



**Arbitration CAS 2014/A/3613 PAOK FC v. Hellenic Football Federation (HFF) & Panathinaikos FC, award of 6 October 2014 (operative part of 11 July 2014)**

Panel: Mr Hendrik Willem Kesler (The Netherlands), President; Mr Efraim Barak (Israel); Prof. Luigi Fumagalli (Italy)

*Football*

*Disciplinary sanction for incidents during a match*

*CAS jurisdiction regarding domestic matters*

*Lack of an arbitration clause for CAS or for an independent arbitration court in the rules of the national federation*

*Article 61 of the UEFA Statutes and CAS appeal procedures*

1. The obligation imposed by FIFA by means of article 68(3) of the FIFA Statutes leaves the national federations a certain discretion as to how to furnish the judicial system in domestic matters. This view is consistent with CAS jurisprudence. In this respect, Article 2(3)(A)(l) of the HFF Statutes does not specifically refer to CAS, but to “*another independent and impartial court*”. The reference to “another” in article 2(3)(A)(l) is important. The preceding provision of the HFF Statutes specifically refers to CAS. This might therefore lead one to conclude that the reference to “another” in article 2(3)(A)(l) of the HFF Statutes was intended to determine that the disputes covered by article 2(3)(A)(l) of the HFF Statutes could only be referred to another independent and impartial court than CAS.
2. In line with the conclusions of another CAS panel, if the rules of a national association do not provide jurisdiction to CAS or to an independent and impartial arbitration court, this cannot create CAS jurisdiction by default. If FIFA considers that the provisions of the national association do not comply with the FIFA Statutes, it may subsequently take the necessary measures towards the national association.
3. Article 61 of the UEFA Statutes forms part of a section in the UEFA Statutes named “CAS as Ordinary Court of Arbitration”. Also paragraph 1 of article 61 of the UEFA Statutes clearly refers to CAS jurisdiction “*in its capacity as an ordinary court of arbitration*”. It is not possible for CAS to be competent in appeal procedures without additional arguments merely on the basis of this provision.

## I. PARTIES

1. PAOK Football Club (the “Appellant” or “PAOK”) is a football club with its registered office in Thessaloniki, Greece. PAOK is registered with the Hellenic Football Federation.
2. The Hellenic Football Federation (the “First Respondent” or the “HFF”) is the national governing body of football in Greece. The HFF is affiliated to the Union of European Football Associations (“UEFA”) and the Fédération Internationale de Football Associations (“FIFA”).
3. Panathinaikos Football Club (the “Second Respondent” or “Panathinaikos”) is a football club with its registered office in Athens, Greece. Panathinaikos is registered with the HFF.

## II. FACTUAL BACKGROUND

### A. Background Facts

4. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the parties and the evidence examined in the course of the proceedings and the hearing. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.
5. On 16 April 2014, a football match (the “Match”) took place at PAOK’s home ground between PAOK and Olympiakos Piraeus (“Olympiakos”). This Match was the second leg of the semi-final of the Greek cup. PAOK won the Match with a score of 1-0. Because the first leg was won by Olympiakos with a score of 2-1, PAOK qualified for the final of the Greek Cup.
6. During the Match a considerable number of flares, fire crackers and smoke bombs were used by the supporters of PAOK, several of which made their way on to the field of play.
7. While the team of Olympiakos was warming up, one PAOK supporter attempted to enter the field of play, but a private security firm engaged by PAOK “*intervened, immobilized him and removed him outside the field of play*”.
8. A short time later, before the visiting team had taken its position on the bench, the same individual managed to enter the field of play without being detected and threw a quantity of fish (anchovies) on the seats of the visiting team’s bench. As a result of this incident, which appears to have been a prank related to the nickname of the fans of Olympiakos, who are allegedly commonly known as “anchovies”, the commencement of the Match was postponed for about 75 minutes. The individual who threw the fish was detected by the “*stadium surveillance electronic system and was arrested after the end of the match*”.
9. In the 87<sup>th</sup> minute of the Match, Mr Maniatis, football player of Olympiakos, and Mr Katsouranis, football player of PAOK, were sent off for their involvement in an altercation. The HFF Observer noted the following in his report (the “Observer’s Report”) regarding Mr Maniatis:

*“During the removal of G. Maniatis from the game after his expulsion from the pitch and at the latter’s entrance to the tunnel, he was hit by an individual with identification insignia belonging to the Security of the Home Team”.*

10. Following the conclusion of the Match, a number of PAOK supporters gained entry to the field of play. The HFF Observer noted the following in his Observer’s Report regarding this incident:

*“At the same time, namely after the end of the Match, supporters of the Home Team invaded the Pitch. Many of them chased after the footballers of the Away Team. The football VALDEZ was hit by a person belonging to the Security of the Home Team bearing identification insignia No. 59. Disturbances against the Footballers of the Visitor’s Team became generalized inside the area of the Dressing Rooms, where the state of affairs was unsettled for quite a while”.*

## **B. Proceedings before the HFF Disciplinary Committee**

11. On 22 April 2014, the HFF Football Prosecutor filed an indictment with the HFF Disciplinary Committee in respect of the events occurred at the Match, concluding as follows:

*“From the Score Sheet, the Observer’s report and the Police Report, in connection with the publications of the newspapers (sports and political), the following real incidents occur:*

1. *During the entry of Referees in the Pitch for the customary inspection, supporters of the prosecuted FC – Home Team threw many objects against them, amongst which an empty glass bottle with the firm “Malamatina”, without thus causing any injuries.*
2. *Upon the entry of the Footballers of the away team in the Pitch for “warming up”, “tens of smoke bombs and fire crackers” were thrown by fans of the prosecuted F.C., without thus causing any injuries and were removed from the field by stadium officers.*
3. *Prior to the commencement of the Match supporters of the Home team threw at the field a “large number of flares and smoke bombs”, some of which were targeted to the bench of the visiting team and burned its plastic part from the fire created, without thus anyone from the officials and players of the visiting team to be injured.*
4. *At the entry of the five referees in the Pitch at the set time for the commencement of the Game (20:00), the match referee noted that there was a turmoil at the bench of the visiting team. Getting there and noting that all seats were full of fish, fish scales and water, he asked them to be cleaned. The person who proceeded to this action, as detected by the electronic control system of the stadium, was a home team fan, who at 19:55, without being detected, got into the perimeter of the field of play from Gate 1 holding a black bag and walked to the bench of the visiting team. The same individual, which was spotted and arrested after the end of the Match), at 19:45 jumped the railings of Gate 1 and moved aggressively towards the players of the visiting team who were warming up, without realizing his threatens, because he was detected timely and removed outside the field of play. After 10 minutes, without the place having been cleaned, the referee returned to the dressing rooms, after asking “either the replacement of the benches or that the team of PAOK sits at the place the team of OLYMPIAKOS”. At the time that the referee was waiting in the*

