

Tribunal Arbitral du Sport
Court of Arbitration for Sport

By email

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Lausanne, 7 October 2019/DB/jmj

Re: CAS 2018/A/5929 Esteghlal Iran Culture and Sport Private Joint Stock Company v. Football Federation Islamic Republic of Iran, Iran Football League Organization & Persepolis Football Club

Dear Sirs,

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

You will receive an original copy of the Award in due course.

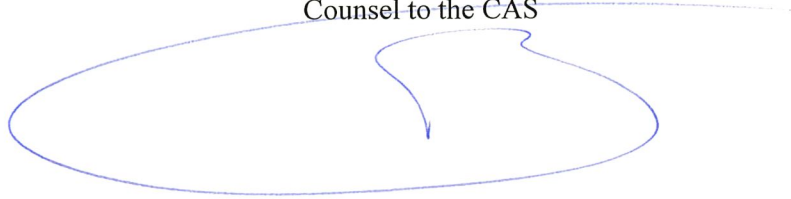
In accordance with Article R59 of the Code of Sports-related Arbitration, the attached Award is not confidential and can be published in its entirety by the CAS. If the Parties consider that any of the information contained in the Award should remain confidential, they should send a request, with grounds, to the CAS by **14 October 2019** in order that such information could potentially be removed, to the extent that such removal does not affect the meaning or the comprehension of the decision.

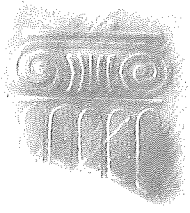
Please be advised that I remain at the Parties' disposal for any further information.

Yours faithfully,

Daniele BOCCUCCI
Counsel to the CAS

Enc.
C.c.: Sole Arbitrator





Tribunal Arbitral du Sport
Court of Arbitration for Sport

**CAS 2018/A/5929 Esteghlal Iran Culture and Sport Private Joint Stock Company v.
Football Federation Islamic Republic of Iran, Iran Football League Organization &
Persepolis Football Club**

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Ivaylo Dermendjiev, Attorney-at-law in Sofia, Bulgaria

in the arbitration between

Esteghlal Iran Culture and Sport Private Joint Stock Company, Iran

Represented by Mr James Kitching, Kitching Sports, Magill, South Australia

Appellant

And

Football Federation Islamic Republic of Iran, Iran

Represented by Mr Esmaeil Hassanzadeh, Head of Disciplinary Committee and Mr Amir Khosravi, General Secretary Legal Advisor

First Respondent

Iran Football League Organization, Iran

Represented by Mr Amir Hossein Fattahi, Competitions Officer

Second Respondent

Persepolis Football Club, Iran

Represented by Mr Iraj Arab, President, Mr Mehdi Zaker, Legal Advisor and Mr Amirali Hosseini, Director of International Affairs and Relations

Third Respondent

I. PARTIES

1. Esteghlal Iran Culture and Sport Private Joint Stock Company (the "Appellant" or "Esteghlal") is a professional football club, affiliated to the Football Federation of the Islamic Republic of Iran.
2. The Football Federation Islamic Republic of Iran ("FFI" or the "First Respondent") is the national football federation of Iran, affiliated to the Fédération Internationale de Football Association ("FIFA").
3. Iran Football League Association (the "League" or the "Second Respondent") is a professional football league organizing the relevant tournaments, such as the championships, cups, etc., in Iran.
4. Persepolis Football Club ("Persepolis" or the "Third Respondent") is a professional football club, affiliated to FFI.
5. The Appellant and the Respondents will be jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

6. This appeal was filed by Esteghlal against the decision of the Appeal Committee of FFI passed on 28 August 2018 (the "Appealed Decision"). By the Appealed Decision the Appeal Committee of FFI dismissed the appeal filed by Esteghlal against the decision issued by the Disciplinary Committee of FFI on 23 July 2018, by which it was decided that the match for the Iran Super Cup had been cancelled because of the refusal/unavailability of Esteghlal to participate and the match was awarded by forfeit in favour of Persepolis with a score of 3-0.
7. 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, it refers in its award (the "Award") only to the submissions and evidence it considers necessary to explain its reasoning.
8. The present dispute is related to the right of FFI to cancel the Super Cup match due to the refusal/unavailability of Esteghlal to play.
9. On 23 May 2018, the Second Respondent met with the head coaches of all the clubs participating in the various national competitions and got their opinion on the proposed new season calendar.
10. On 14 June 2018, the Second Respondent approached all clubs and provided them with the finalized version of the League calendar.

11. On 2 July 2018, the Second Respondent informed the Appellant and the Third Respondent that they would be the two clubs participating in the Super Cup match to take place on 20 July 2018.
12. On 3 July 2018, the Appellant requested that the First Respondent postpone the match for reasons related to the participation of some of its players in the World Cup and the corresponding advisable resting period as per the First Respondent's instructions as well as the club's taking part in the then ongoing Asian Cups.
13. On 10 July 2018, the Second Respondent rejected the Appellant's request.
14. On 14 July 2018, the Second Respondent informed the Appellant that the date of the Super Cup was maintained and of the sanctions it would face should it not participate in the match.
15. On 15 July 2018, the Appellant reiterated its request for postponement.
16. On the same day, the Secretary General of the First Respondent issued an investigatory report in connection with that issue (the "Report"). Pursuant to the main findings of the Report, the Appellant rejected and insisted on changing the date of the Super Cup match.
17. On 17 July 2018, the Security Council of the Sports Commission of Tehran (the "Security Council") met with representatives of all concerned parties in Tehran for the organization of the Super Cup match. At that meeting, a representative of the Appellant allegedly restated the reasons for the Appellant's unavailability and its request for postponement but the same was rejected by the Security Council deeming itself the inappropriate venue for such request and directing the Appellant to the Second Respondent.
18. On 18 July 2018, the Second Respondent announced to the Appellant that the match would be cancelled automatically on 20 July 2018 and Persepolis would be considered as the winner with a score of 3-0, and referred the matter to the Disciplinary Committee of the First Respondent responsible for taking the appropriate decision.

