



**Arbitration CAS 2012/A/2688 Persisam Putra Samarinda, Deltras Sidoardjo FC, Pelita Jaya FC, L. & E. v. Football Association of Indonesia (PSSI), award of 12 April 2012**

Panel: Mr Patrick Lafranchi (Switzerland), President; Prof. Ulrich Haas (Germany); Mr Angelo Cascella (Italy)

*Football*

*Decision of the Executive Committee not to convene an extraordinary Congress*

*CAS Jurisdiction with regard to the statutes of the national federation*

*CAS Jurisdiction with regard to the FIFA Statutes*

1. In case of the absence of any express provision providing for the jurisdiction of the CAS regarding internal disputes in the statutes of the national federation, it is of no importance whether the national arbitration tribunal provided for in said statutes has actually been established or not, as the mere absence of such tribunal cannot confer jurisdiction on the CAS.
2. Article 61 of the FIFA Statutes is not sufficient – by itself – to confer jurisdiction on the CAS. Moreover, Article 62 para. 3 of the FIFA Statutes states that it is in the sole competence of the FIFA member, whose decision is under appeal, to decide upon and implement the means of recourse against its decisions. Thus, Article 61 of the FIFA Statutes does not confer any immediate rights to the appellant(s) to take its/their appeal against a decision of the FIFA member to the CAS. According to CAS jurisprudence, in order for the CAS to have jurisdiction to rule on an appeal, Article R47 of the Code of Sports-related Arbitration requires that a direct reference to the CAS be contained in the statutes or regulations of the body whose decision is being appealed against.

Persisam Putra Samarinda (“First Appellant” or “The Appellants”), located in Kalimantan Timur, Deltras Sidoardjo FC (“Second Appellant” or “The Appellants”), located in Jawa Timur, and Pelita Jaya FC (“Third Appellant” or “The Appellants”), located in Jawa Barat, are professional Indonesian football clubs. L. (“Fourth Appellant” or “The Appellants”), domiciled in Jawa Timur, Indonesia, and E. (“Fifth Appellant” or “The Appellants”), domiciled in Kalimantan, Indonesia, are members of the PSSI congress and the PSSI Executive Committee, as well as the “Save Indonesian Football” Committee.

Football Association of Indonesia (“Respondent” or “PSSI”), is the governing body of football in Indonesia with seat in Jakarta, Indonesia. It is also a member association of the Asian Football

Confederation (AFC), the Fédération Internationale de Football Association (FIFA) and the Indonesian Olympic Committee (“KOP”).

As the governing body of football in Indonesia, the purpose of the Respondent is it – among others – to organize football competitions in all its forms at a national level. The organisation, purpose, and legal relationships within the PSSI are governed by the PSSI Statutes. The statutes include regulations that govern the question of jurisdiction in case disputes in PSSI-related matters arise. The relevant parts of the PSSI Statutes for the dispute at hand read as follows:

**Art. 21 Bodies of PSSI**

- (1) *The Congress is the supreme and legislative body.*
- (2) *The Executive Committee is the executive body.*
- (3) *(...).*
- (4) *(...).*
- (5) *(...).*
- (6) *The bodies of PSSI shall be either elected or appointed by PSSI itself without any external influence and in accordance with the procedures described in these Statutes.*

**Art. 22 Definition and Composition of the Congress**

- (1) *The Congress is the meeting at which all of the Members of PSSI regularly convene. It represents the supreme and legislative authority of PSSI. Only a Congress that is regularly convened has the authority to make decisions.*
- (2) *A Congress may be an Ordinary or Extraordinary Congress.*
- (3) *The President shall conduct the Congress business in compliance with the standing orders of the Congress.*
- (4) *(...).*
- (5) *(...).*

