



Arbitration CAS 2009/A/1910 Telecom Egypt Club v. Egyptian Football Association (EFA), award of 9 September 2010

Panel: Mr. Dirk-Reiner Martens (Germany), President; The Hon. Michael Beloff QC (United Kingdom); Mr. Rui Botica Santos (Portugal)

Football

Jurisdiction of CAS to rule on its own jurisdiction

Requirements for the arbitration arising from an appeal against a federation's decision

"Recognition" of the CAS in the FIFA Statutes and requirements for the CAS jurisdiction

Arbitration clause as a unilateral offer by the federation to arbitrate certain categories of disputes

Interpretation of the rules of a federation and principle of legal certainty

- 1. In accordance with Switzerland's Federal Code on Private International Law (PILA), CAS has the power to decide on its own jurisdiction, whereas Article 186 PILA is applicable to CAS arbitration; according to Swiss legal scholars, Swiss law gives priority to the arbitral tribunal decide on its own competence if its competence is contested before it and it is up to the arbitral tribunal to decide whether a person called before it is bound or not by the arbitration agreement**
- 2. An arbitration arising from an appeal against a federation's decision requires the parties' agreement to arbitrate, in other words an offer to arbitrate and an acceptance thereof. Generally, in a sports environment, federations stipulate in their statutes/regulations that any dispute shall be resolved by arbitration (the offer) and the athlete accepts such offer by signing a respective declaration or simply by participating in competitions organized by the federation. Similarly, in the context of the relationship between clubs, national federations and international federations the organization lower in the hierarchy joins the higher one as member and thereby accepts the latter's "offer" to arbitrate.**
- 3. In accordance with consistent CAS jurisprudence, Article 63 para.1 of the FIFA Statutes does not by itself grant jurisdiction to CAS with respect to decisions passed by confederations, members or leagues: the mere provision that FIFA "recognises" the CAS is not sufficient in itself for a CAS panel to claim jurisdiction over decisions issued by organizations other than FIFA (such as, in particular, national federations). In contrast, the clear provisions of paras. 5 and 6 of Article 63 of the FIFA Statutes, stating that FIFA and WADA, respectively, are "entitled to appeal to CAS against any internally final and binding doping-related decision passed by the Confederations, Members or Leagues" allow a CAS Panel to claim jurisdiction with respect to a national federation's decision on a doping matter through the express reference made by a national federation's statutes to FIFA Statutes.**

4. **An arbitration clause in the federation’s statutes could be the “*point de départ à une procédure d’arbitrage*” because it can be interpreted as a unilateral offer by the sporting organisation to arbitrate certain categories of disputes. Such offer may be accepted by virtue of a person’s membership of the organisation or such person’s declaration to that effect. In the absence of such a clause, however, the mere fact of the Appellant’s membership cannot be considered as a bilateral agreement satisfying the requirements of Article R47 of the CAS Code.**
5. **CAS Panels interpret the various provisions in a manner which seeks to discern the intention of the rule maker, not to frustrate it. However, CAS cannot rewrite but can only interpret rules set forth by sports authorities in the light of general principles of law. In this context, it is important for national federations to draft clear rules and, consequently, for CAS to apply them as written. Statutes of a national football federation must be construed also in a way that promotes the principle of legal certainty for its members. This applies not only to such administrative issues as may arise, but also to the legal remedies available to all interested parties (such as the players, coaches and clubs).**

Telecom Egypt Club (“the Club” or “the Appellant”) is a football club seated in Cairo, Egypt. It is affiliated to the Egyptian Football Association.

The Egyptian Football Association (EFA or “the Respondent”) is the national football association of Egypt. It is affiliated to the Confederation of African Football (CAF) and to the Fédération Internationale de Football Association (FIFA).

During the 2008/2009 season the Appellant was competing in the top division of Egyptian football, the Egyptian Premier League (“the Egyptian League”). The 2008/2009 Egyptian League included 16 teams. The teams finishing in places 14, 15 and 16 would be relegated to the Egyptian Second Division.