A. The FFI proceedings

19. On 19 July 2018, the First Respondent urged the Second Respondent to immediately forward the cancellation decision and transfer the matter to its Disciplinary Committee.
20. By letter dated 19 July 2018, the Disciplinary Committee of the First Respondent invited the Appellant to submit its statement of defence within 48 hours of receipt of said invitation. The latter never submitted such a statement of defence as it allegedly only received said invitation on 23 July 2018 when the Disciplinary Committee rendered its decision.
21. By letter dated 21 July 2018, the Appellant independently wrote to the First Respondent confirming its previous position and demanding that the Disciplinary Committee conduct a fair investigation of the matter.

22. By letter dated 23 July 2018, the general manager of the Security Council declared to the attention of the Second Respondent that the representative for the Appellant confirmed that the Appellant would not be in Iran on the day of the Super Cup match.
23. On 23 July 2018, a disciplinary hearing was held in the present matter. Later that day, the Disciplinary Committee issued the following decision:
- "[...] having authenticated negligence of Esteghlal Club of Tehran in not holding Super Cup Competition on Friday dated 20.07.2018 and with reference to Para. 1 to Art. 96 and Art. 61 of Disciplinary regulations, and Para. 1 to 10 and 14 of Articles of Association of Tehran Football Federation, and in compliance with Art. 93 of Disciplinary regulations, as no compensation is received by League Organization, League Organization declares competition result 3-0 in favor of Persepolis Club."*
24. The grounds of the Disciplinary Committee's decision were the following:
- all clubs are obliged to observe the timetable;
 - the Second Respondent explicitly insisted on holding the match on the previously agreed date and the mere disagreement with a postponement request should be read as an invitation to comply with the original calendar;
 - the Appellant was not even in Iran on match date which illustrates that the latter did not believe in holding the competition on the scheduled date;
 - at the meeting of the Security Council, a representative of the Appellant confirmed the latter's refusal to participate in the match;
 - the Appellant cannot force the Second Respondent into violating the FFI Regulations;
 - in light of the Appellant's behaviour, the Second Respondent could not have maintained the match which would have caused irreparable financial and non-financial damages.
25. On 14 August 2018, consistent with the applicable provisions of the FFI Regulations, the Appellant lodged an appeal against the decision of the Disciplinary Committee before the Appeal Committee of the First Respondent.
26. By letter dated 19 August 2018, the Appellant submitted its written statement.
27. On 20 August 2018, the Appellant informed the Appeal Committee that it would be relying on the testimony of two witnesses, that it duly identified, at the Appeal Committee hearing.
28. On 28 August 2018, after a hearing was held in the matter, the Appeal Committee issued the Appealed Decision which in its operative part reads as follows:

"[...] Estaghlal F.C. did not provide prima facie evidence to succeed in appealing against the rendered judgment of disciplinary council, enforcing 0-3 score in favor of Persepolis F.C. Therefore, by virtue of Article 61 and 106 of Disciplinary Council By-law, upon denying the appeal, the subject judgment is confirmed and approved regarding the case. In case of punishment mitigation, by virtue of Article 93 of the said by-law, as stated in Article 61 of the By-law, not only does the violating team loses the match, but also the team has to pay at least IRR 500,000,000/- as penalty, therefore, it was clarified that the decision is to mitigate the punishment and not entirely neglect it. By virtue of Article 61 and 106 of Disciplinary Council By-law, Estaghlal F.C. is convicted to pay IRR 500,000,000/- penalty, and this decision is final."

29. The grounds of the Appealed Decision were as follows:
- it is clear that the Second Respondent did not accept the Appellant's request for postponement;
 - the Second Respondent provided sufficient reasons why it would not be able to delay the match and informed the Appellant of the consequences of not attending the match;
 - the Appellant confirmed its absence at the Security Council meeting on 17 July 2018;
 - the Appellant's justifications as to its request for postponement did not convince either the Disciplinary Committee, or the Appeal Committee.
30. The Appealed Decision with grounds was notified to the Appellant on 7 September 2018.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

31. On 25 September 2018, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") against the Respondents challenging the Appealed Decision, pursuant to Article R48 of the Code of Sports-related Arbitration (the "CAS Code"). By its Statement of Appeal, the Appellant requested that the case be decided by a sole arbitrator.
32. On 3 October 2019, the Respondents objected to the nomination of a sole arbitrator and requested instead that the dispute be submitted to a panel of three arbitrators.
33. On 18 October 2018, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division had decided to submit the present case to a sole arbitrator.
34. On 19 October 2018, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.
35. On 5 November 2018, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division and in accordance with Articles R33, R52, R53 and R54

of the CAS Code, informed the Parties that the Panel appointed to decide the case was constituted as follows:

Sole Arbitrator: Dr Ivaylo Dermendjiev, Attorney-at-law in Sofia, Bulgaria

36. In accordance with Article R55 of the CAS Code, the Third Respondent filed its Answer on 21 November 2018 while the First and the Second Respondent filed their Answers on 24 November 2018.
37. On 29 November 2018, the CAS Court Office invited the Parties to inform the CAS whether they preferred a hearing to be held or for the Sole Arbitrator to issue an award based solely on the Parties' written submissions.
38. On 3 December 2018, the Third Respondent stated that it did contest holding a hearing session but would participate in such session if necessary.
39. On 5 December 2018, the First and Second Respondents stated that they preferred a hearing to be held in the present matter.
40. On 6 December 2018, the Appellant requested that the award be rendered solely on the basis of the Parties' written submissions.
41. On 18 December 2018, the CAS Court Office informed the Parties that the Sole Arbitrator has decided to hold a hearing in this matter.
42. On 22 December 2018, the Appellant informed that it will seek leave to orally amend its request for relief at the hearing.
43. On 27 December 2018, the First and the Second Respondents objected to the Appellant's request to be authorized to amend its relief.
44. On 18, 20 and 21 February 2018, the Parties signed the Order of Procedure.
45. In accordance with Article R57 of the CAS Code, a hearing was convened and held on 15 March 2018 in Lausanne, Switzerland. The Sole Arbitrator was assisted at the hearing by Mr Daniele Boccucci, Counsel to the CAS. The following persons attended the hearing:

