4A_682/2012[1]

Judgment of June 20, 2013

First Civil Law Court

Federal Judge Klett (Mrs.), Presiding
Federal Judge Corboz
Federal Judge Kolly
Federal Judge Kiss (Ms.)
Federal Judge Niquille (Ms.)
Clerk of the Court: Carruzzo

Egyptian Football Association
Represented by Ms. Delphine Rochat,
Appellant

v.

Al-Masry Sporting Club
Represented by Mr. Philipp Dickenmann and Mr. Reto Hunsperger,
Respondent

Facts;

A.
On February 1, 2012, the Egyptian city of Port Said witnessed some bloody clashes at the end of a football game of the first division of the national championship opposing the local team Al-Masry Sporting Club (hereafter: Al-Masry) to a Cairo team, Al-Ahly Sporting Club (hereafter: Al-Ahly). After the final whistle, numerous Al-Masry supporters invaded the field where they were met by supporters of the visiting team. Some violent confrontations then took place between the two groups, leaving 74 dead and hundreds of casualties.

On March 21, 2012, the Egyptian Football Federation (hereafter: EFA, according to its English acronym) issued sanctions against the two clubs. Al-Masry was forbidden to play in the Port Said stadium and its first team was banned from any competition for the 2011/2012 and 2012/2013 seasons. As to the Cairo club, it was ordered to play four official games behind closed doors.

Seized by Al-Masry, the Appeal Committee of EFA (hereafter: the Appeal Committee) aggravated the sanctions issued in the first instance against the club in a decision of April 24, 2012. It banned the club from participating in any sport event organized by EFA during the 2012/2013 season; it relegated the club to the second division for the 2013/2014 season, excluding the presence of its supporters for the games at home or on its opponent's field. It decided that the club could not organize a game in the Port Said stadium for four years; finally, it ordered the club to play the next four games against Al-Ahly on neutral ground, at least 200 kilometers away from Cairo and Port Said.

B.
On May 17, 2012, Al-Masry appealed the April 24, 2012 decision to the Court of Arbitration for Sport (CAS).

In an award of October 2, 2012, the three-member Panel constituted to decide the appeal upheld it in part. Consequently, it ordered the Port Said club to play all its games at home during an entire season behind closed doors.

[1] Translator's Note: Quote as Egyptian Football Association *vs.* Al-Masry Sporting Club, 4A_682/2012. The original of the decision is in French. The full text is available on the website of the Federal Tribunal, www.bger.ch.

C.
On November 16, 2012, the EFA (hereafter: the Appellant) filed a Civil law appeal with a request for a stay of enforcement. It submits that the Federal Tribunal should annul the October 2, 2012, award and find that the CAS had no jurisdiction to issue the award.

In a response of February 15, 2013, the CAS produced its file and submitted that the appeal should be rejected.

Al-Masry (hereafter: the Respondent) submits that the appeal should be rejected to the extent that the matter is capable of appeal, at the beginning of its observations of February 18, 2013.

Reasons;

1.
According to Art. 54 (1) LTF[2] the Federal Tribunal issues its decision in an official language[3], as a rule in the language of the decision under appeal. When the decision is in another language (here, English) the Federal Tribunal resorts to the official language chosen by the parties. In the CAS, they resorted to English. In the brief sent to the Federal Tribunal, the Appellant used French. The Respondent's answer was in German.
In accordance with its practice, the Federal Tribunal shall resort to the language of the appeal and consequently issue its judgment in French.

2.
In the field of international arbitration, a Civil law appeal is allowed against the decisions of arbitral tribunals pursuant to the requirements at Art. 190 to 192 PILA[4] (Art. 77 (1) (a) LTF). Whether as to the object of the appeal, the standing to appeal, the time limit to appeal, the Appellant's submissions or the grievances raised in the appeal brief, none of these admissibility requirements raises any problem in this case. There is therefore no reason not to address the appeal.

