



Tribunal Arbitral du Sport  
Court of Arbitration for Sport

**CAS 2019/A/6436 Nathan Joel Burns v. FIFA & AEK Athens FC**

## **ARBITRAL AWARD**

**delivered by the**

## **COURT OF ARBITRATION FOR SPORT**

**sitting in the following composition:**

Sole Arbitrator: Mr Lars Hilliger, Attorney-at-Law, Copenhagen, Denmark

in the arbitration between

**Nathan Joel Burns**, Australia

Represented by Ms Angela Collins of Professional Footballers Australia Inc, Melbourne, Australia, and Mr Roy Vermeer of FIFPro, Amsterdam, The Netherlands

Appellant

and

**1/Fédération Internationale de Football Association (FIFA)**, Zürich, Switzerland

Represented by Mr Jaime Cambreleng Contreras, Head of Litigation, and Mr Roberto Nájera Reyes, Senior Legal Counsel

**2/AEK Athens FC**, Greece

Represented by Mr Konstantinos Zemberis, attorney-at-law, Athens, Greece

Respondents

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**I. PARTIES**

1. Mr Nathan Joel Burns (the “Appellant” or the “Player”) is a professional football player of Australian nationality.
2. The Fédération Internationale de Football Association (“FIFA” or the “First Respondent”) is the world governing body of football, whose headquarters are located in Zurich, Switzerland.
3. AEK Athens FC (the “Club” or the “Second Respondent”) is a professional Greek football club affiliated with the Hellenic Football Federation (the “HFF”), which in turn is affiliated with FIFA.

**II. FACTUAL BACKGROUND**

4. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the Parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain its reasoning.
5. On 7 June 2013, the FIFA Dispute Resolution Chamber (the “FIFA DRC”) passed a decision in a dispute between the Appellant and a Greek professional football club named AEK FC (the “FIFA DRC Decision”), according to which:

*“1. The claim of Claimant, Nathan Joel Burns, is accepted.*

*2. The Respondent, Club AEK FC, has to pay to the Claimant, within 30 days as from the date of notification of this decision, the amount of EUR 150,000 plus 5% interest p.a. until the date of effective payment as follows:*

- 5% interest p.a. as of 26 April 2012 over the amount of EUR 50,000*
- 5% interest p.a. as of 26 July 2012 over the amount of EUR 50,000*
- 5% interest p.a. as of 26 October 2012 over the amount of EUR 50,000*

*[4.] In the event that the amount due to the Claimant is not paid by the Respondent within the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*

*[...].”*

6. On 5 December 2013, and following a request from the Appellant to do so, the FIFA Players’ Status department urged the debtor to comply with the FIFA DRC Decision, as the

matter would otherwise be transferred for the consideration of the FIFA Disciplinary Committee.

7. By letter of 6 December 2013, HFF informed FIFA, *inter alia*, that “*FSA AEK FC is dissolved and set in liquidation process, according to the relevant stipulations of Greek Law. As a result, FSA AEK FC is already non-existent, nor will participate to any national professional championship, nor is affiliated with the Hellenic Football Federation. [...].*”
8. By letter of 25 March 2014 from the Deputy Secretary of the FIFA Disciplinary Committee (the “FIFA DC”), and without having received any payment from the Second Respondent in the case before the FIFA DRC, the Appellant was informed, *inter alia*, as follows:

*“[...] In this respect, we have noted from the above-mentioned correspondence that the Greek club AEK FC is no longer affiliated to the Hellenic Football Federation by stating that it “is already non-existent, nor will participate to any national professional championship, nor is affiliated with the Hellenic Football Federation.*

*On account of the above, we must inform you that, as a general rule, our services and competent decision-making bodies (i.e. the Players’ Status Committee and the Dispute Resolution Chamber as well as the Disciplinary Committee) cannot deal with cases involving clubs which are not affiliated to their Associations any longer.*

*As a consequence, on behalf of the chairman of the FIFA Disciplinary Committee, we regret having to inform you that we do not appear to be in a position to further proceed with the case of the reference in which the club AEK FC is involved. [...]*”

9. By letter of 23 June 2016, the Appellant informed FIFA, *inter alia*, as follows:

*“[...] As I am sure you are aware [AEK FC] is, once again, affiliated with the HFF and has been participating in the Greek Super League since 2015. Moreover, [AEK FC] were the winners of the 2016 Greek Cup Final.*

*Accordingly, [the Appellant] is seeking the assistance of the FIFA DC to enforce the DRC’s decision under Article 64 of the FIFA Disciplinary Code. [...]*”

10. On 24 October 2016, FIFA replied to the Appellant and to the HFF, *inter alia*, as follows:

*“[...] In this regard, we hereby inform the parties that the Chairman of the Disciplinary Committee, after considering all the facts and documents related to the present case observed that, according to the letter of the Hellenic Football Federation dated 26 October 2015 (hereto enclosed), the club AEK FC involved in the matter at stake had been dissolved and lost its affiliation to the Hellenic Football Federation. Therefore, it remains that the club called AEK FC that is currently competing in the Greek first division is a new entity.*

*As a consequence of the foregoing, we must inform you that, as a general rule, our services and decision-making bodies (i.e. the Players’ Status Committee and the Dispute Resolution Chamber as well as the Disciplinary Committee) cannot deal with cases involving clubs which are not affiliated to their associations any longer. [...]*”

11. By letter of 8 December 2016, the Appellant provided additional evidence to FIFA and submitted that the FIFA DC now had a sufficient basis for proceeding with the enforcement of the FIFA DRC Decision.
12. On 12 September 2018, and following information received from FIFA by letter of 4 September 2018 that “*unless we are provided with new evidence on this matter, we will not be able to present the case again to the Chairman.*”, the Appellant maintained that he has provided substantial new evidence and asked for confirmation that the case would then be submitted to the FIFA DC, stating that “*Otherwise, we will consider your refusal to issue a decision as a denial of justice.*”
13. On 19 October 2018, and following the Appellant’s filing of an appeal with the CAS, the Appellant was informed by FIFA, *inter alia*, that “*the current Chairman to the FIFA Disciplinary Committee has decided that the matter should be analysed in view of the situation of the club AEK FC.*”, while asking the Appellant and the Second Respondent to submit any position “*with respect to the alleged legal and/or sporting succession of the clubs AEK Athens FC and AEK Athens [...]*”. Based on that, on 24 October 2018, the Appellant withdrew the appeal, and on 29 October 2018, the Appellant forwarded his submission with evidence to FIFA, while the Second Respondent did the same on 12 November 2018.

