Tribunal Arbitral du Sport
Court of Arbitration for Sport
Tribunal Arbitral del Deporte

By email and courier

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Lausanne, 16 August 2021/FC/vm

Re: CAS 2020/A/6830 Dorian Leveque v. FC PAOK Thessaloniki & FIFA

Dear Sirs,

Please find enclosed, by email and courier a copy of the Arbitral Award issued by the Court of Arbitration for Sport in the above-referenced matter.

In accordance with Article R59 of the Code of Sports-related Arbitration, the attached Award is not confidential and can be published in its entirety by the CAS. If the Parties consider that any of the information contained in the Award should remain confidential, they should send a request, with grounds, to the CAS by **23 August 2021** in order that such information could potentially be removed, to the extent that such removal does not affect the meaning or the comprehension of the decision.

Please be advised that I remain at the Parties' disposal for any further information.

Yours faithfully,

Fabien CAGNEUX
Counsel to the CAS

Enc.
Cc: Panel

CAS 2020/A/6830 Dorian Leveque v. FC PAOK Thessaloniki & Fédération Internationale de Football Association (FIFA)

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Patrick Lafranchi, Attorney-at-Law in Bern, Switzerland
Arbitrators: Mr Alexis Gramblat, Attorney-at-Law in Paris, France
Mr Wouter Lambrecht, Attorney-at-Law in Barcelona, Spain

Ad hoc Clerk: Mr Peter Rittinger, Attorney-at-Law in Salzburg, Austria

in the arbitration between

Mr Dorian Leveque, France

Represented by Mr Jean-Jacques Bertrand, Attorney-at-law, SCPA Bertrand & Associé, Paris, France

Appellant

and

FC PAOK Thessaloniki, Greece

Represented by Mr Achilleas S. Mavromatis and Mr Christos Ap. Papathomas, Attorneys-at-law, Thessaloniki, Greece

Respondent 1

Fédération Internationale de Football Association (FIFA), Switzerland

Represented by Mr Miguel Liétard Fernández-Palacios, Director of Litigation and Mr Alexander Jacobs, Senior Legal Counsel, FIFA, Zurich, Switzerland

Respondent 2

I. PARTIES

1. Mr Dorian Leveque ("the Appellant" or "the Player") is a professional football player of French nationality.

2. FC PAOK Thessaloniki or PAOK FC ("the Club" or "the First Respondent") is a Greek football club affiliated to the Hellenic Football Federation ("the HFF").

3. The Fédération Internationale de Football Association ("FIFA" or "the Second Respondent", and together with the First Respondent "the Respondents") is the governing body of international football at worldwide level. FIFA has its seat in Zurich, Switzerland and maintains legal personality under Swiss law.

4. The Player, the Club and FIFA are collectively referred to as "the Parties".

II. FACTS

5. The following section is a summary of the relevant facts and allegations based on the Parties' written and oral submissions and the evidence examined in the course of the present appeal arbitration proceedings. Reference to additional facts and allegations found in the Parties' submissions will be made, where relevant, in connection with the factual analysis that follows. While the Panel has considered all the facts, allegations and evidence submitted by the Parties in the present proceedings, it only refers to the factual section to the submissions and evidence it deems necessary to later explain its reasoning.

A. Background Facts

a. The Pre-Agreement and the Employment Contract

6. On 23 May 2017, the Player and the Club signed a "pre-contract" ("the Pre-Agreement") according to which they agreed to sign a "final" employment contract that would govern their intended three-year employment relationship, starting in July 2017.

7. The Pre-Agreement – *inter alia* – provides as follows:

"(...) c) The specific terms, regarding the distribution of the amounts, the Bonuses and all other clauses, are included in the Professional Player's Contract already signed as draft today by the Parties and is considered as integral part of the present.

d) The Player (....) undertakes the obligation to travel to Thessaloniki by no later than 20 June 2017 in order to pass the medical examination and sign the above Contract in its final version, which will be exactly the same as the draft.

(...)

i) Any dispute arising from the present will be settled by the Court of Arbitration for Sport (CAS-TAS), Lausanne, Switzerland, according to the principle "Ex aequo et bono". The

arbitration panel shall consist of three members and the language of arbitration shall be English. The decision of the CAS is binding and not open to appeal. The procedure will be conducted in an expedited manner."

8. On the same day, 23 May 2017, the Player and the Club also signed a draft employment contract ("the Draft Employment Contract") which – *inter alia* – included the following clauses:

*"**10. Resolution of disputes***

All disputes between the parties are settled by the Appeals Committee for the Resolution of Financial Disputes (PEEOD) at first instance, and the Court of Arbitration of the H.F.F. at second instance.

11. Football Rules

***11.1.** The football rules are the Statutes, Regulations and Decisions of FIFA, UEFA, H.F.F. and, where applicable, the relevant Professional Association.*

***11.2.** The Club and the Player are obligated to comply with the Statutes, Regulations and Decision of FIFA, UEFA, H.F.F. and the relevant Professional Association (if applicable), which constitute an integral part of this agreement, and that is recognised by the parties by their signatures."*

9. A document entitled "*Declaration Re. Professional Player's Contract with Player Dorian Leveque*" ("the Declaration") was attached to the Pre-Agreement and said Declaration referred to the terms of the Draft Employment Contract. Moreover, in the Declaration it was provided that the Player is entitled to an extra amount of seven hundred euros (EUR 700.00) net each month and six round-trip flight tickets for him and his family (in total 6 people) per season for the route Thessaloniki-Geneva-Thessaloniki.

10. On 3 July 2017, the Appellant and the First Respondent signed the final version of the employment contract consisting of a main body plus an annexe (the "Employment Contract") starting on 3 July 2017 and ending on 30 June 2020.

11. The Employment Contract contained the exact same terms as the Draft Employment Contract – therefore including the clauses *"10. Resolution of disputes"* and *"11. Football Rules"*.

12. The Employment Contract, in its Article 4, foresees a fixed monthly salary of EUR 1,069.35 with a further remuneration of eight hundred thousand euros (EUR 800,000) net payable as follows:

- *EUR 15,800.00 net/month from July 2017 until May 2018,*
- *EUR 16,200.00 net for June 2018,*
- *EUR 25,000.00 net/month from July 2018 until June 2019,*

- *EUR 25,800.00 net/month from July 2019 until May 2020,*
- *EUR 26,200.00 for June 2020.*

13. In the annexe to the Employment Contract the following net bonuses, applicable for each season, were agreed:

1)	*In case the Club wins the Greek Championship*	*EUR 50,000.00*
2)	*In case the Club wins the Greek Cup*	*EUR 20,000.00*
3)	*In case the Club achieves its participation in UEFA Champions League Group Stage after qualifying matches in seasons 2017/18, 2018/19 and 2019/20 for each season this target is achieved*	*EUR 50,000.00*
4)	*Qualification of the Club to the next Round of UEFA Champions League (i.e. to the Round after the Group Stage) in seasons 2017/2018, 2018/2019, 2019/2020*	*EUR 50,000.00*
5)	*In case the Clubs achieves its participation in UEFA Europa League Group Stage after qualifying matches in seasons 2017/2018, 2018/2019 and 2019/2020 for each season this target is achieved*	*EUR 20,000.00*
6)	*Qualification of the Club to the next Round of UEFA Europa League (i.e. to the Round after the Group Stage) in seasons 2017/2018, 2018/2019, 2019/2020*	*EUR 20,000.00*
7)	*In case the Player achieves in total ten goals and assists for goals accumulatively in the Greek Championship*	*EUR 10,000.00*

Bonus Condition
The Player will be entitled to receive the above Bonuses 1-2 only if he has participated in at least fifty percent (50%= of the matches of the respective competition (Greek Championship, Greek Cup) during which the Bonus has been achieved. For Bonuses 3-6 the Player will be entitled to receive these Bonuses only if he has participated in at least fifty percent (50%) of the qualifying matches for the respective qualification and the achievement of the target. As participation in all the above cases (1-6) is considered if the Player has played for at least forty five (45) minutes per match.

14. Still on the same day, 3 July 2017, the Player and the Club also signed an agreement in which they declared the Pre-Agreement, dated 23 May 2017, terminated and declared that they do not have any claim or demand, past, present or future, arising from the Pre-Agreement.

b. The Employment and the Facts Leading up to the Early Termination

15. During the season 2017/2018, the Player informed the Club about several injuries which he suffered. He underwent several surgeries and treatments meaning he was unable to play for most of the season.

16. At the beginning of the 2018/2019 season, the Player started training again with the Club.

17. Before a friendly match to be played against K.A.A. Gent on 26 June 2018, the Player complained about discomfort in his hamstrings.

18. At a certain moment in time during the pre-season 2018/2019, the jersey number "6", previously attributed to the Player for the season 2017/2018, was assigned by the Club to another player of the Club's first team.

19. As of 9 July 2018, the Player stayed in France and therefore was absent from the training season and other activities of the Club.

20. On 30 July 2018, the Player's agent, Mr Iaouad Boukhari, contacted the Club's Sports Director, Mr Lubos Michel, by email seeking the latter's approval for the Player to be able to conduct trials in France.

21. The email correspondence between the Player's agent, Mr Iaouad Boukhari, and the Club's Sports Director, Mr Lubos Michel, on 30 July 2018 reads as follows:

Iaouad Boukhari:	*Good morning Lubos, I am Iaouad Boukhari, the agent of Dorian Leveque. As you know, he is currently working in France. I think I am close to get a club taking him on trial couple of days. I don't have a name but some contacts that should be ok very soon."*
Lubos Michel	*Ok...for which period?*
Iaouad Boukhari	*From now to the 15th August please.*
Lubos Michel	*Ok*

22. On 15 August 2018, the Player himself asked for the Club's permission for a trial with Valenciennes F.C. from 16 August 2018 to 20 August 2018.

23. On 16 August 2018, the Club authorizes the Player to participate in training sessions with Valenciennes F.C. issuing the following authorization letter:

"By the present PAOK F.C. grants its permission to the player Dorian Leveque to participate in training sessions of the football club Valenciennes F.C. for the period until 20.08.2018, under the condition that Valenciennes F.C. covers full medical insurance of the player for the whole above period.

If until 20.08.2018 PAOK F.C. and Valenciennes F.C. have not signed a transfer agreement for the player, then the player is obliged to return to PAOK F.C. for the continuation of his contractual obligations."

24. On 20 August 2018, Mr Lubos Michel proposed to the Player to terminate the Employment Contract by amicable agreement in return for the payment of a sum of one hundred thousand euros (EUR 100,000) plus the salaries due for the months July and August 2018. The Player did not accept the Club's proposal and replied on 23 August 2018 that he was waiting to hear from Valenciennes F.C. regarding a possible transfer.

25. No agreement was found between the Club and Valenciennes, neither prior to the 20th of August nor after said date and the Player did not return to the Club in the meantime.

26. On 24 August 2018, the Club recruited the player Alin-Dorinel Tosca who played in the same position as the Player.

*c. **The Early Termination***

27. On 28 August 2018, the Club, by means of a letter, requested the Player to justify his continued absence as of July 2018 giving him until 30 August 2018 to reply.