3.
3.1. The Federal Tribunal issues its decision on the basis of the facts established by the Arbitral Tribunal (Art. 105 (1) LTF). This Court may not rectify or supplement *ex officio* the factual findings of the arbitrators, even if the facts were established in a blatantly inaccurate manner or in violation of the law (see Art. 77 (2) LTF ruling out the applicability of Art. 105 (2) LTF). However, as was already the case under the aegis of the Federal Law organizing the Federal Courts (see ATF 129 III 727 at 5.2.2; 128 III 50 at 2a and the cases quoted) the Federal Tribunal retains the faculty to review the factual findings on which the award under appeal is based, if one of the grievances mentioned at Art. 190 (2) PILA is raised against such factual findings or when some new facts or evidence are exceptionally taken into account in the framework of the Civil law appeal (see Art. 99 (1) LTF).

3.2. As a preliminary point, the Appellant states that it will supplement the factual findings to the extent useful by way of evidence submitted during the arbitration, which is part of the case file. It adds that this process has been authorized by the Federal Tribunal in recent case law (judgment 4A_600/2008 of February 20, 2009 at 3[5]).

This opinion cannot be shared. The case quoted by the Appellant had the specificity that the decision under appeal merely took notice of the irrevocable withdrawal of an appeal as a consequence of the failure to pay the deposit requested by the CAS. In that case, it was therefore necessary for the Federal Tribunal to review the manner in which the CAS proceedings had been conducted as shown by the case file, in order to adjudicate the grievances raised against that decision.

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[2] Translator's Note: LTF is the French abbreviation of the Federal Statute of June 17, 2005, organizing the Federal Tribunal, RS 173. 110.

[3] The official languages of Switzerland are German, French and Italian.

[4] Translator's Note: PILA is the most commonly used English abbreviation for the Federal Statute on International Private Law of December 18, 1987, RS 291.

[5] Translator's Note: Full English translation available at http://www.swissarbitrationdecisions.com/case-struck-by-cas-because-of-late-payment-of-advance-on-fees?search=%22February+20%2C+2009%22

The aforesaid principles must remain guiding. The mission of the Federal Tribunal when seized of a Civil law appeal against an international arbitral award is not to retry the case as a Court of Appeal would do, but merely to examine whether the admissible grievances raised against the award are justified or not. Allowing the parties to state facts other than those found by the Arbitral Tribunal – except for the exceptional cases reserved by case law – would no longer be compatible with such a mission, even though the facts may be established by evidence contained in the arbitration file (judgment 4A_386/2010 of January 3, 2011 at 3.2[6]).

4.
4.1. In a first argument, the Appellant invokes Art. 190 (2) (b) PILA to claim that the Arbitral Tribunal was wrong to accept jurisdiction in the matter at hand. According to the Appellant, the Respondent would not have exhausted the domestic remedies instituted in favor of its members.

The Respondent submits that the jurisdictional defense should be rejected on various grounds.

First, the jurisdiction of the CAS would result from an arbitration agreement concluded by the parties. Secondly, the Appellant's failure to challenge jurisdiction in due course would have the same effect. Thirdly, the jurisdiction of the CAS would also result from correct interpretation of the statutes and regulations of the Appellant. Fourthly and finally, the Respondent itself would have withdrawn the legal remedy it had exercised and this, according to the Appellant, would have been a legal remedy to exhaust before seizing the Arbitral Tribunal.

For its part, the CAS adopts part of the Respondent's objections in its answer. Moreover, it argues that the Appellant cannot raise the jurisdictional defense without breaching the rules of good faith under the circumstances.

4.2. Seized for lack of jurisdiction, the Federal Tribunal freely reviews the legal issues, including the preliminary questions determining the jurisdiction or lack of jurisdiction of the Arbitral Tribunal. Yet this does not turn this court into a Court of Appeal. Thus, it does not behoove the Court to research itself in the award under appeal the legal arguments which could justify upholding the grievance based on Art. 190 (2) (b) PILA. Instead, it behooves the Appellant to draw the Court's attention on them in order to comply with the requirements of Art. 77 (3) LTF (ATF 134 III 565 at 3.1[7] and the cases quoted).

However, the Federal Tribunal reviews the factual findings only within the aforesaid limits (see at 3) even when it decides as to the submission that the Arbitral Tribunal lacks jurisdiction (judgment 4A_538/2012 of January 17, 2013 at 4.2[8]).

4.3. The review of the argument at hand requires a preliminary reminder of the applicable statutory provisions and regulations as well as the pertinent facts in this respect.

