

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2020/A/7154 ARIS FC v. Ikechukwu John Kingsley Ibeh & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Andre Brantjes, Attorney-at-Law, Amsterdam, the Netherlands
Arbitrators: Mr Ulrich Haas, Professor, Zurich, Switzerland
Mr Juan Pablo Arriagada Aljaro, Attorney-at-Law, Santiago, Chile

in the arbitration between

ARIS FC, Thessaloniki, Greece

Represented by Mr Konstantinos Zemberis, Attorney-at-Law, Athens, Greece

as Appellant

and

Ikechukwu John Kingsley Ibeh, Nigeria

Represented by Mr Joseph F. Vandellos Alamilla, Attorney-at-Law, Valencia, Spain

as First Respondent

Fédération Internationale de Football Association (FIFA), Zurich, Switzerland

Represented by Mr Jaime Cambreleng Contreras, Head of Litigation, Mr Saverio Paolo Spera, Senior Legal Counsel, Miguel Liétard Fernández-Palacios, Director of Litigation, FIFA, Zurich, Switzerland

as Second Respondent

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I. PARTIES

1. ARIS FC (the “Appellant” or “ARIS”) is a professional football club with its registered office in Thessaloniki, Greece. ARIS is registered with the Hellenic Football Federation (the “HFF”), which in turn is affiliated to the *Fédération Internationale de Football Association*.
2. Ikechukwu John Kingsley Ibeh, (the “First Respondent” or the “Player”) is a Nigerian professional football player.
3. The *Fédération Internationale de Football Association* (the “First Respondent” or “FIFA”) is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the world governing body of international football. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and football players worldwide; The Player and FIFA are hereinafter jointly referred to as the “Respondents” and together with ARIS as the “Parties”.

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties, the evidence examined in the course of the proceedings and at the hearing. 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

5. As required by Greek legislation/football regulations, all professional football clubs in Greece must have the legal form of a “Football Société Anonyme” (“*FSA*”). Once a club relegated from the second and lowest tier of Greek professional football, the “*FSA*” is dissolved. Once a club promotes from the amateur leagues to professional football, it is a mandatory requirement that such club acquires the legal form of an “*FSA*”.
6. Apparently, all “*FSAs*” have their foundation in an amateur club, which is a separate legal entity from the “*FSA*”. Accordingly, once the “*FSA*” is dissolved, the amateur branch remains.
7. PAE O Aris Thessaloniki FC (“PAE”) is a Greek professional football club that participated in professional football until the end of the 2013/2014 football season. At that stage, PAE relegated from the Football League Division, the second tier and lowest tier of Greek professional football, to the C National Division, the highest amateur tier. At the time, PAE was also involved in a liquidation process. PAE lost its “*FSA*” status and was dissolved.
8. In the following seasons, i.e. 2014/2015 and 2015/2016, the amateur club Aris Thessaloniki AS (“ARIS AS”) participated in the C National Division. At the end of the 2015/2016 season, ARIS AS was crowned champion and consequently promoted

to the Football League Division, i.e. professional football, as a consequence of which a professional branch (an “*FSA*”) had to be established again.

9. In August 2016, the “*FSA*” ARIS was formed and started competing in Greek professional football since the start of the 2016/2017 season until today.

B. Factual Background of Contractual Dispute

10. On 1 August 2013, the Player signed an employment agreement with PAE, valid from 1 August 2013 until 30 June 2015.
11. On 16 December 2013, the Player unilaterally terminated the employment agreement on the basis that PAE did not comply with its financial obligations.

C. First Proceedings before the FIFA Dispute Resolution Chamber

12. On 14 January 2014, the Player lodged a claim with the FIFA Dispute Resolution Chamber (the “*FIFA DRC*”), arguing that he had terminated the employment agreement with just cause and claiming outstanding remuneration in the amount of EUR 27,018 over September, October and November 2013 and EUR 171,404 as compensation for breach of contract from PAE.
13. On 1 October 2014, the HFF issued a letter to FIFA informing it that PAE due to a dissolution and liquidation process, was no longer affiliated with the HFF.
14. On 24 February 2015, FIFA informed the Player that, in consideration of the information provided by the HFF, it was not competent to hear the dispute in light of the fact that PAE was no longer affiliated with the HFF.
15. The HFF also emphasized that the amateur club Aris Thessaloniki AS (“*ARIS AS*”), which was competing at that moment in the C National Division, the highest amateur league in Greece, should not be confused with PAE since they *inter alia* are different legal entities, have different administrations and have different registration numbers.
16. On 25 February 2015, the Player asked FIFA to reconsider its position of 24 February 2015 and adjudicate on his claim because PAE was affiliated to HFF on the date the claim had been lodged before the *FIFA DRC*.

