

11. On 24 January 2022, CAF sent a letter to the SFA General Secretary, copying the Club, confirming that it had “temporarily approved” the Club’s stadium, while also indicating that the stadium would be “continuously monitored” and that in case infractions would be reported “CAF may decide to review its decision”. Furthermore, the letter indicated as follows:

*“It is also to be noted that **Al Hilal Stadium is only temporarily approved** for the CAF Interclubs 2021-22 edition subject to the continuation and upgrade and renovation work as per the CAF inspection report. Until the completion of the renovation works, and specifically the spectators’ facilities mentioned in the report, a **decision has been taken not to allow the presence of spectators in any CAF played matches at Al Hilal Stadium, in other words the upcoming CAF Inteclubs [sic!] matches will be played behind closed doors.**”*

As such, the stadium management should ensure that all the works are implemented in the coming period in order for the stadium to be permanently approved and be able to host CAF international football senior matches. In case all the works are not completed in time, CAF may decide to review the temporary approval and ban the stadium from hosting CAF matches” [emphasis in original].

12. The Club did not challenge CAF’s decision dated 24 January 2022.
13. On the same date, 24 January 2022, the Club issued a statement on its official social media platforms indicating that “Officially [...] [CAF] approves the stadium of [the Club]”.
14. On 13 February 2022, the Club sent a request to CAF for 15,000 spectators to be allowed to attend the Match, accompanied by an approval from the Sudan Ministry of Health.
15. On 16 February 2022, CAF’s Head of Safety and Security, following a discussion with the CAF Secretary General, informed Mr Raul Chipenda, CAF’s Development Director, as follows in a voice message by WhatsApp:

“Hello Raul, I have just spoken to the GS and I’ve told him that you are doing another letter to the team to let them know that based on the current security situation in the country CAF is disapproving the earlier approval for spectators in the match and as such the match shall now be played behind closed doors, And that he requested you copy EFA so that they can copy I mean copy the EFA so that they can be able to also inform the authorities because I think the minister of sports of Egypt called him and everybody is interested to know the situation in Sudan. Okay. I also told him you will copy me in that communication so you can copy all of us so that everybody will know that it has been done. Merci beaucoup!”

16. On 16 February 2022 at 14:57, CAF sent an email to the SFA and the Club concerning the request for spectators, which stipulates as follows:

“Documents are well received. You can proceed with your request and host spectators in your next CAF CL match only

Nonetheless, the stadium management should continue with implementation of all the remarks mentioned in the CAF stadium report”.

17. On 16 February 2022 at 20:26, Mr Chipenda sent the Appealed Decision to the SFA, providing as follows:

“Reference to the request of presence of spectators in the stadium during the TotalEnergies CAF CL Match 85 Al Hilal (SUD) Vs Al Ahly SC (EGY) scheduled for the 18th of February 2022 in Al Hilal Stadium in Khartoum, CAF has received updated intelligence that the current circumstances in the country are not favourable for large gatherings.

Accordingly, a decision has been taken not to allow the presence of spectators in the aforementioned match, which means that the match will have to be played behind closed doors.

We kindly ask your cooperation to fully comply with the above decision, while noting that in case of non-respect, your affiliated club will be subject to disciplinary sanctions by CAF”.

18. On 17 February 2022, as set forth in more detail below, the Club filed an application for a stay of execution of the Appealed Decision with CAS.
19. On the same date, 17 February 2022, a letter signed by the Director of the State Police Headquarters was sent to the President of the SFA providing, *inter alia*, as follows:

“Match of AL-Hilal of Sudan Versus AL-Ahli of Egypt

- 1. Referring to the above subject, and taking into account the importance of the sports event, a detailed security plan was set to secure the Match which will take place in AL-Hilal Stadium between AL-Hilal of Sudan and AL-Ahli of Egypt on the championship of the African Champions League, on Friday 18/02/2022*
- 2. All the security forces were mobilized for securing before, during and post-match period”*

(emphasis in original).