*dressing rooms, the police Chief Mr. Zisimopoulos, responsible for security measures of the game, visited him and he assured him that he will safeguard by men the place during and behind the bench of the visiting team and said that in his opinion it was safer that the match would start, otherwise he would have problem with thirty thousand and more fans of the home team. After forty five minutes, the match referee went out with the fourth referee in order to inspect and, after communicating with the heads of both teams and noting that the bench was cleaned and after the confirmation of PAOK F.C. administration (Mr. Savvidis and Vryzas), with the consent of the police, that “they will secure by any possible measure the bodily integrity of the officials and the substitute players of Olympiakos”, it was decided that the match would start. The match finally started, after some time passing for the players of both teams to re –warm up, at 21:15 (with a delay of one hour and fifteen minutes). Before the beginning of the match and especially at the exit of the players of the home team and their entry to the field of play, the home team fans threw a large (undefined) number of Bengals and smoke bombs. Also, at 4’, 7’, 42’, 44’, 70’, 77’, 79’, 87’, 90’, 94’, 96’ and 98’ minutes of the Match the supporters of the Home Team threw a great number of smoke bombs and fire crackers inside the Pitch and its surrounding area, the counting of which was not possible.*

5. *At the 3<sup>rd</sup> minute of the Match “some fans of PAOK threw a banana to the pitch”. For this incident warnings were made by the speakers of the stadium and the match was continued.*
6. *At 47’ of the Match and at the time the Home Team scored a goal, its supporters threw in the Pitch as well as its adjacent area a great number of lit torches and also ignited smoke bombs, creating a dense layer of smoke, a stifling atmosphere and limited visibility inside the Pitch, thus resulting in a three-minute interruption of the Match. Again, warnings were made from the speakers of the stadium.*
7. *At the 87’ minute the player of the prosecuted F. C. Katsouranis K., who was substituted at 67’ and was sitting on the bench of his team, directed towards the pitch and encumbered the player of OLYMPIAKOS G. Maniatis during his trying to get the ball in the pitch after an “out”. Afterwards, he scuffled with the player of the team of OLYMPIAKOS and as a result they were both expelled by a red card and then followed an interruption of the match for four (4) minutes, due to the turmoil at the benches of both teams. During the removal of G. Maniatis from the game after his expulsion from the pitch and at the latter’s entrance to the tunnel, he was hit by an individual with identification insignia belonging to the Security of the Home Team.*
8. *During the stoppage time of the Match supporters of the Home Team threw a flare inside the Pitch, aimed at the Goalkeeper of the team of OLYMPIAKOS, which passed beside him without injuring him. Again for this incident warnings were made from the speakers of the stadium.*
9. *At the 91’ minute of the Match, eight (8) supporters of the Home Team entered the Pitch from Gate “4”, albeit they were removed by the Stadium’s Security.*
10. *While the Match had finished and the referees were waiting at the centre of the pitch in order for them to be allowed by the police organ to direct to the dressing rooms, a general upheaval prevailed in the Tunnel, due to the presence of a large number of individuals, who rendered access to the Referees impossible. After the removal of these persons, following the intervention by the Police Force, the referees entered the dressing rooms.*

11. *At the same time, namely after the end of the Match, supporters of the Home Team invaded the Pitch. Many of them chased after the footballers of the Away Team. The football VALDEZ was hit by a person belonging to the Security of the Home Team bearing identification insignia No. 59. Disturbances against the Footballers of the Visitor's Team became generalized inside the area of the Dressing Rooms, where the state of affairs was unsettled for quite a while".*
12. On 24 April 2014, the HFF Disciplinary Committee sent an indictment to PAOK.
13. On 28 April 2014, a hearing took place in front of the HFF Disciplinary Committee.
14. On 30 April 2014, the HFF Disciplinary Committee issued its decision (the "HFF DC Decision"). The HFF Disciplinary Committee determined that the conditions mentioned in article 15(6)(f) of the HFF Disciplinary Code (the "HFF DC") were to be present cumulatively and interpreted this provision as follows:
- "Besides if a significant number of persons are not involved in such disturbances or if there is not even minor bodily harm or if such disturbances do not take place in the main area of the Stadium or the tiers, there concurs no case for extensive circumstances".*
15. The HFF DC Decision concluded the following:
- "Consequently, all conditions occur, indeed accumulatively, for the classification of said disturbances as extensive, as above, which took place before, during and after the end of the Match and in which a significant number of people were involved and which include the cause of minor bodily harm and which (disturbances) took place in the main area of the Stadium (article 15 par. 6 cases d and f of the D.C./EPO) [...]. Following from the above the reproached FC must, with respect to this deed in the Disciplinary Indictment, be convicted.*
- On the contrary it must be released with respect to the infringement of article 23 of the D.C./EPO on Racism [...]"*
16. As a result, the HFF Disciplinary Committee sentenced PAOK as follows:
- "(a) disciplinary fine amounting to fifty thousand (50,000) Euros; (b) sanction to play two (2) matches without spectators and (c) deducts three (3) points from it in the league table".*

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

17. On 2 May 2014, PAOK filed an appeal with the HFF Appeals Committee against the HFF DC Decision. No appeal was filed by the HFF Football Prosecutor.
18. On 5 May 2014, a public hearing took place in front of the HFF Appeals Committee.
19. On 6 May 2014, the HFF Appeals Committee issued the operative part of its decision (the "Appealed Decision"), which modified a portion of the sanction to be imposed in the following terms:

*“It formally accepts and materially rejects the appeal under judgment.*

*It completes the contested decision by the First Instance Committee of HFF no. 203/2014 with respect to the provision in its operative part under element C from “Deduct three (3) points from it in the League Table” to “deducts three (3) points from it in the League Table compiled for the ranking of teams entitled to take part in the international events for the 2013-2014 season”.*

20. On 13 May 2014, the grounds of the Appealed Decision were communicated. The HFF Appeals Committee determined that the conditions mentioned in article 15(6)(f) of the HFF DC were not to be present cumulatively and interpreted this provision as follows:

*“From the aforementioned provision it clearly follows that in order for disturbances to be designated as “extensive” it suffices for even one of the conditions cited in paragraph 6 of article 15 D.C./EPO to concur, since such conditions (the involvement of a significant number of persons, or the occurrence of even minor bodily harm, or for the disturbance to take place in the main area (pitch) of the Stadium and/or the tiers) are posed disjunctively and not copulatively”.*

21. The grounds of the Appealed Decision determined, *inter alia*, the following:

*“The aforementioned real incidents, which are fully confirmed to the required degree of the full litigious conviction from the Match Sheet and the Observer’s Report, while in parallel being corroborated also in Police report, fall under the material part of the provision in article 15 par. 6 case d of the D.C./Hellenic Football Federation and parallel to this the last of the disjunctively formulated negative conditions of case f in the same provision also concurs, in its positive form (disturbances in the main area (pitch) of the stadium), which justify the classification of the disturbances as “extensive” and in this sense meet the objective and subjective status of the disciplinary offense provided for in the provision in the article in question [...].*