A. For the Appellant:

Mr James Kitching, Counsel

Ms Susanah Ng, Counsel

Mr Amir Hossein Fathi, Managing Director

Mr Ali Ahmadi Khatir, Sporting Director

Mr Akbar AbbasiMaleki, former Chairman(by phone)

B. For the Respondents:

i. First Respondent

Mr Esmaeil Hassanzadeh, Head of Disciplinary Committee

Mr Amir Khosravi, General Secretary Legal Advisor

ii. Second Respondent

Mr Amir Hossein Fattahi, Competitions Officer

iii. Third Respondent

Mr Iraj Arab, President

Mr Mehdi Zaker, Legal Advisor

Mr Amirali Hosseini, Director of International Affairs and relations

46. The Parties were given the opportunity to present their case, to make pleadings and arguments, to examine the witnesses and to answer questions posed by the Sole Arbitrator. Upon closing of the hearing, the Parties expressly stated that they had no objections in relation to their right to be heard. The Sole Arbitrator had carefully taken into account all the evidence and the arguments presented by the Parties, in their written submissions and at the hearing, even if they have not been summarised in the present Award.

IV. SUBMISSIONS OF THE PARTIES

A. The Appellant

47. As to the facts, the Appellant's submissions, in essence, may be summarized as follows:
- The date of the Super Cup match was announced to the Appellant and the Third Respondent in May 2018. That being said, the Appellant underlines that the Super Cup match has a long history of not being played or being rescheduled;
 - On 2 July 2018, the Second Respondent informed the Appellant and the Third Respondent that they would participate in the Super Cup match and confirmed its date;
 - On 3 July 2018, the Appellant informed the First Respondent that the scheduled date of the match would cause the following problems: 1) high risk of some of the Appellant's players' being injured due to their simultaneous involvement in the 2018 FIFA World Cup (the "World Cup"); 2) the First Respondent's instruction directed at clubs taking part in the World Cup to take a 14-day rest period before any future matches; 3) involvement of the Appellant's players in the final match of the 2017 Iranian Cup which took place on 3 June 2018; 4) the impossibility for the Appellant's

- team to complete its preparatory pre-seasonal camp because of the accumulated delays as per the previous points;
- On 10 July 2018, the Second Respondent rejected the postponement request because the match dates were known much in advance, the Super Cup match could only take place before the start of the 2018/2019 season and both the Appellant and the Third Respondent were in the same competing conditions. By the same correspondence, the Second Respondent cautioned the Appellant that its failure to participate would result in the imposition of sanctions;
 - On 14 July 2018, the Appellant was invited to attend the meeting of the Security Council in view of the organization of the match;
 - On the same day, by an unsolicited correspondence sent to the Appellant, the Second Respondent restated that disciplinary proceedings and potential monetary sanctions would follow the Appellant's refusal to participate in the Super Cup match;
 - On 15 July 2018, the Appellant reiterated its request for postponement;
 - On 17 July 2018, the Security Council meeting was held. The representative of the Appellant who attended the meeting was not authorized to make decisions regarding the Appellant's participation in the match;
 - On 18 July 2018, the Second Respondent cancelled the match, awarded a 3-0 forfeit victory to the Third Respondent, and referred the matter to the Disciplinary Committee;
 - While on 19 July 2018 the First Respondent issued an invitation to the Appellant to submit its statement of defence within 48 hours of receipt of said invitation, the Appellant did not receive the invitation until 23 July 2018, and after the Disciplinary Committee decision was announced publicly;
 - On 21 July 2018, the Appellant independently wrote to the First Respondent regarding the cancellation of the match arguing that the Second Respondent misinterpreted the Appellant's request for postponement which was never meant to be an act of withdrawal;
 - On 23 July 2018, the Security Council issued a letter in support of the position that at the 17 July 2018 meeting, the representative for the Appellant advised on the Appellant's absence on match day;
 - The Disciplinary Committee of the First Respondent confirmed the cancellation decision and awarded the match by forfeit to the Third Respondent;
 - The Appeal Committee confirmed the Disciplinary Committee's decision and imposed additional monetary sanction upon the Appellant;
 - Concerning the decision of the Appeal Committee, the Appellant claims that it was not given a meaningful opportunity to submit a written statement prior to the appeal

hearing. At that hearing, the Appellant orally submitted that 1) the match was cancelled two days before the actual match date; 2) the 17 July 2018 meeting was for the limited purpose of deciding on security and logistical matters and that is why the Appellant's representative at that meeting had no authority to take any decisions outside of that restricted scope; 3) at no point did the Appellant effectively withdraw from participation at the match; 4) both the Appellant and the Third Respondent were absent from the stadium on match day;

- On 8 September 2018, the First Respondent notified the Appealed Decision to the Appellant and stated in the media that it would award the trophy for the match to the Third Respondent.