D. First Proceedings before the Court of Arbitration for Sport

17. On 17 March 2015, the Player filed an appeal with the Court of Arbitration for Sport (the “*CAS*”) against FIFA’s letter dated 24 February 2015 (CAS 2015/A/3991).
18. On 30 March 2015, FIFA informed *CAS* that its letter dated 24 February 2015 was not an appealable decision and acknowledged that it was willing to continue its investigation on the basis of the claim filed by the Player.
19. On 2 April 2015, the Player withdrew his appeal in CAS 2015/A/3991.

E. Continuation of the First Proceedings before the FIFA Dispute Resolution Chamber

20. On 28 April 2015, FIFA resumed the proceedings against PAE.
21. On 18 May 2015, the HFF informed FIFA about the relegation of PAE at the end of 2013/2014 and that it did not submit its participation to compete in the 2014/2015 season and that a club named: 'Aris Thessalonikis AS' competed in the C National Division during the 2014/2015 season but it had to be considered a different legal identity from PAE.
22. On 11 November 2015, the Player informed FIFA that PAE was a member of the HFF and that ARIS AS was to be considered as the sporting successor and therefore liable for all liabilities of PAE.
23. On 26 May 2016, the FIFA DRC rejected the Player's claim, stating that he failed to prove that ARIS AS was the sporting successor of PAE.

F. Second Proceedings before the Court of Arbitration for Sport

24. On 19 December 2016, the Player lodged an appeal with CAS against the FIFA DRC decision dated 26 May 2016 (CAS 2016/A/4918).
25. On 13 July 2018, following enquires made by the sole arbitrator in charge of the proceedings, the HFF informed the sole arbitrator and the Player about the existence of ARIS.
26. On 4 October 2018, CAS considered and decided the following:

166. This CAS award confirms that the Player has a final and binding, enforceable debt against PAE. However, the Sole Arbitrator acknowledges that PAE is now in liquidation, so it is unlikely that the Player will be able to recover much, if any, of his debt from PAE.

167. Accordingly, if the Player believes that [ARIS] is the legal or sporting successor of PAE, the Player may wish to enforce his debt against [ARIS]. If the Player wishes to do so, then that is a new claim against a different legal entity. The Player should bring his claim against [ARIS] following article 22 of the RSTP, through the FIFA DRC, respecting the time limitations of the RSTP (noting that the information regarding the existence of [ARIS] perhaps only became available from the HFF on 13 July 2018 during these CAS proceedings). He should then seek to convince the FIFA DRC that [ARIS] is the sporting successor of PAE and should, somehow, be responsible for the debt that PAE owes to him under this CAS Award.

168. The Sole Arbitrator notes that this is a very similar situation to another recent case at the CAS – CAS 2017/A/5460. In that case, a player who had an enforceable CAS award against an insolvent club sought to enforce the award against an alleged successor club through the FIFA Disciplinary

Committee. The sole arbitrator in that case concluded that the player should have instead filed a new claim at the FIFA DRC (not the FIFA Disciplinary Committee) against the successor club. Accordingly, if the Player wishes to enforce this CAS award against [ARIS], he should bring a new claim against [ARIS] at the FIFA DRC in the manner set out above.

B. Conclusion

169. *Based on the foregoing, and after taking into due consideration all the evidence produced and all submissions made, the Sole Arbitrator finds that the Appeal is partially upheld, and PAE must pay the Player the following amounts:*

- *EUR 7,018, plus 5% p.a. interest from 30 September 2013 until the effective date of payment;*
- *EUR 10,000, plus 5% p.a. interest from 30 October 2013 until the effective date of payment;*
- *EUR 10,000, plus 5% p.a. interest from 30 November 2013 until the effective date of payment; and*
- *EUR 187,982, plus 5% p.a. interest from 16 December 2013 until the effective date of payment.”*

G. Second Proceedings before the FIFA Dispute Resolution Chamber

27. On 4 October 2018, the Player lodged a new claim with the FIFA DRC, this time against ARIS, arguing that ARIS was the sporting and legal successor of PAE and requesting the FIFA DRC to order ARIS to pay the following amounts:

“ *ii. The Respondent is obliged to pay the Claimant the debt owed by PAE, which has been confirmed by the CAS Award, i.e. the Respondent must pay the Claimant the following amounts:*

- *EUR 7,018 plus 5 % p.a. interest from 30 September until the effective date of payment;*
- *EUR 10,000 plus 5% interest from 30 October 2013 until the effective date of payment;*
- *EUR 10,000 plus 5% interest from 30 November 2013 until the effective date of payment;*
- *EUR 187,982, plus 5% interest from 16 December 2015 until the effective date of payment.”*

28. The FIFA DRC took guidance in the following para. in the CAS Award (CAS 2016/A/4918):

“The Sole Arbitrator highlights that the decision that had dealt with the question of the succession of a sporting club in front of the CAS (CAS 2007/A/1355; TAS 2011/A/2614; TAS 2011/A/2646; TAS 2012/A/2778) and in front of FIFA’s decision-making bodies (...), have established that, on the one side, a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it. Thus, the obligations acquired by any of the entities in charge of its administration in relation with its activity must be respected; and on the other side, that the identity of a club is constituted by elements such as its name, colours, fans, history, sporting achievements, shield, trophies, stadium, roster of players, historic figures, etc. that allow it to distinguish from all the other clubs. Hence, the prevalence of the continuity and permanence in time of the sporting institution in front of the entity that manages it has been recognised, even when dealing with the change of management companies completely different from themselves (original text in Spanish).”