20. On 18 February 2022, CAF drew up a report concerning the safety and security situation in Sudan. The conclusion of such report was a recommendation to play the Match behind closed doors.
21. On 18 February 2022 at 14:00 CET, the Match took place without spectators.
22. On 1 April 2022, a national news outlet in Sudan (www.dabangasudan.org) reported that by such date the number of deaths in Sudan as a result of demonstrations following the coup had risen to 93.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

23. On 17 February 2022, at 17:33 CET, the Club applied, before the filing of an appeal, for a stay of execution of the Appealed Decision with CAS asking for an order to be rendered

before the start of the Match, which was supposed to take place the day after (i.e. on 18 February 2022 at 14:00 CET).

24. On 18 February 2022, the CAS Court Office invited CAF to file its comments on the Club's request to stay the execution of the Appealed Decision concerning the Match to be held later that day at 15:00 CAT, by 10:00 CET / 11:00 CAT.
25. On the same date, 18 February 2022, at 10:24 CET, the CAS Court Office informed the Parties that CAF had not filed any comments and that the President of the Appeals Arbitration Division would issue an Order on the Club's request for provisional measures shortly.
26. On the same date, 18 February 2022, at 11:01 CET, the CAS Court Office provided the Parties with the operative part of the Order on Request for Provisional Measures, issued by the President of the Appeals Arbitration Division of CAS, dismissing the Club's application for a stay of execution of the Appealed Decision. The CAS Court Office informed the Parties that "[t]he reason for the dismissal lies in a negative assessment of the irreparable harm test, which the Division President does not consider fulfilled" and that the reasoned Order would follow in due course. The operative part of the Order provides as follows:
 1. *The Request for Provisional Measures filed by Al Hilal Club on 17 February 2022 is dismissed.*
 2. *The costs deriving from the present order will be determined in the final award or in any other final disposition of this arbitration.*
27. On 25 February 2022, the Club filed a Statement of Appeal with CAS, challenging the Appealed Decision, in accordance with Articles R47 and R48 of the 2021 edition of the CAS Code of Sports-related Arbitration (the "CAS Code"). In this submission, the Club requested that the proceedings be expedited in accordance with Article R52 CAS Code. Furthermore, the Club nominated Mr Michele A.R. Bernasconi, Attorney-at-Law in Zurich, Switzerland, as arbitrator.
28. On 7 March 2022, the Club filed its Appeal Brief in accordance with Article R51 CAS Code.
29. On 13 March 2022, CAF informed the CAS Court Office that it nominated Mr Benoît Pasquier, Attorney-at-Law in Zurich, Switzerland, as arbitrator.
30. On 16 June 2022, CAF filed its Answer in accordance with Article R55 CAS Code. In its Answer, CAF, *inter alia*, objected to the admissibility of the appeal and to the jurisdiction of CAS. In its Answer, CAF also submitted that exhibits 3 and 4 to the Appeal Brief were to be dismissed as they were submitted only in Arabic.
31. On 21 June and 3 July 2022 respectively, the Club and CAF requested for a hearing to be held.
32. On 7 July 2022, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division, pursuant to Article R54 CAS Code, had decided that the arbitral tribunal appointed to decide the case was constituted as follows:

President: Mr Manfred Nan, Attorney-at-Law, Arnhem, The Netherlands;

Arbitrators: Mr Michele A.R. Bernasconi, Attorney-at-Law, Zurich, Switzerland;