14. By letter of 16 May 2019 from the FIFA DC, the HFF was informed, *inter alia*, as follows:

*“[...] In particular, please note that the legal representative of the creditor claims that the club AEK FC is to be considered the successor of the debtor in the aforementioned disciplinary proceedings, the disaffiliated club AEK FC, and, as such to be held liable for the amounts due by the disaffiliated club AEK FC, in accordance with the decision passed by the Dispute Resolution Chamber on 7 June 2013. [...]”*

*In view of all the above, we are therefore opening disciplinary proceedings against the club AEK FC in respect of a violation of art. 64 of the FDC. [...]”*

15. On 15 August 2019, the Appellant, the HFF and the Second Respondent received a letter from FIFA (together with FIFA’s e-mail of 23 August 2019 as mentioned below under para. 17 the “Appealed Decision”), informing them of the following:

*“[...] We refer to the abovementioned matter and to our correspondence dated 4 July 2019, where the parties were informed that that the matter would be submitted to a member of the FIFA Disciplinary Committee for evaluation on 15 July 2019.*

*On behalf of the Deputy Chairman of the Disciplinary Committee, it is noted that the matter had already been dealt with by the Chairman of the Disciplinary Committee, as notified to the parties on 25 March 2014, and further ratified by means of letters of 24 October 2016 and 4 September 2018 (cf. enclosures for ease of reference). Specially, the Chairman of the Disciplinary Committee considered that the Respondent, Club AEK FC, is “not a legal successor of the old AEK FC.*

*In light of the above, and after a careful analysis of all the fact and documents related to the present case, the Deputy Chairman of the Disciplinary Committee has decided that the*

*claimant has not brought forward any new elements that may sustain the claim as to reopen the disciplinary proceedings in accordance with article 52 of the FIFA Disciplinary Code (2019 ed.), and consequently, the above mentioned decision taken by the Chairman of the Disciplinary Committee on 25 March 2014 and ratified on 24 October 2016 and 4 September 2018 shall prevail. This must be understood in line with the general principle of res judicata in the extent that the Disciplinary Committee is not in a position to deal again with the merits of the present case.*

*As a consequence of the foregoing and on behalf of the Deputy Chairman of the Disciplinary Committee, we inform you that the present disciplinary proceedings against the club AEK FC are hereby declared closed.*

*Finally, please note that the present decision is final and subject to the legal remedies foreseen by article 49 of the FIFA Disciplinary Code (2019 ed.). [...]"*

16. By letter of 22 August 2019, the Appellant objected to the decision of FIFA to declare the disciplinary proceedings against AEK FC closed, and stated, *inter alia*, as follows:

*"[...] and we note that we still have not received a formal decision from the FIFA Disciplinary Committee on the issue whether the "new" AEK FC is liable for the debt of the "old" AEK FC towards the Player.*

*We would like to remind FIFA that the Player withdrew his appeal in front of CAS for denial of justice in view of:*

- i. *the content of FIFA's letter dated 19 October 2018 by means of which FIFA informed the parties that it had decided that "the matter should be analysed in view of the situation of the club AEK FC", and*
- ii. *the content of FIFA's letter dated 22 October 2018 by means of which FIFA informed CAS that it would continue the investigation in the case, and whereby FIFA asked CAS to declare the said proceedings moot, or alternatively, to suspend them until a decision was passed.*

*We further remind FIFA that hereafter on 16 May 2019 FIFA opened disciplinary proceedings against the "new" AEK FC for a violation of art. 64 of the 2017 version of the FIFA Disciplinary Code, and that on 27 May 2019 the FIFA Disciplinary Committee would pass a decision as contemplated under art. 78 par. 2 of the 2017 version of the FIFA Disciplinary Code.*

*[...]*

*Hence, to date we have not received a formal decision from FIFA on the Player's request to consider the "new" AEK FC liable for the debt of the "old" AEK FC. Perhaps superfluously, we wish to remind FIFA that in accordance with the FIFA Disciplinary Code (art. 115 old and 51 new), FIFA has set certain requirements for decisions, amongst others that they contain a motivation. So far, FIFA has only provided us with letters signed by the administration of FIFA.*

[...]

*We fail to understand why – instead of drowning the parties in a swamp of ambiguous and contradicting letters – the FIFA Disciplinary Committee cannot simply do what it is supposed to do and pass a formal decision as to the substance of the Player’s request. Such decision can then – if desired – subsequently be appealed to CAS either by the Player or by the “new” AEK FC, depending on the outcome.*

*Please note that should we not receive a reply confirming that FIFA will provide us with a formal and motivated decision, we will assume that you refuse to pass a decision and consider this (once more) as a case of denial of justice. [...]*”

17. By email of 23 August 2019, FIFA acknowledged receipt of the Appellant’s letter and referred to the content of its letter dated 15 August 2019, stating, *inter alia*, as follows:

*“[...] In this sense, on behalf of the Deputy Chairman of the Disciplinary Committee, we would like to refer the creditor to the content of our previous letter dated 15 August 2019 (cf. enclosure for ease of reference) and more particular to its last paragraph whereby the parties were informed that the decision rendered by the Deputy Chairman of the Disciplinary Committee and communicated by means of said letter (i.e. to close the proceedings) ‘is final and subject to the legal remedies foreseen by article 49 of the FIFA Disciplinary Code (2019 ed.)’. [...]*”

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

18. On 30 August 2019, the Appellant filed his Statement of Appeal in accordance with Articles R47 and R48 of the CAS Code of Sports-related Arbitration (2019 edition) (the “CAS Code”) against the Appealed Decision.
19. On 12 September 2019, the Appellant submitted his Appeal Brief in accordance with Article R51 of the Code.
20. On 24 September 2019, the Respondents requested to submit their Answer after the payment by the Appellant of his share of the advance of costs pursuant to Article R55 (3) of the Code.
21. On 31 October 2019, and in accordance with Article R54 of the CAS Code, the Parties were informed by the CAS Court Office that the arbitral tribunal appointed to decide the case had been constituted as follows: Mr Lars Hilliger, Attorney-at-Law in Copenhagen, Denmark, as Sole Arbitrator.
22. On 25 November 2019, the Respondents, FIFA and AEK Athens FC filed their respective Answers to the appeal in accordance with Article R55 of the CAS Code.
23. On 17 December 2019, the Parties were informed that the Sole Arbitrator had decided to hold a hearing in this matter pursuant to Article R57 of the CAS Code.