28. On 30 August 2018, the Player, still via his agent Mr Iaouad Boukhari, sent a letter to the Club stating, *inter alia*, that the letter, dated 28 August 2018, had surprised him since he had been told by the Club to find a new club and had been proposed and authorised to return to France, which is what he did.

29. On the same day, the Club's Board of Directors decided to terminate the Player's Employment Contract, a decision which was redacted and reflected in detail in the minutes ("the Minutes") of said meeting.

30. On 6 September 2018, a court bailiff posted an excerpt of the Minutes, containing the decision to terminate, on the front door of the Player's apartment in Thessaloniki.

31. On 7 September 2018, the same Minutes were communicated to the Player via email.

B. The Proceedings before the HFF

32. On 17 September 2018, the Club started proceedings before the Committee for the Resolution of Financial Disputes of the HFF ("PEEOD") with the requests to validate the early termination of the Employment Contract by the Club and to consider the termination to be valid from 10 July 2018 or, in the alternative, from 21 August 2018 onwards. Furthermore, the Club requested the PEEOD to impose sporting sanctions on the Player.

33. On 19 September 2018, the Club informed the Player about its request to the PEEOD and forwarded him the relevant supporting documents.

34. On 26 September 2018, the Club, by means of email, including a letter dated 25 September 2018, informed the Player about the need to attend a meeting with a notary in Thessaloniki on 28 September to be examined as a witness as well as that the hearing before the PEEOD was scheduled for 1 October 2018.

35. On 1 October 2018, the hearing before the PEEOD took place in the presence of the Player's Greek lawyer Ms Ioanna Barmpi ("the Greek Lawyer") who requested on behalf of the Player a postponement of the hearing. The request was granted, and the hearing was postponed to 15 October 2018.

36. On 15 October 2015, a hearing before the PEEOD took place. At the hearing, the Greek Lawyer in addition to the Player's French lawyer Mr Jean-Jacques Bertrand ("the French Lawyer"), were present and written records were made of said hearing ("the Hearing Minutes").

37. According to the Hearing Minutes, the PEEOD appointed a Greek-English translator whilst the Player's lawyers challenged the PEEOD's competence submitting that the dispute was a dispute of international nature.

38. On 18 January 2019, the PEEOD issued a decision, rejecting the Player's submissions regarding the lack of competence and ruled that the Employment Contract was terminated on 17 September 2018 for reasons solely attributable to the Player. The PEEOD dismissed the Club's request to impose sporting sanctions on the Player.

39. On 22 January 2019, the Player filed an appeal against the decision of the PEEOD to the HFF Court of Arbitration for Football ("the CAF"). In the cover letter to his appeal, the Player declared that he recognized the competence and jurisdiction of the CAF.

40. On 23 January 2019, the Club filed an appeal against the decision of the PEEOD to the CAF too, seeking once more the imposition of sporting sanctions.

41. On 13 February 2019, the CAF dismissed both the appeal of the Player and the Club ("the CAF Award").

42. On 17 April 2019, the Player initiated an annulment proceeding against the CAF Award before a Greek civil court in accordance with Article 897 of the Greek Code of Civil Procedure.

C. The Proceedings before FIFA

43. On 11 October 2018, the Player lodged a claim before the FIFA Dispute Resolution Chamber ("FIFA DRC") and requested to be awarded a total amount of EUR 776,565.05, including the outstanding remuneration and compensation for breach of contract by the Club ("the Claim").

44. The Claim was lodged following the Player's request for postponement of the PEEOD hearing on 1 October and prior to the actual PEEOD hearing taking place on 15 October 2018.

45. On 7 January 2019, FIFA notified the Claim to the Club sharing a full copy thereof, whilst inviting the Club to submit its Answer by no later than 27 January 2019.

46. The Club sent correspondence to FIFA on 22 January, 6 February and 21 February 2019, *inter alia* challenging FIFA's jurisdiction.

47. On 7 March 2019, FIFA sent a letter to the Player referring to Article 22 lit. b of the FIFA Regulations on the Status and Transfer of Players ("FIFA RSTP") informing the Player that the PEEOD and the CAF appeared to be constituted in accordance with the provision of the FIFA Regulations, which had been confirmed by several FIFA DRC decisions. The FIFA letter continued by stating that it appeared that decisions had already been rendered by the HFF relevant bodies on 18 January and 13 February 2019 and that in accordance with the general rule of *res judicata* FIFA was not in a position to intervene in the present dispute between the Player and the Club.

48. On 25 March 2019, the Player insisted in his Claim and requested the FIFA DRC to render a formal decision.

49. On 5 November 2019, the FIFA DRC rendered its decision ("the Appealed Decision"), providing as follows in its operative part:

"The claim of the Claimant, Dorian Leveque, is inadmissible."

50. On 7 February 2020, the grounds of the Appealed Decision were notified to the Player and the Club. Reading, in its relevant parts, as follows:

"9. Having said that, the Chamber further took into account that, on 22 July 2013, the Court of Arbitration for Sport (CAS) issued an award, whereby it decided that the national arbitration bodies of the HFF fulfill the requirements of equal representation and of an independent chairman and guarantees fair proceedings. Furthermore, the CAS underlined in said award that FIFA's deciding body is not an appeal body.

10. In this context, the Chamber took note that the Greek deciding body at the basis of the aforementioned CAS decision is the same deciding body as the one included in the exclusive jurisdiction clause of the standard Greek Super League employment contract signed by and between the Claimant and the Respondent.

11. On account of the above, the DRC established that the present matter is a res judicata due to the facts that a) the employment contract contains a clear and exclusive jurisdiction clause in favour of the national arbitration body of the HFF, b) the CAS confirmed that the relevant Greek deciding body fulfills the requirements of equal representation and of an independent chairman and guarantees fair proceedings, i. e. the relevant Greek deciding body is competent to adjudicate disputes between players and clubs like the matter at hand, and c) said competent national deciding body already passed a decision as to the substance of the present matter.

12. Moreover, the Chamber wished to emphasize that the Claimant participated in both first instance and appeal proceedings in Greece.

13. In light of the above, the Chamber unanimously decided that in accordance with the general legal principle of res judicata it is not in a position to deal again with the substance of the present matter (...)"

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

51. On 28 February 2020, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport ("the CAS") in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration ("the Code") naming the Club and FIFA as respondents.

52. In his Statement of Appeal, the Appellant requested the appeal to be submitted to a Sole Arbitrator. Furthermore, he requested the proceedings to be conducted in French.

53. On 9 March 2020, the CAS Court Office notified the appeal to the Respondents and invited them to comment on various procedural issues.

54. On 11 March 2020, the First Respondent objected to the proceedings being conducted in French since firstly all documents and agreements signed between the Appellant and the First Respondent were in Greek and English and secondly the proceedings before the FIFA DRC were conducted in English too. Furthermore, the First Respondent objected to refer the matter to a Sole Arbitrator.

55. On 13 March 2020, also the Second Respondent informed the CAS Court Office that it did not agree to establish French as the language of the proceedings and asked for the proceeding to be conducted in English.

56. On 16 March 2020, the Second Respondent agreed to refer the matter to a Sole Arbitrator nominated by the President of the CAS Appeals Division as long as he/she is selected from the football list.

57. On 16 March 2020, the Appellant confirmed his wish to submit the case to a Sole Arbitrator and the proceedings to be conducted in French indicating that if a three-member panel were to withhold, he appointed Mr Alexis Gramblat as an arbitrator.

58. On 17 March 2020, the CAS Court Office informed the Parties that given their respective disagreements, the Deputy President of the Appeals Arbitration Division of the CAS would decide on the different procedural issues.

59. On 17 March 2020, the CAS Court Office informed the Parties that the Deputy President of the Appeals Arbitration Division had decided that the case would be referred to a three-member panel, provided that the First Respondent would pay its share of the advance of costs, and that the proceedings will be conducted in English. At the same time, the Respondents were invited to jointly nominate an arbitrator by 27 Mach 2020.

60. On 26 March 2020, the First Respondent nominated Mr Wouter Lambrecht, as an arbitrator in this matter. On 27 March 2020, the Second Respondent confirmed the joint nomination of Mr Wouter Lambrecht.

61. On 27 March 2020 and within the extended time-limit set by the CAS Court Office, the Appellant filed his Appeal Brief.

62. On 30 March 2020, the Respondents were notified the Appeal Brief and requested to submit their Answers to the Appeal.

63. On 14 April 2020, the Appellant challenged the appointment of Mr Wouter Lambrecht.

64. On 15 April 2020, the CAS Court Office informed the Respondents that the Appellant had paid his share of the advance of costs. It reinstated the time limit of 20 days to file their Answers. Furthermore, it invited the Respondents to file their comments to the petition for challenge against the nomination of Mr Wouter Lambrecht.

65. Within the set deadline, the Respondents, by letter of 21 and 22 April 2020 respectively, and Mr Wouter Lambrecht, by letter dated 20 April 2020, filed their comments regarding the Appellant's petition for challenge.

66. On 30 April 2020, the Appellant maintained his petition for challenge.

67. On 1 May 2020, the CAS Court Office informed the Parties that the petition for challenge and all related-observations would be submitted to the ICAS Challenge Commission to render a decision.

68. On 18 May 2020 and within the extended time-limit, the Second Respondent filed its Answer.

69. On 2 June 2020 and within the extended time-limit, the First Respondent filed its Answer.

70. On 8 June 2020, the CAS Court Office – *inter alia* – invited the Parties to inform the CAS Court Office whether they preferred a hearing to be held in this matter or the Panel to issue an award based solely on the Parties' written submissions.

71. On 12 June 2020, the Appellant informed the CAS Court Office about his wish for a hearing to be held in this matter. Furthermore, he requested a second round of written submissions based on exceptional circumstances pursuant to Article R56 of the Code.

72. On 15 June 2020, the First Respondent requested the proceedings to be bifurcated and the Panel to issue a separate award on the issues of jurisdiction and *res judicata*, without holding a hearing. In case the Panel decided to proceed with the examination of the merits of the appeal, the First Respondent requested a hearing to be held and opposed the Appellant's request to be granted a second round of written submissions.

73. On 16 June 2020, the Second Respondent supported the First Respondent's request for bifurcation of the proceedings. It objected to a second round of written submissions and stated that it did not consider a hearing to be necessary in this matter.

74. On 28 July 2020, the Challenge Commission of the International Council of Arbitration for Sport rendered its decision on petition for challenge dismissing the petition of the Appellant.

75. On 6 August 2020, in accordance with Article R54 of the Code and on behalf of the Deputy 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 as follows:

President:	Mr Patrick Lafranchi, Attorney-at-Law in Bern, Switzerland
Arbitrators:	Mr Alexis Gramblat, Attorney-at-Law in Paris, France
	Mr Wouter Lambrecht, Attorney-at-Law in Barcelona, Spain

76. On 12 August 2020, the CAS Court Office forwarded to the Parties Mr Alexis Gramblat's email, dated 11 August 2020, by means of which he wished to amend the *Acceptance and Statement of Independence* form which he had filled on 31 March 2020.