Mr Benoît Pasquier, Attorney-at-Law, Zurich, Switzerland

33. On 8 July 2022, following an invitation from the CAS Court Office, the Club filed its Response with respect to CAF's objection to the admissibility of the appeal and the jurisdiction of CAS, submitting that both objections were to be dismissed.
34. On 12 July 2022, the CAS Court Office, on behalf of the Panel, invited both Parties to submit translations into English of exhibits that had been filed in the Arabic language, a request with which both Parties eventually complied.
35. On 15 and 18 July 2022 respectively, following an inquiry by the CAS Court Office, the Club indicated its preference for a hearing by video-conference, whereas CAF expressed its preference for an in-person hearing.
36. On 21 July 2022, the CAS Court Office informed the Parties that the Panel, after having taken into account the details of the present case, considered a hearing in person to be the most appropriate solution.
37. On 5 August 2022, the CAS Court Office informed the Parties that Mr Dennis Koolaard, Attorney-at-Law in Arnhem, The Netherlands, had been appointed as *Ad hoc* Clerk.
38. On 22 and 24 August 2022 respectively, the Club and CAF returned duly signed copies of the Order of Procedure to the CAS Court Office that was provided to them by the CAS Court Office on 17 August 2022.
39. On 29 September 2022, a hearing was held at the CAS headquarters in Lausanne, Switzerland. At the outset of the hearing, both Parties confirmed that they had no objection to the constitution and composition of the Panel.
40. In addition to the members of the Panel, Mr Björn Hessert, CAS Counsel, and Mr Dennis Koolaard, *Ad hoc* Clerk, the following persons attended the hearing:
 - a) For the Club:
 - 1) Dr Pedro Macieirinha, Counsel.
 - b) For CAF:
 - 1) Mr Nadim Magdy, CAF Legal Counsel.
41. The Panel heard evidence from Mr Eltahir Eltayeb Younis, former Vice-President of the Club, witness called by the Club. The witness was invited by the President of the Panel to tell the

truth subject to the sanction for perjury under Swiss law. The Parties and the Panel had full opportunity to examine and cross-examine the witness.

42. The Club and CAF were given full opportunity to present their cases, submit their arguments and answer the questions posed by the members of the Panel.
43. Before the hearing was concluded, the Club and CAF expressly stated that they had no objection to the procedure adopted by the Panel and that their right to be heard had been respected.
44. The Panel confirms that it carefully heard and took into account in its decision all of the submissions, evidence and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral award.

V. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

A. The Appellant

45. The Club's submissions on the merits of the case, in essence, may be summarised as follows (the submissions on jurisdiction and admissibility are set out separately below):
 - The Appealed Decision is arbitrary and illegal, because it makes a wrong interpretation and application of the facts and legal grounds.
 - Any decision shall contain the legal reasons for the decision and the provisions on which it is based. In this regard, the Club refers to CAS 2016/A/4772. However, the Appealed Decision neither contains a motivation, nor the provisions on which it is based and is therefore null and void.
 - Parties to a dispute in front of a sports-related body are entitled to submit their written statements and express a position. A decision cannot be issued without hearing the "*demandé party*". In this regard, the Club refers to CAS 2000/A/274. The Appealed Decision does not respect the "*contradictory principle, so it is a reason for its nullity*".
 - CAF declared that it received updated intelligence that the circumstances in the country were not favourable for large gatherings. However, that is not true. There were no circumstances in Sudan unfavourable to the presence of spectators at the Match. This was even formally confirmed by CAF on 14 February 2022. Local health authorities authorised the presence of spectators at the Match. The Club and the SFA sent evidence to CAF that all necessary measures to ensure compliance with the FIFA/CAF Covid-19 Match Protocol had been taken and a national safety and security officer was appointed. CAF has not clarified nor specified what intelligence it received about the circumstances that prevented the presence of spectators at the Match.

- The Appealed Decision breached the Spectator Procedure. The Spectator Procedure provides that if a member association demonstrates that it meets the specified criteria before the relevant deadline, it is automatically authorised to allow spectators to the extent permitted. It is clearly stated in the Spectator Procedure that “No further CAF official written confirmation will be issued to authorize the presence of supporters”.
- By acting contrary to its previous authorisation of 14 February 2022, CAF acted in violation of the principle of *venire contra factum proprium*. Therefore, the Appealed Decision is “null and void and, if not so, subsidiary, it was arbitrary, excessive, disproportional and disrespected sports doctrine and jurisprudence”.
- There is an unjust, systematic and intended targeting against the Club. The “odd and suspicious organization of the matches demonstrates utterly blatant bias in favor of North Africa region through the Arab Maghreb, and premeditated hostility against [the Club], which is not considered among the beloved teams and its homeland, Sudan, is out of CAF’s favored region”. This bias against the Club has created a “state of extreme congestion, suspicion, and bitterness in the Sudanese sports”. By this historical account, the Club intends to indicate the “magnitude of injustice, harm, and targeting against [the Club] throughout its African career, in which was crowned by qualifying to the African competition final twice, though, regrettably, was deliberately excluded from one of the two said two finals”.
- The Appealed Decision caused damages and losses to the Club in a total amount of USD 917,000, as follows:
 - 200 VIP tickets of USD 1,000 = USD 200,000;
 - 4,000 tickets of USD 20 = USD 80,000;
 - 11,000 tickets of USD 10 = USD 110,000;
 - Renting 4 cafés of USD 1,000 = USD 4,000;
 - 12,000 branded t-shirts of USD 16 = USD 192,000;
 - 10,000 scarves of USD 12 = USD 120,000;
 - 5,000 caps of USD 8 = USD 40,000;
 - 5,000 flags (small) of USD 4 = USD 20,000;
 - 3,000 flags (1m x 1.5m) of USD 7 = USD 21,000;
 - Beverage, water & hot drinks for USD 25,000;
 - Players photo session for USD 50,000;
 - Ads all around the stadium for USD 30,000;
 - TV studio before the Match and at half time of USD 25,000.