On 21 May 2009 the last round of the Egyptian League was played. The Appellant, which at that point in time had 29 points, was due to play Petroleum Assiut at home. At the same time, the club El Mahalla, which at the same point in time had 30 points, was due to play El Ittihad in an away game. Both the Appellant and El Mahalla were facing the risk of relegation, while El Ittihad and Petroleum Assiut had secured their place in the Egyptian League and were not competing for either the championship itself or for a place in an international competition.

At the 24th minute of the game between El Ittihad and El Mahalla the goalkeeper of El Ittihad scored an own goal while apparently trying to clear a long cross. El Mahalla won the game 2-0 and finished 12th in the Egyptian League. At the same time the Appellant won 2-0 and finished in 14th place. As a result, the Appellant was relegated to the Egyptian Second Division.

Following the above results the Appellant complained to the Respondent that there had been a manipulation of the result in the match between El Ittihad and El Mahalla alleging that El Ittihad's goalkeeper had deliberately palmed the ball into his own net and suggesting that the fact that the referee was carrying an ear-set similar to a mobile phone headset raised suspicions about his conduct.

Having received no response from the Respondent, the Appellant contacted FIFA by letter dated 4 June 2009, setting out their claims and asking for FIFA's intervention.

On 7 June 2009 the Respondent served on the Appellant a letter dated 3 June 2009 stating *inter alia* that

"[...] the [EFA] Competitions Committee in its meeting No. (30) on 28/5/2009, after receiving your complaint, and the video tape of the match, and the reports of the referee and the observer, the Committee did not find any evidence to confirm its existence of a manipulation in the outcome of the match according to the provisions of the Regulation.

And therefore, the Committee decided to adopt the result of the match according to the report of the referee".

By letter dated 8 June 2009 the Appellant challenged the decision of the EFA Competitions Committee before the EFA Appeals Committee and requested, amongst others, that all steps relating to the 2009/2010 competitions should be stayed until the matter is finally settled.

On 17 June 2009 the Respondent replied in the following terms ("the EFA Decision"):

"With reference to the complaint submitted by the Club of Telecom Egypt to appeal the decision of the Competitions Committee in its meeting No. 30 dated on 28/5/2009 on the adoption of the result of the match between El-Mahalla against El-Ittihad of Alexandria, please note the following:

The complaint was presented to Mr. Chancellor, Chairman of the Complaint Committee;

After his acquaintance over all the papers and documents and the decision of the Competitions Committee and the adoption of the Board of Directors of this resolution

He decided the following:

The Acceptance of the complaint and the refusal of the matter with forfeiture of paid fees. [...]"

By letter dated 20 June 2009 the Appellant sought recourse before FIFA against the EFA decision.

On 29 June 2009 FIFA replied as follows:

"[...] we would like to inform you that FIFA is not a body of appeal for decisions reached at national level. According to Art. 63 par. 1 of the FIFA Statutes, appeals against final decisions passed by the Football Associations shall be lodged with the Court of Arbitration for Sport.

From the file that we received, we understand that a final decision was taken by the Egyptian Football Association, and therefore you are in a position to lodge an appeal to the Court of Arbitration for Sport.

The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision. [...]"

Further to the above letter and upon a second request for information by the Appellant dated 21 July 2009, on 13 August 2009 FIFA wrote to the Appellant as follows:

“[...] we would like to inform you that the Egyptian Football Association is bound by the Statutes of FIFA and also the relevant articles regarding the Court of Arbitration for Sport (CAS).

However, since CAS is a fully independent body of FIFA [sic], we have no possibility to intervene regarding their interpretation of the FIFA Statutes.

In any case, we would like to inform you that FIFA was working with the Egyptian Football Association to amend their statutes accordingly, so that similar cases in future will not occur. The relevant statutes of the Egyptian Football Association were approved by FIFA (with one exception) but were not ratified yet by the Egyptian Football Association. [...]”.