*Therefore the decision appealed against, in a correct application of the provision in article 15 par. 6 case d of the D.C./EPO and correct assessment of the proof deemed that the appellant Professional Football Club committed the disciplinary offense attributed to it and provided for in the provision of article 15 par. 6 case d, for which it imposed a fine amounting to fifty thousand (50,000) Euros, the sanction to play two (2) matches without spectators and the deduction of three (3) points from the league table from it, with the direct litigious consequence that the judicial appeal and the formulated grounds therein to be negatively assessed and checked as groundless, a reason for which the appeal under investigation must be rejected and the forfeit of the revenue stamp be ordered.*

*Save, however, that the First Instance Committee by the Hellenic Football Federation (EPO) failed to cite in the operative part of its contested decision the league table, from which the three points must be deducted, which (points) had to be deducted from the league table compiled for the ranking of the teams entitled to participate in international competitions for the 2013-14 session since the “league table of the 2013-14 Championship” had already and duly, in compliance with the aforementioned provisions, been ratified by virtue of the decision by the Super League Board of Directors of 24-4-2014. Following this, there conduces a case for the *ex proprio motu* for this completion of the first instance decision and more specifically with respect to provision C in its operative part from “Deduct three (3) points from it in the League Table” to “deducts three (3) points from it in the League Table compiled for the ranking of teams entitled to take part in the international events for the 2013-2014 session”.*

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

22. On 26 May 2014, PAOK filed a Statement of Appeal with the Court of Arbitration for Sport (the “CAS”), in accordance with Article R48 of the CAS Code of Sports-related Arbitration (the “CAS Code”). In this submission, PAOK requested the President of the CAS Appeals Arbitration Division to issue appropriate directions for an expedited procedure in accordance with Article R52(3) of the CAS Code. PAOK also named the Super League Greece and Panathinaikos as interested parties. In addition, PAOK nominated Mr Efraim Barak, attorney-at-law in Tel Aviv, Israel, as arbitrator.
23. On 4 June 2014, Panathinaikos filed a request for intervention.
24. Also on 4 June 2014, the HFF confirmed its agreement to an expedited procedure.
25. On 5 June 2014, the HFF confirmed not to oppose the intervention of Panathinaikos in the proceedings.
26. On 9 June 2014, PAOK confirmed that it had no objection to the intervention of Panathinaikos in the proceedings and that the parties (including Panathinaikos) had agreed a procedural calendar as follows:
  - *“12 June: deadline for PAOK to submit Appeal Brief*
  - *24 June: deadline for HFF and Panathinaikos to submit answers*
  - *27 June: deadline for PAOK to submit further comments on jurisdiction (if necessary)*
  - *2 July: deadline for HFF and Panathinaikos to submit rejoinder on jurisdiction (if necessary – it being understood that the Appellant would then have the opportunity to address matters raised in any rejoinders at the hearing)*
  - *Week of 7-11 July: hearing to be set on a day suitable to the CAS, the Panel and the parties*
  - *14 July: decision without grounds (preferably by the early afternoon)”*
27. On 10 June 2014, the CAS Court Office informed the parties that, in view of the agreement of PAOK and the HFF, Panathinaikos would be considered as the Second Respondent in this procedure.
28. Also on 10 June 2014, Panathinaikos nominated Prof. Luigi Fumagalli, Professor and attorney-at-law in Milan, Italy, as arbitrator.
29. On 11 June 2014, the HFF confirmed to agree with Panathinaikos’ nomination of Prof. Fumagalli as arbitrator.

30. On 12 June 2014, PAOK filed its Appeal Brief, in accordance with Article R51 of the CAS Code. This document contained a statement of the facts and legal arguments. PAOK challenged the Appealed Decision, submitting the following requests for relief:

- “(i) upholding the appeal filed by the PAOK;*
- (ii) setting aside the operative part of the decision made by the Appeal Committee of the HFF in matter 45/6-5-2014 to the extent that it imposes a deduction of points on PAOK;*
- (iii) setting aside the operative part of the decision made by the Disciplinary Committee of the HFF in matter 206/30.04.2014 to the extent that it imposes a deduction of points on PAOK;*
- (iv) obliging the Hellenic Football Federation to take the necessary measures to:*
  - erase the deduction of the three points applied to PAOK from the classification of the Super League playoffs for participation in international competitions,*
  - confirm that PAOK achieved the first place in the play off round and therefore earned the exclusive right to be nominated as the Greek club to participate in the Third Qualifying Round of the UEFA Champions League 2014-2015;*
- (v) ordering the Hellenic Football Federation to register PAOK with UEFA as the Greek club to participate in the Third Qualifying Round [sic] the UEFA Champions League 2014-2015;*
- (vi) making any other orders that the Panel deems appropriate in the circumstances;*
- (vii) condemning the Respondent(s) to pay all the arbitration costs; and*
- (viii) ordering the Respondent(s) to pay a substantial contribution towards the Appellant’s arbitration related costs”.*

31. On 24 June 2014, the HFF filed its Answer, in accordance with Article R55 of the CAS Code, whereby it requested the CAS to decide the following:

- “1. That the appeal of PAOK is inadmissible in view of the CAS’ lack of jurisdiction.*
- 2. That the present appeal must therefore be dismissed, without any decision on the merits being adopted.*
- 3. That PAOK shall bear all court costs related to the current arbitral proceedings.*
- 4. That PAOK must pay a contribution towards HFF’s legal fees and other expenses in an amount no lower than 5.000 EUR.*

*Subsidiarily,*



*In the case that the Panel considers that CAS has jurisdiction to decide on the merits of the appeal lodged by PAOK, the HFF respectfully requests the Panel to rule:*

1. *That the appeal filed by PAOK is rejected on the merits.*
  2. *That PAOK shall bear all court costs related to the current arbitral proceedings.*
  3. *That PAOK must pay a contribution towards HFF's legal fees and other expenses in an amount no lower than 5.000 EUR".*
32. Also on 24 June 2014, Panathinaikos filed its Answer, in accordance with Article R55 of the CAS Code, whereby it requested the CAS to decide the following:
- "1. CAS has no jurisdiction on the present dispute and therefore declares the appeal filed by PAOK Football Club inadmissible;*
- Subsidiarily,*
2. *The decision issued by the HFF Appeals Committee in the matter 206/30.04.14 be confirmed.*
  3. *The appeal filed by PAOK Football Club be dismissed.*
  4. *All other motions filed by PAOK Football Club be dismissed.*
- In any case,*
5. *The costs related to the present arbitration proceedings shall be entirely borne by PAOK Football Club*
  6. *PAOK Football Club shall pay a substantial contribution to the legal fees and other expenses incurred by Panathinaikos in connection with the present arbitration procedure".*
33. On 27 June 2014, pursuant to Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to decide the present matter was constituted by:
- Mr Hendrik Willem Kesler, attorney-at-law in Enschede, the Netherlands, as President;
  - Mr Efraim Barak, attorney-at-law in Tel Aviv, Israel, and;
  - Prof. Luigi Fumagalli, Professor and attorney-at-law in Milan, Italy, as arbitrators
34. On 27 June 2014, PAOK filed its answer on jurisdiction, in accordance with the procedural schedule agreed upon by the parties, concluding that CAS has jurisdiction to hear the present dispute.
35. On 1 July 2014, the HFF filed its rejoinder on jurisdiction, in accordance with the procedural schedule agreed upon by the parties, opposing all the contentions made by PAOK in its submission dated 27 June 2014.