46. On this basis, the Club submits the following prayers for relief in its Appeal Brief:

“The appellant requests that the decision passed on 16 February 2022 by the respondent Confederation Africaine de Football not to allow the presence of spectators in the TotalEnergies CAF CL Match 85 Al Hilal (SUD) Vs Al Ahly SC (EGY) scheduled for the 18th of February 2022 in Al Hilal Stadium in Khartoum shall be declared arbitrary, illegal, null and void.”

The appellant requests that the respondent Confederation Africaine de Football shall be condemn [sic] to pay to the appellant as compensation the total amount of 917 000,00 USD, plus interest at 5% rate since 16 February 2022 until effective payment.

The respondent shall bear the arbitration costs.

The respondent shall pay to the appellant a contribution towards his legal fees and other expenses in connection with the proceedings” (emphasis removed).

B. The Respondent

47. CAF’s submissions on the merits of the case, in essence, may be summarised as follows (the submissions on jurisdiction and admissibility are set out separately below):

- The reason behind the Appealed Decision is to protect the people of Sudan together with the fans of the Club from a possible undesirable incident that may have resulted in the loss of lives. Sudan is going through a period of political unrest following a takeover of the government by a military coup that occurred on 25 October 2021. Since then, almost a hundred lives have been lost due to confrontations between demonstrators that are against the military coup by the bullets of the security forces of the regime that is currently in charge of the country.
- In the Club’s request to CAF dated 13 February 2022 to play the Match with 15,000 spectators, it failed to submit proof of having appointed a National Safety and Security Officer for the organisation of the Match as stipulated in the Spectator Procedure.
- The Club tried to introduce in its Appeal Brief an exhibit that was never submitted to CAF, namely Exhibit 5 to the Club’s Appeal Brief pertaining to a document related to the security plan to secure the Match. This document is dated 17 February 2022, four days after the filing of the Club’s request to CAF dated 13 February 2022.
- Al Hilal claims that the CAF Security Officer was very grateful for all security measures taken and stated that the country was stable, but failed to prove this with any material document from CAF and merely submitted emails sent from the Club to its counsel.
- The Appealed Decision complied with the last paragraph of CAF’s Spectator Procedure, as the Club failed to provide CAF with the requested documents in order to obtain the approval to hold the Match with spectators. The request submitted by the Club on 13 February 2022, did not include the appointed National Safety and Security Officer.
- As evidence of the appointment of a National Safety and Security Officer had to be provided to CAF “*at the latest 24 hours before the match in question*”, failing which any national association would be “*prohibited from welcoming spectators for this match*”, the Appealed Decision was issued in accordance with the CAF’s Spectator Procedure.

