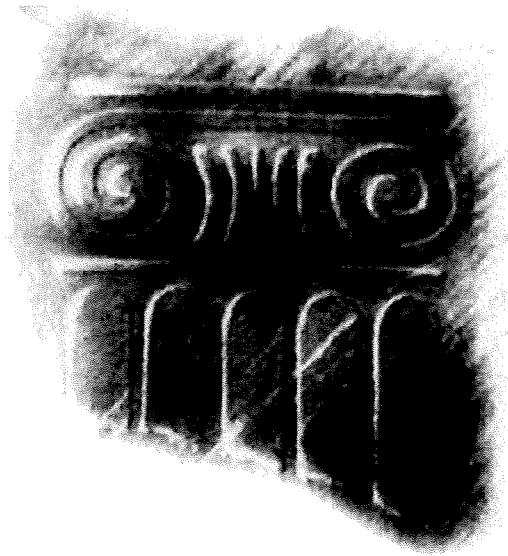


TAS / CAS

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



AWARD ON COSTS

AO Kavala, Greece

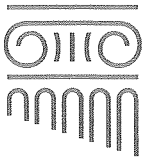
v.

Fédération Internationale de Football Association (FIFA), Switzerland

&

FC Hegelmann, Lithuania

CAS 2023/A/9667 - Lausanne, December 2023



TAS / CAS

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2023/A/9667 AO Kavala v. FIFA & FC Hegelmann

AWARD ON COSTS

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr. Patrick Stewart, Solicitor in Manchester, United Kingdom

Arbitrators: Mr. Efraim Barak, Attorney-at-Law in Tel Aviv, Israel
Dr. Anna Bordiugova, Attorney-at-Law in Kyiv, Ukraine

in the arbitration between

AO Kavala, Kavala, Greece

Represented by Mr. Marc Cavaliero, Mr. Jaime Cambreleng and Ms. Carol Etter, Cavaliero & Associates SA, Geneva, Switzerland.

Appellant

and

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

Represented by Mr. Saverio Paolo Spera, Senior Legal Counsel, FIFA Litigation Department

First Respondent

and

FC Hegelmann, Kaunas, Lithuania

Represented by Mr. Georgi Gradev, SILA International Lawyers, Sofia, Bulgaria

Second Respondent

* * * * *

I. PARTIES

1. AO Kavala (“**Kavala**” or the “**Appellant**”) is a football club affiliated to the Hellenic Football Federation (the “**HFF**”) which is, in turn, a member association of the Fédération Internationale de Football Association.
2. The Fédération Internationale de Football Association (the “**First Respondent**” or “**FIFA**”) is an association incorporated under Swiss law with its registered office in Zurich, Switzerland. FIFA is the governing body for international football. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players worldwide.
3. FC Hegelmann (the “**Second Respondent**” or “**Hegelmann**”), is a football club affiliated to the Lithuanian Football Federation (the “**LFF**”) which is, in turn, a member association of FIFA.
4. Collectively, Kavala, FIFA and Hegelmann will be referred to as the “**Parties**” and FIFA and Hegelmann shall be referred to as the “**Respondents**”.

II. FACTUAL BACKGROUND

5. Below is a brief overview of the facts leading to the dispute between the Parties, rather than a detailed summary, as the Panel has ultimately not been requested to take a decision on the dispute. The Panel is merely required to issue an Award on Costs.
6. On 29 April 2022, the FIFA Dispute Resolution Chamber (the “**DRC**”) decided on a training compensation claim (TMS Ref. No. 10205) brought by Hegelmann against the Greek football club FC Kavala, over the transfer of the player Vilius Armalas (the “**DRC Decision**”). The DRC Decision provided, *inter alia*, as follows:

“[...]

2. *The Respondent, FC Kavala, has to pay to the Claimant [Hegelmann] EUR 25,972.60 as training compensation plus 5% interest p.a. as from 10 February 2022 until the date of effective payment.*

[...]

4. *Pursuant to article 24bis of the Regulations on the Status and Transfer of Players if full payment (including all applicable interest) is not paid within 45 days of notification of this decision, the following consequences shall apply:*

1. *The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration the ban shall be of three entire and consecutive registration periods.*

2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not paid by the end of the three entire and consecutive registration periods”

7. As the DRC Decision was not complied with within the 45-day deadline, FIFA imposed a transfer ban on FC Kavala.
8. At the end of season 2021/2022, FC Kavala was relegated into an amateur division. According to both the HFF and the Appellant, pursuant to Article 111 of Law 2725/1999, relegation to an amateur division resulted in FC Kavala being automatically dissolved and replaced by its founding amateur association (i.e. AO Kavala) without the amateur association assuming any contractual or other obligations of the professional club.
9. On 20 February 2023, Hegelmann contacted FIFA as it deemed AO Kavala to be the sporting successor of FC Kavala and, as such, subject to the DRC Decision.
10. On 25 April 2023 and having considered submissions from AO Kavala, the HFF and the Second respondent, FIFA issued decision FDD-13637 which decided as follows (the “**Appealed Decision**”):

“[...] on the basis of the investigations conducted by FIFA, it appears that the club AO Kavala is to be considered the sporting successor of the club FC Kavala. Said club shall therefore be subject to the decision/confirmation letter issued by the Dispute Resolution Chamber on 2 May 2022.[...]”

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

11. On 16 May 2023, the Appellant filed a Statement of Appeal before the Court of Arbitration for Sport (the “**CAS**”) in accordance with Article R48 of the Code of Sports-related Arbitration (the “**Code**”) which:

- i) contained the following requests for relief:

“Prayer 1: The decision of the FIFA administration shall be set aside.