36. On 2 July 2014, Panathinaikos informed the CAS Court Office that it would not present any comments to PAOK's answer on jurisdiction, but reserved its right to answer at the occasion of the hearing.
37. On 7 July 2014, PAOK filed a new exhibit (*i.e.* minutes of the meeting of the HFF Board of Administration of 22 May 2012).
38. On 8 July 2014, Panathinaikos informed the CAS Court Office to leave it to the Panel's discretion to decide on the admissibility of the new exhibit in light of the requirements of Article R56 of the CAS Code.
39. On 8, 8 and 9 July 2014, respectively, the HFF, Panathinaikos and PAOK duly returned signed copies of the Order of Procedure.
40. On 9 July 2014, the HFF requested the Panel to reject the new exhibit.
41. On 10 July 2014, a hearing was held 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.
42. In addition to the Panel, Mr Dennis Koolaard, *ad hoc* Clerk, and Mr Antonio de Quesada, Counsel to the CAS, the following persons attended the hearing:

For the Appellant:

- Mr Antonio Rigozzi, Counsel;
- Mr William McAuliffe, Counsel;
- Mr Achilleas Mavromatis, PAOK Head of Legal

For the First Respondent:

- Mr Miguel Liétard Fernández-Palacios, Counsel;
- Ms Reyes Bellver Alonso, Counsel;
- Mr Dimitrios Davakis, member of the HFF Legal Department

For the Second Respondent:

- Mr Lucas Ferrer de Robles, Counsel;
- Mr Alkiviadis Papantoniou, member of Panathinaikos' Legal Department

43. No witnesses or experts were heard, however certain questions were posed to Mr Mavromatis, Mr Davakis and Mr Papantoniou. The parties had ample opportunity to present their case, submit their arguments and answer the questions posed by the Panel.
44. Before the hearing was concluded, all three parties expressly stated that they did not have any objection to the procedure adopted by the Panel and that their right to be heard had been respected.

45. The Panel confirms that it carefully heard and took into account in its discussion and subsequent deliberations all of the submissions, evidence and arguments presented by the parties, even if they have not been specifically summarized or referred to in the present award.
46. On 11 July 2014, the operative part of the award was communicated to the parties, determining that CAS does not have jurisdiction to entertain the appeal filed by PAOK.

#### IV. SUBMISSIONS OF THE PARTIES

47. The submissions of PAOK, in essence, may be summarized as follows:
  - As to the jurisdiction, PAOK submits that pursuant to article 2(3)(A)(l) of the HFF Statutes, CAS has jurisdiction because it is the only possible “independent and impartial court” in the sense of this provision. In the absence of a specific independent and impartial national arbitral tribunal, and pursuant to jurisprudence of the SFT, *“an arbitration agreement in favour of a non-existing (non-effective) sports arbitration mechanism shall be interpreted as an arbitration agreement in favour of CAS as a matter of Swiss arbitration law”*. PAOK argues that only CAS can be competent as it is specifically determined in the HFF Statutes that the HFF Court of Arbitration, both the ordinary as well as the appeals division, have no jurisdiction. Furthermore, PAOK maintains that the HFF Court of Arbitration is not an independent arbitral tribunal. Subsidiarily, PAOK argues that the jurisdiction of CAS is based on article 61(1)(b) of the UEFA Statutes as the present dispute takes place in a *“European dimension”*.
  - As to the merits, PAOK maintains that although it *“does not challenge nor seek to excuse the regrettable incidents that took place surrounding the Match, such incidents simply do not qualify as “extensive incidents” as defined in Article 15(6)(f) DC which could justify the imposition of the severest of sanctions provided for in Article 15(6)(a)-(d) DC, in particular the disputed deduction of 3 points from the league table”*. PAOK finds that *“any reasonable or considered reading of Article 15(6)(f) DC no interpretation could be arrived at but that these criteria must co-exist and be cumulative”*.
  - Following such interpretation, PAOK argues that one of the three conditions of article 15(6)(f) of the HFF DC is not present, *i.e.* no “simple bodily damage” can be established. A distinction must be made between “assault” and “simple bodily damage”. The latter requires the presence of *“physical injury or health damage on another person”*, which is not required for “assault”.
  - Moreover, PAOK avers that article 15(6)(d) of the HFF DC requires that the “extensive incidents” took place on the “field of play”, which is different from the “main field area” required by article 15(6)(f) of the HFF DC. PAOK submits that the “field of play” is a smaller area than that of the “main field area”. The only incidents that could constitute “simple bodily damage” (*i.e.* the “hitting”) relate to incidents that took place off the field of play. Hence, there is no basis for a deduction of points.

- Finally, PAOK finds that the deduction of points is significantly disproportionate to the established offences.
48. The submissions of the HFF, in essence, may be summarized as follows:
- As to the jurisdiction, with reference to CAS jurisprudence, the HFF finds that CAS has no jurisdiction. The HFF maintains that its national rules do not provide for CAS jurisdiction, which is required by Article R47 of the CAS Code. The HFF conferred jurisdiction to the HFF Court of Arbitration, which excludes the jurisdiction of CAS based on article 67(3)(C) of the FIFA Statutes. Article 53(1) of the HFF Statutes only concerns ordinary arbitration proceedings before CAS. The HFF further submits that it is not for CAS to decide whether the HFF Court of Arbitration is competent, CAS shall only rule on its own competence.
  - As to the merits, the HFF finds that article 15(6)(f) of the HFF DC is violated if any single one of the conditions is met. It is a *“three-part disjunctive test”*. This derives from the literal wording of the provision as well as the spirit thereof.
  - The HFF observes that only the element of “simple bodily damage” is disputed by PAOK. The HFF finds that hitting another person necessarily causes bodily harm. The hitting is not disputed, as PAOK confirms that an “assault” took place. The HFF emphasizes that “bodily harm” is not required, but only “simple bodily harm”.
  - Since the HFF finds that “bodily harm” is not a requirement for an “extensive incident” to have occurred, the violence on the field of play is sufficient to impose the sanctions provided in article 15(6)(d) of the HFF DC. Moreover, the HFF Observer reported that the assault on Mr Valdez took place during the field invasion by PAOK’s fans. The incidents therefore occurred on the field of play, justifying a three-point deduction. The HFF also argues that the points were correctly deducted from the play-off ranking and not from the general league ranking as the play-offs had already started before the sanction was pronounced.
  - With reference to CAS jurisprudence, the HFF submits that CAS can review the sanctions of a disciplinary body only when the sanction is evidently and grossly disproportionate to the offence. The HFF also argues that the sanction is proportionate, and even lenient, in comparison with other cases of supporter misconduct.
49. The submissions of Panathinaikos, in essence, may be summarized as follows:
- As to the jurisdiction, Panathinaikos finds that CAS does not have jurisdiction to deal with the present matter. Whereas the CAS Code requires that the regulations must expressly provide for jurisdiction, PAOK only refers to general provisions in the FIFA Statutes. With reference to CAS jurisprudence, Panathinaikos maintains that the FIFA Statutes are not directly applicable and that article 2(3)(A)(k) of the HFF Statutes only provides that the HFF shall recognize CAS decisions, when CAS has jurisdiction. Even

if the HFF infringed the obligation of FIFA to create an impartial arbitral tribunal, this does not lead to the conclusion that there is a valid jurisdiction clause to CAS. In that case it would be FIFA's responsibility to take appropriate measures against member associations, which is supported by legal doctrine.