29. Based on this, the FIFA DRC considered the following:

“14. Having said this, the members of the Chamber focused their attention on the following facts:

- a. Both, PAE and AST competed in the Greek league under the name of “Aris FC” or “Aris Thessaloniki”;*
- b. The logos of PAE and AST are almost identical;*
- c. Both clubs held their local matches in the same stadium;*
- d. Both clubs have their registered office at the same address;*
- e. The colours of the club are the same;*
- f. Both clubs share the same history. In particular, according to AST’s website, the club was established in 25 March 1914 and won three Championship titles (1928, 1932 and 1946).*

15. On account of all the above, the DRC reached the following conclusions:

- a. There are sufficient elements to establish that AST has been the same club as PAE throughout its history, despite the alleged change of owners, board of directors, etc.;*
- b. Moreover, by using the same name (“Aris FC”), logo, stadium and, in particular, the history, it is evident that the new club had the intention to maintain the identity and image of PAE in order to be considered the same club.*

16. In view of the foregoing conclusions, the DRC unanimously decided that AST is the sporting successor of PAE and it is therefore liable to pay to the Claimant the amounts determined in the CAS award of 4 October 2018.”

25. On 21 February 2020, the FIFA DRC rendered its decision (“Appealed Decision”). The operative parts provides:

- “1. *The claim of the Claimant, Ikechukwu John Kinglsey Ibeh, is admissible.*
2. *The claim of the Claimant is accepted.*
3. *The Respondent, Aris F.C., has to pay to the Claimant, **within 30 days** as from the date of notification of this decision, outstanding remuneration in the amount of EUR 27,018, plus 5% interest p.a. until the date of effective payment as follows;*
 - a. *5% p.a. as from 30 September 2013 on the amount of EUR 7,018;*
 - b. *5% p.a. as from 30 October 2013 on the amount of EUR 10,000*
 - c. *5% p.a. as from 30 November 2013 on the amount of EUR 10,000.*
4. *The Respondent has to pay to the Claimant, **within 30 days** as from the date of notification of this decision, compensation for breach of contract in the amount of EUR 187,982, plus 5% interest p.a. as from 16 December 2016 until the date of effective payment.*
5. *In the event that the amounts due to the Claimant in accordance with the above-mentioned numbers 3. and 4. are not paid by the Respondent within the stated time limits, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.”*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

30. On 9 June 2020, ARIS filed a Statement of Appeal with CAS against the Respondents with respect to the Appealed Decision, in accordance with Articles R47 and R48 of the 2019 edition of the CAS Code of Sports-related Arbitration (the “CAS Code”). In this submission, ARIS nominated Prof. Dr. Ulrich Haas, Professor in Zurich, Switzerland, as arbitrator.
31. On 22 June 2020, FIFA informed the CAS Court Office that FIFA and the Player jointly nominated Mr Juan Pablo Arriagada Aljaro, Attorney-at-Law in Santiago, Chile, as arbitrator.
32. On 3 July 2020, ARIS filed its Appeal Brief, in accordance with Article R51 CAS Code.
33. On 20 July 2020, the CAS Court Office informed the Parties that the Panel appointed to decide the present matter was constituted as follows:

President: Mr Andre Brantjes, Attorney-at-Law in Amsterdam, the Netherlands;
Arbitrators: Mr Prof. Dr. Ulrich Haas, Professor, Zurich, Switzerland; and

Mr Juan Pablo Arriagada Aljaro, Attorney-at-Law in Santiago, Chile, as arbitrators.