24. All Parties signed and returned the Order of Procedure on, respectively, 13, 14 and 17 January 2020.

25. On 13 February 2020, a hearing was held in Lausanne, Switzerland.

24. In addition to the Sole Arbitrator, Mr Fabien Cagneux, Counsel to the CAS, and the following persons attended the hearing:

For the Appellant

- Mr Roy Vermeer (counsel)

For FIFA:

- Mr Miguel Liétard Fernández-Palacios, FIFA Director of Litigation
- Mr Jaime Cambreleng Contreras, FIFA Head of Litigation
- Mr Roberto Nájera Reyes, Senior Legal Counsel of FIFA Litigation.

For AEK Athens FC

- Mr Konstantinos Zemberis (counsel).

25. At the outset of the hearing, the Parties confirmed that they had no objections to the constitution of the arbitral tribunal.

26. The Parties were afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the Sole Arbitrator. After the Parties' final submissions, the Sole Arbitrator closed the hearing and reserved his final award. The Sole Arbitrator took into account in his subsequent deliberations all the evidence and arguments presented by the Parties although they may not have been expressly summarised in the present Award.

27. At the end of the hearing, the Parties present expressly confirmed that they did not have any objection to the procedure adopted by the Sole Arbitrator and that their right to be heard and to be treated equally had been duly respected.

#### **IV. SUBMISSIONS OF THE PARTIES**

28. In his Appeal Brief of 12 September 2019, the Appellant requested the CAS:

- (a) *To rule that FIFA's refusal to pass a formal and motivated decision, in accordance with the requirements of the FIFA Disciplinary Code, as to whether the "new" AKE FC (i.e. the Greek professional football club currently playing on the highest level in Greece) is the same club – and/or the sporting successor of – the "old" AEK FC and therefore responsible for the debt of the "old" AEK FC, constitutes a "denial of justice".*
- (b) *To rule that the letter of FIFA dated 15 August 2019 – taking into account all previous correspondence and together with FIFA's subsequent refusal on 22 August*

*2019 to the FIFA Disciplinary Committee pass a formal decision – constitutes a decision.*

- (c) To rule that there was no situation of res judicata which prevented the FIFA Disciplinary Committee from deciding on the Appellant's request that it pass a formal and motivated decision as to whether the "new" AEK FC is the same club – and/or the sporting successor of – the "old" AEK FC and therefore responsible for the debt of the "old" AEK FC.*
- (d) To rule that there is no disaffiliation and/or res judicata and/or other legal grounds that prevents FIFA from proceeding with the execution of the FIFA DC decision dated 7 June 2013.*
- (e) To rule that the "new" AEK FC is the same club – and/or the sporting successor of – the "old" AEK FC and therefore responsible for the payment of the amounts due to the Appellant in accordance with the FIFA DRC decision dated 7 June 2013.*
- (f) To order FIFA to execute the FIFA DRC decision dated 7 June 2013 against the "new" AEK FC.*
- (g) To order FIFA to impose disciplinary sanctions on the "new" AEK FC for the non-compliance of said club with the FIFA DRC decision dated 7 June 2013.*
- (h) To condemn the Respondents to pay the entire CAS administration costs and the arbitration fees and to reimburse the Appellant of any and all expenses he incurred in connection with this procedure.*
- (i) To rule that the Respondents have to pay the Appellant a contribution towards his legal costs.*

Or, in the alternative,

- (a) To order that the FIFA Disciplinary Committee must pass a formal decision on the Appellant's requests concerning the question whether the "new" AEK FC (currently participating in the competitions organised by the HFF) is the same club – and/or the sporting successor of – the "old" AEK FC and whether the FIFA DRC Decision dated 7 June 2013 can be enforced against the "new" AEK FC.*

29. The Appellant's submissions, in essence, may be summarised as follows:

- FIFA's refusal to pass a formal and motivated decision on the Appellant's request constitutes a ruling of FIFA which must be considered as a denial of justice that materially affects the legal situation of the Appellant and is appealable to the CAS.
- As such, FIFA refuses to provide the Appellant with a decision in relation to having the Club held liable for the debt of the "old" AEK FC, which can constitute a denial of justice.



- It is obvious that the Appealed Decision contains a ruling which affects the legal situation of the Appellant, since FIFA's decision not to proceed with the enforcement of the FIFA DRC Decision, which entitled the Appellant to a significant amount of money, undoubtedly affects the Appellant's legal position.
- In the alternative, the Appellant is to be considered appealing the letter of FIFA by means of which FIFA decided that, due to the principle of *res judicata*, the FIFA DC was no longer in a position to deal with the request of the Appellant.
- In any case, there was no *res judicata* which would prevent the FIFA DC from passing a decision, since no official decision has ever been issued or notified to the Appellant.
- FIFA erred in a number of ways when deciding not to proceed with the enforcement of the FIFA DRC Decision.
- First of all, the club AEK FC was never truly disaffiliated from the HFF, and every statement made relating to the contention that the "old" AEK FC was disaffiliated has simply been an attempt to clean up the balance sheets of the club.
- This is supported by the fact that AEK FC still participated in the official Greek football leagues under the auspices of the HFF for every season during its alleged disaffiliation.
- And even if the "old" AEK FC had been disaffiliated at some point, the Club must be considered the successor of the "old" AEK FC, therefore being liable for the payment of the outstanding amount to the Appellant.
- Secondly, it is not correct that any decision regarding the Club's succession of the "old" AEK FC was ever made by FIFA, and the Appellant has never received any decision from the FIFA DC in respect of the Appellant's request to consider the Club liable for the debt of the "old" AEK FC.
- Even if FIFA is referring to its previous letters, neither of these letters fulfils the formal requirements pursuant to Article 115 of the FIFA Disciplinary Code for an appealable decision of the FIFA DC, and it is therefore not relevant either whether or not the Appellant challenged these.
- Neither of the letters indicates the composition of the FIFA DC, include the grounds of the alleged decision, mention the provisions on which the decision was based, include the terms of the alleged decision, nor include the notice of the channels for appeal.
- As such, no decision complying with the required forms and contents has ever been notified to the Appellant, and FIFA's position in this respect only serves to demonstrate that it has passed decisions contrary to its own regulations. As the notifications forwarded by FIFA do not fulfil FIFA's own requirements for a formal

decision, the Appellant had a legitimate expectation that a formal and legal decision regarding the succession of AEK FC would be passed, which never happened.