77. On 26 August 2020, Mr Alexis Gramblat provided inputs to the questions posed to him by the First Respondent following the amended Statement of Independence and, on 31 August 2020, the First Respondent informed the CAS Court Office that in view of Mr Alexis Gramblat's clarification no challenge would be filed against his nomination.

78. On 11 November 2020, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing in the present matter on 14 December 2020 and this via videoconference. In the same letter, the CAS Court Office informed the Parties that the Panel had decided that there would be no bifurcation of the proceedings and that the Appellant's request to be granted a second round of written submissions had been rejected, since the Appellant had failed to demonstrate any exceptional circumstances to substantiate his request.

79. The Appellant, the First Respondent and the Second Respondent signed and returned the Order of Procedure and on 14 December 2020 the hearing was held via videoconference. The Panel was assisted by Mr Peter Rittinger, Ad hoc Clerk, and Mr Fabien Cagneux, Counsel to the CAS. The following persons attended the hearing for the Parties:

For the Player:	Mr Jean-Jacques Bertrand, counsel
	Mr Jules Plancque, counsel
	Mrs Clémence Picard, counsel
	Mr Dorian Lévêque, Appellant

For the Club:	Mr Achilleas Mavromatis, counsel Mr Christos Papathomas, counsel Mr Heiner Kahlert, counsel Mr David Menz, counsel
For FIFA:	Mr Miguel Liétard Fernández-Palacios, Director of Litigation Mr Alexander Jacobs, Senior Legal Counsel

80. The following witnesses were heard, in no specific order of appearance, all by videoconference:

- Mr Reginal Ray, former coach of Valenciennes FC, witness called by the Player;
- Mr Iaouad Boukhari, agent of the Player, witness called by the Player;
- Dr Cohen, medical doctor, witness called by the Player;
- Mr Pantelis Konstantinidis, the Club's Team Manager, witness/party representative called by the Club;
- Mr Lubos Michel, former CEO and current Advisor to the Club, witness/party representative called by the Club;
- Dr Emmanouil Papacostas, medical doctor, witness called by the Club;

81. All witnesses were invited by the President of the Panel to tell the truth subject to the sanction of perjury under Swiss law. The Parties and the members of the Panel had full opportunity to examine and cross-examine the witnesses.

82. At the opening of the hearing, the Parties confirmed they had no objections to the constitution of the Panel nor to the procedure adopted by the Panel so far, and they went on to present their case. The Parties were given full opportunity to submit their arguments in opening and closing statements, and to answer the questions posed by the members of the Panel and before the hearing was concluded, the Parties confirmed that their right to be heard had been respected.

IV. SUBMISSIONS OF THE PARTIES

83. The Panel confirms that it has carefully taken into account in its decision all the submissions, evidences and arguments presented by the Parties, even if they are not specifically summarised or referred to in the present Arbitral Award.

A. Submissions of the Player

84. In his Appeal Brief, the Appellant submitted the following requests for relief:

*"**DECLARE and RULE** that it is competent to investigate the present dispute;*

DECLARE and RULE *that the request made by Mr LEVEQUE before the Court of Arbitration for Sport is admissible;*

Regarding the contested decision,

DECLARE and RULE *that the arbitration clause in the employment contract is unlawful in that it was not explicitly and freely agreed between the parties, since it results from a standard employment contract imposed on the Player;*

DECLARE and RULE *that the Greek NDRC is competent only to deal with national disputes;*

DECLARE and RULE *that the Greek NDRC does not respect the principles of independence, impartiality and consequently the right to a fair trial;*

DECLARE and RULE *that the procedure conducted by the PAOK before the Greek NDRC is irregular;*

Thus,

DECLARE *the Greek NDRC was not competent to deal with the dispute between Mr LEVEQUE and PAOK club;*

DECLARE *the absence of res judicata regarding the decisions made by PEEOD and The Court of Arbitration;*

Consequently,

DECLARE *that the request made by Mr LEVEQUE before FIFA DRC was admissible;*

NOTE *the early termination of Mr LEVEQUE's employment contract by the PAOK SALONIQUE without just cause, and consequently:*

ORDER *THE PAOK SALONIQUE to pay to Mr LEVEQUE:*

- *As arrears of remuneration:*
  - *The sum of* ***€ 50,000*** *net for salary arrears for the months of July and August 2018;*
  - *The sum of* ***€ 2,138,70*** *gross for the arrears of supplementary salary for the months July and August 2018;*
  - *The sum of* ***9,800 € net as a*** *car rental allowance;*
  - *The sum of* ***€ 3,204,65*** *as a refund of his plane tickets;*
- *As regards the consequences of early termination of the employment contract without just cause:*
  - *The sum of* ***€ 560,000,00 net*** *for salaries due until the end of the contract;*
  - *The sum* ***of € 23,525,70 gross*** *for the additional remuneration due until the end of the contract;*
- *As damage related to loss of chance due to break-up without just cause:*
  - *The sum of* ***€ 50,000 net*** *for the loss of the chance to receive any "individual" bonuses;*

- *The sum of **€ 50,000 net** for the loss of chance to receive any "collective" bonuses;*
- *The sum of **15,400 €** net for the loss of chance to receive the vehicle rental allowances contractually provided for;*

- *For the removal expenses incurred by Mr LEVEQUE : the sum of **2,496 €***
- *For the costs of the proceedings, jointly and severally with FIFA: the sum of **€ 20,000**.*
- *For the arbitration cos before the CAS, jointly and severally with FIFA: the totality of the arbitration cost.*

***ORDER** the PAOK SALONIQUE to be communicated to Mr LEVEQUE under a daily penalty of 500€:*

- *His pay slips for the months of July 2017 to August 2018;*
- *Any proof of payment of taxes in Greece;*

85. The submissions of the Appellant in support of his requests for relief, as contained in his Appeal Brief and as advocated at the hearing, may, in essence, be summarized as follows:

a. As to Jurisdiction of the FIFA DRC/Admissibility

- The principle of *res judicata* cannot be applied in cases where a decision is reached after an irregular procedure.
- The procedure in front of the HFF bodies, both in first instance and on appeal, were irregular since there was no fair trial before the PEEOD and the CAF (together referred to as the "HFF Judicial Bodies"). This shows from the following elements:

  - The HFF Executive Committee has the power to appoint the chairman of the national committees, both at first instance and on appeal whilst the President of said Board is elected by secret ballot by the General Assembly of the HFF which is solely composed of club representatives (Articles 5, 20 and 30 HFF Statutes). This latter violates the fundamental principle of equal representation as foreseen in Article 22 lit. b FIFA RSTP and the FIFA Circulars n° 1129 and n° 2010 and thus raises doubts about the independence and neutrality of the HFF Judicial Bodies.
  - The principle of equal representation is fundamental. A mere appearance of equal representation is not enough (see CAS 2018/A/5659). It is the Club that carries the burden of proof to establish that the HFF Judicial Bodies meet the minimum requirements of the principle (see CAS 2014/A/4846).
  - The FIFA DRC did not carry out any casuistic analysis in respect to the admissibility of the claim.

- The Player is not a member of the Panhellenic Association of Paid Footballers, therefore he never had the same rights as the Club regarding the composition of the HFF Judicial Bodies.
- There were several procedural flaws during the proceedings in front of the HFF Judicial Bodies, inter alia:
  - the Player neither received the summons from the PEEOD nor did he receive any instructions as to the conduct of the proceedings;
  - the documents provided by the Club before the PEEOD had never been communicated to the Player;
  - the Player did not have access to Greek sporting regulations and no translated versions of the regulations were shared with him;
  - the Player was not informed by the PEEOD of the right to be represented and to benefit from a translator.

➢ In any case, the PEEOD lacked competence because:

- the dispute was of international nature whereas the HFF Judicial Bodies are, pursuant to Articles 62 and 63, only competent to settle national dispute;
- the Parties never agreed to submit their disputes to the PEEOD. In accordance with the principle of contractual freedom, the Player thus has never agreed to confer jurisdiction to the PEEOD in respect of "any dispute";
- the Player was forced to sign an HFF "model contract", including the jurisdiction clause, and thus did not freely agree to such jurisdiction clause;
- the only freely signed agreement is the Pre-Agreement of 23 May 2017 to which the draft employment contract was linked. According to this Pre-Agreement any dispute was to be settled by the CAS.

b. As to the Termination of the Employment Contract without Just Cause

➢ The Player at no point committed any breach of contract that would justify the termination of the Employment Contract by the Club. Neither the past injuries, nor his absence were valid reasons for such termination, as evidenced by the following factual elements:

- during the season 2017/2018 the Player suffered various injuries, however the required medical examinations and rehabilitation were always made in full agreement and consultation with the Club. The Player had always tried to recover as quickly and best as possible;
- the Player had fully recovered for the start of the season 2018/19 and had regularly resumed the season participating in the first pre-season course from 22 June to 3 July 2018;

- on 7 July 2018, the Player was informed by the Club's Sports Director and the General Team Manager that the Club's Head Coach no longer wished to use the services of the Player and that he would be excluded from the pre-season training. At the same meeting, the Player was invited to find a new club and to return to France where he stayed as of 9 July 2018 in order to find a new club;
- on 30 July 2018, Mr Iaoaud Boukhari, the agent of the Player, contacted the Club's Sport's Director seeking his approval for a trial of the Player from 30 July 2018 until 15 August 2018, which the Club expressly agreed on;
- on 15 August 2018, the Player again requested the Club's authorisation to carry out a trial with Valenciennes F.C. from 16 August 2020 until 20 August 2020, which was once again granted by the Club;
- both trials were accepted since the Club wanted the Player to leave;
- from 9 July to 20 August 2008, the Club neither informed the Player that he was absent without cause, nor did the Club seek any clarifications as to his absence. This further demonstrates that the Club had no interest in the Player and wanted to part ways with him;
- Instead of putting the Player on notice, on 20 August 2018, the Club proposed the Player, via the cross-message platform WhatsApp, to mutually terminate the Employment Contract in exchange for a payment of one hundred thousand euros (EUR 100,000) by the Club plus the outstanding salaries for the months July and August 2018;
- the Player did not accept the proposal and remained in Valenciennes to try to finalize a deal with Valenciennes CF, such with the knowledge of the Club and without the Club objecting thereto;
- on 24 August 2018, the Club recruited the player Alin-Dorinel Tosca, who played in the same position as the Player, further demonstrating that the Club was not interested in the Player;
- on 28 August 2018, the Club, for the very first time and by means of its Attorney, asked the Player to provide explanations concerning his absence granting him till 30 August to do so, such in light of the meeting of the Club's Executive Committee taking place on the same day;
- the Player timely replied to the request for explanations and, in his reply, reminded the Club that it had invited him to find a new club, had authorized both stays in France and trials with Valenciennes CF. The Player disputed any concerns regarding his physical condition and reminded the Club that he was in perfectly capable of performing his duties.