**Article 31 Extraordinary Congress**

- (1) *The Executive Committee may convene an Extraordinary Congress at any time.*
- (2) *The Executive Committee shall convene an Extraordinary Congress if 2/3 (two-thirds) of the members of PSSI make such request in writing. The request shall specify the items for the agenda. An extraordinary Congress shall be held within three months of receipt of the request. If an Extraordinary Congress is not convened, the Members who requested it may convene the Congress themselves. At a last resort, the Members may request assistance from FIFA.*
- (3) *The Members shall be notified of the place, date and agenda at least four weeks before the date of an Extraordinary Congress.*

- (4) *When an Extraordinary Congress is convened on the initiative of the Executive Committee, it must draw up the agenda. When an Extraordinary Congress is convened upon the request of Members, the agenda must contain the points raised by those Members.*
- (5) *The agenda of an Extraordinary Congress may not be altered.*

#### **Art. 69 Arbitration**

*PSSI shall create an Arbitration Tribunal, which shall deal with all internal national disputes between PSSI, its members, Players, Officials and match and players' agents that do not fall under the jurisdiction of its judicial bodies. The Executive Committee shall draw up special regulations regarding the composition, jurisdiction and procedural rules of this Arbitration Tribunal.*

#### **Art. 70 Jurisdiction**

- (1) *PSSI, its Members, Players, Officials and Match and Player's Agents will not take any dispute to Ordinary Courts unless specifically provided for in these Statutes and FIFA regulations. Any disagreement shall be submitted to the jurisdiction of FIFA or PSSI.*
- (2) *PSSI shall have Jurisdiction on internal dispute[s]<sup>1</sup>, i.e. disputes between the parties belonging to PSSI. FIFA shall have Jurisdiction on international disputes, i.e. disputes between [parties] belonging to different Associations and/ [or] Confederation[s].*

#### **Art. 71 Court of Arbitration for Sport**

- (1) *In accordance with the relevant articles of the FIFA Statutes, any appeal against a final and binding FIFA decision shall be heard by the Court of Arbitration for Sport (CAS), Switzerland. CAS shall not, however, hear appeals on violation of the Law of the Game, suspensions of up to four matches or up to three months, or decisions passed by an independent and duly constituted Arbitration Tribunal of an Association or Confederation.*
- (2) *PSSI shall ensure its full compliance and that of its Members, Players, Officials and match and players' agents [with] any final decision passed by [a] FIFA body or CAS.*

Being a member of the AFC, FIFA and KOI, the Respondent is also bound by their regulations, especially by their respective Statutes, where applicable. The latter also include regulations that govern the question of jurisdiction in the case disputes arise.

The relevant parts of the FIFA Statutes in the dispute at hand read as follows:

#### **Art. 60 Court of Arbitration for Sport (CAS)**

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

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<sup>1</sup> Content in brackets added by the Panel.

- (2) *The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.*

**Art. 61 Jurisdiction of CAS**

- (1) *Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question.*
- (2) *Recourse may only be made to CAS after all other internal channels have been exhausted.*
- (3) *CAS, however, does not deal with appeals arising from:*
- (a) *violations of the Laws of the Game;*
  - (b) *suspensions of up to four matches or up to three months (with the exception of doping decisions);*
  - (c) *decisions against which an appeal to an independent and duly constituted arbitration tribunal recognised under the rules of an Association or Confederation may be made.*
- (...).

**Art. 62 Obligation**

- (1) *The Confederations, Members and Leagues shall agree to recognize CAS as an independent judicial authority and to ensure that their members, affiliated Players and Officials comply with the decisions passed by CAS. The same obligation shall apply to licensed match and players' agents.*
- (2) *Recourse to ordinary courts of law is prohibited unless specifically provided for in the FIFA regulations.*
- (3) *The Associations shall insert a clause in their statutes or regulations, stipulating that it is prohibited to take disputes in the Association or disputes affecting Leagues, members of Leagues, clubs, members of clubs, Players, Officials and other Association Officials to ordinary courts of law, unless the FIFA regulations or binding legal provisions specifically provide for or stipulate recourse to ordinary courts of law. Instead of recourse to ordinary courts of law, provision shall be made for arbitration. Such disputes shall be taken to an independent and duly constituted arbitration tribunal recognised under the rules of the Association or Confederation or to CAS. The Associations shall also ensure that this stipulation is implemented in the Association, if necessary by imposing a binding obligation on its members. The Associations shall impose sanctions on any party that fails to respect this obligation and ensure that any appeal against such sanctions shall likewise be strictly submitted to arbitration, and not to ordinary courts of law.*