- It is very important that there is legal certainty about whether or not a decision has been passed or not, and, furthermore, FIFA cannot choose at its own discretion to disregard its own rules depending on the situation.
- FIFA simply cannot argue that its letters are decisions because it fully and completely violated FIFA's own regulations, and the Appellant would be severely prejudiced if FIFA could profit from its own violations of the relevant regulations.
- Thirdly, the Chairman of the FIFA DC has never considered whether the Club was "not a legal successor of the "old" AEK FC".
- In March 2014, when FIFA forwarded its letter to the Appellant, the Appellant had never raised any issue in relation to the Club being the same club as, and/or the sporting successor of, the "old" AEK FC, which is why FIFA could not possibly have passed a decision on that issue, and, equally, could not have ratified that decision later on.
- Furthermore, it must be stressed that the possibility that the Club might be considered as a new entity does not preclude that entity from being the sporting successor of the "old" AEK FC – these two are mutually exclusive propositions.
- With regard to the allegations that the Appellant did not bring forward any new elements that may sustain the claim to reopen the disciplinary proceedings in accordance with the FIFA Disciplinary Code, this is disputed by the Appellant.
- On the contrary, the Appellant did provide substantial evidence to the FIFA DC in December 2016 and October 2018 to sustain the claim for the reopening of the disciplinary proceedings, which leads to the confirmation by FIFA that it was in fact opening disciplinary proceedings against the Club for a violation of Article 64 of the 2017 version of the FIFA Disciplinary Code and that a decision would be passed in May 2019.
- Finally, FIFA was wrong in considering that *res judicata* prevented the FIFA DC from deciding on the Appellant's request that it pass a formal and motivated decision as to whether the Club is the same club – and/or the sporting successor of – the "old" AEK FC and therefore liable for the debt of the "old" AEK FC.
- If FIFA's letter of 25 March 2014 was to be considered a decision, the letter would not have referred to its content as being without prejudice whatsoever and would, at the very least, have referred to it being a decision which was final and binding and subject to legal remedies foreseen by the provisions of the applicable FIFA Disciplinary Code.

- Furthermore, it follows from the correspondence between the Club and FIFA, that the Club also was of the opinion that no formal decision had been passed on this issue.
  - With regard to the situation of the Club, it is undisputed that it is currently competing in the highest level in Greece and is currently not disaffiliated or involved in any bankruptcy or insolvency proceedings, which could in any way justify FIFA's decision not to proceed with the enforcement of the FIFA DRC Decision.
  - However, even if the Club presents itself as the same club as the "old" AEK FC, thriving on the same history, brand and commercial value, when it comes to paying the debts to its former players, the Club argues that there is no link between the new legal entity and the old one and that the only common feature is the brand and the name of AEK FC, owned by the amateur club.
  - As such, on the one hand the Club seeks to profit from the rich history, fan base, commercial value and legacy of AEK FC, whereas, on the other hand, it does not want to meet its financial obligations to its former employees, *i.e.* the players who were a part of the same club.
  - Evidently, such a stance cannot be endorsed as it is detrimental to the rights of the creditors and creates an unfair competition and uneven playing field.
  - Based on the specific circumstances and in line with CAS jurisprudence, the Club must be considered as the same club – and/or the sporting successor of – the "old" AEK FC and, therefore, liable for the payment of the amounts due to the Appellant.
  - In case the Club's attempt to circumvent its financial obligations to its former players would be allowed, the acceptance of such a construction would be nothing less than disastrous and would be incompatible with the statutory objectives of both FIFA and UEFA.
  - As such, the 2019 edition of the FIFA Disciplinary Code includes a new provision which regulates these situations in an effort to avoid such intolerable and undesirable situations as they harm the integrity of the sport.
30. In its Answer to the Appeal Brief of 25 November 2019, FIFA requested the Sole Arbitrator to issue an award on the merits:
- (a) *rejecting the requests for relief sought by the Appellant;*
  - (b) *confirming the Appealed Decision;*
  - (c) *alternatively, referring the case back to the Disciplinary Committee for a new assessment of the case concerning the legal and/or sporting succession between the New Club and the Debtor Club;*
  - (d) *In any case, ordering the Appellant to bear the full costs of these arbitration proceedings.*

31. FIFA's submissions, in essence, may be summarised as follows:

- The Appellant's appeal has been lodged against the Appealed Decision by which it was decided to confirm the termination of the disciplinary proceedings against the club AEK FC for reasons of *res judicata*, based on the fact that the same issue had already been assessed on at least two previous occasions.
- As such, the core of the present dispute lies in the question of whether or not the FIFA DC can review – or reopen – one claim over and over again when it is based on the same facts and documents that have already been taken into account on previous occasions.
- The Sole Arbitrator should arrive at the conclusion that the case has been reviewed on at least two occasions by the FIFA DC, which has arrived at the very same conclusion; the Club is not the legal successor of the “old” AEK FC.
- As a consequence, both the FIFA DC and the CAS are prevented from addressing the case again.
- Alternatively, and only if the Sole Arbitrator should be of the opinion that the FIFA DC was not prevented from studying the case, the case should be referred back to the FIF DC for a new assessment of the case concerning the legal and/or sporting succession between the Club and the “old” AEK FC.
- With regard to the FIFA DRC Decision, it must be stressed that the FIFA DC, in its capacity as an enforcement authority, cannot review or modify the substance of a previous decision of FIFA's deciding bodies.
- In view of the bankruptcy proceedings and of the disaffiliation of the “old” AEK FC, the Chairman of the FIFA DC decided, on 24 March 2014, to close the disciplinary proceedings against this club. This was the first time the FIFA DC concluded that the FIFA DRC Decision could not be enforced against the bankrupt and disaffiliated “old” AEK FC, which was fully in line with FIFA regulations and CAS jurisprudence.
- The Appellant never presented any evidence establishing that the “old” AEK FC was not involved in bankruptcy proceedings or that it was still affiliated with the HFF, nor did the Appellant ever challenge this decision within the relevant time limit to do so and, thus, it became final and binding on the Parties.
- More than two year later, the Appellant informed FIFA that AEK FC was again affiliated with the HFF and requested the FIFA DC – for the second time – to enforce the FIFA DRC Decision, however without providing FIFA with any evidence or documentation of the aforementioned and relying only on his statement.
- However, already in 2015, the HFF had confirmed, *inter alia*, that “old” AEK FC had been dissolved, completed its liquidation process and no longer participated in any

HFF competition, and the HFF had also clarified the differences between the “old” AEK FC and the Club, *inter alia*, that both were totally different legal entities with different Tax and Commercial registry numbers and with different administrations, assets and liabilities.