On 29 June 2009 the Appellant filed its statement of appeal with the Court of Arbitration for Sport (CAS). The Appellant submitted the following prayer for relief:

“In this case, we just have one request of the justice court, which is to have a look at the TV recording of the incident by Your Distinguished Organization, and to provide us with appropriate arbitrators, and to issue an appropriate decision on this issue, where a goal keeper scored the goal by himself on his own goal or not with our willingness to bear the costs for the expert arbitrators in this field, and we would like to make it clear that we do not want to choose the arbitrators and just want to leave the matter to justice court [sic]”.

The Appellant’s submissions on the issue of jurisdiction can be summarised as follows:

- The competence of the CAS to resolve the dispute is based on Article 63 of the FIFA Statutes which are directly binding on the Respondent as a member of FIFA. FIFA confirmed in its letter dated 13 August 2009 to the Appellant that the Respondent is *“bound by the Statutes of FIFA and also the relevant articles regarding the Court of Arbitration for Sport”*.
- The Respondent not only recognised the competence of CAS in its own statutes (“the EFA Statutes”) but also undertook to have its member clubs, among which is the Appellant, accept the jurisdiction of CAS. This is evident from Article 7 para. 8 of the EFA Statutes which lists the conditions for membership to the EFA expressly stipulating that it is mandatory for all Egyptian clubs to accept the jurisdiction of CAS.
- In addition, since the highest authority of football, FIFA, provides the right to associations, clubs and players to challenge its decisions before CAS, “it is very logical” that such a right exists as well in relation to decisions issued by national football associations like the Respondent.
- Article 7 para. 8 of the EFA Statutes was a mistranslation and misimplementation of the FIFA Statutes. Currently it is understood to mean that the Egyptian clubs have the duty to recognise the CAS, whereas in fact, it should be the EFA, not the clubs, which have the duty to recognise the CAS. In any event, it is clear from the EFA Statutes that both the Egyptian clubs and the EFA itself recognise CAS as the final appellate body.

On 28 July 2009 the CAS Court Office informed the parties that the dispute had been assigned to the CAS Appeals Arbitration Division and should therefore be treated in accordance with Article 47 et seq. of the Code of Sports-related Arbitration (“the CAS Code”).

On 17 August 2009 the Respondent filed its Answer requesting from CAS the following:

- “1. to establish that the CAS does not have jurisdiction to rule on the appeal;*
 - 2. to establish that the appeal filed by the Appellant is inadmissible;*
 - 3. to condemn the Appellant to the payment in the favour of the Respondent of the legal expenses incurred;*
 - 4. to establish that the costs of the arbitration procedure shall be borne by the Appellant.*
- Only in the event that the above is not accepted, the Respondent respectfully asks the Panel:*
- 1. to establish that the appeal is to be considered withdrawn or alternatively to reject the appeal;*
 - 2. to condemn the Appellant to the payment in the favour of the Respondent of the legal expenses incurred;*
 - 3. to establish that the costs of the arbitration procedure shall be borne by the Appellant”.*

The Respondent’s submissions on the issue of jurisdiction can be summarised as follows:

- The EFA Statutes and the regulations of the Respondent do not contain any direct specific right of appeal to the CAS. Moreover, the Appellant and the Respondent have never concluded a specific arbitration agreement. Consequently, the Appellant has no right to appeal to the CAS in the present case.
- Article 7 para. 8 of the EFA Statutes is not a binding arbitration clause. It contains only the conditions which the clubs applying for membership to the Respondent must fulfil.
- Several previous CAS Panels have found that neither Article 63 of the FIFA Statutes nor provisions similar to Article 7 para. 8 of the EFA Statutes constitute a sufficient legal basis for the CAS to assume jurisdiction over a claim or an appeal.

By letter dated 19 October 2009 the Panel invited the parties to make further submissions on the issue of CAS jurisdiction in the present matter.

On 29 October and 9 November 2009 the parties filed their respective submissions regarding the jurisdiction of CAS.

In accordance with Article R57 of the CAS Code, the Panel, deeming itself sufficiently informed on the basis of the written submissions of the parties and taking into consideration that the issues to be decided, at this stage, are strictly legal and not fact sensitive, determined that there was no need to hold a hearing to adjudicate the issue of jurisdiction.