48. With regard to the merits, the Appellant urged the Sole Arbitrator to hear the matter *de novo* and identified the following main issues:

- The Appeal Committee violated the Appellant's procedural rights, and more specifically, its right to be heard and to meaningfully defend itself;
- The Appeal Committee erred in deciding that the Appellant withdrew from participating in the match. The Appeal Committee relied on irrelevant and incorrect factual allegations to cancel the match. Thus, it is irrelevant that the Appellant's team was not in Iran on match day as the decision to cancel the match had been taken two days in advance of that date. Moreover, the Appellant's players could have easily returned home had the match not being cancelled. Additionally, the very presence of the Appellant's representative at the Security Council meeting was an obvious signal that the Appellant intended to participate in the match. At that same meeting, the representative of the Appellant did not communicate any wish or decision to withdraw from participation in the match. In claiming the latter, the First Respondent relied solely upon documents prepared by the Security Council, which had been clearly disproved by a witness statement of the Appellant's representative. According to the applicable provisions of the FFI Regulations, the First Respondent bears the burden of proving the club's violation of said regulations. However, the latter failed to discharge its burden of proof and its claims of a withdrawal remained entirely unsubstantiated. Instead, the First Respondent erroneously and arbitrarily misconstrued the Appellant's request for postponement;
- Anyhow, the Appeal Committee did not have the power to render the Appealed Decision, as pursuant to Article 61 of the FFI Regulations, the failure to organize the match is imputed to the club only if "*such failure was due to an act or omission*" of the club. Here, the match was obviously cancelled but through no fault of the Appellant. The latter could thus not be held liable for violation of Article 61 of the FFI Regulations;
- In any case, the Appeal Committee mistakenly increased the sanction imposed by the Disciplinary Committee adding to the forfeiture a large monetary fine.

49. In the Appeal Brief, the Appellant requested the following relief, which was later orally amended at the hearing:

"92.1. annul the Decision;

92.2. order the Match to be rescheduled and played on a date prior to 31 December 2018 [this request was amended at the hearing by requesting that the match be rescheduled at "a later date"];

92.3. (in the hypothetical scenario that the Appellant is found to have violated Article 61 of the Regulations) annul the Decision of the Appeal Committee and issue a new decision consistent with the DC Decision;

92.4. order the Respondents to bear all arbitration costs connected with this procedure; and

92.5. order the Respondents to pay the Appellant a contribution towards its legal and other costs, in the amount to be determined at the discretion of the Sole Arbitrator."

B. The First Respondent and the Second Respondent

50. It must be noted that the First and the Second Respondents submitted a "joint answer" with the same requests for relief. Their position, which was aligned also for the pleadings at the hearing, will be consequently summarized together. As to the facts, the submissions of the First Respondent and the Second Respondent, in essence, may be summarized as follows:

- On 23 May 2018, the Second Respondent met with the head coached of all the clubs competing in the various national competitions and solicited their opinion with regard to the proposed new season calendar;
- The Second Respondent contacted the Appellant on various other occasions for the latter's participation at the Super Cup;
- On 14 June 2018, the Second Respondent provided all clubs with the finalized league calendar;
- On 2 July 2018, the Second Respondent officially contacted the Appellant and the Third Respondent to invite them to attend a meeting in connection with the organization of the match;
- On 3 July 2018, the Appellant shared with the Second Respondent its opinion with regard to the date of the match;
- On 10 July 2018, the Second Respondent expressly and overtly manifested their refusal of the Appellant's offer for postponement, confirmed the match date as the only possible date for the Super Cup, and reminded the Appellant of the consequences of its decision to withdraw from the match;

- On 14 July 2018, the Second Respondent, in good faith, sent yet another letter to the Appellant pointing out that its potential withdrawal would result in financial and non-financial damages for the League, triggering the latter to commence disciplinary and legal proceedings against the club;
- On 15 July 2018, the Appellant reiterated its request for postponement without taking into consideration the Second Respondent's reasons for turning down its offer;
- On 17 July 2018, the fully authorized representative of the Appellant attended the Security Council meeting. All thirty-three attendees were unanimously convinced that the representative confirmed the Appellant's withdrawal. However, the representative was advised to send its request by official letter to the Second Respondent;
- On 18 July 2018, the Second Respondent cancelled the match for the following reasons: 1) the Second Respondent had rejected the Appellant's offer to postpone the match but the latter persisted in its position; 2) the Appellant's representative present at the Security Council expressly stated that the Appellant was unavailable on match day; 3) on match day, the Appellant was at a training camp in Turkey and was absent from Iran and only planned to return on 22 or 23 July 2018; 4) the Appellant had planned to play a friendly match in Germany on 21 July 2018 and when that match got cancelled for visa issues it played another friendly match with a team from Turkmenistan on 20 July 2018; 5) a decision to maintain the match date would have caused hardship to the fan mass as well as a general confusion and chaos in the vicinity of the stadium;
- On 19 July 2018, the First Respondent requested that the Second Respondent having issued the decision to immediately refer the matter to the Disciplinary Committee so as to respect the Appellant's right to be heard and to defend its case;
- As 20 July 2018 was a non working day in Iran, notification to the Appellant of the matter being referred to the Discipline Committee and the applicable deadlines to exercise its right to be heard, was sent to and received by the Appellant on 21 July 2018;
- The Second Respondent then referred the decision to the Disciplinary Committee of the First Respondent, which on 23 July 2018 issued a decision sanctioning the Appellant for its violation of the FFI Regulations by forfeiting the match in favour of the Third Respondent;
- Also on 23 July 2018, the General Manager of the Security Council addressed a letter to the Second Respondent whereby the former confirmed that the Appellant's representative at the Security Council meeting on 17 July 2018 was fully authorized by the club to make binding decision and confirmed the team's absence of Iran on match day;
- By letter dated 19 August 2018, the Appellant submitted a written statement before the Appeal Committee with regard to the cancellation and forfeit decision;

- On 20 August 2018, the Appellant informed the Appeal Committee that it would be relying on the testimony of two witnesses, that it duly identified, at the Appeal Committee hearing;
- On 28 August 2018, after a hearing was held in the matter, the Appeal Committee confirmed the cancellation of the match and issued the appropriate sanction as per the FFI Regulations.