- Furthermore, the Club had confirmed to FIFA, *inter alia*, that the Club was first incorporated in 2014, that it did not assume any rights or obligations of the “old” AEK FC and that the only link with the “old” AEK FC was the brand and the name, which were licensed by the AEK amateur club which, in turn, was receiving some amounts from the Club for such concession. Therefore, the Club could not be liable for any of the actions performed by the “old” AEK FC.
- In light of the above, on 24 October 2016, the Chairman of the FIFA DC decided, after considering all the facts and documents of the case, that the “old” AEK FC was still dissolved and not affiliated with the HFF and, for this reason, once again concluded that FIFA could not deal with the case that involved a disaffiliated club.
- Furthermore, it was clarified that the club competing in the tournament was a new entity, in other words that the Club was not the legal successor of the “old” AEK FC.
- The Chairman of the FIFA DC arrived at the correct conclusion, not least considering that the Appellant did not provide any evidence at this point to prove his allegations and thus being prevented from enforcing the FIFA DRC Decision.
- This second conclusion of the Chairman of the FIFA DC was notified to the Parties on 24 October 2016, and since, once again, the Appellant did not object to or challenge this conclusion within the relevant time limit, it also became final and binding on the Parties.
- By letter dated 8 December 2016, and thus outside of the time limit to challenge the decision of 23 October 2016, the Appellant attempted to re-open the case by stating that the Club should be liable for the debt of the “old” AEK FC, but the Appellant did not provide any new information or documentation that could modify the previous decisions of the FIFA DC.
- The information contained in the Appellant’s letter of 8 October 2016 was not new to the FIFA DC, since it was clear to the FIFA DC, already before 24 October 2016, *inter alia* that the Club was participating in the Greek Super League, that the Club used the same name as the “old” AEK FC, that the logos of the two clubs did not have any obvious differences and that the Club was playing its official matches at the same stadium as the “old” AEK FC used to do.
- Since the alleged new elements thus could not lead to the re-opening of the potential disciplinary proceedings against the Club, on 4 September 2018, the Secretariat issued a letter informing the Appellant that the case would not be re-submitted to the Chairman unless provided with new evidence.

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- This was an explicit reference to the fact that the alleged new evidence brought by the Appellant was not new and, thus, the Secretariat deemed it sufficient to refer to the decision of 24 October 2016 without having to consult the Chairman again.
- By letter of 12 September 2018, the Appellant stated that he did in fact provide substantial new evidence and information, and that a refusal to submit the case to the FIFA DC would be considered an issue of denial of justice.
- Following the instructions of the Chairman of the FIFA DC, the Appellant and the Club were invited to submit their positions and the evidence they wished to rely on.
- Following their submissions and a submission from the HFF, the complete case was evaluated by the Deputy Chairman of the FIFA DC on 15 July 2019, who noted that the Appellant's claim had already been reviewed on two previous occasions and that decisions had already been passed in this matter and that he was therefore precluded from re-visiting such final and binding decisions to the effect that the Club is not a legal successor of the "old" AEK FC.
- Specifically, it was confirmed, after a careful analysis of all the facts and documents, that the Appellant did not bring forward any new elements that did not exist prior to 24 October 2016 to justify the re-opening of the matter.
- The principle of *res judicata* prevents a judgment involving the same parties and the same object from being discussed over and over again by a court or tribunal.
- The Appellant never appealed against the decisions of 25 March 2014 and 24 October 2016 issued by the FIFA DC, thus allowing them to become final and binding on all the corresponding Parties.
- In view of the fact that the matter was already dealt with by the FIFA DC on previous occasions and that the cumulative conditions of *res judicata* are met, there was no other option but to apply the legal effects of such a principle to the Appellant's request, which led to the Appealed Decision.
- As such, the Sole Arbitrator must consider that the outcome and conclusion of the Appealed Decision was correct, given that the Deputy Chairman of the FIFA DC was prevented from re-assessing the case that had been decided before by the Chairman and was bound by the outcome of the previous decisions rendered in 2014 and 2016.
- The principle of *res judicata* is a matter of public policy, and the FIFA DC was entitled to review it ex officio in accordance with SFT jurisprudence.
- With regard to the allegations of the Appellant that the different decisions of the FIFA DC may not be qualified as such as they do not meet the requirements of the FIFA Disciplinary Code, these allegations must be set aside since the CAS has established on many occasions that the form is irrelevant for determining if a communication should be considered as a decision.

- Thus, the relevant decisions of the FIFA DC of 2014, 2016 and 2019 are to be considered as decisions, since, *inter alia*, it is irrelevant that they were drafted as letters, they did in fact affect the legal situation of the Appellant, they were unilateral acts from the FIFA DC sent to the Appellant intending to produce legal effects and they had an obvious intention to decide on the matter that was requested by the Appellant.
- With regard to the Appellant's argument related to the succession of the "old" AEK FC, it is not necessary to address such arguments considering that the Sole Arbitrator is not even allowed to look at them, but should dismiss the matter as inadmissible as one of the effects of *res judicata*.

32. In its Answer of 25 November 2019, AEK Athens FC requested the following relief:

1. *to reject the Appellant's appeal in its entirety;*
2. *to rule that FIFA communication of 15 August 2019 was a formal decision of the FIFA Disciplinary Committee and confirm the said decision;*
3. *to confirm that the principle of res judicata applied in the present matter and that the FIFA Disciplinary Committee could not deal against with the merits of the present matter;*
4. *to condemn the Appellant to the reimbursement in the favour of the Second Respondent of all the expenses incurred;*
5. *to establish that the costs of the present arbitration procedure shall be borne by the Appellant,*
6. *to rule that the Appellant has to pay to the Second Respondent a contribution towards his legal costs.*

*Subsidiarily, only in the event that the above is rejected:*

1. *to reject the Appellant's appeal in its entirety;*
2. *to rule that the Second Respondent is not the successor of the Old Entity and has no standing to be sued;*
3. *to condemn the Appellant to the reimbursement in the favour of the Second Respondent of all the expenses incurred;*
4. *to establish that the costs of the present arbitration procedure shall be borne by the Appellant;*
5. *to rule that the Appellant has to pay the Second Respondent a contribution towards his legal costs.*

33. AEK Athens FC's submissions, in essence, may be summarised as follows:

- First of all, the Second Respondent agrees that the Appealed Decision is a formal decision which is appealable before the CAS.