The Panel’s analysis and conclusions on the issue of jurisdiction are set out below.

LAW

CAS Jurisdiction

1. The only issue to be addressed in this award is whether the CAS has jurisdiction to hear the request for arbitration lodged by the Club.
 - A. *Jurisdiction of CAS to rule on its own jurisdiction*
2. In accordance with Switzerland's Federal Code on Private International Law (PILA), CAS has the power to decide on its own jurisdiction. Article 186 PILA is applicable to CAS arbitration (RIGOZZI A, *L'arbitrage international en matière de sport*, Thesis Geneva, Basel 2005, p. 524). It reads as follows:
 - (a) *The arbitral tribunal shall rule on its own jurisdiction.*
 - (b) *The objection of lack of jurisdiction must be raised prior to any defence on the merits.*
 - (c) *In general, the arbitral tribunal shall rule on its own jurisdiction by means of an interlocutory decision*".
3. According to Swiss legal scholars:
 - Article 186 "is the embodiment of the widely recognised principle in international arbitration of 'Kompetenz-Kompetenz'. This principle is also regarded as corollary to the principle of the autonomy of the arbitration agreement" (ABDULLA Z., *The Arbitration Agreement*, in: KAUFMANN-KOHLER/STUCKI (eds.), *International Arbitration in Switzerland – A Handbook for Practitioners*, The Hague 2004, p. 29).
 - "Swiss law gives priority to the arbitral tribunal to decide on its own competence if its competence is contested before it (...). It is without doubt up to the arbitral tribunal to examine whether the submitted dispute is in its own jurisdiction or in the jurisdiction of the ordinary courts, to decide whether a person called before it is bound or not by the arbitration agreement" (MÜLLER Ch., *International Arbitration – A Guide to the Complete Swiss Case Law*, Zurich et al. 2004, pp. 115-116).
 - "It is the arbitral tribunal itself, and not the state court, which decides on its jurisdiction in the first place ... The arbitral tribunal thus has priority, the so-called own competence" (WENGER W., n. 2 ad Article 186, in: BERTI S. V. (ed), *International Arbitration in Switzerland – An Introduction to and a Commentary on Articles 176-194 of the Swiss Private International Law Statute*, Basel et al. 2000).
4. Furthermore, both parties in their submissions have expressly accepted the competence of CAS to rule on its own jurisdiction in the present case.
5. As frequently occurs in international arbitration, in accordance with para. 3 of Article 186 PILA, the Panel has decided to rule on its jurisdiction by means of a partial award on jurisdiction.

B. *Jurisdiction of CAS to rule on the merits of this case*

6. In essence, Arts. R27 and R47 of the CAS Code state the obvious with respect to jurisdiction: A court of arbitration has jurisdiction only if the parties to a dispute have made an agreement to that effect.

“R27: These Procedural Rules apply whenever the parties have agreed to refer a sports-related dispute to the CAS. Such disputes may arise out of an arbitration clause inserted in a contract or regulations or of a later arbitration agreement (ordinary arbitration proceedings) or involve an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies, or a specific agreement provides for an appeal to the CAS (appeal arbitration proceedings.)” (emphasis added by the Panel).

“R47: An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body”.

7. The Appellant has not produced a contract which contains an arbitration agreement. The Appellant’s attempts to have the Respondent agree to arbitration after the dispute has arisen, have also failed.
8. The Appellant argues that CAS has jurisdiction because the dispute *“involves an appeal against a decision rendered by a federation”* (Art. R27), i.e. the 17 June 2009 EFA Decision.
9. The Panel wishes to emphasize that an arbitration arising from an appeal against a federation’s decision requires the parties’ agreement to arbitrate, in other words an offer to arbitrate and an acceptance thereof. Generally, in a sports environment, federations stipulate in their statutes/regulations that any dispute shall be resolved by arbitration (the offer) and the athlete accepts such offer by signing a respective declaration or simply by participating in competitions organized by the federation. Similarly, in the context of the relationship between clubs, national federations and international federations the organization lower in the hierarchy joins the higher one as member and thereby accepts the latter’s *“offer”* to arbitrate.