51. With regard to the merits of the case, the First Respondent and the Second Respondent submitted the following justifications: 1) not only are the FFI and the League are independent sport governing bodies and have the discretion to organize competitions, but their decisions are fully in line with industry practices and the decisions taken by FIFA or the AFC under similar circumstances; 2) football public order has to be observed in organizing competitions and the current case cannot serve as precedent for other teams' irrational requests; 3) the Super Cup had to be organized before the start of the new league season; 4) four independent bodies, that are the League, the Security Council, the Disciplinary Committee and the Appeal Committee share the same understanding as to the Appellant's overall behaviour and the underlying decision to withdraw; 5) the Appellant's training camp took place overseas and the it had organized a friendly game on match day which clearly illustrate its unwillingness to participate in the Super Cup.

52. In their Answer, the First Respondent and the Second Respondent requested the following relief:

"65.1. Dismiss request of the Appellant to annul a decision of the Iran Football Federation appeal committee dated 28 August 2018.

65.2. IRIFF and the League hereby reject all of the other requests raised by the appellant and ask for dismissing them."

53. With regard to the arbitration and legal costs, the First Respondent and the Second Respondent declared they are *"still insisting on not paying the arbitration costs and (...) that the Appellant has already incurred significant financial damages to the IRIFF and League due to the match cancellation and they should cover all of them upon providing receipts and documents."*

C. The Third Respondent

54. In its written submission, the Third Respondent stated its compliance with the rules and regulations of the FFI as well as with the league calendar. It further confirmed its availability to participate in the match on 20 July 2018 had the Appellant not withdrawn.

55. The Third Respondent argued that throughout the match preparation process, the Appellant exhibited ignorance regarding the Second Respondent's warnings.

56. It stressed that clubs with over forty million fans such as Persepolis itself cannot afford to violate the FFI's rules and regulations because of the high risk of irregularity and chaos that might ensue such behaviour.

57. The Third Respondent demanded to be compensated by the Appellant for the losses the former had suffered due to the match failure and requested the following relief:

"... confirmation of the decision, rendered by judiciary members of the Iranian Football Association, as well as the condemnation of Esteghlal Club to compensate for the damages that has (sic) been inflicted on us.

Considering the issue that Persepolis was not a party in any case raised at Iran Football Federation (Disciplinary Committee or Appeal Committee) and did not interfere or was not effective in any decisions therefore we respectfully request the arbitrator of the current case to dismiss appellant's claim against Persepolis FC."

V. JURISDICTION

58. 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 if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body."

59. In the absence of a specific arbitration agreement, in order for the CAS to have jurisdiction to hear an appeal, the statutes or regulations of the sport-related body from whose decision the appeal is being made must expressly recognize the CAS as an arbitral body of appeal.

60. Article 111 ("*Recourse to the Court of Arbitration for Sport (CAS)*") of the FFI Regulations provides that:

"(...) according to Articles of Association of Football Federation and Articles of Association of FIFA, final decision passed by judicial organs of Federation can be appealed in Court of Arbitration for Sport (CAS) under formal and substantive regulation of the said international entity" (translation provided by the Appellant)."

61. The Appellant submits that all internal remedies have been exhausted before resorting to the CAS and relies on Article 106.6 of the FFI Regulations providing the following:

"Judgments of the Appeal Committee are final, and if possible, they can be merely objected to before Sport Supreme Court, and will be subject to regulations of the said court in terms of objection and hearing formalities."

62. The First Respondent and the Second Respondent in their Answer contend that the CAS has no jurisdiction over the Second Respondent in relation to the current matter as, while the latter has its independent legal existence, its role is subordinated to that of the First Respondent. Consequently, the Second Respondent could not be independently named as a party in the present proceedings. The Sole Arbitrator deems it appropriate to re-

qualify the aforementioned objection to jurisdiction as a claim that the Second Respondent has no standing to be sued in the present matter, and as such the issue shall be dealt with in the Merits section of this Award.

63. All parties have signed the Order of Procedure, thereby confirming jurisdiction of the CAS and foregoing any prior jurisdictional objection.
64. It follows that the CAS has jurisdiction to decide this dispute.

VI. ADMISSIBILITY

65. Article R49 of the CAS Code provides as follows:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late."

66. According to the information provided by the Appellant, and which has not been contested by the Respondents, the Appealed Decision was notified to the Appellant on 8 September 2018 and the Statement of Appeal filed on 25 September 2018, within the required twenty-one days set in Article R49 of the CAS Code.
67. No further objection in that respect has been raised by the Respondents. It follows that the appeal is admissible.
68. In their written submissions, the First and Second Respondents requested that, in addition to upholding the Appeal Decision, the Sole Arbitrator award them compensation for the financial losses allegedly incurred as a result of the cancellation of the match.
69. The CAS Code does not provide for the possibility of the respondent to file in appeals arbitration proceedings a counterclaim against the decision challenged by the appellant - any party wishing to have the disputed decision set aside or modified has to file an independent appeal. Although the First and Second Respondents' request was not strictly speaking formulated as a counterclaim or as an appeal against the Appealed Decision, in effect it seeks modification or supplement of the holding of the Appealed Decision.
70. Accordingly, the First and Second Respondents' request is inadmissible.

VII. APPLICABLE LAW

71. 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, that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision."

72. The matter at stake relates to an appeal against a final decision of FFI's Appeal Committee rendered pursuant to the 2017 Disciplinary Code of the FFI (the "FFI Regulations").
73. Pursuant to Article 3 of the Regulations, all legal entities which are members of the First Respondent and all football clubs and their members are bound by the application of the FFI Regulations.
74. All Parties refer to the FFI Regulations and subsidiarily, Iranian law, as law applicable to the merits of the dispute.
75. In light of the above, and in particular, of the Parties' concurring positions as to applicable law, the Sole Arbitrator is of the view that the law applicable to the present appeal shall be primarily the FFI Regulations, and subsidiarily, Iranian law to the extent its contents are ascertainable by the Sole Arbitrator.