- As to the merits, Panathinaikos argues that all three criteria of article 15(6)(f) of the HFF DC are met. With reference to jurisprudence of the HFF, the Match Observer's report takes precedence over a police report and that a police report is only of supplementary nature.
- Panathinaikos refers to statements made by Mr Valdez regarding the bodily damage suffered by him. From these statements it appears that he was punched several times, that he was kicked in his genitals and that he was pulled by the hair. Panathinaikos finds that *"the type of aggression displayed towards Mr Valdez is certainly sufficient to cause at least simple bodily damage"*. Regarding Mr Maniatis, Panathinaikos submits that it is *"not entirely outside the realm of reasonable probability that Mr Maniatis suffered bodily damage"*. As the other two requirements were not disputed, Panathinaikos finds that the conditions of article 15(6)(f) of the HFF DC are complied with.
- Panathinaikos argues that, *"despite PAOK's allegations, there should be no doubt in the Panel's minds as to whether extensive incidents occurred on the field of play because, as discussed above, extensive incidents do not require that bodily damage occur"*. Since several extensive incidents occurred on the field of play, the disciplinary bodies of the HFF properly applied article 15(6)(d) of the HFF DC and sanctioned PAOK with a three-point deduction.
- Panathinaikos finds that the sanction imposed was proportionate. Due to the timetable, it was legitimate that points were deducted from the league ranking, while the infringements were committed during a cup match. Also, Panathinaikos refers to CAS jurisprudence in maintaining that CAS shall not review sanctions unless there is a clear and manifest error or arbitrariness in the sanction imposed.

## V. PRELIMINARY ISSUE

### A. New exhibit filed on 7 July 2014

50. At the outset of the hearing, the Panel invited the parties to comment on the admissibility of the new exhibit filed by PAOK on 7 July 2014.
51. After having heard the parties' views on the admissibility and after deliberating on the issue, the President of the Panel informed the parties during the hearing that the newly submitted exhibit would be admitted to the case file, the exceptional circumstance, in the sense of Article R56 of the CAS Code, being the fact that the minutes of the meeting were already available to the parties, as confirmed by the HFF during the hearing, before it was submitted by PAOK.

**B. New exhibits filed on 10 July 2014**

52. During the hearing, PAOK requested two additional documents to be admitted to the case file. The first document being a transcript of an interview on the radio of the HFF President of 8 July 2014, and the second document allegedly being evidence of criminal proceedings being instigated on 8 July 2014 in relation to the matter in dispute.
53. After having heard the parties' views on the admissibility of these documents, particularly the Respondents' objections thereto, the President of the Panel informed the parties that both documents would not be admitted to the case file. Although the documents could not have been submitted earlier, the Panel was not convinced of their relevance for the pertinent points in the present appeal arbitration proceedings.

**VI. ADMISSIBILITY**

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

*"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from receipt of the decision appealed against".*

55. As no time limit is provided in the statutes or regulations of the HFF, the appeal was to be filed within twenty-one days following the date of receipt of the Appealed Decision. It is not disputed that PAOK filed its Statement of Appeal within this deadline of twenty-one days. The appeal complied with all other requirements of article R48 of the CAS Code, including the payment of the CAS Court Office fees.
56. It follows that the appeal is admissible.

**VII. JURISDICTION**

**A. Legal Basis for the Panel to Decide on CAS Jurisdiction**

57. In keeping with article 176 of the Switzerland's Private International Law Act (the "PILA"), Chapter 12 of the PILA governs this arbitration as the *lex arbitri*, i.e. the law governing the arbitral proceedings, since the seat of the arbitral tribunal is located in Switzerland and since at least one of the parties is neither domiciled nor habitually resident in Switzerland.
58. Article 186(1) of the PILA provides that "[t]he arbitral tribunal shall rule on its own jurisdiction", which principle is generally accepted as "*Swiss courts have repeatedly upheld the arbitrators' competence-competence, in both domestic and international matters, in explicit terms*" (BORN, International Commercial Arbitration, 2<sup>nd</sup> edition, 2014, p. 1062).

59. The Panel therefore has the so-called *Kompetenz-Kompetenz*, *i.e.* the authority to determine whether it has jurisdiction to adjudicate the merits of the case (CAS 2005/A/952).
60. This principle is reflected in Article R55 (4<sup>th</sup> paragraph) of the CAS Code, determining that “[*t*]he Panel shall rule on its own jurisdiction”.
61. Furthermore, the parties did not dispute the competence of the Panel to rule on its own jurisdiction in the present case.
62. The Panel is therefore satisfied that it is authorised to rule on its own jurisdiction.

## **B. The Positions of the Parties**

63. PAOK submitted the following summary of its position on jurisdiction:
  - (i) All the parties to the present arbitration are bound by the HFF Statutes.
  - (ii) Pursuant to article 2(3)(A)(l) of the HFF Statutes the present dispute shall be heard by an “*independent and impartial court, which shall settle the dispute to the exclusion of any ordinary court*”.
  - (iii) An independent and impartial court ruling to the exclusion of the state courts is an arbitral tribunal; hence article 2(3)(A)(l) is an arbitration clause.
  - (iv) If the opinion of the HFF as stated in these proceedings will be confirmed, this practically means that the arbitration mechanism provided for in the HFF Statutes, in fact, does not allow PAOK to have the present dispute adjudicated by arbitration as contemplated by article 2(3)(A)(l) since the obligation that the HFF took upon itself to refer the disputes “to another independent and impartial court” was actually nullified by not mentioning precisely which is this “independent and impartial court”.
  - (v) The arbitration clause is thus “pathological”.
  - (vi) According to the relevant case law of the Swiss Federal Tribunal (the “SFT”), article 2(3)(A)(l) shall be interpreted as referring to the CAS (*i.e.* the only established arbitration tribunal in sports matters and explicitly acknowledged by the HFF in its Statutes).
  - (vii) Should the Panel decide to disregard the SFT’s case law concerning pathological arbitration agreements, it could also assert jurisdiction based on article 61(1)(b) of the UEFA Statutes.
64. The HFF submits that the HFF Statutes do not contain any clause establishing the jurisdiction of CAS to hear an appeal lodged against a decision of the HFF’s disciplinary bodies. The only reference to CAS in the HFF Statutes is the recognition of this court for the HFF and its members to refer disputes to CAS if they so agree upon expressly, as well as to recognise decisions passed by CAS. This does not constitute an express agreement to arbitrate disputes arising from appeals against internal decisions of the HFF.
65. The HFF further maintains, notwithstanding its arguments on the jurisdiction of CAS, that the HFF Statutes expressly foresee the jurisdiction of the HFF Court of Arbitration to resolve disputes between its members, including appeals against its internal decisions. The HFF finds that the existence of this independent arbitral tribunal precludes any appeal before CAS on the

basis of article 67(3)(c) of the FIFA Statutes, because decisions such as the Appealed Decision can be appealed before an independent and duly constituted national arbitration tribunal.