C. *Jurisdiction based on FIFA Statutes?*

10. Bearing the above in mind, the Panel shall now examine whether – as the Appellant claims – CAS jurisdiction arises from the FIFA Statutes, more particularly from Articles 62 and 63 which read as follows:

“Article 62 Court of Arbitration for Sport (CAS)

1. FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, clubs, Players, Officials and licensed match agents and players’ agents.

2. 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.

Article 63 Jurisdiction of CAS

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

5. FIFA is entitled to appeal to CAS against any internally final and binding doping-related decision passed by the Confederations, Members or Leagues under the terms of par. 1 and par. 2 above.

6. The World Anti-Doping Agency (WADA) is entitled to appeal to CAS against any internally final and binding doping-related decision passed by FIFA, the Confederations, Members or Leagues under the terms of par. 1 and par. 2 above.

....”

11. In accordance with consistent CAS jurisprudence on this issue, in the Panel's view Article 63 para.1 of the current FIFA Statutes does not by itself grant jurisdiction to CAS with respect to decisions passed by confederations, members or leagues (see e.g., CAS 2008/A/1656, CAS 2005/A/952, CAS 2004/A/676, CAS 2002/O/422). Indeed, the mere provision that FIFA “recognises” the CAS is not sufficient in itself for a CAS panel to claim jurisdiction over decisions issued by organizations other than FIFA (such as, in particular, national federations).
12. In contrast, the clear provisions of paras. 5 and 6 of Article 63 of the FIFA Statutes, stating that FIFA and WADA, respectively, are “entitled to appeal to CAS against any internally final and binding doping-related decision passed by the Confederations, Members or Leagues” allow a CAS Panel to claim jurisdiction with respect to a national federation's decision on a doping matter through the express reference made by a national federation's statutes to FIFA Statutes (see CAS 2007/A/1370 & 1376, and the Swiss Federal Court's judgment of 9 January 2009, 4A_460/2008, confirming the jurisdiction of CAS in such a case).
13. In this connection, the Panel also refers to the case CAS 2008/A/1525, where the CAS panel ruled that it had jurisdiction to decide a dispute between a professional football club and its national association. The “point de départ” was again a provision expressly establishing a right for legal recourse to CAS, this time contained in the applicable regulations of the HFF:
“The reference to the Court for Arbitration of Sports (CAS) is permitted past the conclusion of all levels of jurisdiction of the Hellenic Football Bodies, under the terms and conditions stated in the Statutes of the HFF and UEFA” (emphasis added by the Panel).
14. The Panel finds that no equivalent provision can be found in the regulatory framework of the EFA, no matter which of the versions supplied by the parties (see below) applies.
15. In view of the above considerations, the Appellant's submissions based on the FIFA Statutes are without merit.

D. *Jurisdiction based on EFA Statutes?*

16. The Appellant further or alternatively argues that CAS' jurisdiction arises from the EFA Statutes.
17. Despite the Panel's patient efforts the parties have been unable to agree on the applicable version of the EFA Statutes at the time when the events which gave rise to this arbitration occurred. As will be shown below however, it matters not for the Panel's decision which of the two versions of the EFA Statutes is the applicable one.
18. The Appellant relies on the Arabic version of the EFA Statutes submitted by it to CAS with their 7 February 2010 letter (the "Appellant's Version").
19. The CAS has procured an English translation of the Appellant's Version which translation the Appellant accepted in its 30 April 2010 letter to CAS.
20. The Respondent does not accept the Appellant's Version and claims that it "*is a new draft of the EFA Statutes that are currently being discussed with FIFA and that are neither final nor approved*" (Respondent's letter to CAS of 24 April 2010). The Respondent relies on an Arabic version of the EFA Statutes (the "Respondent's Version") submitted by them on 12 February 2010 ("*Please find enclosed the EFA Statutes approved on 29 August 2009 in its original Arabic version which are only ones applicable to the present matter*") and on an English translation thereof provided by FIFA to CAS on 11 December 2010.
21. The relevant part of the English translation of the Appellant's Version of the EFA Statutes on membership conditions reads as follows:
Article 11: Membership Procedures and Requirements:
Any club applying for membership to EFA shall submit a written membership application accompanied by the following documents:
...
d. Declaration of durable compliance by the applicant and its members with the statutes, regulations and decisions by FIFA, CAF and EFA.
...
f. Declaration of recognition of the Egyptian Court of Sport Arbitration – once established – and the Court of Sport Arbitration in Lausanne.
..."
(Emphasis added)
22. The relevant parts of the English translation of the Respondent's Version of the EFA Statutes on membership conditions which reads as follows:

"Article 7: Conditions for being a Member
Membership procedure and Admission

This governs the rights and obligations of the members of the EFA Association as well as rules regarding the admission, suspension, expulsion and resignation of a member of the association.

...

6. *A declaration which agrees to comply with constitutional law, its orders and directions in their current and future forms complying with the FIFA, the CAS, the IFAB and EFA and its subsidiaries decisions.*

...

8. *A declaration that it recognizes the EFA Dispute Committee, Appeal Committee and the Court of Arbitration for Sport (CAS) in Lausanne.*

...

10. *To recognize the EFA and the CAS (court of arbitration for sports) in the settlement of disputes between the FIFA members, Confederations, Leagues, clubs, players, officials and licensed match agents and player's agents.*

11. *A declaration to recognize the Arbitration EFA Court to be established in the future.*

...”

(Emphasis added)

23. Article 44 of the English translation of the Appellant's Version on the EFA appellants body reads as follows:

“Article 44: The Appeals Committee: [...]

D. The Appeals Committee's decisions shall be final and binding for all relevant parties and are not subject to appeal”.

(Emphasis added)

24. Article 28 on the English translation of the Respondent's Version reads as follows:

“Article 28 Judicial Bodies

[...] The Appeal Committee: [...]

3. The appeal committee rules [sic] are final and binding to all the parties concerned. They may not be overturned”.

25. The jurisdictional provisions of the Appellant's Version of the EFA Statutes read as follows:

“Article 46: Arbitration

EFA shall form a sport arbitration court to decide all internal disputes between and among EFA, and EFA members, players, officers, and players' agents that are subject to any jurisdiction of its judicial bodies. The Administrative Council shall set forth special regulations for the creation of this court and decide on its jurisdiction and procedural rules.

Article 47: Prohibition to Resort to Ordinary Judicial Bodies

- (A) *Neither EFA nor its members, players, coaches, administrators, players' agents, or any game agent may resort to ordinary courts in any of the sports dispute that may arise under the pain of penalization as prescribed in the Regulations.*
- (B) *The local EFA branch shall decide internal or local disputes that may arise between EFA's members in the local branch. International disputes involving EFA and other associations including continental associations shall fall under the sole authority of FIFA.*

Article 48: Court of Arbitration of Sports

- (A) *Any final decision issues by FIFA may only be appealed before the Court of Arbitration for Sports (CAS) in Lausanne, Switzerland.*
- (B) *No appeal may be filed at CAS against penalties imposed for violation of the Game's Law or any other penalties or suspension from participation in a maximum of four matches or a maximum of three months, or any decision issued by the sports arbitration courts at the national or continental association.*
- (C) *EFA shall secure commitment by itself and its members, players, officers and match agents to comply with any final decision ratified by FIFA's body or CAS".*

26. The jurisdictional provisions of the Respondent's Version of the EFA Statutes read as follows:

"Article 37: The Legal Disputes

The Association, its members, players, officials and match and players' agent will not take any dispute to Ordinary Courts unless specifically provided for in these Statutes and FIFA regulations. Any disagreement shall be submitted to the jurisdiction of the Dispute Committee.