- As the Appealed Decision clearly mentions that the reason behind playing the Match behind closed doors is that CAF had received updated intelligence that the circumstances in Sudan were not favourable for large gatherings, it is reasoned and justified. A threat of losing lives in the stadium justifies taking a decision to play a match behind closed doors, specifically in case the organisers of such match have not fulfilled the requirements to play it with the attendance of the supporters.
- The assessment of damages and compensation put forward by the Club is based on the fraudulent and misleading witness statement of Mr Eltaher Eltayeb Younis. While the Club reiterated that it had already sold all tickets for the Match, when the Appealed Decision was communicated to the Club on 16 February 2022, the Club announced on its official Facebook page that the ticket sale process would only commence the following day, i.e., 17 February 2022, at 9:00 am.
- Furthermore, the announced price of the tickets on the Club's official Facebook page was 20 USD for VIP stand tickets, and 10 USD, which was later reduced to 4 USD, for the rest of the tickets. These are substantially lower amounts than the 1,000 USD for VIP Tickets and 20 USD for regular tickets used by the Club when calculating its damages. In addition, the calculation of the Club was based on a number of 15,200 spectators instead of 15,000. As such, the assessment of the damages related to the sale of tickets is incorrect.
- The Club assesses USD 418,000 as additional expenses for purchases of gift items for Al Hilal as well as beverages. This makes the average of the person going to the stadium according to the calculation of the Club about 35 USD per person. This is highly unlikely as the average salary of an employee in Sudan is around USD 55 per month.
- The mechanism of earning USD 50,000 during the Match by means of a *"players photo session"* is *"unheard of"*.
- With respect to the claim of the Club that it will air a TV studio before the Match and during half time which would make an expected income for the Club of USD 25,000, it is recalled that the exclusive entity that is entitled to air a TV studio before the Match and during half-time is the sole and exclusive partner of CAF in Sudan. Had the Club decided to make such a violation, it would have suffered from severe sanctions that may have been imposed by CAF as well as its exclusive broadcasting partner in Sudan.
- Earning USD 30,000 from advertisements is not reasonable and remained unsubstantiated.

48. On this basis, CAF submits the following prayers for relief in its Answer:

"Prayer 1: *To declare that the Appeal is inadmissible, and that CAS has no jurisdiction to rule on the Appeal.*

Prayer 2: *To the extent it is admissible, the Appeal shall be dismissed and the decision of CAF shall be confirmed in its entirety.*

Prayer 3: *To the extent that the decision of CAF is not confirmed in its entirety, the request that the Respondent pays to the Appellant as compensation the amount of USD 917,000, plus interest at 5% rate since 16 February 2022 until effective payment is rejected.*

Alternatively, to reduce the amount of the compensation as the tribunal may assess in light of the submission of the Respondent.

Prayer 5 [sic]: *Appellant to be ordered to bear the costs of the arbitration and it shall be ordered to contribute to the legal fees incurred by the Respondent at an amount of CHF 10,000”.*

VI. JURISDICTION

49. Article R47 CAS Code provides 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”.

50. Articles 48(1) and (3) CAF Statutes (2021 edition), *inter alia*, provide as follows:

“1. CAF authorizes appeals to the Court of Arbitration for Sport; an independent arbitration tribunal based in Lausanne (Switzerland), to resolve any disputes between CAF, national associations, members, leagues, clubs, players, officials, and licensed match agents and licensed players’ agents.

[...]

3. Only CAS shall be empowered to adjudicate on appeals against any decisions or disciplinary sanctions taken in the last instance by any legal body of CAF or FIFA, a national association, league, or club. Any appeal must be filed with CAS within ten (10) days following the notification of the decision”.

51. The jurisdiction of CAS is contested by CAF on the basis that the Appealed Decision was not an internally final and binding decision, but should have been appealed before the CAF Appeal Board, prior to challenging it before CAS. Since the mechanism set forth by Article 48(3) CAF Statutes is not applicable, CAS lacks jurisdiction over the present matter.

52. The Club maintains that CAS has jurisdiction to adjudicate and decide on the Club’s appeal. The Club maintains that the Appealed Decision can be appealed to CAS according to Article R47 CAS Code. All internal legal remedies provided for by the rules of CAF have

been exhausted in accordance with Article R37 CAS Code. The Appealed Decision is not a decision of the CAF Disciplinary Board or another CAF committee that the CAF regulations declare as final or referable to another body in the sense of Article 13 CAF Disciplinary Code. Accordingly, the Appealed Decision is a final decision of CAF in the sense of Article 48(3) CAF Statutes.