34. On 11 August 2020, the Player filed its Answer, in accordance with Article R55 CAS Code.
35. On 19 August 2020, FIFA filed its Answer, in accordance with Article R55 CAS Code.
36. In 21 August 2020, FIFA and the Player indicated they preferred a decision solely on the basis of the written submissions.
37. On 24 August 2020, ARIS indicated it wanted a hearing to be scheduled after which the Panel decided to set a date for a hearing.
38. On 1 September 2020, the CAS Court Office sent an Order of Procedure to the Parties, which was signed and returned by the Player on 7 September 2020 and 8 September 2020 by FIFA and ARIS.
39. On 24 September 2020, the Player filed some additional documents. ARIS and FIFA did not object to this, but ARIS indicated it wanted to elaborate on these documents during the hearing.
40. On 1 October 2020, a hearing was held by video-conference. At the outset of the hearing, the Parties confirmed not to have any objection as to the constitution and composition of the Panel.
41. In addition to the Panel and Mr Antonio de Quesada, Head of Arbitration to the CAS, the following persons attended the hearing:
 - a) For ARIS:
 - 1) Mr Konstantinos Zemberis, Counsel
 - b) For the Player:
 - 1) Mr. Joseph F. Vandellos Alamilla, Counsel
 - 2) Mr. Saksham Samarth, Counsel
 - c) For FIFA:
 - 1) Mr Jaime Cambreleng Contreras, FIFA Head of Litigation
 - 2) Mr Michel Letard Fernandez-Palacios, Director of Litigation
 - 3) Mr Saverio Paolo Spera, Senior Legal Counsel
42. The Parties did not call any witnesses.

43. The Parties were given full opportunity to present their cases, submit their arguments in opening and closing statements, and to answer the questions posed by the members of the Panel.
44. Before the hearing was concluded, all Parties expressly stated that they had no 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 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.

IV. POSITIONS OF THE PARTIES AND PRAYERS FOR RELIEF

A. The Appellant

46. ARIS' submissions, in essence, may be summarised as follows:
 - The Player's claim is time-barred. In accordance with Article 25 para 5 of the FIFA RSTP, the FIFA DRC shall not hear any case if more than two years have elapsed since the event giving rise to the dispute. This time limit had to be examined *ex officio*.
 - It is not correct that the Player became aware of the existence of ARIS during the CAS 2016/A/4918 proceedings. The Player followed the developments in Greece closely and was trying to establish a relationship between PAE and ARIS AS and should have been aware of the existence of ARIS as soon as it was incorporated in August 2016.
 - Since the Player filed his claim against ARIS in February 2019, more than two years elapsed, hence the claim was time-barred and inadmissible.
 - Even if the Player was not aware of the existence of ARIS, the claim is time-barred because ARIS started competing in the Second Division in November 2016.
 - The actual time limitation does not start from the alleged knowledge of a creditor but from the existence of the new club. Another interpretation would not be acceptable because a creditor could just claim he only found out of the acceptance a few days before filing a claim.
 - ARIS is not the legal and sporting successor of PAE. The cases in which this is established, it was to tackle and fight shady practices.
 - In this case there is also no uninterrupted participation in the same division and no players or assets are transferred.

- In all cases where succession was confirmed, FIFA and CAS have discovered shady practices and a clear intention of the clubs to circumvent laws and regulations while they were still enjoying and taking advantage of the assets of the old club and operating on the same management and continued to play without interruption.
- PAE participated in the season 2013/2014 in the Greek Superleague. ARIS AS participated in the seasons 2014/2015 and 2015/2016 in the third amateur division. ARIS participated afterwards in 2016/2017 and 2017/2018 in the second (professional) division respectively in the Superleague. ARIS therefore is not the sporting successor. It did not acquire any licence from of the old club. The sporting continuity was interrupted.
- This is corroborated by CAS 2016/A/4918 in which was established that ARIS AS is not the sporting successor of PAE.
- ARIS has not acquired any assets from PAE and uses different VAT/TIN and General Commercial Registry numbers.
- ARIS has a different shareholder than PAE.
- In unrelated proceedings, the FIFA DRC decided in a similar case that no succession existed between the old and new entity.
- Subsidiarily, ARIS takes guidance in CAS 2011/A/2646 and submits that the Player by not trying to recover his credit and announcing his claim to the liquidation procedure, has forfeited his right to claim the outstanding amounts from ARIS.
- Lastly, ARIS submits that the amount awarded to the Player is wrongly awarded. ARIS can never be liable to pay any compensation for breach of contract.

47. On this basis, ARIS submits the following prayers for relief:

“1. to set aside the challenged decision.

2. to rule that the claim of the First Respondent was time-barred and to reject the claim on that basis.

3. to condemn the Respondents to the payment in the favour of the Appellant of the legal expenses incurred.

4. to establish that the costs of the arbitration procedure shall be borne by the Respondents.