Prayer 2: Confirm that the Appellant, the amateur club, AO Kavala, is not the sporting successor of the professional club AO Kavala 1965.

Prayer 3: FIFA and FC Hegelmann shall be ordered, individually or jointly, to bear the costs of the arbitration and to contribute substantially to the legal fees incurred by AO Kavala.”

- ii) requested that the case be submitted to a panel of three arbitrators in accordance with Article R50 of the Code; and
- iii) nominated Mr. Efraim Barak as an arbitrator.

12. On 28 May 2023, the Respondents jointly nominated Ms. Anna Bordiugova as an arbitrator.

13. On 6 June 2023, the Second Respondent requested that the proceedings be bifurcated and that a preliminary award be issued declaring the Appeal inadmissible because it was brought against an email, an administrative correspondence, which did not constitute an appealable decision.
14. On 8 June 2023, the Appellant submitted that the Second Respondent's request to declare the Appeal inadmissible should be denied including, *inter alia*, because the Appellant had not yet submitted its Appeal Brief.
15. On 13 June 2023, the First Respondent also submitted that the Second Respondent's request to declare the Appeal inadmissible should be denied.
16. On 3 July 2023, the Appellant filed its Appeal Brief within the extended deadline set pursuant to the Code.
17. On 20 July 2023, the CAS Court Office confirmed that the Panel had been appointed to determine the Appeal and was constituted as follows:

President: Mr. Patrick Stewart, Solicitor in Manchester, United Kingdom

Arbitrators: Mr. Efraim Barak, Attorney-at-Law in Tel Aviv, Israel

Dr. Anna Bordiugova, Attorney-at-Law in Kyiv, Ukraine
18. On 23 August 2023, the CAS Court Office informed the Parties that the Panel had decided to deny the request for bifurcation of the proceedings and to defer any decision as to the nature of the challenged decision to the final award.
19. On 1 Sep 2023, the First Respondent filed its Answer within the extended deadline set pursuant to the Code.
20. On 4 September 2023, the HFF requested leave to file an *amicus curiae* brief.
21. On 9 Sep 2023, the Second Respondent filed its Answer within the extended deadline set pursuant to the Code.
22. On 11 September 2023, the Second Respondent opposed the HFF's request to file an *amicus curiae* brief and requested that the Panel determine the Appeal based on the Parties' written submissions alone.
23. On 12 September 2023: (a) the First Respondent opposed the HFF's request to file an *amicus curiae* brief; and (b) the Appellant confirmed its support for the HFF's request to file an *amicus curiae* brief.
24. On 15 September 2023, the Second Respondent: (a) informed the CAS Court Office that it had entered into a settlement agreement with the Appellant dated 14 September 2023 (the "**Settlement Agreement**"); (b) provided a copy of the Settlement Agreement to the CAS Court Office; and (c) confirmed that the Appellant had already paid the settlement fee to the Second Respondent in accordance with the Settlement Agreement, with the

effect that the Second Respondent no longer had any pending claim against the Appellant. The Settlement Agreement contained the following provision with respect to costs:

“3.1 [...] AO Kavala shall bear all related arbitration costs. The Parties shall bear their own legal costs.”

25. On 21 September 2023:

- i) The Appellant confirmed to the CAS Court Office that it had entered into the Settlement Agreement with the Second Respondent and that, accordingly, it was withdrawing its appeal.
- ii) The CAS Court Office informed the Parties that it acknowledged the withdrawal of the appeal and that an award on costs would be issued in due course.

IV. JURISDICTION

26. Article R47 of the Code provides as follows:

“An appeal against the decision of a federation, association or sports-related body may be filed with 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.”

27. Article 57 (1) 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 or leagues shall be lodged with CAS within 21 days of receipt of the decision in question.”

28. The Parties do not dispute the jurisdiction of CAS.

29. It follows that the CAS has jurisdiction to decide on the present dispute and therefore issue this Award on Costs.

V. COSTS

30. Since the Appellant has withdrawn its appeal, the Panel orders that the present arbitration procedure be terminated and removed from the CAS roll.

31. Article R64.4 of the Code provides that:

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

- *the CAS Court Office fee,*

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

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

32. Article R64.5 of the CAS Code provides that:

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

33. In view of the fact that the Appellant withdrew its appeal and that, pursuant to the Settlement Agreement, the Appellant agreed to meet the costs of the arbitration, the Panel confirms that the costs of the arbitration, in an amount that will be determined and served on the parties by the CAS Court Office, shall be borne in full by the Appellant.
34. Under the Settlement Agreement, the Appellant and the Second Respondent agreed to bear their own legal costs. Further FIFA was represented by its in-house Counsel. Accordingly, the Panel finds it appropriate that each Party bears his own legal fees and other expenses incurred in connection with these proceedings.
35. In view of the Parties’ requests, there is no reason to render a decision on any other point than the above. For this, any other motions or prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

- 1. The procedure CAS 2023/A/9667 *AO Kavala v. FIFA & FC Hegelmann* is terminated and removed from the CAS roll.
- 2. The costs of the arbitration, to be determined and served to the parties by the CAS Court Office, shall be borne in their entirety by AO Kavala.
- 3. The Parties shall bear their own legal fees and other expenses incurred in connection with the present arbitration.
- 4. Any other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne (Switzerland)
Date: 15 December 2023

THE COURT OF ARBITRATION FOR SPORT

Mr. Patrick Stewart
President of the Panel

Mr. Efraim Barak
Arbitrator

Dr. Anna Bordiugova
Arbitrator