53. The Club also maintains that the jurisdiction of CAS is confirmed in the Order on the Club's request for provisional measures dated 18 February 2022, as the Club's request was dismissed based on the "irreparable harm" test, as a consequence of which the finding must have been that there was jurisdiction to issue the Order.
54. The Panel finds that the mere fact that the President of the Appeals Arbitration Division of CAS decided in her Order on Request for Provisional Measures that the Club's application was to be dismissed on the basis of the "irreparable harm" test, does not mean that the jurisdiction of CAS is *per se* given. Indeed, in Orders concerning Provisional Measures issued by the President of the Appeals Arbitration Division of CAS, the jurisdiction of CAS is only assessed on a *prima facie* basis and such finding is not binding on the Panel.
55. The Panel finds that the issue of whether the Club exhausted the internal legal remedies available to it is not a matter of jurisdiction of CAS, but that such alleged defect would rather impact on the admissibility of the appeal.
56. In the context of a dispute where an appellant had allegedly failed to exhaust the internal legal remedies available to it, i.e., a situation in which it depends on the specific circumstances of the case whether an appeal can be filed to CAS directly, a CAS Panel reasoned, *inter alia*, as follows:

"It is debated in legal doctrine whether exhausting internal legal remedies is an admissibility requirement (pro: RIGOZZI/HASLER, Article R47 CAS Code, in: Arroyo (Ed.), Arbitration in Switzerland, Vol. II, 2018, p. 1583) or a matter of jurisdiction (pro: MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, 2015, p. 391). According to Rigozzi/Hasler "[i]t must be emphasized that although the "exhaustion of internal remedies rule" constitutes a mere admissibility requirement, it is treated as a precondition for CAS jurisdiction in the context of actions to set aside CAS awards based on Art. 190(2) (b) PILS, meaning that the issue can be reviewed with unfettered powers by the Swiss Supreme Court" (RIGOZZI/HASLER, Article R47 CAS Code, in: Arroyo (Ed.), Arbitration in Switzerland, Vol. II, 2018, p. 1584).

The Panel favours considering the issue as an admissibility requirement. First, this is in line with the Parties' written and oral submissions that considered it to be an issue of admissibility. Second, because the requirement does not serve to distinguish the Panel's mandate from the Parties' access to justice before state courts. By submitting to CAS jurisdiction, the Parties wanted to exclude any kind of recourse to state courts. In particular, they did not want to enable a party to file an appeal before state courts in all matters, in which a CAS panel finds that the requirements for a "decision" within the meaning of Article R47 CAS Code are not fulfilled. Consequently, the issue whether or not a decision is appealable (within the meaning of Article R47 of the CAS Code) is not aimed at limiting the CAS jurisdiction vis-à-vis

state courts. Instead, it is an admissibility issue, since – at the end of the day – the response to the question at stake is dictated by procedural principles such as procedural efficiency. This Panel finds itself comforted in its view by a comparison with the procedural rules regulating appeals before state courts. In such context whether or not a (preliminary) decision from a previous instance is appealable or not to a higher instance is a procedural matter of admissibility” (CAS 2019/A/6298, paras. 77-78).

57. The Panel agrees with such analysis. In the matter at hand, based on Article 48(3) CAF Statutes, there is no question that if the Club has exhausted all internal legal remedies available to it, CAS would be the only instance competent to adjudicate and decide on such appeal. Hence, the jurisdiction of CAS is established.
58. Whether or not the Club exhausted all internal legal remedies available to it is examined below in the context of the admissibility of the appeal.

VII. APPLICABLE LAW

59. Article R58 CAS Code provides as follows:

“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”.

60. Article 48(2) CAF Statutes provides as follows:

“The Code of Sports-related Arbitration shall govern the arbitration proceedings. With regard to substance, CAS shall apply the various regulations of CAF and FIFA or, if applicable, of national associations, members, leagues and clubs, and, as a last resort, Swiss Law”.