Subsidiarily and only in the event the above is rejected:

1. To set aside the challenged decision.

2. *To rule that there is no legal and/or sporting succession between the old entity (PAE O Aris) and the Appellant.*
3. *to condemn the Respondents to the payment in the favour of the Appellant of the legal expenses incurred.*
4. *to establish that the costs of the arbitration procedure shall be borne by the Respondents.*

Subsidiarily and only in the event the above is rejected:

1. *to set aside the challenged decision.*
2. *To rule that, in any case, the First Respondent is not entitled to receive from the Appellant or to rule that the First Respondent is entitled to only receive the amount of 27,018 euros;*
3. *to condemn the Respondents to the payment in the favour of the Appellant of the legal expenses incurred.*
4. *to establish that the costs of the arbitration procedure shall be borne by the Respondents.”*

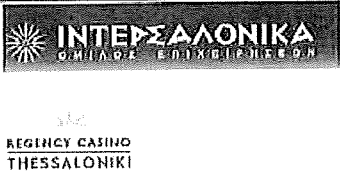
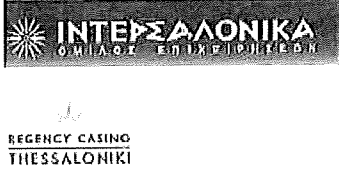
B. The First Respondent

48. The Player's submissions, in essence, may be summarised as follows:

- As for the time-bar in Article 25 para 5 FIFA RSTP, the existence of ARIS was only known to CAS and the Player through the letter of HFF of 13 July 2018 in the CAS proceedings (CAS 2016/A/4918). Hence the time limit starts from 4 October 2018.
- The Player could not assume as a fact that the credit would be recognized until the conclusion of the CAS proceedings, because his claim was initially rejected by FIFA. Recognition and acknowledgement of credit are a pre-requisite or the purpose for a termination of the time limit. Before the CAS decision, the Player did not have *locus standi* to claim.
- Thus, the event given rise to the dispute was triggered on 4 October 2018.
- The Sole Arbitrator in CAS 2016/A/4918 instructed the Player to consider filing a claim before FIFA DRC against ARIS and would never have done so if he had the same opinion as ARIS in the case at hand.
- The claim has therefore been filed timely within the time limit in Article 25 para 5 FIFA RSTP.
- Pursuant to Article 137 of the Swiss Code of Obligations (the “SCO”), a new prescription period was triggered which started on 4 October 2018.
- CAS has an established jurisprudence with respect to sporting succession of clubs and the Player refers to CAS 2013/A/3425, 2016/A/4550 and 2016/A/4576.

- This jurisprudence has been codified by FIFA in Article 15.4 of the FIFA Disciplinary Code.
- The following similarities exist between PAE and ARIS:

Issue	PAE	AST (Appellant)
Name of football club operated	Aris FC	Aris FC
Registered office	Alkminis 69, Thessaloniki, 542 49	Alkminis 69, Thessaloniki, 542 49
Stadium	Kleanthis Vikelidis Stadium	Kleanthis Vikelidis Stadium
Team colours	Yellow and Black	Yellow and black
Logo	Yellow background with black text and artwork	Yellow background with black text and artwork (some minor differences might have been

		made to the artwork, but the key components remain the same) ¹²
Date of incorporation	25 March, 1914	25 March, 1914 The new entity was established in 2016, however, in the club's official website the date of incorporation is mentioned as 1914. ¹³ Therefore, it is quite evident that Aris FC has remained the same club from the date of its incorporation till the present date.
Website	www.arisfc.gr/gr (access only through link below ¹⁴)	www.arisfc.com.gr/
Sponsors¹⁵		
Social Media Accounts (vid. Annex R7)	Instagram ¹⁶ handle: arisfc_offical Twitter username: @ArisFc1914 Facebook page: ARIS F.C.	Instagram handle: arisfc_offical Twitter username: @ArisFc1914 Facebook page: ARIS F.C.

- In addition, ARIS claims the history of PAE, including the trophies won by PAE in the past, the founding year and the hymn.
- The continuity is undisputable because ARIS AS replaced PAE in the same category in season 2014-2015 and 4 players remained with ARIS AS.
- Due to the chronology of events until 2017-2018, ARIS has uninterruptedly carried the sporting activities of PAE. It was only due to procedural requirement of Greek law that a new entity was formed in order to compete in Greek professional football.
- ARIS is benefitting from the assets of PAE and is creating the impression that it wants to embody PAE for all purposes.

- In accordance with Article 11 para 4 of Law 2725/1999, if the liquidation is not concluded in 30 months, the club becomes operational again. Hence ARIS is responsible for the liabilities of PAE and also according to Greek law had to be considered the sporting successor.
- None of the jurisprudence cited by ARIS substantiates the position of not being the sporting successor.
- ARIS identity stayed the same in the eyes of the common public and the fans by maintaining the same name, logo, colours, history, brand etc.
- The Player has exercised due diligence in collecting his claim starting from December 2013, but emphasizes that this obligation only arises in case of a notification of a bankruptcy or liquidation.
- According to Article 34 para 4 of the Greek Bankruptcy Code, the Player's claim should be recognised automatically so failure to exercise due diligence, cannot be attributed to him.
- According to Article 89 of the Greek Bankruptcy Code, the liquidator is obliged to announce to all creditors about the filing of their claim. However the Player was never notified by the liquidator.
- The Player had no means to pursue his claim.
- No notification of a liquidation proceedings was ever given to the Player to would enabled him to file a claim. Hence ARIS is liable for not fulfilling the pre-condition of notifying the Player of an ongoing liquidation proceedings.
- ARIS cannot benefit by invoking the argument of diligence when it has not respected the principle: *nemo auditor propriam turpitudinem allegans*.
- In accordance with Article R57 of the CAS Code, the letter of the liquidator filed by ARIS as exhibit 12, is inadmissible. ARIS failed to exercise reasonable diligence by procuring this document before the FIFA DRC. And the letter of the liquidator fails to establish that the Player was notified about the opening of the bankruptcy or liquidation.
- The FIFA DRC in its decision of 21 February 2020, has correctly identified the amounts and upheld the same as confirmed by the Sole Arbitrator in CAS 2016/A/4918. Now ARIS has to be considered a sporting successor, it will be liable as a non-compliant party.