- The Appealed Decision confirmed that the matter regarding whether the Club is the same club and/or the successor of the “old” AEK FC had already been dealt with by the Chairman of the FIFA DC and that this decision was correct, which is why the disciplinary proceedings against the Club were declared closed.
- The argument that the matter had already been dealt with was submitted by the Club in response to the letter from FIFA in which the Appellant and the Club were informed about the matter being re-submitted to the FIFA DC.
- It is very important that players and clubs can enjoy legal certainty that a certain matter is not dealt with over and over again for no reason.
- As such, the Appellant is wrong in arguing that there was no previous decision of the FIFA DC on the matter and therefore there could be no *res judicata*, since the FIFA letters of March 2014, October 2016 and September 2018 contain and/or confirm such a decision and since it is generally acknowledged that the format of a decision is not decisive and that even a letter can constitute a formal and appealable decision if it actually contains and/or notifies a decision/ruling that affects the legal situation of a party.
- With regard to the disaffiliation of the “old” AEK FC, it must be stressed that the club which participated in the amateur third division of Greek football during the sporting season 2013-2014 was the amateur association AEK Athens and, thus, neither the “old” AEK FC, which was formally dissolved in 2013, nor the Club, which was only incorporated in July 2014 and affiliated with the HFF later on.
- The Club is not the sporting and/or legal successor of the “old” AEK FC and has no standing to be sued in the present matter, neither before FIFA nor before the CAS, since it is a completely different entity from the “old” AEK FC.
- Furthermore, the Appellant was never an employee of the Club and has no legal title against the Club whatsoever.
- Also, the Club never acquired any of the assets or rights of the “old” AEK FC, and the Club has a totally different management and a different owner.
- The burden of proof lies with the Appellant, and the Appellant has not been able to prove in any way that the Club is the legal and/or sporting successor the “old” AEK FC.
- Furthermore, the HFF confirmed this to FIFA, and there are no grounds for disputing such information and statements from the HFF. Moreover, it has been confirmed by the Greek Civil Court in a similar case against the Club.
- It is also important to point out that a very beneficial and legal remedy is in fact available to the Appellant to satisfy his claim according to Greek national law, which



the Appellant should have exercised as other former teammates of the Player actually did.

- The failure by the Appellant to make use of this special remedy provided by Greek sports law for players, which is actually more efficient than the general remedies available to creditors during normal insolvency procedures, constitutes a lack of diligence, the impact of which in the present case should be the dismissal of his Appeal.
- Finally, it is essential to note that the decision on whether or not the Club is a successor of the “old” AEK FC is in any way clearly not a decision that can be made by the FIFA DC.
- If the Appellant is of the opinion that the Club is in fact the successor of the “old” AEK FC and, as a result, liable for paying the debt of the said Club, the Appellant should have filed a claim with the FIFA DRC against the Club under the rules and regulations of FIFA, which the Appellant never did.

## **V. JURISDICTION**

34. Article R47 of the CAS Code provides as follows:

*“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.”*

35. The Sole Arbitrator notes that the Parties all agree that the Appealed Decision constitutes a final and appealable decision, which directly affects the Appellant’s legal position.
36. Based on the above, and after analysing the nature of the Appealed Decision, the Sole Arbitrator is satisfied with considering the Appealed Decision as such in line with the Parties’ submissions.
37. With respect to the Appealed Decision, the Appellant relies on Article 58 (1) of the FIFA Statutes as conferring jurisdiction on the CAS. In addition, none of the Respondents objected to the jurisdiction of the CAS, and all Parties confirmed the CAS jurisdiction when signing the Order of Procedure.
38. It follows that the CAS has jurisdiction to decide on the appeal of the Appealed Decision.

## **VI. ADMISSIBILITY**

39. Article 57 of the FIFA Statutes provides as follows:

*“Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by confederations, member associations and leagues, shall be lodged with CAS within 21 days of receipt of the decision in question.”*

40. The Appealed Decision was forwarded to the Appellant on 15 August 2019. On 30 August 2019, the Appellant filed his Statements of Appeal, *i.e.* within the statutory time limit of 21 days set forth in Article R49 of the CAS Code, which is not disputed. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements of Articles R48 and R51 of the CAS Code.

41. It follows that the appeal is admissible.

## **VII. APPLICABLE LAW**

42. Pursuant to Article 57(2) of the FIFA Statutes

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

43. Article R58 of the CAS Code provides as follows:

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

44. The parties agree that the applicable regulations in these proceedings for the purpose of Article R58 of the CAS Code are the rules and regulations of FIFA, and, additionally, Swiss law.

45. Based on the above, the Sole Arbitrator is satisfied that the various regulations of FIFA are primarily applicable, in particular the FIFA Disciplinary Code and, subsidiarily, Swiss law should the need arise to fill a possible gap in the various regulations of FIFA.

## **VIII. MERITS**

46. Initially, the Sole Arbitrator notes that, on 7 June 2013, the FIFA DRC passed the FIFA DRC Decision in the employment related dispute between the Appellant and the “old” AEK FC, according to which, *inter alia*, the latter “[...] has to pay to the [Appellant] within 30 days as from the date of notification of this decision, the amount of EUR 150,000 plus 5% interest p.a. until the date of effective payment as follows. [...]” However, this amount was apparently never paid to the Appellant.

47. Based on the evidence of the case, the Sole Arbitrator finds it evident that the “old” AEK FC in 2013 entered into a liquidations process caused by financial difficulties and that the club was formally disaffiliated from the HFF and, as such, was no longer participating in the official national tournament of Greek football. The club was eventually officially dissolved as a result of this liquidation process.
48. The Sole Arbitrator furthermore finds it sufficiently proven that the football club participating in the amateur third division under the AEK name during the 2013-2014 season was the amateur association AEK Athens, and it is further undisputed that the Club was only formally incorporated in July 2014, after which the Club was affiliated with the HFF and then participated in the second division of Greek football during the 2014-2015 season before being promoted to the Super League for the 2015-2016 season.
49. Furthermore, the Sole Arbitrator notes that the Club uses the same name as the “old” AEK FC and almost the same logo, which, according to the information provided by the Club, is the result of an agreement between the Club and the amateur association AEK Athens, which is the rightful owner of such rights and for the use of which the Club is paying the amateur association AEK Athens.
50. Finally, it is not in dispute that the decision-making bodies of FIFA (*i.e.* the Players’s Status Committee as well as the FIFA DC) cannot deal with cases involving clubs which are not affiliated with their national association any longer.
51. However, the Appellant submits that the Club is the legal and/or sporting successor of the “old” AEK FC and that the Club is therefore to be held liable for the payment of the outstanding debt to the Appellant pursuant to the DRC Decision.
52. The Appellant further submits that FIFA’s refusal to pass a formal and motivated decision in accordance with its own rules and regulations as to whether the Club is the legal and/or sporting successor of the “old” AEK FC, and therefore liable for the payment of the debt of the latter to the Appellant, constitutes a denial of justice.
53. These submissions are rejected by both FIFA and the Club who submit that the Appealed Decision is correct since the FIFA DC was prevented from deciding on the Appellant’s request to the FIFA DC to enforce the FIF DRC Decision against the Club, and given the fact that the matter has already been dealt with before, the principle of *res judicata* is applicable to the request.
54. Furthermore, the Club submits that it is not the successor of the “old” AEK FC and not in any way liable for the payment of the debt of the “old” AEK FC.
55. Thus, the main issues to be resolved by the Sole Arbitrator are:
  - Does the Appealed Decision constitute a denial of justice (**A**)?
  - And in the affirmative, is the Club to be considered the successor of the “old” AEK FC, and thus, liable for the payment to the Appellant in accordance with the DRC Decision (**B**)?