61. It is not in dispute between the Parties that, in accordance with Article R58 CAS Code and Article 48(2) CAF Statutes, the dispute shall be decided primarily according to the various regulations of CAF, in particular the CAF Statutes, the CAF Disciplinary Code as well as the CAF Champions League Regulations and, subsidiarily, Swiss law.
62. However, while the Club relies on the 2017 edition of the CAF Statutes and the 2007 edition of the CAF Disciplinary Code, CAF relies on the 2021 edition of the CAF Statutes, the 2018 edition of the CAF Disciplinary Code and the 2019 edition of the CAF Champions League Regulations.
63. The Panel notes that the dispute between the Parties ensued in 2022, at a point in time when the 2021 edition of the CAF Statutes, the 2018 edition of the CAF Disciplinary Code and the 2019 edition of the CAF Champions League Regulations had already entered into force. Accordingly, the Panel finds that these editions of the relevant rules and regulations are applicable to the matter at hand.

VIII. ADMISSIBILITY

64. Article R49 CAS Code, *inter alia*, 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 in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against”.

65. Article 48(3) CAF Statutes provides as follows:

“Only CAS shall be empowered to adjudicate on appeals against any decisions or disciplinary sanctions taken in the last instance by any legal body of CAF or FIFA, a national association, league, or club. Any appeal must be filed with CAS within ten (10) days following the notification of the decision”.

66. The appeal was filed within 10 days of issuance of the Appealed Decision, as required by Article 48(3) CAF Statutes. Furthermore, the appeal complied with all other requirements of Article R48 CAS Code, including the payment of the CAS Court Office fee. It follows that the Club’s appeal is, in principle, admissible.

67. However, CAF objects to the admissibility of the appeal as it maintains that the Club ought to have challenged the Appealed Decision with the CAF Appeal Board within 3 days from the date of the Appealed Decision (i.e., by 19 February 2022 at the latest), pursuant to Article 54 CAF Disciplinary Code. The Club never challenged the Appealed Decision before the CAF Appeal Board and, accordingly, never exhausted the internal legal remedies available to it, as a consequence of which the Club’s appeal should be declared inadmissible.

68. On the other hand, the Club submits that the Appealed Decision is not a decision of the CAF Disciplinary Board or any other committee that the CAF Regulations do not declare as final or referable to another body. In other terms, according to the Club, the Appealed Decision is final, and thus appealable to CAS.

69. As to the competence of the CAF Appeal Board, the Panel notes that Article 42 CAF Statutes provides as follows:

“The Appeal Board shall consist of one (1) president, one (1) vice-president, and the number of members deemed necessary. The remit of this body shall be governed by CAF Disciplinary Code, CAF Statutes and CAF Regulations”.

70. Based on such provision, the Panel infers that the jurisdiction of the CAF Appeal Board is governed not only by the CAF Statutes, but also by the CAF Disciplinary Code and the CAF Regulations. Accordingly, to assess whether the Club should have filed an appeal with the CAF Appeal Board, one needs to also consider the provisions of the CAF Champions League Regulations and the CAF Disciplinary Code.

71. Article XVII CAF Champions League Regulations provides as follows:

- “1. *An appeal may be lodged to the Appeal committee against the decision of the Organising and the Disciplinary board but not against those stipulated as final.*
 2. *The rights of the appeal are fixed at 3,000\$ (Three Thousand US Dollars). If the appeal is sustained, the fee shall be refunded to the Association making the appeal.*
 3. *The appeal must reach the Secretariat of CAF by email or fax within three days following the dispatch, by email or fax of the decision of the organising committee.*
 4. *The appeal shall have no delaying effect except in financial matters and fines”.*
72. Article 13 CAF Disciplinary Code provides as follows:
- “The Appeal Board is responsible for deciding appeals against any of the Disciplinary Board’s, or other committee’s decisions that the CAF Regulations do not declare as final or referable to another body”.*
73. Article 53 CAF Disciplinary Code provides as follows:
- “An appeal may be lodged to the Appeal Board against any decision passed by the Disciplinary Board or a standing committee, which the Regulations do not deem as final, unless the sanction pronounced is:*
- a) a warning;*
 - b) a reprimand;*
 - c) a suspension for less than three (3) matches or of up to two (2) months within a particular season;*
 - d) a fine of less than (\$5.000) five thousand US Dollars”.*
74. Article 54(1) CAF Disciplinary Code provides as follows:
- “Anyone who is affected by a decision and has direct interest and was party to the decision justifying amendment or cancellation of the decision may submit it to the Appeal Board”.*
75. Article 55(1) CAF Disciplinary Code provides as follows:
- “The party intending to appeal shall announce his intention in writing within three (3) days of notification of the decision”.*
76. Article 61 CAF Disciplinary Code provides as follows:
- “1. The Appeal Board rules, in principle, as a body in the last instance.*
 2. *The right is reserved for an appeal to be made to the Court of Arbitration for Sport (CAS) (cf. art. 45 para. 4 of the Statutes)”.*
77. The Panel finds that it can be inferred from the above-cited provisions that the CAF Appeal Board is competent to adjudicate and decide on any decisions issued by CAF, unless any of the rules and regulations of CAF provides that such decision is final and binding or referable to another body.