66. In addition, the HFF finds that, when taking article 2(3)(A)(l) and article 41 (G) of the HFF Statutes into consideration, one can only conclude that the present dispute should have been lodged with the independent and impartial arbitration court of the HFF: the HFF Court of Arbitration. It would then be for the HFF Court of Arbitration to decide if it has jurisdiction.
67. Finally, the HFF argues that an alleged lack of independence of the HFF Court of Arbitration does not justify the jurisdiction of CAS. The HFF also disputes that the HFF Court of Arbitration is impartial and lacks independence and that such objection should have been brought before the HFF Court of Arbitration.
68. Panathinaikos maintains that neither article 53, nor article 2(3)(A)(k) and (l) of the HFF Statutes contain a valid arbitration clause in favour of CAS. In respect of article 2(3)(A)(l) of the HFF Statutes, Panathinaikos argues, with reference to CAS jurisprudence, that CAS is not expressly named in this article.
69. Panathinaikos argues that PAOK wrongly construes that CAS, by *“being the only independent and impartial Tribunal available to HFF members”*, shall retain jurisdiction in the case at stake. Panathinaikos finds that the Panel should not overlook the major flaw that appears in PAOK’s reasoning: the supposed infringement of the obligation contained in the statutes of the HFF is not *per se* a valid arbitration clause.
70. In this respect, Panathinaikos refers to CAS jurisprudence in arguing that *“such alleged lack of independence and impartiality would have to be solved by FIFA with the HFF, respectively before Greek courts, if Greek law provides so but, certainly, this cannot create a nihilo a jurisdiction case for CAS”*.

### **C. The Position of the Panel**

71. Article R47 of the CAS Code determines the following:

*“An appeal against a 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 him prior to the appeal, in accordance with the statutes or regulations of that body”*.

72. Article 67 of the FIFA Statutes provides, *inter alia*, as follows:

*“1. Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question.*

*2. Recourse may only be made to CAS after all other internal channels have been exhausted.*



3. CAS, however, does not deal with appeals arising from:

(...)

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

(...).”

73. Article 53(1) of the HFF Statutes provides the following:

*“Any natural person or legal entity involved in football by any way, is obligated to recognize the jurisdiction and observe the decisions of the Court of Arbitration for Sport (CAS) in Lausanne (Switzerland), as specified in the relevant provisions of the FIFA and UEFA Statutes;”*

74. Article 2(3)(A)(k) and (l) of the HFF Statutes determine the following:

*“The Hellenic Football Federation (H.F.F.) as a member of FIFA and UEFA is obligated:*

k) *to recognize the jurisdiction and observe the decisions of the Court of Arbitration for Sport (CAS) in Lausanne (Switzerland), as specified in the relevant provisions of the FIFA and UEFA Statutes;*

l) *to refer in the last instance any dispute of national dimension arising from or related to the application of the HFF’s statutes or regulations only to another independent and impartial court, which shall settle the dispute to the exclusion of any ordinary court, unless expressly prohibited by the Hellenic law. This provision does not apply for decisions of the Board of Directors of HFF regarding the issuance and original interpretation of regulations”.*

75. Article 41(G) of the HFF Statutes determines, *inter alia*, the following:

*“1. The Hellenic Football Federation (H.F.F.) maintains an independent supreme Court of Arbitration. The organ functions in two sections, the Ordinary Arbitration Division and the Appeals Arbitration Division.*

a) *(...) The Ordinary Arbitration Division is competent to resolve any disputes arising from the implementation of the provisions of the Statutes and the Regulations of the Hellenic Football Federation (H.F.F.) at first and last instance. The Ordinary Arbitration Division is not competent to hear cases judged at second instance by other decision making organs. (...) The Ordinary Arbitration Division is also competent to rule on second instance, any dispute ruled at first instance by the Player Status and Transfer Committee. The jurisdiction of the Ordinary Arbitration Division may, provided there is a relevant stipulation, extend also to any dispute between the aforestated natural persons and legal entities with any third party.*

b) *(...) The Appeals Arbitration Division is competent to resolve at second degree the disputes settled by the Dispute Resolution Chamber between players or coaches and Professional Football Clubs and disputes that were decided at the first instance by the Players Status and Transfer Committee”.*

76. It is not in dispute between the parties that the adoption of article 2(3)(A)(l) of the HFF Statutes derives from the obligation for national football associations imposed by FIFA by means of article 68(3) of the FIFA Statutes:

*“The Associations shall insert a clause in their statutes or regulations, stipulating that it is prohibited to take disputes in the Association or disputes affecting Leagues, members of Leagues, Clubs, members of Clubs, Players, Officials and other Association Officials to ordinary courts of law, unless the FIFA regulations or binding legal provisions specifically provide for or stipulate recourse to ordinary courts of law. Instead of recourse to ordinary courts of law, provision shall be made for arbitration. Such disputes shall be taken to an independent and duly constituted arbitration tribunal recognised under the rules of the Association or Confederation or to CAS.*

*The Associations shall also ensure that this stipulation is implemented in the Association, if necessary by imposing a binding obligation on its members. The Associations shall impose sanctions on any party that fails to respect this obligation and ensure that any appeal against such sanctions shall likewise be strictly submitted to arbitration, and not to ordinary courts of law”.*

77. The Panel finds that the obligation imposed by FIFA leaves the national federations a certain discretion as to how to furnish the judicial system in domestic matters. This view is consistent with CAS jurisprudence:

*“The Appellant cannot ignore that the system proposed by FIFA in its own Statutes leaves room for manoeuvre to national associations which can decide whether they want to recognize an arbitration tribunal other than CAS for their domestic disputes, as rightly put forward in Iraklis 1 [CAS 2010/A/2170, §46]. Article 63 [which does not materially differ from the present article 67 of the FIFA Statutes] therefore refers to the association’s rules, namely its Statutes and Regulations, as bearing on the question of CAS jurisdiction vel non in domestic football disputes.*

*More importantly, nothing in article 63 FIFA Statutes can lead to the conclusion that it is directly applicable and therefore forms part per se of the national association’s rules, as alleged by the Appellant in its written submissions. The members of FIFA remain independent legal entities with their own sets of rules. In other words, the regulations of FIFA, notably of article 63 FIFA Statutes, need to be adopted in the federation’s rules either word by word or by reference to apply to domestic matters” (CAS 2011/A/2483, §§66-67).*

78. As maintained by PAOK, the jurisdiction of CAS in the present matter must therefore derive from the relevant rules and regulations of the HFF, more specifically from article 2(3)(A)(l) of the FIFA Statutes.