**A. Does the Appealed Decision constitute a denial of justice?**

56. In order for the Sole Arbitrator to conclude whether or not the Appealed Decision did in fact constitute a denial of justice against the Appellant, the Sole Arbitrator finds it prudent to deal with the question of the alleged *res judicata* first.
57. As submitted by FIFA, the *res judicata* principle is the general principle which prevents a judgment or decision involving the same parties and the same object from being discussed over and over again by a court of tribunal, thus avoiding the potential occurrence of two contradicting decision, which would be contrary to public policy.
58. Based on, *inter alia*, CAS jurisprudence, a *res judicata* situation occurs where (i) a claim is made that is identical (from a substantive point of view) to another already decided on; (ii) the same parties were involved in such outcome; and (iii) the matter was solved based on the same facts existing at the time of the first judgment.
59. The Appealed Decision is the result of the Appellantss request of 8 December 2016 when the Appellant requested the FIFA DC to proceed with the enforcement of the FIFA DRC Decision against the Club, in which connection the Appellant submitted information regarding the Club's alleged succession of the "old "AEK FC.
60. The Appealed Decision stated, *inter alia*, as follows:

*"[...] On behalf of the Deputy Chairman of the Disciplinary Committee, it is noted that the matter had already been dealt with by the Chairman of the Disciplinary Committee, as notified to the parties on 25 March 2014, and further ratified by means of letters of 24 October 2016 and 4 September 2018 (cf. enclosures for ease of reference). Specially, the Chairman of the Disciplinary Committee considered that the Respondent, Club AEK FC, is "not a legal successor of the old AEK FC".*

*In light of the above, and after a careful analysis of all the fact and documents related to the present case, the Deputy Chairman of the Disciplinary Committee has decided that the claimant has not brought forward any new elements that may sustain the claim as to reopen the disciplinary proceedings in accordance with article 52 of the FIFA Disciplinary Code (2019 ed.), and consequently, the above mentioned decision taken by the Chairman of the Disciplinary Committee on 25 March 2014 and ratified on 24 October 2016 and 4 September 2018 shall prevail. This must be understood in line with the general principle of *res judicata* in the extent that the Disciplinary Committee is not in a position to deal again with the merits of the present case. [...]"*

61. As such, the Appealed Decision submits that is was already decided on a previous occasion that the Club is not to be considered the successor of the "old" AEK FC and that the Appellant has not brought forward any new elements that may sustain the claim to reopen the disciplinary proceedings.
62. As the Appellant submits that no such formal and motivated decision was ever issued and forwarded to the Appellant, thus not making it possible to apply the principle of *res judicata*, the Sole Arbitrator first of all concentrates on the alleged earlier decisions referred to in the Appealed Decision.

63. With regard to the letter of 25 March 2014 from the Deputy Secretary of the FIFA DC, the Sole Arbitrator notes that this letter seems to deal only with the fact that the “old” AEK FC is no longer affiliated with the HFF, based on which the FIFA DC finds that it cannot deal with cases involving clubs which are not affiliated with their associations any longer.
64. Without in any way questioning the conclusion in this letter, the Sole Arbitrator notes that the FIFA DC apparently did not at this point consider any possible succession between the “old” AEK FC and the Club, which also follows from the fact that the Club was not even formally incorporated, nor affiliated, with the HFF in March 2014.
65. Based on the above, the Sole Arbitrator therefore finds that the letter of 25 March 2014 does not deal with whether or not the Club is the successor of the “old” AEK FC.
66. With regard to the letter of 24 October 2016 from the FIFA DC, the Sole Arbitrator initially notes that this was a response to the Appellant’s letter of 23 June 2016, which read, *inter alia*, as follows:
- “[...] As I am sure you are aware [AEK FC] is, once again, affiliated with the HFF and has been participating in the Greek Super League since 2015. Moreover, [AEK FC] were the winners of the 2016 Greek Cup Final.*
- Accordingly, [the Appellant] is seeking the assistance of the FIFA DC to enforce the DRC’s decision under Article 64 of the FIFA Disciplinary Code. [...]”*
67. In its letter, which, together with at least some of the documentation replied upon, was also forwarded to the HFF, and thus to the Club, FIFA replied, *inter alia*, as follows:
- “[...] In this regard, we hereby inform the parties that the Chairman of the Disciplinary Committee, after considering all the facts and documents related to the present case observed that, according to the letter of the Hellenic Football Federation dated 26 October 2015 (hereto enclosed), the club AEK FC involved in the matter at stake had been dissolved and lost its affiliation to the Hellenic Football Federation. Therefore, it remains that the club called AEK FC that is currently competing in the Greek first division is a new entity.*
- As a consequence of the foregoing, we must inform you that, as a general rule, our services and decision-making bodies (i.e. the Players’ Status Committee and the Dispute Resolution Chamber as well as the Disciplinary Committee) cannot deal with cases involving clubs which are not affiliated to their associations any longer. [...]”*
68. The Sole Arbitrator initially notes that FIFA stresses that the observation of the Chairman of the FIFA DC is based on all the facts and documents related to the present case, which include the Club’s submission regarding not being the successor or in any other way related to the “old” AEK FC.
69. Even if the provision of the material in question by the FIFA DC may not *per se* be regarded as passing a formal and motivated decision, it nevertheless gives the recipients an insight into the deliberations underlying the content of the letter.