4.3.1. Art. R47 (1) of the Sport Arbitration Code (hereafter: the Code) states that an appeal against a decision of a federation 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 this sports-related body. As to Art. R 55 (1) of the Code, it requires the Respondent to submit an answer containing any defense of lack of jurisdiction among other things to the CAS within 20 days from receipt of the grounds for the appeal.

Pursuant to Art. 42 (4) of the Appellant's statutes, the decisions issued by the Appeal Committee are final and may not be annulled within this federation. Such decisions must be appealed to the CAS, at least as long as no sport arbitral tribunal has been created in Egypt to adjudicate domestic disputes (Art. 44 (2) and (46) of the Appellant's statutes).

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[6] Translator's Note: Full English translation available at http://www.swissarbitrationdecisions.com/no-appeal-against-a-decision-rejecting-a-request-for-interpretat?search=%22january+3%2C+2011%22

[7] Translator's Note: Full English translation available at http://www.swissarbitrationdecisions.com/extension-of-arbitration-clause-to-non-signatories-case-of-a-gua?search=%22august+19%2C+2008%22

[8] Translator's Note: Full English translation available at http://www.swissarbitrationdecisions.com/alleged-lack-authority-representatives-creates-jurisdictional-issue?search=%22january+17%2C+2013%22

Art. 21 *bis* of the Appeal Rules adopted by the Appellant gives each party – according to the French translation given by the Appellant – the possibility to request a "reappraisal" of the decision of the Appeal Committee within 10 days if the decision was influenced by "an act of cheating" by the other party or if the petitioner discovers afterwards some concluding documents which it could not invoke in the appeal proceedings and of which the Appeal Committee did not know at the time it issued its decision.

4.3.2. It has been seen that the Appeal Committee issued its decision as to the Respondent's appeal on April 24, 2012.

On May 3, 2012, the Respondent seized the aforesaid Committee of a request pursuant to Art. 21 *bis* of the aforesaid Rules. According to the Appellant, the Al-Ahly club would have done so as well on the same day.

On May 8, 2012, the Appellant's executive director – in answer to an inquiry by the Respondent as to the responsibility to appeal the decision of the Appeal Committee to the CAS – confirmed that this was indeed the way to follow to appeal the decision, which had been taken in last instance.

On May 17, 2012, the Respondent filed its statement of appeal. On May 22, 2012, invited by the Court office of the CAS to submit its appeal brief, it applied for an additional time limit to do so and the Appellant was asked to express its view on this request by letter of May 24, 2012.

On May 28, 2012, the Appellant's executive director wrote to the CAS to describe the procedural steps taken after the tragic events of February 1, 2012 in Port Said. His fax contains the following passage: "*On May 3, 2012, Al-Masry club appealed against these decisions [i.e. the first instance decision of March 21, 2012, and the appeal committee decision of April 24, 2012] before the EFA appeal committee according to the Art. 21 of appeal regulation*".[9]

On May 29, 2012, the Respondent's executive director sent a fax to the Appellant in which he expresses bewilderment as to the explanations contained in the fax of the previous day. Among other things, he emphasizes that he seized the CAS on the basis of the very indications given by the Appellant according to which the decision of the Appeal Committee was from the last domestic instance and he denies that a request based on Art. 21 *bis* of the Appeal Rules may be considered as a preliminary legal recourse to exhaust before seizing the CAS and he states that in any event, he formally withdraws such a request, should it have been filed.

On May 30, 2012, the Appellant's executive director answered the Respondent to confirm that the Appeal Committee was the last instance within the Federation and that an appeal against a decision of this body should be made to the CAS, the specific procedure of Art. 21 *bis* of the Rules of Appeal being optional only.

On the same day, the Respondent complied with the invitation received from the Court office of the CAS to state its position as to the Appellant's explanations in the aforesaid fax of May 28, 2012, and stated the reasons for which an appeal to the CAS was in its views the only available legal remedy pursuant to Art. 44 of the Appellant's statutes, while pointing out with an exhibit in support that on the previous day, it had specifically withdrawn its request based on the aforesaid provision of the Rules.

On June 25, 2012, the Respondent filed its appeal brief in a timely way within the extension it had been given for this purpose.