➢ Notwithstanding these factual elements, the Executive Committee decided to terminate the Employment Contract on 30 August 2018 with alleged just cause, notwithstanding that the same day, the Club's Sports Director had once again proposed the amicable

termination of the Employment Contract in return for the sum of two hundred and ten thousand euros (EUR 210.000).

c. As to the Compensation Payable

- The Employment Contract was terminated by the Club without just cause and damages are payable by the Club.
- The Player signed a fixed three-year contract and when the Employment Contract was terminated, 22 months were remaining.
- The damages should be established based on Article 17 of the FIFA RSTP and in light thereof the following damage heads and amounts should be awarded and paid:

o	Remaining contractual salary for the seasons 2018-19 & 2019-20:	EUR 23,525.70 gross
o	Remaining monthly instalment payments for the seasons 2018-19 & 2019-20	EUR 560,000.00 net
o	Outstanding monthly salaries for the months of July and August 2018	EUR 2,138.70 gross
o	Outstanding monthly instalment payments for the months July and August 2018	EUR 50,000.00 net
o	Car rental allowance (EUR 700.00/month)	EUR 9,800.00 net
o	Refund of the Player's air plane tickets	EUR 3,204.65 net
o	Damage related to the loss of chance to break-up without just cause - "individual bonuses" - "collective bonuses" (victory bonuses) - Loss of chance to receive vehicle rental allowances contractually provided	 EUR 50,000.00 net EUR 50,000.00 net EUR 15,400.00 net
o	Removal expenses incurred by the Player	EUR 2,496.00

B. Submissions of the Club

86. In its Answer to the Appeal, the Club submitted the following requests for relief:

"*I. Bifurcate the present proceedings and issue a decision on jurisdiction and admissibility before entering, if at all, into the merits of this dispute;*

II. Hold that the CAS does not have jurisdiction to hear the appeal;

III. In the alternative, reject the Appellant's appeal as inadmissible;

IV. In the further alternative, dismiss all prayers for relief submitted by the Appellant on the merits;

V. Order the Appellant to pay the costs of the present arbitration; and

VI. Order the Appellant to pay the legal fees and expenses of the First Respondent, to be determined at a later stage of the proceedings."

87. The Club's submissions in support of its request for relief may, in essence, be summarized as follows:

a. As to the Lack of Jurisdiction of the CAS

- The Club and the Player validly and freely agreed, in Article 10 of the Employment Contract, to a specific jurisdiction clause installing exclusive jurisdiction on the HFF Judicial Bodies thus excluding any other forum, such as the CAS.
- The fact that the Employment Contract, and thus its jurisdiction clause, are based on the model employment contract of the HFF does not imply that said clause was not freely accepted by the Player. By signing the Employment Contract without any reservation, the Player explicitly agreed with it.
- Contrary to what the Player alleges, the jurisdiction clause in the Employment Contract is the only valid clause governing their employment relationship and said contract superseded and replaced the Pre-Agreement dated 23 May 2017, the latter even being terminated by means of a separate agreement signed between the Club and the Player.
- Even if the Employment Contract had conferred jurisdiction on the CAS, still the Player would be estopped from invoking CAS' jurisdiction since he recognized the jurisdiction of the HFF Judicial Bodies. To later dispute the same runs counter with the legal principle of *venire contra factum proprium*.
- The CAF is a true arbitral tribunal which is recognised not only by the Player, when seeking the annulment of the decision before the Greek civil courts in accordance with the Greek Civil Code of Procedure, but also by FIFA and the CAS in that both have recognised that the PEEOD and the CAF fulfil the required international procedural standards (see CAS 2012/A/2983) as outlined in the FIFA Circular n° 1010.
- For what concerns the principle of parity of the PEEOD, the latter body is composed of six members of which two are appointed by the Pan-Hellenic Professional Football Players' Association and two by the Super League. The two remaining members, who are neither selected by the Union nor the League, are Greek judges fully familiar with labour law and they act as President and Deputy President, such pursuant to Article 4 of the HFF Procedural Rules of the Dispute Resolution Chamber edition 2012 ("the PEEOD Procedural Rules"). Their independence follows from their profession and capacity as independent state judges and there is no reason why they would apply different standards in their function as independent President and Deputy President of the PEEOD compared to when they act as independent judges. The fact that they are appointed by the HFF Executive Committee does not affect the equal influence between clubs and players regarding the constitution of the PEEOD since the HFF is the governing body for football in Greece and, in such role, it promotes and regulates football for the sake of all

stakeholders of the Greek football community. It is not because the clubs are members of the HFF that the latter is an interest group for clubs whilst also the Union participates in the general assembly of the HFF which the elects the HFF Executive Committee. In any case, the situation at the HFF is comparable to the constitution of the list of arbitrators at CAS with the ICAS, in which athletes are underrepresented compared to federations, appointing the arbitrators and still such has been considered lawful.

- For what concerns the principle of parity of the CAF, the latter sits in a three member-panel pursuant to Article 5.3 of the HFF Court of Arbitration for Football Rules of Procedure edition 2018 ("the CAF Procedural Rules"). The panel is composed of a chair, who must be a senior state court judge, appointed by the HFF Executive Committee, and two arbitrators, each party being entitled to nominate one. Moreover, in doing so, the parties, pursuant to Articles 2 and 11 of the CAF Procedural Rules, can choose from a list of arbitrators prepared by their own representative bodies, with the Super League and the Union each drawing up their list of arbitrators which is then confirmed by the HFF Executive Committee.
- Both the PEEOD and the CAF guarantee the right to an independent and impartial tribunal in that:
  - each member of a panel can be challenged if there are legitimate doubts as to the member's independence and impartiality (Article 10 PEEOD Procedural Rules, Articles 3 and 4 HFF CAF Procedural Rules);
  - their procedures are contentious, foresee the principle of equal treatment and allow parties to be represented by counsel (Article 14, 15, 16 and 26 PEEOD Procedural Rules and Articles 8, 10 and 14 HFF CAF Procedural Rules).
- Since valid arbitral tribunals exist at HFF level and given that the Player and the Club validly conferred exclusive jurisdiction on the PEEOD and the CAF, FIFA lacked jurisdiction to entertain the complaint of the Player. Given that FIFA lacked jurisdiction also CAS lacks jurisdiction to hear the present case.
- The Player must be denied the possibility of a parallel jurisdiction of the CAS by simply filing a claim before the FIFA DRC, which was obviously not competent in the present case.

b. As to the Inadmissibility of the Appeal due to the Principle of Res Judicata

- *Res judicata* relates to the admissibility of a claim or an appeal which implies that if found to be present it leads to the inadmissibility of the appeal (CAS 2013/A/3256).
- Whether or not *res judicata* exists depends on the triple identity test being met (CAS 2010/A/2091, CAS 2016/A/4501, CAS 2018/A/5888).

- *In casu*, the procedure before CAS (and FIFA) involves the same parties, the same subject matter and the same legal grounds as the ones before the PEEOD and the CAF, which already issued a final and binding decision on this matter.

- As the triple identity is met, the Appeal is inadmissible and the proceedings should be bifurcated with a separate decision to be issued on CAS' jurisdiction and on *res judicata* in order to resolve the dispute in a time and cost-efficient manner.

*c. **Alternatively, as to the Merits***

- In any case, the Appeal must be dismissed on the merits.
- The Club had just cause, as defined by and pursuant to established CAS case law and Article 377 Swiss Code of Obligations ("SCO"), to terminate the Employment Contract due to the Player's unjustified absence and his unprofessional behaviour.
- Regarding the unjustified absence:
    - the Player was absent from training sessions and all other activities of the Club's first team from 10 July 2018 until 15 August 2018, while the Employment Contract was in force and while the Club was playing qualifying games for the 2018/19 UEFA Champions League;
    - the Player had neither requested nor obtained any permission from the Club to be absent and silence on the Club's behalf cannot be considered to constitute consent.
    - contrary to the assertions of the Player, neither the Sports' Director, nor the former Team Manager of the Club told the Player that the Head Coach no longer wanted him in the first team;
    - the Club was indeed willing to negotiate a transfer of the Player but such fact does not affect the Player's obligations under the Employment Contract and the Player was warned to return to the Club on 21 August 2018 which he failed to do;
    - the Club signed a contract with the player Mr Tosca on one of the last days of the transfer window, on 24 August 2020, due to Player's unauthorized absence after 20 August 2018;
    - contrary to the assertions of the Player, it is not true that the Club's Sports Director proposed to mutually terminate the Employment Contract on 30 August 2018.
- In addition to his unjustified absence, the Player's conduct and behaviour was unprofessional:
    - the Player underwent several surgeries during the season 2017/2018, which were not necessary to be carried out during the season; he failed to correctly inform

the Cub's medical staff about the surgeries and to discuss with them the necessity thereof;

- the Player's absences for medical treatments during the 2017/18 season were longer than expected, on more than one occasion, and not in line with the promises he had made to be back for the season 2018/19;
- the Player complained about pain that could not be established clinically, all of which constitute unprofessional behaviour allowing the Club, considering also the absence, to terminate the contract with just cause.

➢ Even if the unjustified absence would not be sufficient to justify an early termination, combined with the Player's unprofessional behaviour, the assessment must surely be changed.

➢ In the further alternative, if no just cause existed, the Player would only be entitled to receive a fraction of what he claimed in that:

- the monthly instalments payments for the months July and August 2018 and the proportional part for September 2018 up to the termination of contract were already paid;
- the damages of the Player are to be mitigated by deducting the salary he earned with his subsequent employers Annecy F.C. (from 31 January 2019 until 19 July 2019) and FC Le Mans (since 19 July 2019);
- the Appellant failed to sufficiently substantiate that he would have been entitled to any bonuses had the Employment Contract not been terminated. In any case, the bonuses were conditioned to him participating in 50% of the games and for at least 45 minutes;
- the car rental allowance costs are not due since the Player, following his return to France, no longer incurred such costs;
- the Player is not entitled to relocation costs as per the Employment Contract such costs would have been incurred in any case, even if the Employment Contract ran till its end of was cancelled prematurely.

C. Submissions of FIFA

88. In its Answer to the Appeal, FIFA submitted the following requests for relief:

"(a) Reject the Appellant's appeal in its entirety;

(b) Confirm the decision rendered by the FIFA Dispute Resolution Chamber on 5 November 2019;

(c) Alternatively, referring the case back to the FIFA Dispute Resolution Chamber;

(d) To order the Appellant to bear all costs incurred with the present procedure and to order the Appellant to make a contribution to FIFA's legal costs."