The relevant parts of the AFC Statutes in the dispute at hand read as follows:

**Art. 8 Membership**

- (1) *Membership shall be open to National Associations in Asia.*
- (...)
- (8) *The application must be accompanied by the following mandatory items:*
- a) *a copy of the applicant's legally valid statutes and regulations;*

- b) *a declaration that it will always comply with the Statutes, Codes, Regulations, directives and decisions of FIFA and the AFC; and ensure that these are also respected by its own members, Clubs, Officials and Players;*
- c) *a declaration that it will comply with the Laws of the Game in force;*
- d) *a declaration that it recognises the Court of Arbitration for Sport (CAS) in Lausanne, as specified in these Statutes;*

(...).

#### **Art. 11 Obligations of Member Associations**

- (1) *Member Associations have the following obligations:*
  - a) *to comply fully with the Statutes, Codes, Rules and Regulations, directives and decisions of FIFA and the AFC at all times and to ensure that these are also respected by its members;*
- (...)
- f) *to adopt a statutory clause specifying that any dispute requiring arbitration involving itself or one of its members and relating to the Statutes, Regulations, directives and decisions of FIFA and the AFC shall come solely under the jurisdiction of the appropriate arbitration tribunal recognised by the AFC and that any recourse to ordinary courts is prohibited;*

(...).

#### **Art. 58 Disputes**

- (1) *Member Associations, Clubs, Officials or Players shall not refer disputes with FIFA, the AFC or Member Associations, Clubs, Leagues, Officials, Players, licensed match agents and players' agents to courts of law but, after exhausting all previous stages of appeal available at the AFC, FIFA, Member Associations or League level, may submit such disputes to the Court of Arbitration for Sport (CAS).*
- (2) *In conformity with Article 58.1, Member Associations and Clubs shall provide appropriate clause/clauses in their Statutes to restrain their officials and players from referring their disputes to ordinary courts.*
- (3) *Any violation of this Article shall be sanctioned in accordance with these Statutes.*

#### **Art. 59 Court of Arbitration for Sport**

- (1) *AFC recognizes the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between the AFC and the other confederations, Members, Leagues, Clubs, Players, Officials and licensed match agents and players' agents.*
- (2) *The provisions of the CAS Code of Sports – related Arbitration shall apply to the CAS proceedings. AFC Statutes, Codes, Rules, Regulations, Instructions and Decision as well as the law of Malaysia shall be applied where relevant.*
- (3) *Recourse may only be made to CAS after all other internal channels have been exhausted.*
- (4) *All decisions taken by CAS shall be deemed to be final and binding upon all parties.*

**Art. 60 Jurisdiction of CAS as an ordinary Court of Arbitration**

*CAS shall have jurisdiction, to the exclusion of any ordinary court or any other court of arbitration, to deal with the following disputes in its capacity as an ordinary court of arbitration:*

- (a) *Disputes between the AFC and Member Associations, Leagues, Clubs, Players and Officials;*
- (b) *Disputes between Member Associations, Leagues, Clubs, Players and Officials.*