78. Indeed, Article 48(3) CAF Statutes specifically requires that “*CAS shall be empowered to adjudicate on appeals against any decisions or disciplinary sanctions **taken in the last instance by any legal body of CAF**” [emphasis added], from which it derives that CAS can only entertain an appeal after at least a second instance within CAF has adjudicated and decided on the matter, i.e., a last instance of CAF, unless specifically indicated otherwise.*
79. This is reiterated by Article 8 CAF Disciplinary Code, which provides as follows:
- “Decisions taken by the Appeal Board shall be final and binding on all the parties concerned. This provision is subject to appeals lodged with the Court of Arbitration for Sport (CAS) (art. 47 para. 4 of the Statutes)”.*
80. The Panel could not detect, and the Club did not refer to, any provision in the rules and regulations of CAF determining that a decision such as the Appealed Decision is to be referred to another body than the CAF Appeal Board.
81. The Panel notes that the Appealed Decision is issued by CAF’s Development Director and not formally by or on behalf of a standing committee of CAF. The Panel finds that it is clear from the afore-mentioned legal framework that CAF required any decision issued by CAF to be challenged internally before the CAF Appeal Board, i.e. not only decisions issued by a standing committee of CAF. The Panel finds that, in particular also considering the broad wording of Article 54(1) CAF Disciplinary Code, the Club should have lodged an appeal with the CAF Appeal Board, as a precondition for filing an appeal with CAS.
82. This notwithstanding, the Panel finds that it would be a good practice for CAF to indicate the applicable appeal remedies in any decision issued but given that there is no requirement to do so based on the various rules and regulations of CAF, the Panel finds that the fact that this was not done in the Appealed Decision should remain without consequences.
83. The Panel observes that, as submitted by CAF, the CAF Statutes, the CAF Champions League Regulations, and the CAF Disciplinary Code, refer to various types of decisions that are considered final and binding decisions. With respect to such decisions, if appealable at all, there is certainly no requirement of first having to lodge an internal appeal before the CAF Appeal Board.
84. The Panel finds that the Appealed Decision cannot be qualified as a final and binding decision set forth in any of the afore-mentioned Statutes or regulations. Indeed, the Club also did not submit that this was the case.
85. Finally, given the short period between the issuance of the Appealed Decision and the moment the Match took place, the Club could potentially have argued that it should be permitted to by-pass the competence of the CAF Appeal Board, because only CAS would be able to provide an effective recourse against the Appealed Decision in such short time frame. However, the Club did not put forward such argument, as a consequence of which the Panel is not in a position to determine if and why the CAF Appeal Board would not be able to provide an effective recourse.

86. In any event, the Panel finds that, given that Article 14(1)(c) CAF Disciplinary Code provides the Chairman of the CAF Appeal Board with the power to “*pronounce, alter and annul provisional measures*”, there is no direct reason why filing an appeal with the CAF Appeal Board would not have been an effective remedy.
87. Consequently, given that the Club failed to exhaust the internal legal remedies available to it before filing an appeal with CAS, the appeal is inadmissible.
88. The Club’s claim for damages, to the extent such claim would be admissible and the Panel would be competent to adjudicate and decide on it in the present appeal arbitration proceedings before CAS, which issues can be left undecided, is premised on the setting aside of the Appealed Decision. However, since the Appealed Decision is not set aside, the Club’s claim for damages became moot.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 25 February 2022 by Al Hilal Club against the decision issued on 16 February 2022 by the Development Director of the *Confédération Africaine de Football* is inadmissible.
2. (...).
3. (...).