70. Based on the content of the Appellant's request in his letter of 23 June 2016, and notwithstanding that the Sole Arbitrator agrees with the Appellant that the fact that it is a new entity does not automatically preclude this new entity from also being the successor of the "old" AEK FC, the Sole Arbitrator nevertheless finds that the FIFA DC, in its letter, not only addresses the question of whether it is a new entity, but also addresses the question of whether, based on the information received, it is assumed that there are valid grounds for enforcing the FIFA DRC decision against the Club, which is rejected by the FIFA DC.
71. Based on that, the Sole Arbitrator finds that the FIFA DC actually dealt with the same matter from a substantive point of view as the Appellant brought forward in his letter of 8 December 2016 and which led to the Appealed Decision.
72. This, in spite of the fact that FIFA explained during the hearing that the FIFA DC probably mainly addressed the question of whether the Club was to be considered the legal successor of the "old" AEK FC and, therefore, probably did not give separate consideration to the question of whether the Club was to be considered the sporting successor of the "old" AEK FC since the Appellant had in fact had the possibility of claiming this specifically if he had regarded this as an essential aspect.
73. However, the application of the principle of *res judicata* is subject to the condition that a formal decision on a given matter is actually passed, mainly because one of the objectives of this principle is to avoid the risk of two conflicting decisions on the same matter.
74. The Appellant refers in this context to FIFA's own formal rules of the FIFA Disciplinary Code and submits that these have not been complied with, for which reason a formal decision meeting the requirements for relying on the *res judicata* principle cannot be assumed to have been passed. Thus, the Appellant had a legitimate expectation that a formal and legal decision regarding the succession would be passed, which it never was.
75. The Sole Arbitrator notes that there is an abundant CAS jurisprudence in relation to what constitutes a "decision" within the meaning of Article R47 of the CAS Code, allowing a decision to be appealed to CAS (see *inter alia* CAS 2018/A/5933).
76. Even if the question of whether the letter of 24 October 2016 from the FIFA DC constitutes a decision is not connected directly to an appeal of the letter itself to the CAS, the Sole Arbitrator finds that the characteristic features of an appealable decision before the CAS may also be of relevance in the specific assessment.
77. The Sole Arbitrator notes in this connection that the term "decision" must be construed in a broad sense, that the form of the communication in question is irrelevant for its qualification, that a decision is a unilateral act issued to one or more determined recipients that is intended to produce or produces legal effects and that an (appealable) decision of a sport association or federation is normally a communication directed to a party and based on an "*animus decidendi*", i.e. an intention of a body of the association to decide the matter.
78. The Sole Arbitrator further notes that a large degree of legal certainty must be required in order to ensure that the recipients of, for example, a letter from FIFA are not, unnecessarily, in any doubt as to whether the communication received is an actual decision or has been provided as general information only.

79. However, this requirement of legal certainty also applies to any other recipients of such a communication so as to ensure that such recipients, if the necessary basis is found to be present, will have a legitimate expectation that a decision has been passed, even in situations where not all formal conditions may have been met.
80. The Sole Arbitrator considers that this is the case in relation to the letter of 24 October 2016 from the FIFA DC, which the Club also received as mentioned. Accordingly, the Sole Arbitrator finds that in assessing whether a decision must be assumed to have been passed, it will also be necessary, to some extent, to take into account the legitimate expectations any other recipient of the letter may have, which would not be relevant to the same extent if the letter in question had legal effects on one recipient only.
81. In the light of these circumstances and since the letter of 24 October 2016 from the FIFA DC has the character of a unilateral act intended to produce legal effects, combined with the fact that the letter is considered to be based on an *animus decidendi*, the Sole Arbitrator finds that it is a formal and legal decision meeting the requirement for a decision in relation to the principle of *res judicata*.
82. The Sole Arbitrator also finds that this should reasonably have been clear to the Appellant at the time of receiving the letter in 2016, in which connection the Appellant had the opportunity to appeal against the decision in accordance with the applicable rules.
83. Furthermore, the Sole Arbitrator finds that no evidence has been produced to prove that the Appellant, after this decision, has brought forward any additional and new information to sustain his claim for a reopening of proceedings, in which connection the Sole Arbitrator points out that the FIFA DC, prior to its decision in 2016, had received information about the Appellant's allegations from the Club and from the HFF.
84. In light of the foregoing, the Sole Arbitrator thus finds that a formal decision was already made in 2016, addressing the question of whether the Club is the successor of the "old" AEK FC and, therefore, liable for the debt of the former club to the Appellant.
85. With reference to this decision of 24 October 2016 and in accordance with the principle of *res judicata*, the Sole Arbitrator finds that the decision in the Appealed Decision not to reopen the disciplinary proceedings on the ground that the FIFA DC was not in a position to deal again with the merits of the request, does not constitute a denial of justice since the matter has already been dealt with once by the competent legal body of FIFA.
- B. Is the Club to be considered the successor of the "old" AEK FC and, thus, liable for the payment to the Appellant in accordance with the FIFA DRC Decision?**
86. Based on the above conclusion, the Sole Arbitrator finds himself not in a position to deal again with whether or not the Club is to be considered the successor of the "old" AEK FC.

## **IX. COSTS**

87. Article R64.4 of the Code provides as follows:

*“At the end of the proceedings, the CAS Court Office shall determine the final amount of the costs 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. [...]”*

88. Article R64.5 of the CAS Code provides as follows:

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

89. Having taking into account the outcome of the arbitration, in particular the fact that the appeal was dismissed, the Sole Arbitrator considers that the costs of the arbitration must be borne by the Appellant in their entirety.

90. As a general rule, the award must grant to the prevailing Parties a contribution towards their legal fees and other expenses incurred in connection with the proceedings. In the present case, and in consideration of the outcome of the proceedings and also the fact that FIFA was not represented by an external counsel, the Sole Arbitrator rules that the Appellant shall pay a contribution towards the Club’s legal fees and expenses in the amount of CHF 4,000 (four thousand Swiss francs), while FIFA shall bear its own legal expenses.

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## **ON THESE GROUNDS**

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

1. The appeal filed by Nathan Joel Burns against the decisions rendered by the FIFA Disciplinary Committee on 15 and 23 August 2019 is dismissed.
2. The decisions rendered by the FIFA Disciplinary Committee on 15 and 23 August 2019 are confirmed.
3. The costs of the arbitration, to be determined and served to the Parties by the CAS Court Office, shall be borne entirely by Nathan Joel Burns.
4. Nathan Joel Burns is ordered to pay to AEK Athens FC a total amount of CHF 4,000 (four thousand Swiss francs) as a contribution towards its expenses incurred in connection with these arbitration proceedings.
5. FIFA shall bear its own legal expenses incurred in connection with these arbitration proceedings.
6. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland  
Date: 13 July 2020

**THE COURT OF ARBITRATION FOR SPORT**

Lars Hilliger  
Sole Arbitrator