The following day, the Court office of the CAS invited the Appellant to submit its answer within 20 days. However, the Appellant did not comply with this invitation. It kept out of the arbitral proceedings since then and in particular it did not attend the hearing held by the Panel at the seat of the CAS on July 20, 2012.

4.4

[9] Translator's Note: In English in the original text.

4.4.1. Pursuant to Art. R47 (1) of the Code, the jurisdiction of the CAS may in particular originate from a specific arbitration agreement concluded by the parties. Being a contract, the arbitration agreement is effective when the parties displayed their willingness to resort to arbitration reciprocally and in a concordant manner (Kaufmann-Kohler/Rigozzi, Arbitrage international, 2e éd. 2010, n° 227).

In its answer, the Respondent deduces from the correspondence exchanged by the parties in May 2012, (see 4.3.2, above) that they entered into a specific arbitration agreement, creating the jurisdiction of the CAS to decide the appeal against the decision of the Appeal Committee of April 24, 2012. The argument is unfounded. While this possibility was ruled out by the Panel itself (award n. 69) it appears artificial to interpret the enquiries formulated by the Respondent and the answers given by the Appellant as the conscious expression of the concordant willingness of the two parties to submit the matter to the CAS, irrespective of what the pertinent provisions of the Appellant's statutes and regulations state, in other words to consider this exchange of correspondence as tantamount to an arbitration agreement. Instead, it was a mere clarification of the legal position as to the legal remedy available to appeal a decision of the Appeal Committee.

4.4.2

4.4.2.1. Pursuant to Art. 186 (2) PILA, the jurisdictional defense must be raised before any defense on the merits. This applies the principle of good faith embodied at Art. 2 (1) CC[10], which applies to all areas of law, including arbitration. Stated differently, the rule of Art. 186 (2) PILA implies that the arbitral tribunal in which the defendant proceeds on the merits without reservation, acquires jurisdiction from this fact only. Hence the party addressing the merits without reservation (*Einlassung*[11]) in an arbitral procedure dealing with a matter capable of arbitration, acknowledges by this concluding act that the arbitral tribunal has jurisdiction and definitively loses the right to challenge the jurisdiction of the aforesaid tribunal (ATF 128 III 50 at 2cc/aa and the references).

Art. 186 (2) PILA is not mandatory as to the manner in which the jurisdictional defense must be raised. Thus, the arbitration rules provide for specific form and time limits (Kaufmann-Kohler/Rigozzi*, op. cit*. n°427). Art. R55 (1) of the Code requires the defense to be raised in the Respondent's answer, which must be submitted to the CAS within 20 days after receipt of the grounds for the appeal.

The legal position is different when the Respondent fails to appear. In this case, the Arbitral Tribunal must verify its jurisdiction *ex officio* (ATF 120 II 155 at 3b/bb p. 162), in the light of the information available, yet without having to go beyond or to conduct its own investigations (Pierre Lalive/ Jean-François Poudret/ Claude Reymond, Le droit de l'arbitrage interne et international en Suisse, 1989, n° 12 ad Art. 186 PILA; Bernard Dutoit, Droit international privé Suisse, 4e éd. 2005, n° 8 ad Art. 186 PILA; Berger/ Kellerhals, International and Domestic Arbitration in Switzerland, 2nd ed. 2010, no 626; Kaufmann-Kohler/ Rigozzi, op. cit., n° 428).

4.4.2.2. In this case, the Appellant did not file an answer within the time limit it had been given to do so. However, it claims to have raised the jurisdictional defense before, namely as soon as it was informed that an appeal had been lodged. If this were true, one would have to admit that it validly challenged the jurisdiction of the Arbitral Tribunal, albeit prematurely under Art. R55 (1) of the Code. However, this requirement is not met. Indeed, no matter what the Appellant says, the May 28, 2012, letter it sent to the Court office of the CAS does not at all express its author's intent to raise a jurisdictional defense. The aforesaid passage of the letter (see above 4.3.2, 5th par.), contained in a text merely recalling the procedural steps after the tragedy of February 1, 2012, is only an element of the story without taking any position or objection as to the jurisdiction of the CAS. Furthermore, far from raising a defense in this respect, the Appellant confirmed to the Respondent two days later that the appeal to the CAS was indeed the way to challenge the decision of the Appeal Committee, considering the optional nature of the specific procedure at Art. 21 *bis* of the appeal Rules.