89. The submissions of FIFA in support of its requests for relief, may, in essence, be summarized as follows:

- CAS is competent to hear the appeal against the Appealed Decision and should confirm the FIFA decision.
- FIFA was right in declaring the Player's Claim against the Club inadmissible as a result of *res judicata* and this following a prior binding decision rendered by the PEEOD in first instance and confirmed in appeal by the CAF in second instance.
- These HFF Judicial Bodies had been designated as the competent authorities to hear the dispute between the Appellant and the First Respondent pursuant to the exclusive jurisdiction clause agreed between them. Furthermore, the Player fully participated in the proceedings before the PEEOD and CAF, including the hearing where he was assisted by his French and Greek Lawyers.
- It is only for the purpose of the present proceedings that the Player raises an abundance of arguments on the irregular procedure, lack of independence of the tribunals, unequal representation etc. These arguments are raised *post factum* and upon losing his appeal before the HFF Judicial Bodies. The Player's approach cannot be described in any other way than constituting "*forum shopping*" which is not admissible.
- Whereas the Player alleged that the HFF Judicial Bodies are not independent, do not guarantee a fair procedure and do not respect the principle of equal representation, he has not provided any document or any evidence which could effectively substantiate its claims and demonstrate such dependence, unfair procedures and lack of equal representation, such in violation of Article 8 of the Swiss Civil Code ("SCC"), and relevant CAS jurisprudence (CAS 2003/A/506, para. 54; and CAS 2009/A/1810 & 1811, para. 46; CAS 2009/A/1975, para. 23).
- The award CAS 2014/A/3656 does not help the Player's contention as in said case the panel indicated that, if it would have been provided with sufficient documentation by the club to assess the PEEOD's compliance with the minimum criteria, it may have well come to a different conclusion. The FIFA DRC was provided with all relevant documents.
- Keeping in mind the presence of a clear jurisdiction clause in favour of the HFF Judicial Bodies, the indisputable compliance of the HFF Judicial Bodies with all requirements of independent for arbitration tribunals, one must turn to the fact that a decision was already passed by the competent national deciding body.
- Said decision passed by the HFF Judicial Bodies meets the "triple identity check" of (1) the identity between the parties to the first decision and to the subsequent one, (2) the identity of objects between the two decisions; and (3) the identity of the basis (*causa petendi*) and as such is vested with *res judicata* effect (Cfr. CAS 2013/A/3380, CAS 2016/A/4408).

V. JURISDICTION

90. The Panel notes that the Club challenged the jurisdiction of the CAS to hear the present dispute mainly because, according to the Club, the FIFA DRC, in light of the exclusive jurisdiction clause in favour of the HFF, was not competent to hear the contractual dispute between the Appellant and the First Respondent in the first place. Given that FIFA did not have jurisdiction in first place, neither can the CAS have jurisdiction on appeal.

91. Considering the findings by panels in other cases (CAS 2018/A/5628 para. 50 *et seq.*) the issue of jurisdiction of CAS is to be considered on a formal basis. Therefore, in light of the Appealed Decision, the following articles must apply.

92. Article R47 of the Code provides as follows:

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

93. Article 57 (1) of the FIFA Statutes ed. 2019 reads as follows:

"FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents."

94. Article 58 (1) of the FIFA Statutes edition 2019 provides as follows:

"[A]ppeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question."

95. Article 24 (2) of the FIFA RSTP provides:

"[...] Decisions reached by the DRC or the DRC judge may be appealed before the Court of Arbitration for Sport (CAS)."

96. Since the Appeal of the Player is directed against a final decision of the FIFA DRC, a fact which is not disputed by the Parties, the Panel holds that the CAS has jurisdiction to hear the present Appeal. In doing so the Panel has the full power to review the facts and the law and can decide the dispute *de novo* as per Article R57 of the Code.

97. In this respect, the Panel notes that the issue of whether the FIFA DRC was competent or not to deal with the matter at hand, clearly relates to the merits of the case. Whatever finding the Panel, following its legal analysis, will reach in this respect, neither affects,

nor has it any relation to CAS's jurisdiction to hear appeals against FIFA decisions. The Club mistook the issue of the jurisdiction of the CAS to hear appeals against FIFA decisions (which results from the relevant articles quoted above) with the jurisdiction of FIFA to hear the Player's claim, which, for what concerns the CAS arbitral proceedings, purely relates to the merits of the case and not to CAS's jurisdiction to hear appeals against FIFA decisions.

VI. ADMISSIBILITY

98. The Respondents argue that the FIFA DRC was prevented from deciding the Claim because the present issue is a *res judicata*. However, the Panel finds that also this issue of relates to the merits of the case and it will thus be examined below in the corresponding chapter.

99. Article 58 (1) of the FIFA Statutes states:

"Any appeal against decisions taken by FIFA in the final instance, in particular the judicial bodies, as well as against decisions taken by the confederations, member associations or leagues, must be lodged with CAS within twenty-one days of receipt of the decision.

100. The Appealed Decision was issued on 5 November 2019. Its grounds were notified to the Appellant and the First Respondent on 7 February 2020.

101. On 28 February 2020, the Appellant filed his Statement of Appeal before the CAS, therefore within the time-limit.

102. The Statement of Appeal also complied with all other requirements set forth in Article R48 of the CAS Code, it therefore follows that the Appeal is admissible.

VII. APPLICABLE LAW

103. Article R58 of the Code provides the following:

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

104. Article 57 (2) of the FIFA Statutes stipulates 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."

105. In addition, Article 11 (2) of the Employment Contract reads as follows:

"The Club and the Player are obligated to comply with the Statutes, Regulations and Decision of FIFA, UEFA, H.F.F. and the relevant Professional Association (if applicable), which constitute an integral part of this agreement, and that is recognised by the parties by their signatures."

106. The Appellant and the First Respondent did not make any specific submissions as to the applicability of any specific national law.

107. Keeping the above in mind, the Panel will decide the present dispute in accordance with the rules and regulations of FIFA and the HFF, including the relevant FIFA circulars relating to the National Dispute Resolution Chambers, whilst Swiss law shall apply subsidiarily in case the need arises to fill a possible gap in the FIFA Regulations.

108. Pursuant to Article 26 of the FIFA RSTP, the Panel considers that the June 2018 version of the FIFA RSTP, which entered into force on 1 June 2018, is applicable to the present case given that the Player's Claim against the Club was filed with FIFA on 12 October 2018.

109. This arbitral proceeding is further governed by the Articles 176 *et seq.* of the Swiss Private International Law Act ("PILA"), since at least one of the Parties is domiciled outside Switzerland and because the seat of the arbitration is in Switzerland (Article R27 of the CAS Code).

VIII. MERITS OF THE DISPUTE

110. The issue at the centre of this dispute is whether the FIFA DRC, by means of the Appealed Decision, correctly considered the Claim of the Player inadmissible and thus refused to take jurisdiction and hear the case.

111. In this respect, the Panel notes that the Parties effectively treated the issues of *res judicata* and jurisdiction of the FIFA DRC as one and the same issue since the arguments they have put forward in their submissions regarding both concepts consistently overlapped one another.

112. The Panel concurs that there is a certain overlap of both concepts. In fact, the issue of the alleged jurisdiction of the FIFA DRC opposed to that of the HFF Judicial Bodies must, according to the Panel, be examined within the scope of the *res judicata* exception raised by the Respondents.

113. More precisely, in order for the decision of the CAF to resort *res judicata* effects, not only must it meet the triple identity test as put forward by the Respondents, it must also:

- be rendered by the competent authority with the corresponding jurisdiction to render such decision (ATF 140 III 278: at 3.2);

- qualify as an (1) "arbitral award" that (2) can be recognized in Switzerland as per Article 194 PILA which in turn refers to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, commonly known as the New York Convention ("NYC") (SFT 4A_374/2014 at paras. 4.2.1, 4.2.2);

- constitute a final decision on the merits (SFT 4A_374/2014 at para. 4.3.2.2.).

114. The Panel deems it important to clarify the above since it understands that the *res judicata* exception is part of the procedural public policy, at least for what concerns the two grounds contained in Article V.2 of the NYC, meaning that the Panel must control *ex officio* if the conditions for *res judicata* are fulfilled.

115. As to the requirement that the CAF Award must qualify as an "arbitral award" for the *res judicata* exception to apply, it should be noted that this notion "arbitral award" is not defined in the NYC (SFT 4A_374/2014 with further reference to Kaufmann-Kohler and Rigozzi, op. cit., n. 874).

116. However, the Swiss Federal Tribunal ("SFT") in its decision 4A_374/2014 held that for an arbitral award to be characterized as such the:

"[...] decision of a private origin must be comparable to that of a state court (Poudret and Besson, op. cit., ibid. and the examples quoted at n. 878). According to the case law of the Federal Tribunal, an actual award akin to the judgment of a state court supposes that the tribunal issuing it presents sufficient guarantees of impartiality and independence. [...]).

(Emphasis added by the Panel)

117. From the above, it follows that the guarantees of impartiality and independence that must be met in order for the CAF Award to be recognized as an arbitral award, are the same guarantees that FIFA, as per Article 22 lit. b FIFA RSTP, imposes on its national dispute resolution chambers for the latter to be competent (or not).

118. In fact, in order for the HFF Judicial bodies "[...] *to qualify as an arbitral tribunal*" issuing arbitral awards "[...] *the national judicial instance must be a joint body representing all interests (constituted by a president, a secretary, and representatives of the different stakeholders). The decision should be based on a majority decision and respect the parties' right to be heard in an adversarial trial.*" (Res judicata in sports disputes and decisions rendered by sports federations in Switzerland, Despina Mavromati, Social Science Research Network, 2015).

119. Hence, for the CAF Award to be recognised as an arbitral award, the CAF must meet the same conditions as the one imposed by FIFA on the National Dispute Resolution Chambers ("the NDRCs") for FIFA to deny to jurisdiction in favour of an NDRC.

120. As such, the issue of *res judicata* and jurisdiction overlap one another *in casu*. The Panel shall thus first analyse whether the CAF Award can be recognised as an arbitral award in that the HFF Judicial Bodies must be independent, must guarantee fair proceedings and respect the principle of equal representation of players and clubs. The finding regarding the above will of course also affect the finding on FIFA's (lack of) jurisdiction.

121. Taking into account the submissions of the Parties and the above mentioned, the Panel thus considers that in order to reach a decision regarding the case under review, the following questions must be analysed and answered:

A. Was there an agreement between the Player and the Club to confer jurisdiction on the HFF Judicial Bodies to resolve disputes between them;

if so:

B. Do the HFF Judicial Bodies comply with the prerequisites contained in Article 22 lit. b of the FIFA RSTP?

C. Was the FIFA DRC prevented from deciding the Claim because the present issue is a "*res judicata*"?

D. In case the FIFA DRC was or was not competent to hear and decide on the Appellant's claim, what are the legal consequences thereof?

E. In case question (A) is answered in the affirmative and question (B) and (C) are answered in the negative, did the Club terminate the Employment Contract with just cause or without just cause? What are the legal consequences thereof?

A. Was there an agreement between the Player and the Club to confer jurisdiction on the HFF Judicial Bodies to resolve disputes between them?