49. On this basis, the Player submits the following prayers for relief:

- *"To dismiss in full the Appeal filed by the Appellant;*

- *To uphold and confirm the decision rendered by FIFA DRC on 21 February 2020 in full, Ref. nr. 19-00332.*
- *To condemn the Appellant to the payment of all costs related to the present arbitration proceedings;*
- *To condemn the Appellant to the payment of 10,000 Euros, in order to pay the defense fees incurred by the first Respondent as a consequence of the present proceedings. Confirm that the Appellant lacks the required standing to appeal and therefore to reject the appeal on this basis;”*

C. The Second Respondent

50. FIFA provided the following summary of its submissions:

- The Player’s claim was not time-barred. With his claim of 7 February 2019 before the FIFA DRC, the sole object was the issue of the sporting successor. This had to be done in order to pave the way for a subsequent satisfaction of his credit.
- If the HFF had not communicated the existence of another potential successor prior to 13 July 2018, it is not conceivable to maintain that the Player should have known about ARIS’ position of potential sporting successor already in the summer of 2016.
- The triggering moment in order for the time-limit to start running is the knowledge of the existence of the potential sporting successor, i.e. 13 July 2018 when the HFF communicated the circumstance in CAS 2016/A/4918.
- Alternatively, the claim of the Player is not time-barred according to Article 138 SCO. Article 138 G SCO provides:

Where the limitation period has been interrupted by an application for conciliation, or the submission of a statement or defence, a new limitation period commences when the dispute is settled before the relevant court [...]
- By having filed a claim on 14 January 2014, the Player interrupted the limitation period, which started running again as from the moment he obtained a final and binding decision on the merits.
- There can be a sporting successor without a bankruptcy. Finding of sporting successor does not have to derive from a fraudulent conduct nor does FIFA need to prove the existence of shady practises from the sporting successor.

- ARIS made use of the essential elements that constituted the identity of PAE and with which fans do identify ARIS.
- The situation at hand is undesirable and unwarranted in football. If this sort of practice is allowed, it will turn into a *carte blanche* for other clubs that will have the possibility to disrespect their financial obligations. They will manage to re-start their activity with a clean balance sheet at the expense of the pre-existing creditors.
- When there is sporting continuity there is no reason for the new entity which acquired assets of the old one not to respect its liabilities as well.
- Whether a club is operated through a new legal entity, does not bear relevance for the question whether there is sporting succession. FIFA relies on CAS 2013/A/3425.
- FIFA DRC is not bound by previous decision and does not observe the principle of *stare decisis*. The FIFA DRC takes its decisions on a case-by-case basis.
- The specific circumstances show that ARIS is the sporting successor of PAE. These are:
 - i. Both clubs have always been identified as ARIS;
 - ii. The team emblem has remained unchanged;
 - iii. ARIS is playing its local matches in the same stadium;
 - iv. The clubs share the same colours;
 - v. The clubs share the same history;
 - vi. The Sole Arbitrator in CAS 2016/A/4918 suggested that there might be sporting succession between PAE and ARIS.
 - vii. ARIS acquired assets from ARIS AS.
- The sporting continuity has been preserved. The creation of another entity capable of replacing in the Greek professional league the one that went bankrupt, maintaining all the sporting traits of the latter, while in the meantime ARIS AS kept on existing.
- ARIS was already found to be the sporting successor by FIFA DRC in four different proceedings. ARIS never appealed these decisions.
- It follows from the CAS Award (CAS 2013/A/3425) that if ARIS is considered the successor, it is obliged to perform the payments that should have been performed by PAE.