The Appellant undoubtedly did not file a subsequent answer, so that the Panel continued the arbitration in its absence, as allowed by Art.R55 (2) of the Code. As this was a procedure *in absentia*, the arbitrators moreover stated that it behooved them to examine the issue of the jurisdiction *ex officio* in

[10] Translator's Note: CC is the French abbreviation of the French Civil Code.
[11] Translator's Note: In German in the original French text.

accordance with the aforesaid principles (Award n. 67 and 76). In other words, they ruled out the hypothesis of an *Einlassung* by the Appellant as a basis for the jurisdiction.

However, the Panel accepted the jurisdiction on the basis of the aforementioned letter that the Appellant's executive director had sent to the Respondent on May 30, 2012. The Appellant criticizes this. It is not sure that the argument is admissible as one cannot but violate the rules of good faith by strengthening its opponent's belief that it can appeal to the CAS, only to try to deny it the right to seize this Arbitral Tribunal later on.

Be this as it may, the Appellant vainly challenges the jurisdiction of the CAS for the following reasons.

4.4.3.

4.4.3.1. It is established that the Respondent filed its statement of appeal with the CAS on May 17, 2012, after submitting a request within the meaning of Art. 21 *bis* of the Appeal Rules on May 3, 2012, and after receiving confirmation by the Appellant's executive director on May 8, 2012, that in answer to its enquiry of the same day, this was effectively the way to appeal the decision of the Appeal Committee of April 24, 2012. This set of circumstances would tend to demonstrate that the party was initially unsure as to the legal recourse to appeal the aforesaid decision; that at first, it used the legal remedy with the shorter time limit (i.e. that of Art. 21 *bis* of the Appeal Rules, to be filed within ten days) in order to safeguard its rights; that afterwards, it enquired from the Appellant whether this legal remedy was the right one; that it was told that the decision under challenge was final insofar as the Egyptian Football Federation was concerned and it could be appealed to the CAS; that consequently, it acted by seizing the latter.

Moreover, contrary to what the Appellant argues (appeal n. 890 *i.f.*) the Respondent did indeed withdraw its request pursuant to Art. 21 *bis* of the appeal Rules when the case was already pending in the CAS. It did so in its letter of May 29, 2012, to the Appellant's attention (see award n. 74). Admittedly, such a withdrawal would not be effective if it referred to a legal remedy contemplated by Art. R47 (1) of the Code because it would then be tantamount to a maneuver seeking to circumvent the rule of exhaustion of prior available legal remedies stated in this provision. However, this is not the case here.

4.4.3.2. The requirement to exhaust the available legal remedies prior to the appeal, contained at Art. R47 (1) of the Code, only refers to the body which the federation involved requires to be seized before the CAS, to the exclusion of a body to which the Appellant has the option to appeal or not the decision it does not like (Antonio Rigozzi, L'arbitrage international en matière de sport, 2005, n° 1024, p. 526). Moreover, as the Respondent rightly points out (answer n. 34 ss), it is hardly conceivable to admit that such an obligation could also relate to an extraordinary and incomplete legal remedy, such as revision. It must be recalled that the CAS Panel reviews the facts and the law with full power (Art. R57 (1) of the Code). Yet, assuming that a party should exhaust an extraordinary and incomplete legal remedy before being able to seize the CAS, the object of the appeal could only be the decision issued as to this legal remedy. The Appellant could only argue that the facts and the law would have been wrongly applied by the appeal body of the sport federation involved within the limits of its narrow power of review. However, the Appellant would no longer be in a position to refer the initial decision to the CAS as the time limit of 21 days (Art. R49 of the Code) would have run out long before. Admittedly, it would be conceivable to have this time limit start only as from the notification of the decision as to the incomplete and extraordinary legal remedy, as did Art. 100 (6) LTF – abrogated when the Civil Code of Procedure came into force, (RS 272) – in a comparable situation. However, Art. R49 of the Code does not state anything like that and the Appellant does not claim that its own rules would contain a specific provision suspending the alternate time limit of 21 days (see Art. R49, first sentence of the Code). The general principle must accordingly remain, as expressed in another context by Art. 54 (1) of the Federal Law organizing Federal Courts of December 16, 1943 (OJ) abrogated by Art. 131 (1) LTF, according to which the time limit to appeal could not be extended by recourse to an extraordinary legal remedy. In the case at hand, the Appellant's statutes specifically provide that the decisions of the Appeal Committee are final, that they may not be annulled within the Egyptian Football Federation and that they must be appealed to the CAS (see above at 4.3.1, second par). Art. 21 *bis* of the Appeal Rules of the Appellant for its part, provides each party with the possibility to request within ten days a "reappraisal" of the decision of the Appeal Committee, if the decision was influenced by a "act of cheating" of the other party or if the petitioner discovers afterwards some concluding documents that it could not invoke in the appeal proceedings and the existence of which was not known to the Appeal Committee at the time it