122. As a starting point, it seems advisable to recall the applicable provisions of the FIFA RSTP, which read as follows:

"Article 22 Competence of FIFA

Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear:

a) (...)

b) Employment-related disputes between a club and a player of an international dimension; the aforementioned parties may, however, explicitly opt in writing for such disputes to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement. Any such arbitration clause must be included either directly in the contract or in a collective bargaining agreement applicable on the

parties. The independent national arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of players and clubs;

(Emphasis added by the Panel)

c) (...)"

Article 24 Dispute Resolution Chamber

1. The Dispute Resolution Chamber (DRC) shall adjudicate on any of the cases described under article 22 a), b), d) and e) with the exception of disputes concerning the issue of an ITC.

2. (...)"

123. From the above it follows that the FIFA DRC is competent to hear employment related disputes between a club and a player of an international dimension insofar the parties have not agreed on an arbitration clause foreseeing in the exclusive jurisdiction for national arbitration tribunals to settle their disputes thereby excluding the jurisdiction of the FIFA DRC.

124. As to the required arbitration clause, footnote 101 of the FIFA Commentary of the RSTP (2005 edition) further specifies that *"a clear reference to the competence of the national arbitration tribunal has to be included in the employment contract."*

125. Keeping the above in mind, it should be noted that the Player and the Club did indeed include an arbitration clause and in the Employment Contract which reads as follows:

*"**10. Resolution of disputes***

All disputes between the parties are settled by the Appeals Committee for the Resolution of Financial Disputes (PEEOD) at first instance, and the Court of Arbitration of the H.F.F. at second instance."

126. The Panel considers that the wording of this arbitration clause, as required by Article 22 lit. b of the FIFA RSTP, and Article II of the NYC, constitutes a clear jurisdiction clause in favour of the HFF Judicial Bodies.

127. Therefore, in case the Appellant and the First Respondent consented to the arbitration clause and the Greek Judicial Bodies meet the requirements contained in Article 22 lit. b of the FIFA RSTP, the HFF Judicial Bodies were indeed the competent bodies to render decisions, implying that the FIFA DRC lacked competence to resolve employment related disputes between the Appellant and the First Respondent.

128. As to the requirement of consent, the Panel observes that the Appellant asserted that the parties to the Employment Contract, at least not the Player, had never consented to confer jurisdiction on the PEEOD, *a fortiori* not for "any dispute". The Player further submitted that the Employment Contract, including the arbitration clause, was based on a

standard/model contract provided by the HFF and that being based on the model contract of the HFF, the Player had neither negotiated said clause nor *"intended to attribute jurisdiction to Greek sports commissions, as evidenced by the terms of the agreement freely drafted and signed between the parties on 23 May 2017."* Still, according to the Player, by signing the Pre-Agreement, dated 23 May 2017, the Parties, and at minimum the Player, had always wanted to confer jurisdiction to the CAS, rather than to the HFF Judicial Bodies, and this because the Player does not understand the Greek language nor does he master the Greek regulations. As such, the Player did not (freely) consent to an arbitration clause whereby he would have his case heard by the HFF Judicial Bodies.

129. In analysing said arguments and reviewing the validity of the arbitration clause, reference must be made to Swiss law.

130. In this respect, Article 5 (1) PILA states:

"In matters involving an economic interest, parties may agree on the court that will have to decide any potential or existing dispute arising out of a specific legal relationship. The agreement may be entered into writing, by telegram, telex, telecopier or any other means of communication which permits it to be evidenced by a text. Unless otherwise agreed, a choice of forum is exclusive."

131. Article 178 (2) PILA provides:

"As to substance, the arbitration agreement shall be valid if it complies with the requirements of the law chosen by the parties or the law governing the object of the dispute and, in particular, the law applicable to the principal contract, or with Swiss law".

132. More generally Article 18 (1) SCO provides:

"When assessing the form and terms of contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement".

133. Therefore, the Appellant's and the First Respondent's real intent is to be respected as a priority.

134. The Panel duly noted the assertions of the Appellant which cannot be upheld for the following reasons.

135. The fact that the Employment Contract is a standard contract does not lead to the conclusion that the Player did not (freely) consent with the included jurisdiction clause. In fact, the Player signed the Employment Contract without any reservation.

136. Besides, the Pre-Agreement dated 23 May 2017, to which the Player refers and which contained an arbitration clause in favour of CAS, was terminated explicitly in writing on 3 July 2017. The Pre-Agreement, and its arbitration clause, were thus no longer in force at the moment the employment dispute between the contracting parties arose. In addition, even if the Pre-Agreement would not have been terminated and two contradicting arbitration clauses would have existed at the same time, the arbitration clause of the Pre-Agreement would not have helped the Player since it installed jurisdiction on the CAS and not on the FIFA DRC which is where the Player submitted his Claim.

137. Finally, it should be noted that the Employment Contract was drafted in English, meaning that the Player's lack of understanding of Greek is not a valid argument. Further, the Appellant's lack of understanding of the Greek regulations in no case leads to the conclusion that he did not want to agree on the jurisdiction of the HFF Judicial Bodies. In the Panel's view, the Appellant's Claim of not having freely negotiated the terms of the Employment Contract and/or of not having agreed on all the terms, including the arbitration clause, are not supported by any convincing evidence.

138. As a conclusion, in the Panel's view, the Player and the Club, by including the exclusive arbitration clause in the Employment Contract, agreed to the jurisdiction of the HFF Judicial Bodies for their employment related disputes, namely the PEEOD as first instance body and the CAF as second instance body.

B. Do the PEEOD and the CAF comply with the prerequisites contained in Article 22 lit. b of the FIFA RSTP?

a. Introduction

139. The Panel notes that, even if a valid arbitration agreement exists in favour of national arbitral tribunals, which is the case *in casu*, they must meet the requirements of Article 22 lit. b of the FIFA RSTP. They must be independent, must guarantee fair proceedings and must respect the principle of equal representation of players and clubs.

140. The requirements contained in Article 22 lit. b of the FIFA RSTP are further defined in the FIFA Circular n° 1010, dated 20 December 2005. This Circular defines the minimum procedural standards imposed on such arbitration tribunals at national level in order for them to be considered "independent" and "duly constituted", as follows:

- ***Principle of parity when constituting the arbitration tribunal***
  The parties must have equal influence over the appointment of arbitrators. This means for example that every party shall have the right to appoint an arbitrator and the two appointed arbitrators appoint the chairman of the arbitration tribunal. The parties concerned may also agree to appoint jointly one single arbitrator. Where arbitrators are to be selected from a predetermined list, every interest group that is represented must be able to exercise equal influence over the compilation of the arbitrator list.

- ***Right to an independent and impartial tribunal***
  To observe this right, arbitrators (or the arbitration tribunal) must be rejected if there is any legitimate doubt about their independence. The option to reject an arbitrator also requires that the ensuing rejection and replacement procedure be regulated by agreement, rules of arbitration or state rules of procedure.

- ***Principle of a fair hearing***
  Each party must be granted the right to speak on all facts essential to the ruling, represent its legal points of view, file relevant motions to take evidence and participate in the proceedings. Every party has the right to be represented by a lawyer or other expert.

- ***Right to contentious proceedings***
  Each party must be entitled to examine and comment on the allegations filed by the other party and attempt to rebut and disprove them with its own allegations and evidence.

- ***Principle of equal treatment***
  The arbitration tribunal must ensure that the parties are treated equally. Equal treatment requires that identical issues are always dealt with in the same way vis-à-vis the parties."

141. It is reminded that meeting these requirements is important, not only in order for the CAF Award to be recognised as an arbitral award that can be vested with *res judicata* effect but also for what concerns FIFA's (lack of) jurisdiction.

142. The Appellant claims, that the PEEOD and the CAF were not competent to settle the matter at hand, because they (1) did not comply with the requirements of independent arbitration tribunals, (2) did not guarantee a fair and contentious procedure and (3) did not respect the principle of equal representation of players and clubs. Concerning the principle of equal treatment, no arguments were put forward by the Appellant.

143. In light of such allegations and, as a threshold matter, the Panel wishes to underline that many of the different allegations submitted by the Appellant in relation to the above three contentions were submitted for the first time before FIFA whilst none or only very few of those allegations were submitted before the HFF Judicial Bodies. Rather the contrary, the Player explicitly recognised the jurisdiction of the CAF and appointed its own arbitrator before said instance, whilst before the PEEOD the Player only challenged the latter's jurisdiction since the dispute was one of international nature. No other comments or reservations could be found in the respective briefs of the Player before the HFF Judicial Bodies. In this respect, reference is made to the decision of the SFT with reference 4A_374/2014 which reads as follows in point 4.2.2:

"Any procedural participant must comply with the rules of good faith (see Art. 52 of the Code of Civil Procedure [CCP]; RS 272). As stated in ordinary civil procedure, the principle of good faith has a general scope so it also governs arbitral procedure, whether domestic or international (judgment 4A_606/2013 of September 2, 2014, at 6.2.1; judgment 4A_214/201311 of August 5, 2013, at 4.3.1). Pursuant to this principle, it is not admissible to keep grievances as to procedural deficiencies in reserve when they could have been rectified immediately, only to raise them in case of an unfavourable outcome of the arbitral procedure. The rule also requires that grounds to refuse recognition of the foreign award pursuant to the New York Convention may not be validly invoked if they have not been raised in a timely manner when the arbitral procedure was pending (Präklusionswirkung, according to German terminology)."

144. The Panel agrees on the above paragraph and in light thereof, many if not all of the allegations put forward by the Appellant become problematic, to say the very least, and the Panel could decide to disregard them all together.

145. Notwithstanding the foregoing, the Panel will, in order to be diligent, address the different allegations and grievances raised by the Appellant.

146. Starting with its analysis of the different grievances raised by the Appellant, the Panel observes that the Appellant invoked the CAS award with reference CAS 2014/A/3656 which would allegedly confirm its allegations that the HFF Judicial Bodies would not meet the requirements set by FIFA whilst the Respondents and the FIFA DRC in the Appealed Decision refer to CAS 2012/A/2983, to conclude the contrary.

147. With reference to the above-mentioned awards, the Panel wishes to quote CAS 2012/A/2983, in which the panel answered the question, whether the Greek NDRCs fulfil all the requirements of independent tribunals in the affirmative. The panel in that case stated as follows:

"8.26 After having carefully reviewed the HFF Statutes and the HFF-RSTP, both of which regulate the composition of the HFFAC and the PEEOD, respectively, the Panel concludes that both sets of rules contain principles which, if complied with, respect the principle of equal representation of players and clubs.

8.27 The Panel notes, for instance, that both sets of rules lay down how the ordinary arbitrators are appointed equally either by the parties themselves or by the Board of Directors of the PanHellenic Professional Players Association and the Board of Directors of the Professional Associations, respectively.

8.28 Furthermore, the Panel notes, which was also confirmed during the hearing, that the chairman is in both cases appointed independently of the parties and on an objective basis.

[...]