79. The Panel observes that article 2(3)(A)(l) of the HFF Statutes does not specifically refer to CAS, but to “another independent and impartial court”.

80. The Panel finds the reference to “another” in article 2(3)(A)(l) important. The preceding provision (*i.e.* article 2(3)(A)(k) of the HFF Statutes) specifically refers to CAS. This might therefore lead one to conclude that the reference to “another” in article 2(3)(A)(l) of the HFF

Statutes was intended to determine that the disputes covered by article 2(3)(A)(l) of the HFF Statutes could only be referred to another independent and impartial court than CAS.

81. The majority of the Panel<sup>1</sup> finds that this view is corroborated by article 41(G) of the HFF Statutes, determining that the competent instance in appeals from disputes taking place at a national level is the HFF Court of Arbitration.
82. The view that the jurisdiction of CAS does not derive directly from article 2(3)(A)(l) of the HFF Statutes is consistent with the findings of another CAS panel:

*“Whereas the HFF Disciplinary Code does not provide for any arbitration clause in favor of CAS, the HFF Statutes do, by contrast, provide for specific rules on jurisdiction in relation with disciplinary matters.*

*The general jurisdiction clause in the HFF Statutes must be found under article 2 par. 3.A. lit l, which provides that any dispute of national dimension arising from the application of the HFF Statutes or Regulations, as in the present case, will be referred to “any other independent and unprejudiced court that will judge the dispute with the exclusion of any ordinary court, unless this is strictly inhibited by the Greek legislation”. CAS is not expressly mentioned in this article.*

*The “independent and unprejudiced court” is designated under article 41 lit G of the HFF Statutes which establishes an independent Court of Arbitration. According to this provision, the HFF Court of Arbitration, more precisely its Ordinary Arbitration Division, is “competent for the solution of any dispute arising by the application of the provisions of the Articles of Association and the Manual of the Hellenic Football Federation, at first and higher instance” (article 41 lit. G par. 2 lit. a of the HFF Statutes). Its jurisdiction extends notably to disputes arising between the Greek football clubs and the Hellenic Football Federation, as this is the case in these proceedings. Obviously, the competence of the HFF Court of Arbitration covers disciplinary disputes.*

*The Appellant claims that the HFF Court of Arbitration is not an independent and impartial tribunal and that, in any case, it was confronted to a “lock out” and could not gain access to the Court. Yet the Panel does not find any document in the file which substantiates those submissions. In any case, such alleged lack of independence and impartiality would have to be solved by FIFA with the HFF, respectively before Greek courts, if Greek law so allows. This cannot create a nibilo confer jurisdiction to CAS. (...)*

*Based on the foregoing, if a party intends to file an appeal against decisions of the [HFF Appeals Committee], it can only refer the case to the HFF Court of Arbitration, based on article 41 lit. G of the HFF Statutes. There is no arbitration clause in favor of CAS” (CAS 2011/A/2483, §§87-91).*

83. Furthermore, the Panel has doubts as to the binding nature of article 2(3)(A)(l) of the HFF Statutes and whether this provision is indeed an arbitration clause, as one of “*the materially essential points of an arbitration clause [is] the intent of the parties to bind themselves to submit their dispute to decision by an arbitral tribunal*” (ATF 138 III 29, §2.1).

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<sup>1</sup> The following references to “the Panel” in paragraphs 82-89 should be understood as referring to the majority of the Panel.

84. Although the content of lit. 1 by itself is clear in excluding the competence of state courts, the Panel finds that the heading of article 2(3)(A) of the HFF Statutes casts serious doubts on the HFF's acceptance to be bound by an arbitration clause referring to CAS. More specifically, the Panel finds that it is not clear whether the HFF, with the implementation of this provision, complied with FIFA's obligation by granting its members a general right to appeal (*i.e.* giving its general consent to arbitrate), or, whether the HFF merely acknowledged the obligation imposed by FIFA, without converting this obligation into a binding acceptance of the CAS jurisdiction, in the sense that its members could derive a general right to appeal therefrom.
85. The Panel finds that it appears that the HFF used the discretion, or "*room for manoeuvre*", granted to it by FIFA to create the HFF Court of Arbitration, to the exclusion of CAS. The only relevant provision for the present matter that clearly provides competence is article 41(G) of the HFF Statutes. There is however no statutory basis in the HFF Statutes on the basis of which it can be concluded that CAS would be competent in case the HFF Court of Arbitration is not competent.
86. On the basis of the above, it appears to the Panel that the HFF by means of article 2(3)(A)(l) of the HFF Statutes merely acknowledged the obligations imposed on it by FIFA, but that this is not an expression of intent to refer appeals to CAS arbitration by and of itself.
87. As such, the Panel finds that it cannot be concluded that the HFF, by means of article 2(3)(A)(l) of the HFF Statutes, intended to be bound to submit disputes to any means of arbitration (including by arbitration at CAS) other than by arbitration through the HFF Court of Arbitration.
88. Whereas PAOK, with reference to jurisprudence of the SFT (cf. ATF 138 III 29, §2.2.3) maintained that "[i]t is decisive that the intention of the parties should be expressed to have an arbitral tribunal, *i.e.* not a state court, decide certain disputes (BGE 129 III 675 at 2.3 p. 679 ff)", the Panel observes that the SFT continues by saying that "[t]he arbitral tribunal called upon to decide must be either determined or in any case determinable". The Panel finds that it is not determined, nor determinable, that CAS is the arbitral tribunal called upon.
89. Consequently, the Panel concludes that article 2(3)(A)(l) of the HFF Statutes is not an arbitration clause providing the members of the HFF with a general right to appeal final decisions of the HFF to CAS arbitration.
90. The Panel is aware that another CAS panel reasoned as follows:

*"[T]he Panel also notes that article 1.5 of the same Statutes [of the Belarus Football Federation], included in the chapter so-called "General Arrangements", grants ABFF's members the following right:*

*"To refer any dispute of national dimension arising from [the Belarus Football Federation's] Statutes provisions or regulations **after having used all remedies presented by this Statutes only to an independent and impartial court of arbitration as to the last instance** (emphasis added by the*

*Panel), which will settle the disputes to the exclusion of any ordinary court, unless expressly prohibited by the legislation in force” (emphasis added by the Panel)” (CAS 2013/A/3107, §101).*