issued its decision. It does not appear that the aforesaid higher rules (the Appellant's statutes) would regard the request available pursuant to the aforesaid subordinated provision (the Appeal Rules) as a legal recourse which would mandatorily have to be exhausted before seizing the CAS. Moreover, the legal remedy reserved by Art. 21 *bis* of the Appeal Rules has all the classical characteristics of revision (an extraordinary legal remedy, with limited openings, which does not stay the decision and has no devolutive effect). Hence, on the basis of the aforesaid principles, there is no reason to consider it as one of the legal remedies to be previously exhausted for an appeal to the CAS to be admissible according to Art. R47 (1) of the Code.

4.5. This being so, the argument of lack of jurisdiction of the CAS is unfounded, even if the matter is capable of appeal as to this.

5.

5.1. The Appellant moreover argues that the CAS decided *ultra petita* when it imposed a sanction upon the Respondent (the prohibition to admit an audience to all its games at home during the full season) harsher than the harshest sanction (the obligation to play up to six games in neutral territory and without spectators) to which the Port Said club had agreed in its alternate submissions (see award n. 55 in connection with n. 63/64).

5.2. In its answer, (n. 21) the CAS doubts that the Appellant would have an interest to raise such an argument. One would be inclined to agree. It must indeed be seen that by raising this argument, the Appellant is not only referring to a decision deemed to affect its opponent, but also calls into question a sanction which, in view of its severity, is closer to the one issued by its Appeal Committee, rather than that which the sanctioned club stated it would consent to in the worst case. In other words, by raising this procedural argument the Appellant indirectly argues that the CAS issued too severe a sanction against the Respondent, even though the aforesaid sanction was significantly less severe than the one it had itself imposed upon the club through its Appeal Committee. This may not be consistent with the principle of good faith. Be this as it may, the argument fails.

According to Art. 190 (2) c PILA, first hypothesis, the award may be appealed when the Arbitral Tribunal decided beyond the submissions of which it was seized. The grievance raised by the Appellant against the CAS on the basis of this provision is completely groundless. Indeed the Panel was seized of submissions from the Respondent, ranging from the complete absence of any sanction to the obligation to play six games behind closed doors on neutral ground. The Appellant did not participate in the arbitral proceedings and did not hint, whether formally or implicitly, that it would accept such a sanction, even though it would be less than what its Appeal Committee had imposed upon the appealing club. Therefore, by inflicting upon this club a more severe penalty than the maximum sanction in its alternate submissions, yet less harsh than the ones issued in the first instance, the Panel admitted the appeal only in part, did not exceed the limits of its decision powers and consequently did not at all decide *ultra petita.*

6.
Moreover, the Appellant argues a violation of its right to be heard.

6.1. The right to be heard as guaranteed by Art. 182 (3) and 190 (2) d PILA is not different in principle from that which constitutional law consecrates (ATF 127 III 576 at 2c; 119 II 386 at 1b; 117 II 346 at 1a p. 347). Thus it was held in the field of international arbitration that each party has the right to state its views on the essential facts for judgment, to present its legal arguments, to propose evidence on pertinent facts and to participate in the hearings of the Arbitral Tribunal (ATF 127 III 576 at 2c; 116 III 639 at 4c, p. 643).