Thus, what is required in the context of art. 22 of the FIFA-RSTP is, whether or not the procedural rules applicable before the Helenic judicial bodies are such to enable a conduct of the procedure in a fair and equitable way. In the view of the Panel nothing in the applicable rules indicates the contrary. In particular the Panel notes that both the Statutes of the HFF (Statutes Implementation Regulations) and the Procedural Rules of the Disputes Resolution Committees provide that all parties must be summoned and given an opportunity to be heard during proceedings instituted before the HFFAC and the PEEOD, respectively. In particular, the Procedural Rules of the Disputes Resolution Committees describe the measures to be taken in the event that a party is not present at the designated home address. Thus, the Panel finds that also this prerequisite for a recognition of the judicial bodies of the Helenic Federation according to art. 22 of the FIFA-RSTP is fulfilled."

148. The Panel also takes note of CAS 2014/A/3656 stating:

"194. The Panel finds that a mere oral reference during the hearing before CAS to a CAS award establishing that the PEEOD /EPO was considered by a CAS panel to comply with FIFA's requirements, is not sufficient to determine that the PEEOD/EPO indeed still complies with the mandatory criteria of FIFA Circular letter no. 1010 since regulations and practices may change over time and that, even if the Panel would have been provided with sufficient documentation by the Club to assess the PEEOD/EPO's compliance with the minimum criteria, it may well have come to a different conclusion that the CAS panel in CAS 2012/A/2983."

195. The Panel observes that the Club only provided the following documentation in order to establish that the PEEOD/EPO complied with the requirements set by FIFA [...]

196. These partial translations [of the HFF Regulations and Statutes] do not provide any guidance as to whether the principle of a fair hearing, the right to contentious proceedings and the principle of equal treatment are respected. [...]"

(Emphasises added by the Panel)

149. The abovementioned CAS awards (2012/A/2983, 2014/A/3656) do not determine the issues of the independency of the HFF Judicial Bodies in the same way, but they do not contradict each other. In fact, the panel in CAS 2014/A/3656 did not conclude that the HFF Judicial Bodies do not meet the requirements of independent tribunals. Rather, the panel noted that the club did not provide the necessary evidence to convince the panel that the Greek NDRCs were independent tribunals, which conducted a fair proceeding. Thus, the failure to establish independency was primarily related to an insufficient submission of evidence by the club.

150. In light of the above and since: neither of the awards invoked by the Parties can fully prove either one or the other allegation, since said awards are not binding for this Panel and since the Panel is aware that regulations and practices can change over time (see CAS

2014/A/3656, para. 194), the Panel will review the applicable procedural rules of the HFF Judicial Bodies. *i.e.* the PEOOD Procedural Rules and the CAF Procedural Rules, as well as the Statutes of the HFF, to determine whether the HFF Judicial Bodies meet the requirements set out in Article 22 lit. b of the FIFA RSTP and the FIFA Circular n° 1010.

b. Principle of parity when constituting the Arbitration Tribunal

151. The principle of equal representation of players and clubs is a fundamental principle according to the FIFA Circular n° 1010. The respective regulations of the HFF Judicial Bodies must thus foresee that each party has the same influence on the composition of the Tribunal.

152. In this respect, the relevant provisions of the PEEOD Procedural Rules regarding the composition of the PEEOD tribunal state as follows:

> **"Procedural Regulation Committee for the Resolution of Financial Disputes**
> *B. Principles Article 4 Formation*
> *1. PEEOD shall consist of the following members, who shall serve a two-year and renewable term of office.*
> *a) one president and one deputy president who are High Court or Senior Judges in service. (...)*
> *b) two players' representatives elected or appointed on proposal of the Pan-Hellenic Professional Football Players' Association (PSAP).*
> *c) two clubs' representatives, elected or appointed on a proposal of the relevant League.*
> *[...]*
>
> **HFF Regulations of the Status and Transfer of Players (HFF RSTP)** provide:
> Art. 20 *"Without prejudice to the right of any player, coach or club to bring civil proceedings for employment-related disputes, HFF is competent for the following:*
> *1. [...]*
> *2. Employment-related disputes between a club and a player*
> *3. [...]*
> *[...]*
>
> *Art. 22 First Instance Committee for the Resolution of Financial Disputes (PEEOD)*
> *1. **A three-member First Instance Committee for the Resolution of Financial Disputes (PEEOD) is hereby operating for professional football.***
> *2. The Committee is competent to decide on any dispute provided for under Article 20 (1), (2), (3) and (5) hereof.*
> *3. The President of the Committee and his substitute are judges. The rest of the members are appointed by each party (Association and PSAP, etc.)*
> *4.[...]*
> *5. [...]"*
>
> (Emphasises added by the Panel)

153. According to the cited regulations, the Pan-Hellenic Professional Football Player's Association and the relevant football league appoint two members, respectively, out of

the six members of the PEEOD. Therefore, the interest groups of each party appoint the same number of arbitrators.

154. The composition of the CAF in the relevant articles of the CAF Procedural Rules is regulated as follows:

"HFF Court of Arbitration for Football Rules of Procedure:
Article 2. Formation – Composition
1. CAF [Court of Arbitration for Football] shall convene and meet on seven-member (7-member) or five-member (5-member) panels, of which, three (3) members, the President and other two (2) are Senior Judges and the remaining four (4) or two (2) members, respectively, are arbitrators appointed in twos (2) or ones (1) by each party to the proceedings, from the validated lists of each body kept with the Court Registry. CAF meets in sections as well, on three-member panels, presided by one of the Judge-members, and the two members as arbitrators.
2. The President, the Deputy President, the two regular members and one alternate (5 in total) are appointed by decision of the HFF Executive Committee, in compliance with the provisions of the Statute for a period of three (3) years. (...)
3. Arbitrators are appointed by each party from a unified list of arbitrators kept at the Court seat. Before the commencement of each season, the National Professional Football Leagues, Super League and Football League, the Pan-Hellenic Associations, or Unions or Federations of Footballers, Coaches and Agents shall draw up and disclose o CAF Registry one list each, with the names of four (4) to five (6) arbitrators. [...]

***Article 5* Competences. Jurisdiction. Disputes covered**
[...]
***3.** CAF has also jurisdiction to hear appeals against the decisions of the Players' Status Committee (PSC) and the First Instance Committee for the Resolution of Financial Disputes (PEEOD), as well as to enforce and implement sanctions (under article 24 of the Regulations on the Status and Transfer of Players (RSTP)) In order to hear the cases referred to in the present paragraph, CAF shall meet on three-member panels and as Single-member to enforce and implement sanctions.*

Article 11. Appointment of arbitrators – Exclusion

***1.** CAF shall convene in compliance with the provisions of Article 2 hereof. Arbitrators shall be appointed by each party selected from the approved unified list of arbitrators kept at the CAF seat, in compliance with the provisions of Article 10 hereof.*
***2.** In the cases referred to in article 5 (1) and (2), the parties shall appoint one (1) or two (2) arbitrators each. (...). Any arbitrator appointed by the parties shall be deemed to be appointed only on confirmation by the President, who shall verify that the arbitrator is included in the approved list of arbitrators."*

(Emphasises added by the Panel)

155. During the proceedings before the CAF, each party had the chance to nominate one arbitrator respectively from a list of arbitrators which is prepared by their representative interests' groups, namely the Players Union on the one hand and the Super League on the

other hand. Therefore, the interest groups of each party appoint the same number of arbitrators to the list of arbitrators serving on the CAF.

156. The above articles demonstrate that, at least for what concerns the party appointed arbitrators, each party/interest group had an equal influence over "their" appointed arbitrators.

157. The Appellant's assertion that he never had the same right as the Club regarding the composition of the PEEOD or the CAF because he was not a member of the Panhellenic Association of Paid Footballers, while the Club is a member of the Professional Association (Super League) is not to be followed. In this respect, the Appellant disregards that the Panhellenic Association of Paid Footballers is the interest group of the Professional Footballer Players in Greece acting in the interest of the players. Whether he was a member or not, does not affect the fact that said interest group, like the interest group of the club, had an equal influence on the composition of the panels of the HFF Judicial Bodies.

158. For what concerns the positions of the President and Deputy President on the PEEOD and the CAF, it is undisputed that it is the HFF Executive Committee that appoints these members. In this respect the Panel takes note of the Appellant's submission, claiming that according to Article 3 of the FIFA National Dispute Resolution Chamber Standard Regulations, the President and Deputy President should be chosen by the player and the club representatives, and that such is not the case for the HFF Judicial Bodies whilst the HFF Executive Committee, who appoints those members, is composed solely of club representatives.

159. In light of said allegations, the Panel wishes to emphasize that according to the Preamble of the FIFA National Dispute Resolution Chamber Standard Regulations, these provisions were drafted "[...] *for creating national dispute resolution chambers along the lines of the principles of the FIFA Dispute Resolution Chamber and in particular, the principle of equal representation of players and clubs.*"

160. Hence, the individual provisions of these standard rules are not intended to be legally binding, but to provide a recommendation as to how national dispute resolution chambers can be structured to fulfil the requirements of the principle of equal representation of players and clubs. The mentioned principle of equal representation does not imply that the parties in all circumstances are entitled to appoint all arbitrators under the condition that one party does not exert more or different influence on the appointment of arbitrators compared to the other party (see CAS 2012/A/2983, para. 8.23).

161. As to the Appellant's contention that the sole fact that the HFF Executive Committee is composed purely of club representatives and that this raises doubts about the independence and neutrality of the HFF Judicial Bodies, the Panel observes the following.

162. After reviewing the HFF Statutes, especially regarding the tasks of the HFF Executive Committee, the Panel finds that the HFF Executive Committee cannot be considered as a club representative organ, rather it represents the interests of all stakeholders in Greek football. Therefore, the fact that the HFF Executive Committee appoints the President and Vice-President of the HFF Judicial Bodies neither influences the independence of the respective tribunals, nor violates the principle of equal representations of players and clubs *per se*. The aforementioned holds true even more when taking into account the kind of people being appointed as President and Deputy President of the HFF Judicial Bodies. More precisely, these people appointed by the HFF Executive Committee must be state judges with an experience in labour law for what concerns the PEEOD and senior state judges for what concerns the CAF. Their capacity, role and experience as state judge or senior state judge means that these individuals, irrespective of whom appointed them, act independently and impartially, both concepts being inherent to their position as state or senior state judge. As such, even if the assertion of the Player would be followed that the HFF Executive Committee is solely composed of club representative and that as such clubs would have "more influence" over the appointment of the members of the HFF Judicial Bodies, an assertion which for the avoidance of doubt has not been withheld by this Panel as the HFF Executive Committee is not solely composed by club representatives, this would not have led this Panel to conclude that the principle of equal parity is not met. The fact that the people who are appointed by the HFF Executive Committee as President or Deputy-President is based on an objective criteria in that they must be (senior) state judges, whom as part of their profession act and are perceived to be independent and impartial, ensures that there is an equal representation on the HFF Judicial Bodies, namely one "neutral" President or Vice-President appointed on the basis of an objective criteria by the HFF Executive Committee, and one arbitrator appointed by each party / interest group, whom in any case and for the avoidance of doubt must also act independently and impartially.