VIII. MERITS

76. The core principle that CAS applies when rendering an award is the *de novo* principle resulting from Article R57 of the CAS Code. According to Article R57, the Sole Arbitrator has full power to review the facts and the law of the case. Furthermore, the Sole Arbitrator may issue a new decision which replaces the challenged decision or may alternatively annul the decision and refer the case back to the previous instance.
 77. Based on the Parties' submissions and oral argument, the issues for determination are the following:
 - A. As a preliminary matter on the merits, does the Second Respondent have standing to be sued in the present matter?
 - B. Was the Appellant's right to be heard and meaningfully defend itself violated during the FFI proceedings?
 - C. Did the Appellant withdraw from participation in the Super Cup match?
 - D. Depending on the answer to (B) above, what is the appropriate sanction for the Appellant's withdrawal?
- A. Does the Second Respondent have standing to be sued in the present matter?**
78. In their joint Answer, the First and the Second Respondents assert that the CAS has no jurisdiction over the League in this case as the latter owes its very existence to the FFI and cannot be separately appealed as an independent respondent before the CAS.
 79. Such claim purports to the legal standing of the Second Respondent rather than CAS jurisdiction over the underlying dispute.

80. The CAS Code offers no guidance in that respect. CAS tribunals dealing with similar standing issues have thus resorted to the applicable provisions of Swiss law. Under Swiss law, *"a party has standing to be sued and may thus be summoned before the CAS only if it has some stake in the dispute because something is sought against it"* (CAS 2007/A/1329 Chiapas F.C. v/ Cricuma Esporte Clube & CAS 2007/A/1330 Chiapas F.C. v/ R.) or in other words if it is *"personally obliged by the 'disputed right' at stake, that is only if it has some stake in the dispute because something is sought against it"* (CAS 2008/A/1517 Ionikos FC v. C.).
81. In the case at hand, as an integral part of its amended request for relief, the Appellant is seeking that the Second Respondent reschedule the match. The Second Respondent thus clearly has a stake at the dispute as something is sought against it. Consequently, the Sole Arbitrator finds that the Second Respondent has legal standing to be sued in the present proceedings.
- B. Was the Appellant's right to be heard and meaningfully defend itself violated during the FFI proceedings?**
82. The Appellant argued in its written submissions that the FFI proceedings violated its right to be heard and defend itself since it had not been given a meaningful opportunity to present its written statements either to the Disciplinary Committee or to the Appeal Committee.
83. With regard to the first stage of the FFI proceedings, the Appellant claims the 48 hours it had been granted to file its written position with regard to the League's cancellation decision had already elapsed when it was notified of that deadline.
84. The Sole Arbitrator notices a serious factual discrepancy as to the send and receipt dates of the Disciplinary Committee's letter dated 19 July 2018. Keeping in mind that, as per the express terms of the letter, the 48 hours deadline for filing a statement started running on 19 July 2018, whether the actual receipt happened a few hours before the deadline on 21 July 2018 or on 23 July 2018 is irrelevant as in both situations the Appellant found itself deprived of its opportunity to prepare and submit its written observations prior to the deadline.
85. Pursuant to Article 20.11 of the FFI Regulations on "Convening sessions, parties to dispute rights, confidentiality, notification of decisions":

"All the papers and notifications relevant to the councils, clubs, coaches, players and clubs employees shall be sent to the related regional football association and the said papers shall be considered notified five days after sending to the regional football association and the fifth day shall be considered as the notification day. It shall be notified to the regional football association through administrative automation (Internal Communication System).

Note: The regional football association shall notify the said papers, as soon as possible without delay, to the addressee against receipt and send it attached with the official letter to the Football Federation through administrative automation."

86. Despite its quite imprecise drafting, it could be deducted from the provision that the decision has to be notified to its addressee, that is the Appellant, "as soon as possible without delay". According to the evidence submitted by the First Respondent, it notified the decision to the Appellant on the next business day, on 21 July 2018, which clearly falls within the meaning of "as soon as possible without delay".
87. Based on the above and notwithstanding the timely notification, the Appellant was not given sufficient opportunity to present its arguments in writing, and its right to be heard and defend itself during the Disciplinary Committee proceedings had been violated.
88. Concerning the second stage of the FFI proceedings, the Appellant asserts that it was not invited to file its written statement prior to the hearing. However, as per the Appellant's letter to the Appeal Committee dated 19 August 2018 produced by the Respondents, the Appellant was able to introduce its written argumentation prior to the hearing that it and its witnesses later also attended in person. Consequently, the Appellant's right to be heard and defend itself was not violated during the Appeal Committee proceedings.
89. Thus, if the Appellant had been deprived of its right to present and defend its case before the Disciplinary Committee, it seems that the Appellant's opportunity to argue its case in writing and orally before the Appeal Committee cured such violation.
90. In case any doubt subsists as to the integrity of the Appellant's procedural rights, all potential violations at whatever stage of the FFI proceedings have been sufficiently cured during the course of the current proceedings. The Sole Arbitrator holds that the *de novo* review contemplated by Article R57 of the CAS Code, must be understood to cure any eventual violation of Appellant's right to be heard at the previous instance.
91. The jurisprudence of CAS in this regard is abundant and consistent. For instance, in the award CAS 2018/A/1574, the CAS Sole Arbitrator established that the effect of the *de novo* hearing is:
- "a completely fresh hearing of the dispute between the parties [and thus], any allegation of denial of natural justice or any defect or procedural error even in violation of the principle of due process which may have occurred at first instance... will be cured by the arbitration proceedings before the appeal Sole Arbitrator and the appeal Sole Arbitrator is therefore not required to consider any such allegations."*
92. To similar effect, Mavromati & Reeb (the Code of the Court Arbitration for Sport, Cases and Materials, Edition 2015) observe that CAS Sole Arbitrators regularly reject arguments as to procedural deficiencies in the previous instance on the basis of this curative effect, noting the well-established CAS jurisprudence according to which "[...] the virtue of an appeal system is that issues relating to fairness of the proceedings before the authority of first instance fade to the periphery."
93. The Sole Arbitrator concurs with the Sole Arbitrator in CAS 2015/A/4346 that the full power to review the facts and the law, granted under the provisions of Article R57 of the CAS Code, has a dual meaning: not only that procedural flaws of the proceedings of the previous instance can be cured in the proceedings before the CAS, but also that the

Sole Arbitrator is authorized to admit new prayers for relief and new evidence and hear new legal arguments (see MAVROMATI/REEB, *The Code of the Court of Arbitration for Sport, Commentary, Cases and Materials*, Edition 2015, comment under Article R57, para. 12, p. 508) with some limited restrictions which are not applicable in the present case.