The Association shall have jurisdiction on internal national disputes, i.e. disputes between parties belonging to the Association. FIFA shall have jurisdiction on international disputes, i.e. between parties belonging to different Associations and/ or Confederations:

1. *Regarding FIFA regulations and any grievance against FIFA, the final decision shall be filed to the Court of Arbitration for Sport (CAS) at Lausanne to render the final award regarding its rules.*
2. *The EFA and all its affiliates shall be bound to obey the final FIFA decisions and those of the Court of Arbitration for Sport.*
3. *In accordance with the appropriate FIFA Statutes, any appeal against a final and binding FIFA decision shall be heard by the Court of Arbitration for Sport in Lausanne, Switzerland.*
4. *The Association shall ensure its full compliance and that of its members, players, officials and match and players' agents with any final decision passed by a FIFA body or CAS".*

27. On the basis of the above regulatory framework the Panel will now examine the merits of the Appellant's argument which is essentially as follows:

28. By virtue of the Appellant's declaration according to Article 11d of the EFA Statutes – (for purposes of the discussion below the Panel assumes that the Appellant's Version is the applicable version of the EFA Statutes and that the Appellant has in fact made the declaration

required under Article 11d) – the Appellant has accepted what it claims is the EFA’s “offer” to arbitrate before CAS any possible disputes between the parties.

29. However even if one were to interpret the Appellant’s “recognition” of CAS in Article 11f (or the equivalent provision in the Respondent’s Version) as the expression of an agreement to arbitrate before CAS, there still needs to be an “offer” to do the same by the EFA and the Panel is unable to find a declaration to that effect in the EFA Statutes on the Appellants’ Version. On the contrary, Article 44D of the EFA Statutes (and Article 28 paragraph 3 of the Respondent’s version) declares the decisions of the appeal committee as final and binding.
30. When dealing with a similar scenario in relation to the statutes of the Bulgarian Football Association the Panel in CAS 2007/O/1440 held that
“the Declaration [by the club to recognize the exclusive competence of CAS] is simply an express acceptance by the Club of the jurisdictional or arbitral clauses to be found in the BFU rules; hence, the jurisdiction of an arbitration panel – be it the CAS or a BFU body – must be expressly set forth in the BFU rules”.
31. The Panel further observes that the absence of an arbitration clause in the EFA Statutes granting jurisdiction to CAS also affects the legal conclusions to be drawn from the Appellants’ membership of the EFA. As noted by the Panel in the matter CAS 2002/O/422, an arbitration clause in the federation’s statutes could be the *“point de départ à une procédure d’arbitrage”* because it can be interpreted as a unilateral offer by the sporting organisation to arbitrate certain categories of disputes. Such offer may be accepted by virtue of a person’s membership of the organisation or such person’s declaration to that effect. In the absence of such a clause, however, the mere fact of the Appellant’s membership cannot be considered as a bilateral agreement satisfying the requirements of Article R47 of the CAS Code, as the Appellant contends.
32. In light of the foregoing, the Panel concludes that, due to lack of jurisdiction of the Court of Arbitration for Sport, the appeals filed by the Appellant on 29 June 2009 must be dismissed.
33. The Panel wishes to underline that it interpreted the various provisions in a manner *“which seek[ed] to discern the intention of the rule maker, not to frustrate it”* (CAS 96/149). However, CAS cannot rewrite but can only interpret rules set forth by sports authorities in the light of general principles of law. In this context, it is important for national federations to draft clear rules and, consequently, for CAS to apply them as written (CAS 2005/A/946). In the present case the EFA Statutes must be construed also in a way that promotes the principle of legal certainty for its members. This applies not only to such administrative issues as may arise, but also to the legal remedies available to all interested parties (such as the players, coaches and clubs).

The Court of Arbitration for Sport rules:

1. The CAS has no jurisdiction to adjudicate the present dispute between the Telecom Egypt Club and the Egyptian Football Association.
2. The appeal filed by the Telecom Egypt Club on 29 June 2009 against the decision of the Appeals Committee of the Egyptian Football Association dated 17 June 2009 is dismissed.
- (...)
5. All other requests or motions submitted by the parties are dismissed.