163. In summary, the Panel in the case under review gives more importance to the objective elements underpinning the appointment of the President and Vice-President of the HFF Judicial Bodies than to which body actually formally appoints them. The Panel considers that these objective elements ensure that the principle of parity is met in the case at hand.

c. Right to an Independent and Impartial Tribunal

164. According to the FIFA Circular n° 1010 the right to an independent and impartial tribunal requires the right of the parties to object to the appointment of an arbitrator, if there is any legitimate doubt as to his or her independence.

165. In this respect, the First Respondent submitted the applicable procedural regulations of the HFF Judicial Bodies which provide that each party can challenge a member of the PEEOD or the CAF. This further safeguards the impartiality and independency of the appointed arbitrators. The Panel finds that the regulations are conclusive to state that the

HFF Judicial Bodies do indeed meet the principle that requires that one must have the right to an independent and impartial tribunal.

166. Moreover, by reviewing the written records and the Hearing Minutes of the proceedings before the PEEOD and the CAF, the Panel duly notes that the Appellant did not challenge the appointment of any of the appointed arbitrators during the proceedings.

167. Thus, the Panel does not follow the argumentation of the Appellant and considers that the Player had his case heard by a tribunal that was independent and impartial.

*d. **Fair Proceedings***

168. The Appellant claims that the proceedings before the HFF Judicial Bodies were not conducted in a fair manner. He submitted that several alleged "irregularities" took place during the proceedings. The Panel accurately reviewed all these allegations which can be summarized as follows: (1) the Player did not receive any summons from the PEEOD and in general his right to be heard was violated during the proceedings, (2) the Player's lack of knowledge of the Greek language prevented him from an adequate defence, (3) the Player's lack of knowledge of the regulations in regards to the procedure prevented him from an adequate defence and the PEEOD failed to give him the required instructions during the proceedings.

169. Notwithstanding these allegations, the Appellant does not claim, that the procedural rules of the HFF Judicial Bodies do not guarantee a fair proceeding. In this respect, the Panel refers to CAS 2012/A/2983 in which the panel stated:

"(...) However, the Panel also notes that in the context of art. 22 of the FIFA-RSTP the requirement that the proceedings be fair and equitable must be assesses in the abstract. According to the applicable rules the DRC is not an appeal body designed to assess whether or not in an individual case the right to be heard of a party was violated and, thus, must assume jurisdiction. The rules on jurisdiction must be foreseeable for both parties. Whether a certain judicial body is competent or not to decide the dispute must be ascertainable for the parties before the claim is lodged and cannot depend on instances that arise during the course of the proceedings. Thus, what is required in the context of art. 22 of the FIFA-STP is, whether or not the procedural rules applicable before the Helenic judicial bodies are such to enable a conduct of the procedure in a fair and equitable way."

(Emphasis added by the Panel)

170. The examination whether the respective principles were violated must thus be examined in the abstract and not necessarily *in concreto*. Therefore, the Panel mainly reviewed the procedural regulations of the HFF Judicial Bodies in abstract and concludes that these provisions meet and enable a procedure to be conducted in respect of the principles of a fair hearing and equal treatment and guarantee the right to contentious proceedings. These

procedural regulations, *inter alia*, foresee that the parties to PEEOD proceedings are called before the hearing and that the language of the proceeding is Greek with the possibility of providing the party with an interpreter. Therefore, the Panel finds that the regulations are such to enable a conduct of the procedure in a fair and equitable manner.

171. Moreover, even if the allegations of the Player would not be evaluated purely in abstract but also *in concreto*, the Panel notes that the Player, contrary to what he alleges, was summoned before the PEEOD, or at least was made aware of such summon, as he correctly attended the hearings of the PEEOD on both 1 and 15 October 2018. The Player's allegations as to not having been provided a translator or not mastering the Greek language nor the HFF Regulations are difficult to understand for this Panel since the Player was at all times represented by his Greek Lawyer, in addition to his French Lawyer, before the HFF Judicial Bodies. In any case, as previously mentioned, a procedural party must comply with the rules of good faith and pursuant to this principle, it is not admissible to keep grievances as to procedural deficiencies in reserve when they could have been rectified immediately, only to raise them in case of an unfavourable outcome of the arbitral procedure.

172. In this respect, the Panel also wishes to recall Article 8 SCC, which provides:

"Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact."

173. The Panel wishes to emphasize (once again) the following undisputed facts: the Appellant attended all hearings before the PEEOD, in which he was represented by a Greek Lawyer; even in case, the Appellant did not receive summons by the PEEOD, the Appellant was informed by the First Respondent about the pending proceedings and the hearing before the PEEOD; it can be inferred from the minutes of the hearings that the Appellant was granted an interpreter; the Player appealed the decision of the PEEOD before the HFF CAF by stating *"I declare that I recognize the competency and jurisdiction of Your Court"*.

174. By reviewing the facts above and due to the lack of conclusive evidence, submitted by the Appellant, the Panel is not convinced that Player's right to be heard was violated during the proceedings before the PEEOD and/or the CAF.

175. In respect to other alleged irregularities of the proceedings not specifically dealt with above, the Panel concludes that the Appellant either did not prove his allegations, could not convince the Panel with the submitted evidence or the Appellant's allegations were not maintained after being contested by the First Respondent.

176. Thus, the Panel concludes that the proceedings before the HFF Judicial Bodies were conducted in a fair manner.

e. Interim Conclusion

177. After reviewing all the submitted allegations and counter-arguments, the Panel concludes that the HFF Judicial Bodies fulfilled all the conditions required to be considered independent tribunals guaranteeing fair proceedings with respect for the principle of equal representation of players and clubs.

178. As such, the CAF decision must also be considered as an arbitral award capable of being vested with the *res judicata* exception.

179. However, as the Appellant and the First Respondent agreed on a valid arbitration clause in favour of the HFF Judicial Bodies, irrespective of whether the HFF CAF's decision is vested or not with res *judicata* effects, in any case the FIFA DRC correctly denied its jurisdiction in the present matter and thus correctly held that the Claim of the Player was inadmissible.

C. Was the FIFA DRC prevented from deciding on the Claim, because the present issue is *Res Judicata*?

180. As previously mentioned, the Panel is aware of the well-established triple identity test, which must be applied when considering the issue of *res judicata, i.e.* whether the same parties were involved in the proceedings, whether the claims ("objects") in both proceedings are identical and whether the basis ("facts") of the case are the same.

181. However, as also previously mentioned, whether or not the triple identity is met, something which has not been disputed by the Appellant, is not in and by itself sufficient for a decision to resort *res judicata* effects. More precisely, in order for a decision to resort *res judicata* effects it must also be:

- be rendered by the competent authority with the corresponding jurisdiction to render such decision (ATF 140 III 278: at 3.2);
- qualify as an (1) "arbitral award" that (2) can be recognized in Switzerland as per Article 194 PILA which in turn refers to the 1958 NYC. (SFT 4A_374/2014 at paras. 4.2.1, 4.2.2);
- constitute a final decision on the merits (SFT 4A_374/2014 at para. 4.3.2.2.).

182. Even though the above conditions do appear to be met *prima facie*, which therefore speaks in favor of the *res judicata* exception to apply, the Panel, as indicated by the Club in its Answer, does note that an annulment procedure against the HFF CAF decision is pending before the Greek courts as per Article 897 of the Greek Civil Code of Procedures.

183. However, since questions (A) *Was there an agreement between the Player and the Club to confer jurisdiction on the HFF Judicial Bodies to resolve disputes involving them* and question (B) *Do the HFF Judicial Bodies comply with the prerequisites contained in Article 22 lit. b of the FIFA RSTP* were answered positively, the issue of the *res judicata*

exception can be left open, for the following reason: even if the triple identity check is not met, or one would conclude that there exists no final and binding decision, still the FIFA DRC would not have jurisdiction in the present matter because its jurisdiction was excluded by means of a valid arbitration clause in the Employment Contract conferring jurisdiction on the HFF Judicial Bodies, which in turn meet the minimum requirements prescribed by Article 22 lit. b of the FIFA RSTP.

184. Hence, the Panel finds that the issue of *res judicata* should only have been decided on in case the Panel found that the FIFA DRC did have jurisdiction to decide the case, or at most if the Panel found that the HFF Judicial Bodies had no jurisdiction.

D. In case the FIFA DRC was or was not competent to resolve the Appellant's Claim, what are the legal consequence thereof?

185. The Panel wishes to stress that it considered all the argumentations and evidences duly submitted by the Parties. Thus, had the Panel decided that the FIFA DRC did have jurisdiction, the Panel could have entered into and decide on the merits of the case. However, due to the fact that the FIFA DRC's jurisdiction has to be denied, the Appeal must be dismissed and the Panel is prevented from elaborating and deciding on the merits of the case with regard to the termination of the Employment Contract, in particular, whether it was terminated with just cause or without just cause

186. As the Panel found that the FIFA DRC correctly denied its jurisdiction and declared the Claim of the Player inadmissible, there is no need to further elaborate question E).

IX. COSTS

187. Article R64.4 of the CAS Code provides the following:

"At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of the 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."

188. Article R64.5 of the CAS Code reads 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."

189. In light of the outcome of these proceedings on the one side and the fact that, the First Respondent challenged the jurisdiction of the CAS during the entire proceedings on the other side, the Panel considers that the costs of the arbitration, to be calculated by the CAS Court Office, shall be borne 80% by the Appellant and 20% by the First Respondent.

190. In addition, the Panel considers that the Appellant shall pay an amount of three thousand Swiss Francs (CHF 3,000) to the First Respondent with respect to its legal fees and other expenses incurred in connection with these proceedings in consideration of the complexity of the proceeding. The Fédération Internationale de Football Association shall bare its own costs as it was not represented by external counsel.

* * * * * * * * *

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Court of Arbitration for Sport has jurisdiction to entertain the appeal filed by Mr Dorian Leveque on 28 February 2020 against the decision rendered by the FIFA Dispute Resolution Chamber on 5 November 2019.

2. The appeal filed by Mr Dorian Leveque on 28 February 2020 against the decision rendered by the FIFA Dispute Resolution Chamber on 5 November 2019 is dismissed.

3. The decision rendered by the FIFA Dispute Resolution Chamber on 5 November 2019 is confirmed.

4. The costs of the arbitration, to be determined and served to the Parties by the CAS Court Office, shall be borne 80% by Mr Dorian Leveque and 20% by FC PAOK Thessaloniki.

5. Mr Dorian Leveque shall bear his own costs and is ordered to pay an amount of CHF 3,000 (three thousand Swiss Francs) to FC PAOK Thessaloniki as a contribution towards its legal fees and expenses occurred in connection with these arbitration proceedings.

6. All other motions or prayers for relief are dismissed.

Lausanne, 16 August 2021

THE COURT OF ARBITRATION FOR SPORT

Patrick Lafranchi
President of the Panel

Alexis Gramblat
Arbitrator

Wouter Lambrecht
Arbitrator

Peter Rittinger
Ad hoc Clerk