6.2. The Panel held a hearing at the seat of the CAS in Lausanne on July 20, 2012, (award n. 58 to 64). The parties were duly summoned to the hearing by the letter of the CAS Court office of July 9, 2012. During the hearing, which the Appellant did not attend, the Respondent filed a new exhibit concerning the organizational arrangements of the First Division Egyptian Football Championship for the 2011/2012 season, which the Panel accepted (award n. 62). It also amended its submissions (award n. 63 ff).

The Appellant argues that the Panel violated its right to be heard by issuing a decision without first giving it an opportunity to express its view on this new evidence and the amended submissions. It does

so in vain. First, the Appellant pretends to ignore that it had been validly summoned to the aforesaid hearing, at which it voluntarily decided not to appear, just as it had not considered it useful to submit an answer to the Respondent's appeal. However, it was deemed to know that its absence at the hearing would not prevent the hearing from being held (Art. 57 (3) of the Code) and that it was possible that its opponent would file some new exhibits (see Art. R56 of the Code; also see Jean-Philippe Rochat; Sophie Cuendet, Ce que les parties devraient savoir lorsqu'elles procèdent devant le TAS: questions pratiques choisies, in The Proceedings before the Court of Arbitration for Sport [éd. A. Rigozzi; M. Bernasconi], 2007, p. 45 ss, 67 s.). Thus it is in vain that it argues a surprise as to the procedural steps taken by the Respondent during the July 20, 2012 hearing.

Furthermore, as was already pointed out in reviewing the previous argument, the Respondent's amendment of its submissions in this occasion had no impact on the decision power of the Panel or on the sanction effectively imposed upon the Respondent. As to the new evidence, the Panel merely mentioned its filing but did not rely on it to issue its award.

Finally and in any event, one cannot find that a party acts in good faith when, as the Appellant does, it shows absolutely no interest in the appeal proceedings only to make an issue afterward of an alleged procedural error with a view to obtaining the annulment of an award it does not like.

7.
In a last argument, the Appellant claims that "if the Federal Tribunal were to consider that the inadmissible interference of the CAS in the proceedings of the internal bodies [of the Egyptian Football Federation] does not constitute grounds for lack of jurisdiction, the Court would then have to hold that such interference is contrary to Swiss public policy within the meaning of Article 190 (2) e PILA" (appeal n. 113). According to the Appellant, the rule that legally available remedies should be exhausted would also purport to guarantee the principle of autonomy of the association, which would fall within Swiss public policy as in an association it would correspond to the principles stated by the adage *pacta sunt servanda.*

This last argument has no consistency. Indeed it must be immediately pointed out that the premise of the Appellant's reasoning is not established; the CAS did not interfere in a procedure pending in a jurisdictional body of the Egyptian Football Federation but it addressed an appeal against a final decision against which no ordinary legal remedy was available within this federation (see above at 4.4.3.2). Moreover, the notion of substantive public policy and in particular the principle of sanctity of contracts encompassed by Art. 190 (2) € PILA and the corresponding case law (judgment 4A_150/2012 of July 12, 2012[12] at 5.1) have nothing to do with the extensive interpretation given by the Appellant and certainly do not include the principle of autonomy of an association.

8.
The appeal will therefore be rejected to the extent that the matter is capable of appeal, which renders moot the Appellant's request for a stay of enforcement.

9.
The Appellant loses and it shall pay the costs of the federal proceedings (Art. 66 (1) LTF) and compensate the other party (Art. 68 (1) and (2) LTF).
Therefore the Federal Tribunal Pronounces:

1.
The appeal is rejected to the extent that the matter is capable of appeal.

2.
The judicial costs set at CHF 15'000.-- shall be borne by the Appellant.

[12] Translator's Note: Full English translation available at http://www.swissarbitrationdecisions.com/federal-tribunal-reiterates-principle-pacta-sunt-servanda-violated-only-when-arbitral-tribunal?search=%22july+12%2C+2012%22

3.
The Appellant shall pay to the Respondent an amount of CHF 17'000.-- for the federal judicial proceedings.

4.
This judgment shall be notified in writing to the parties and to the Court of Arbitration for Sport (CAS).

Lausanne, June 20, 2013

In the name of the First Civil Law Court of the Swiss Federal Tribunal

The Presiding Judge:	The Clerk of the Court:
Klett (Mrs.)	Carruzzo