91. The Panel finds that it is not bound by this precedent since the CAS panel in CAS 2013/A/3107 came to the conclusion that article 1.5 of the Statutes of the Belarus Football Federation granted the members a right to appeal to arbitration, whereas the Panel in the present case finds that article 2(3)(A)(l) of the HFF Statutes does not by itself grant a right to appeal to arbitration, but is merely an acknowledgement of its obligation to do so.
92. Furthermore, the Panel observes that article 1.5 of the Statutes of the Belarus Football Federation refers to an *“independent and impartial court of arbitration”*, whereas it was clarified at the occasion of the hearing that the correct translation of article 2(3)(A)(l) of the HFF Statutes is the reference to *“independent and impartial court”*, *i.e.* no explicit reference to arbitration.
93. In addition, as correctly noted by the HFF, in CAS 2013/A/3107, reference is made to article 14 of the Statutes of the Belarus Football Federation, which determines that *“[t]he Members of the Association are obliged to settle each of the potential disputes pursuant to the rules established by the Statutes of the [Belarus Football Federation], UEFA and FIFA and to submit any such dispute to the competent bodies of these organisations or, if applicable, to the Court of Arbitration for Sport (CAS) with headquarters in Lausanne, Switzerland”*. The Panel observes that there is no similar provision adopted in the HFF Statutes.
94. As to the argument of PAOK that the Ordinary Arbitration Division of the HFF Court of Arbitration would not be competent to adjudicate the present matter on appeal, the Panel finds, based on the content of article 41(G) of the HFF Statutes and a statement of the HFF representative during the hearing, that this indeed appears to be the case, but that the pertinent question is whether or not CAS has jurisdiction over the present appeal.
95. Since the majority of the Panel is of the opinion that there is no general right to appeal final decisions of the HFF to CAS arbitration based on article 2(3)(A)(l) of the HFF Statutes by itself, and assuming that the Ordinary Arbitration Division of the HFF Court of Arbitration is not competent to deal with the present matter, there is no legal provision on the basis of which an appeal can be filed with CAS, as some sort of supplementary appeals body. In the absence of an agreement to arbitrate, which – in the words of PAOK – is the most fundamental element of an arbitration agreement, the Panel finds that it is prevented to ascertain the content of the arbitration agreement with a view to ensuring its validity under the principle of *“effet utile”*.
96. Insofar PAOK contends that article 41(G) of the HFF Statutes is pathological, the Panel finds that this is not the case because article 41(G) of the HFF Statutes clearly determines that *“[t]he Ordinary Arbitration Division is not competent to hear cases judged at second instance by other decision making organs”*, *i.e.* the HFF Court of Arbitration has no jurisdiction in case of an appeal being lodged against a decision *“judged at second instance”* such as the Appealed Decision.
97. The Panel fully adheres to the conclusion of another CAS panel that *“if the rules of a national association do not provide jurisdiction to CAS or to an independent and impartial arbitration court, this cannot*

*as such create a CAS jurisdiction by default. If FIFA finds that the jurisdictional system of a national federation does not comply with article 63 [currently article 67] of its Statutes it will then take the necessary measures towards the national association in order for it to introduce a valid jurisdiction clause in favor of CAS and/or establish an arbitration court which meets FIFA's criteria on independence and impartiality. In the meantime, it will be a matter of domestic law, Greek law in the present case, to decide whether a party concerned by a decision issued by a HFF body has the right to appeal against such decision before a competent state court" (CAS 2010/A/2170 & 2171, §§54-55).*

98. Finally, insofar PAOK relies on the considerations of the CAS panel in CAS 2008/A/1525 (where jurisdiction was accepted in a domestic disciplinary dispute in Greek football), the majority of the Panel fully adheres to the comments made by the CAS panel in CAS 2011/A/2483, which reasoned as follows:

*"The Panel is aware that CAS decided in another case that it had jurisdiction in a domestic dispute in Greek football dealing with a disciplinary case (CAS 2008/A/1525 [...]), notably on the basis of article 35 par. 4 KAP as well as article 2 par. 3 lit. k and 53 par. 2 lit a of the HFF Statutes. The Panel stresses that obviously the existence of the HFF Court of Arbitration was not taken into consideration when the Panel decided on CAS jurisdiction, notably because the parties did not refer to it. Eventually, the panel in the CAS award CAS 2008/A/1525 did clearly show under nr. 42 that its decision was limited to "**this dispute** [in bold and underlined in the award]", meaning therefore, it would clearly seem, that the Panel did not want it to be taken generally as a precedent for other disputes based on other facts. Consequently, the Panel does not consider this CAS case relevant in the present proceedings. As to the other CAS precedents which deal with the HFF Regulations, the Panel notes that in CAS 2009/A/1842, CAS jurisdiction appears not to have been disputed and therefore specifically considered by the panel; indeed in CAS 2009/A/2019, it is specifically mentioned that the HFF did not dispute CAS jurisdiction. The Panel stresses that the fact that the HFF did not dispute CAS jurisdiction in those two particular cases cannot be considered as a general waiver of its rights to dispute CAS jurisdiction in future cases. It always remains up to the Appellant to establish that CAS has jurisdiction rather than for the Respondent to contest it" (CAS 2011/A/2483, §92).*

99. Finally, PAOK argues that CAS is competent to hear the present case on the basis of article 61(1)(b) of the UEFA Statutes.

100. The Panel observes that article 61(1)(b) of the UEFA Statutes determines the following:

*"The CAS shall have exclusive jurisdiction, to the exclusion of any ordinary court or any other court of arbitration, to deal with the following disputes in its capacity as an ordinary court of arbitration:*

*a) [...]*

*b) disputes of European dimension between associations, leagues, clubs, players or officials".*

101. As to the alleged jurisdiction of CAS in the present case based on article 61(1)(b) of the UEFA Statutes, the Panel observes that PAOK raised this argument for the first time in its answer on jurisdiction filed on 27 June 2014. In addition, this possible legal basis for CAS jurisdiction was not mentioned by PAOK at the hearing.

102. In view of Article R56 of the CAS Code, *“unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument (...) after the submission of the appeal brief and of the answer”*.
103. In the absence of any arguments filed by PAOK in respect of possible exceptional circumstances, the Panel concludes that PAOK was not authorized to supplement its argument, because it was filed after the submission of the appeal brief and the answer.
104. Notwithstanding the above, the Panel observes that article 61 of the UEFA Statutes forms part of a section in the UEFA Statutes named *“CAS as Ordinary Court of Arbitration”*. Also paragraph 1 of article 61 of the UEFA Statutes clearly refers to CAS jurisdiction *“in its capacity as an ordinary court of arbitration”*. In view of the fact that PAOK lodged a *“Statement of Appeal”* with CAS and thereby specifically referred to Article R48 of the CAS Code, which is a provision that forms part of the *“Special Provisions Applicable to the Appeal Arbitration Procedure”* of the CAS Code, the Panel finds that, in the absence of any additional arguments of PAOK to explain this discrepancy, it is not competent on the basis of this provision.
105. Consequently, the Panel finds that CAS is not competent to entertain the present appeal.

## ON THESE GROUNDS

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

1. It has no jurisdiction in the procedure CAS 2014/A/3613 PAOK FC v. Hellenic Football Federation & Panathinaikos FC.
2. The appeal filed by PAOK FC against the Hellenic Football Federation and Panathinaikos FC is not entertained.
3. The arbitration procedure CAS 2014/A/3613 PAOK FC v. Hellenic Football Federation & Panathinaikos FC is removed from the CAS roll.
4. (...).
5. (...).
6. All other motions or prayers for relief are dismissed.