- As for the argument of ARIS that the Player showed lack of diligence in trying to collect his claim, the Appealed Decision simply recognised the entitlement to a credit that already have been awarded by CAS.
- The Appealed Decision only undertook the first step of the assessment. The FIFA DRC is not empowered to sanction clubs for failure to respect monitory obligations contained in previous decisions rendered by FIFA or CAS. This confirms that a creditor's stance in the bankruptcy proceedings does not touch upon the concept of recognition of sporting succession.
- As for the argument of ARIS that if the claim is awarded, this should only refer to the outstanding remuneration, the merits of the underlying contractual dispute are *res iudicata*.
- The contractual dispute between the Player and PAE came to an end with CAS 2016/A/4918 awarding the remuneration and compensation. These matters cannot be discussed anymore by another deciding body.

51. On this basis, FIFA submitted the following prayers for relief:

- a. Rejecting the reliefs sought by the Appellant;*
- b. Confirming the Appealed Decision;*
- c. Ordering the Appellant to bear the full costs of these arbitration proceedings;*
- d. Ordering the Appellant to make a contribution to FIFA's legal costs.*

V. JURISDICTION

52. The jurisdiction of CAS, which is not disputed, derives from Article 58(1) FIFA Statutes (2018 Edition), as it determines that “[a]ppeals 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 receipt of the decision in question” and Article R47 CAS Code. The jurisdiction of CAS is not contested and is further confirmed by the Order of Procedure duly signed by the Parties.

53. It follows that CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

54. The Statement of Appeal was filed 19 May 2020, thus within the deadline of 21 days set by Article 58(1) FIFA Statutes. The appeal complied with all other requirements of Article R48 CAS Code, including the payment of the CAS Court Office fee.

55. It follows that the appeal is admissible.

VII. APPLICABLE LAW

56. ARIS submits that according to Article R58 of the CAS Code, CAS shall apply the various regulations of FIFA and additionally Swiss law.

57. The Player submits that according to Article R58 of the Code, FIFA Regulations and in particular the FIFA Regulations on the Status and Transfers of Players (ed 2018, hereinafter “RSTP”), are applicable and additionally Swiss law and that reference is required to be given to Greek laws given that some material facts and circumstances are governed by Greek regulations.

58. FIFA submits that, according to Article 57(2) FIFA Statutes, CAS shall primarily apply the FIFA Statutes and Regulations, namely the RSTP, and subsidiarily, Swiss law, should the need arise to fill a possible gap in the FIFA regulations.

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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”

60. Article 57(2) FIFA Statutes provides the following:

“The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.”

61. In accordance with Article R58 CAS Code, Article 57(2) FIFA Statutes, the Panel finds that the various regulations of FIFA are to be applied primarily, in particular the RSTP, and, additionally, Swiss law should the need arise to fill a possible gap in the various regulations of FIFA.

VIII. THE MERITS

62. According to the written submissions further substantiated by the Parties in their statements during the hearing, the following issues divide the Parties in these proceedings:

- i. Is the Player’s claim time-barred?
- ii. Is ARIS the sporting successor of PAE?

- iii. Did the Player acted with diligence within the bankruptcy proceedings and in the collecting of his claim towards the liquidator of PAE or is that not relevant?
 - iv. Are the merits of the dispute *res iudicata*?
63. The Panel starts by examining whether the claim of the Player is time-barred before addressing the other issues. If the Panel decides the claim is time-barred, there is no need to decide on the other issues.
64. ARIS' position that the claim of the Player is time-barred is based on Article 25(5) RSTP, which provides:
- “The Players’ Status Committee, the Dispute Resolution Chamber, the Single judge and the DRC judge (as the case may be) shall not hear any case subject to the Regulations if more than two years have elapsed since the event given rise to the dispute. Application of this time limit shall be examined ex officio in each individual case.”*
65. In the Appealed Decision, the FIFA DRC decided that the Player’s claim was admissible and not time-barred. According to the FIFA DRC, the information regarding the existence of ARIS only became available to the Player after the letter from HFF on 13 July 2018 that was filed in CAS 2016/A/4918 and that the limitation period only started to run as from this date.
66. In its Appeal Brief, ARIS submits that the Player was closely following all developments in Greece and should have been aware of the existence of ARIS before 13 July 2018. But even if he was not aware of this, ARIS submits that the limitation period of two years starts from the date of incorporation of ARIS, i.e. August 2016, or at the latest when ARIS started competing in the second division in November 2016.
67. FIFA and the Player have different views on this matter. The Player submits that calculation of the time limit of two years starts from 4 October 2018, when the Sole Arbitrator rendered his award in CAS 2016/A/4918 recognising the credit of the Player against PAE, arguing that the Player had no *locus standi* to claim before such award was issued.
68. FIFA also submits that the Player’s claim was not time-barred. It maintains that if the HFF had not communicated the existence of another potential successor, it is not conceivable to maintain that the Player should have known about ARIS’ position of potential sporting successor already in the summer of 2016.
69. According to FIFA, the triggering moment in order for the limitation period to start running is the knowledge of the existence of the potential sporting successor, i.e. 13 July 2018 when the HFF communicated the circumstance in CAS 2016/A/4918.
70. Alternatively, according to FIFA the claim of the Player is not time-barred according to Article 138 SCO.