94. On this basis, the Sole Arbitrator considers that any eventual violation of Appellant's right to be heard at the previous instance has been cured by these CAS proceedings. Thus, the Appellant has been able to submit its written and oral statements as well as large volumes of evidence that the Sole Arbitrator had taken into consideration in reaching its decision in the case.

C. Did the Appellant withdraw from participation in the Super Cup match?

95. The pivotal question in these proceedings revolves around determining whether the Appellant simply communicated its unavailability and requested a postponement of the Super Cup match or effectively withdrew from participation, such withdrawal eventually resulting in the cancellation of the match.
96. For the purposes of the current analysis, the Sole Arbitrator notes that the Appellant never clearly and explicitly confirmed its withdrawal from the match. In other words, it never simply refused to participate in the match. The Sole Arbitrator will thus have to inspect the Appellant's overall behaviour and statements in the context of the Iranian football reality.
97. Upon notification of the Super Cup finalists and of the official date of the match on 2 July 2018, the Appellant approached the First Respondent and the Second Respondent on several occasions (3 July 2018, 15 July 2018 and 17 July 2018) warning them of the density of the competitions, the lack of rest for the players and corresponding high risk of injury, and the lack of preparation, and simply "suggesting" that postponing the match would be the most reasonable choice in that situation.
98. However, what is important to appreciate is the Appellant's insistence on the postponement even after the League's motivated refusal as well as the timing of its last manifestation of that insistence on 17 July 2018 at the Security Council meeting, at only 3 days from the scheduled date of the match.
99. The Sole Arbitrator observes that while the totality of circumstances will be appreciated in determining whether the Appellant's behaviour amounted to a withdrawal, a particular importance is given to the expression of the Appellant's position at only 3 days from the Super Cup at the Security Council meeting gathering thirty-three stakeholders deciding on the final organizational details of the match.
100. In that regard, the Appellant argues that its representative at the Security Council meeting, Mr. Maleki, had no representative authority and could not take any decision binding the club. In support of its position, the Appellant filed Mr. Maleki's witness statement and called him to the stand at the oral hearing. That point of view is contradicted by the minutes of the meeting indicating that all thirty-three participants confirm Mr. Maleki's call for postponement. Moreover, the Appellant cannot simply escape responsibility for its agent's statements if the agent disposed of apparent authority

to act on the former's behalf. Thus, if a third party reasonably believes that such agency exists predicated on the acts or omissions of the principal, then implied agency can be created. The Appellant selecting and sending a representative at the most important organizational meeting held only three days before the match suffices for a reasonable third party to impute authority upon the agent. His additional request for postponement is thus imputed to the Appellant.

101. Additionally, the Sole Arbitrator takes into consideration the following elements underlined by the Respondents: 1) the league calendar was made known to the Appellant and the Third Respondent in May 2018; 2) even if matches have been postponed in the past, they have always been rescheduled for a date prior to the start of the new league season, which in the current case was allegedly impossible; 3) the Super Cup match is the single most important match in Iran and gathers more than 100.000 spectators; 4) any of the two clubs has tens of millions of fans which thus explains the importance of following the regulations and calendars established by the FFI and the League; 5) agreements had been signed with sponsors and the media with regard to the match.
102. Similarly, the Sole Arbitrator in CAS 2010/A/2401 *Bulgarian Boxing Federation v. European Boxing Confederation* refused to postpone and change the venue of a major boxing competition based on the significant costs a *bona fide* third party had already incurred for the organization of the event, the costs for the commercialization of the event and the risk for the reputation and eventual success of the championship.
103. The Sole Arbitrator finds that the overall behaviour of the Appellant falls short of the well-set sports industry practices and jeopardizes the success and reputation of the Iranian Super Cup. Consequently, upon a comprehensive analysis of the Appellant's behaviour, the Sole Arbitrator is satisfied that said behaviour amounts to a *de facto* withdrawal from the competition.
104. The relevant FFI Regulations are to be found in Article 61:

"Article 61. Failure to hold match and leave match

If a match fails to be organized or remains uncompleted due to a behaviour (either due to an action or omission of a team or a behaviour which club (team) considered as responsible (with the exception of force majeure), the respective responsible club (team) will be announced loser (3-0) by the disciplinary committee, in addition to be sentenced to the payment of minimum five hundred million Rials cash fine."
105. Therefore, the Appellant's *de facto* withdrawal from participation in the match undoubtedly qualifies as an act resulting in the failure of the match to be organized as the mere mitigation obligation of the First Respondent mandated it to cancel the match in order to limit losses. As such, the Appellant's behaviour is in clear violation of Article 61 of the FFI Regulations.
106. The only exception to holding the club responsible for its withdrawal would be if such behaviour was prompted by *force majeure* circumstances. The risks enumerated by the Appellant certainly fail to qualify as exceptional circumstances.

107. For the sake of clarity, the Sole Arbitrator is confident that the last sentence of the Appellant's letter dated 19 August 2018 could offer some kind of guidance as to establishing its motivation which, as pointed out above, and in the absence of further argumentation, does not reach the level of *force majeure*:

"Furthermore, please note that due to the sensitive situation of this match in the society, organizing the Super Cup match in due time and determination of the winner by scores of the teams was the best way rather than awarding the cup to the non-winner team in advance."

108. The Sole Arbitrator therefore concludes that the Appellant violated Article 61 of the FFI Regulations.

D. Depending on the answer to (B) above, what is the appropriate sanction for the Appellant's withdrawal?

109. As established in the previous section, by withdrawing from the match, the Appellant had prompted the Second Respondent to cancel the match. Such act of the Appellant constitutes a violation of the FFI Regulations and shall be sanctioned as per the second part of Article 61 providing the following:

"Article 61. Failure to hold match and leave match

If a match fails to be organized or remains uncompleted due to a behaviour (either due to an action or omission of a team or a behaviour which club (team) considered as responsible (with the exception of force majeure), the respective responsible club (team) will be announced loser (3-0) by the disciplinary committee, in addition to be sentenced to the payment of minimum five hundred million Rials cash fine."

110. In light of the findings of the previous section, the Sole Arbitrator preliminarily excludes the application of Article 62 of the FFI Regulations allowing for a match to be replayed if the failure to hold the primary match was due to either "force majeure" or "conditions out of control or fault of either two team", while the Appellant's behaviour has not been induced by anything but its proper fault. The Appellant's request that the match be replayed is hereby dismissed.
111. It results from the plain meaning of the expression "in addition to" in Article 61 that the applicable sanction has two cumulative and not alternative components – a forfeiture of the match and a monetary fine.
112. The Disciplinary Committee in its decision sanctioned the Appellant's violation by awarding the match by forfeiture to the Third Respondent but made no reference to the monetary fine.
113. The Appeal Committee however issued the two-component sanction as per the express terms of Article 61 enunciated above.
114. The Appellant argues that the Appeal Committee had in that way increased its sanction and invokes Article 106.5 of the FFI Regulations, according to which, *"(i) if the sentenced*

individual take action to appeal the released judgment, his punishments will not be increased in the appeal phase."

115. The Respondents, on the other side, contend that the Appeal Committee did nothing but conform to its mandate in accordance with Article 106.3 of the FFI Regulations, providing that:

"Appeal committee could confirm, amend or reverse the judgments of primitive judicial authority. In case of the punitive judgment reversal, appeal committee itself will release judgment in nature."

116. It is a well-established principle that the legal situation of the appealing party shall not be worsened as a result of the appeal. This principle is accordingly reflected in Article 106.5 of the FFI Regulations. To the extent that the Appeal Committee has the authority to amend the decisions of the lower instances upon appeal, such powers would be properly exercised if the Appeal Committee is seized with a request to amend a decision (for example to impose a less severe sanction in case of alternatives in the respective provision) and not on its own motion.
117. In the present case, not only did the Appeal Committee dismiss the appeal with regard to awarding the forfeit win to the Third Respondent but, by its own initiative and in addition to that, it imposed a monetary sanction upon the Appellant. While, with reference to Article 61 of the FFI Regulations this could have been the proper sanction to be imposed on the Appellant already by the Disciplinary Committee, the latter did not do so. Assuming that the Disciplinary Committee erred in applying correctly the relevant provision of the FFI Regulations, this cannot be held against and to the detriment of the Appellant.
118. Therefore, the Appealed Decision is hereby confirmed with the exception of the part imposing a monetary sanction on the Appellant.

IX. COSTS

119. Article R64.4 of the CAS Code provides as follows:

"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."

120. 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 Sole Arbitrator 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."

121. The Sole Arbitrator notes that the Appellant was only partially successful in bringing this appeal. Given the outcome of the present appeal, the Sole Arbitrator is of the view that the costs of this appeal, to be calculated and served on the Parties by the CAS Court Office, shall be borne in 80 % by the Appellant and in 20% jointly and severally by the First Respondent and the Second Respondent.
122. Notwithstanding the overall success of the Respondents in defending this matter, considering that none of them were represented by external counsel, the Sole Arbitrator determines that each party shall bear its own legal costs and associated expenses.

ON THESE GROUNDS

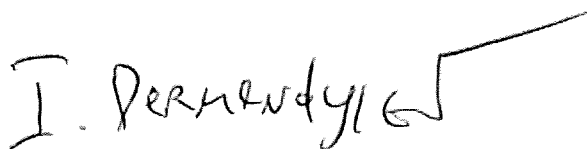
The Court of Arbitration for Sport rules that:

1. The appeal filed by Esteghlal Iran Culture and Sport Private Joint Stock Company on 25 September 2018 against the decision rendered by the Appeal Committee of the Football Federation Islamic Republic of Iran dated 28 August 2018 is partially upheld.
2. The decision rendered by the Appeal Committee of the Football Federation Islamic Republic of Iran dated 28 August 2018 upholding the decision rendered by the Disciplinary Committee of the Football Federation Islamic Republic of Iran dated 23 July 2018, is confirmed, save for the part in which it imposed a monetary sanction on Esteghlal Iran Culture and Sport Private Joint Stock Company in the amount of IRR 500,000,000, which is set aside.
3. The counterclaims of the Football Federation Islamic Republic of Iran and the Iran Football League Organization for compensation for the financial losses allegedly incurred as a result of the cancellation of the match are inadmissible.
4. The costs of the arbitration, to be determined and served to the Parties by the CAS Court Office, shall be borne for 80% by Esteghlal Iran Culture and Sport Private Joint Stock Company and for 20%, jointly and severally, by the Football Federation Islamic Republic of Iran and the Iran Football League Organization.
5. Esteghlal Iran Culture and Sport Private Joint Stock Company, the Football Federation Islamic Republic of Iran, the Iran Football League Organization and Persepolis Football Club shall each bear their own legal costs and other expenses incurred in connection with these arbitration proceedings.
6. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 7 October 2019

THE COURT OF ARBITRATION FOR SPORT



Ivaylo Dermendjiev
Sole Arbitrator