71. The majority of the Panel finds that Article 25(5) RSTP is strictly worded and leaves little room for interpretation and leniency. The sentence “*since the event giving rise to the dispute*” refers to an objective moment in time that is to be ascertained.
72. The Panel finds that the event giving rise to the dispute was initially the Player’s unilateral termination of his employment agreement with PAE. However, in the proceedings leading to the Appealed Decision and in the present proceedings before CAS, the Player maintains that the debtor is actually ARIS.
73. ARIS was only established in August 2016, as a consequence of which the Player could not have filed a claim against ARIS when he terminated his employment contract with PAE. However, as soon as ARIS was founded, the Player could objectively have sought recourse against this newly established entity. There was no requirement for the Player to wait for the arbitral award issued in CAS 2016/A/4918 to be issued before taking action against ARIS.
74. Accordingly, the Panel finds that the establishment of ARIS was “*the event giving rise to the dispute*”.
75. The Player’s submission that the relevant moment is when he became aware of the existence of ARIS, is not correct. The Player’s knowledge is not relevant for the moment the prescription period starts running. Because of legal certainty, the “*event giving rise to the dispute*” must be an objective moment in time.
76. In any event, the majority of the Panel finds that the Player could and should have known about the existence of ARIS already before the HFF formally informed him of its existence on 13 July 2018.
77. Also FIFA’s arguments must be dismissed. According to FIFA, the limitation period started at the moment the credit was recognised by the Sole Arbitrator in CAS 2016/A/4918. But this submission is not supported by the wording of Article 25(5) RSTP.
78. The argument of FIFA that Article 138 SCO is applicable and would support its views on the limitation period must be dismissed. Article 138 SCO only refers to a civil claim through public courts and does not invalidate Article 25(5) RSTP. This is all the more true considering that Swiss law only applies subsidiarily, i.e. absent any clear guidance from the RSTP.
79. The majority of the Panel also finds that the limitation period is not suspended or interrupted by the initial claim of the Player filed against PAE and ARIS AS, because ARIS was not a party to such proceedings. ARIS was not made aware of any looming suit of the Player concerning an employment agreement until after it existed for more than 2 years.
80. The Panel has sympathy for the position of the Player because he dedicated more than 6 years and undoubtedly significant financial resources in his attempts to collect remuneration and compensation in principle due to him, but unfortunately for him legal

certainty requires a strict observance of the limitation period set forth by Article 25(5) RSTP.

81. The majority of the Panel finds that the Player's claim was time-barred and as a consequence of this conclusion is that the Appealed Decision is to be overturned.
82. The Panel emphasizes that the appeal is dismissed without prejudice that the Player may explore other avenues to pursue the claim to which Article 25(5) RSTP does not apply.

IX. COSTS

83. Article R64.4 CAS Code provides as follows:

“At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:

- *the CAS Court Office fee,*
- *the administrative costs of the CAS calculated in accordance with the CAS scale,*
- *the costs and fees of the arbitrators,*
- *the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,*
- *a contribution towards the expenses of the CAS, and*
- *the costs of witnesses, experts and interpreters.*

The final account of the arbitration costs may either be included in the award or communicated separately to the parties. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs.”

84. Article R64.5 CAS Code provides as follows:

“In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties.”

85. Having taken into account the outcome of these arbitration proceedings and specifically the fact that it was FIFA which decided that the Player's claim was not time-barred, the Panel considers it reasonable and fair that the costs of these arbitration proceedings, in an amount that will be determined and notified to the Parties by the CAS Court Office, shall be borne by FIFA.

86. Furthermore, for the same reason as well as in consideration of the complexity and outcome of the proceedings and the conduct and the financial resources of the Parties, the Panel rules that FIFA shall pay a contribution in the amount of CHF 3,000 towards ARIS legal fees and other expenses incurred in connection with these arbitration proceedings, in accordance with Article R64.5 of the CAS Code.

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by ARIS FC against the decision issued on 21 February 2020 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is upheld.
2. The decision issued on 21 February 2020 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is set aside.
3. The costs of the arbitration, to be determined and served on the Parties by the CAS Court Office, shall be borne by *Fédération Internationale de Football Association*.
4. *Fédération Internationale de Football Association* shall pay CHF 3,000 (three thousand Swiss Francs) towards Aris FC legal fees and other expenses incurred in connection with these arbitration proceedings.
5. All other and further motions or prayers for relief are dismissed

Seat of arbitration: Lausanne, Switzerland

Date: 26 April 2021

THE COURT OF ARBITRATION FOR SPORT

Andre Brantjes
President of the Panel

Ulrich Haas
Arbitrator

Juan Pablo Arriagada
Arbitrator