**Art 61 Jurisdiction of CAS as an Appeals Arbitration Body**

- (1) *As Appeals Arbitration Body, CAS shall be entitled to hear appeals against final decisions passed by the AFC and against decisions passed by Member Associations or Leagues.*
- (2) *The appeal shall be lodged with CAS within 21 days of notification of the decision in question.*
- (3) *The appeal shall not have a suspensive effect. The appropriate AFC bodies, or alternatively, CAS may order the appeal to have a suspensive effect.*
- (4) *CAS, however, does not deal with appeals arising from:*
  - (a) *violation of the Laws of the Game;*
  - (b) *suspensions of up to four matches or up to three months (with the exception of doping decision);*
  - (c) *decisions against which an appeal to an independent and duly constituted arbitration tribunal recognized under the rules of the Member Association may be made.*
- (5) *Only parties directly affected by a decision may appeal to CAS. However, where doping-related decisions are concerned, the World Anti-Doping Agency (WADA) and FIFA may appeal to CAS in accordance with the Rules and Regulations of these organizations.*

The relevant parts of the KOI Statutes in the dispute at hand read as follows:

**Art. 27 Indonesian Sport Arbitration Board**

**27.1 BAKI**

*Judicative power within KOI is held and performed by BAKI.*

**27.2 Duties and Obligations**

*BAKI has duties and obligations to receive, examine, and decide any dispute, case disagreement, claim and others related to sport, appearing and involving KOI and/or its sub-ordinates and the Members and/or its subordinates.*

**Art. 28 Dispute**

*28.1 Any dispute, case, claim, disagreement, interpretation of a contract or agreement, relating to sport activity appearing and concerning or involving KOI and/or its sub-ordinates, and/or any Member and/or its subordinates, and/or any dispute relating to sport and/or relating to any activity or interest of sport, within KOI and/or its sub-ordinates and/or [any] Member and/or its sub-ordinates and/or any individual being member of the Member, without exception ("Dispute"), which is unresolved upon mutual consensus and/or upon applicable internal mechanism of the organization, must be and shall be submitted to BAKI to be examined and resolved.*

28.2 *Except as expressly regulated in the Bye- Laws as to the possibility to lodge an appeal against a certain decision of BAKI to CAS, any decision rendered by BAKI is having a final and binding power and effect.*

**Art. 29 Acknowledgement and Compliance**

29.1 *Any statutes or Bye- Laws of any Member must contain provisions which expressly contemplate and affirm acknowledgement and compliance by the Member to BAKI, and as such it binds itself to submit any Dispute concerning or involving its organization and/or its sub-ordinates and/or its members, to be examined and resolved by BAKI.*

29.2 *The compliance as referred to Article 29.1 may also be made upon resolution of the national assembly or congress of the Member, the resolution of which must expressly and clearly specify provisions of statement of compliance as referred to in Article 29.1, unconditionally and irreversibly or irrevocably.*

On 22 January 2011, the PSSI Congress held an extra- ordinary congress in Bali. In that assembly, it was decided – *inter alia* – that 18 clubs would be admitted to the so called “Indonesian Super League” (ISL).

On 9 July 2011, an extraordinary Congress took place in Solo that elected a new Executive Committee (“Exco”) for the PSSI.

On 25 September 2011 the Exco decided to establish the “Indonesian Premier League” (IPL) as a new brand of Indonesian Super League and to grant 24 clubs access to the IPL. Furthermore, the PT Liga Prima Indonesia Sportindo (LPIS) was appointed as a league organiser on 11 October 2011.

On 18 December 2011, several out of almost 600 members of the PSSI – the exact number is disputed between the parties – held an extraordinary meeting in Jakarta as they disagreed with the decisions adopted by the Exco in the meeting of 25 September 2011. In the extraordinary meeting, the members adopted the so called “Jakarta (Pullman) Declaration” (the “Pullman Declaration”). The Pullman Declaration requested – among others – to convene a PSSI Extraordinary Congress with the agenda to elect a new PSSI Executive Committee and to form the “Save Indonesian Football” Committee comprising – among others – the Fourth and Fifth Respondent who should be responsible for ensuring that the PSSI Extraordinary Congress shall be convened by the PSSI or – in failure of that – do all that was necessary to convene the said congress.

On 21 December 2011, according to an article published in the “Jakarta Post” the Respondent’s spokesman Eddi Elison declared that the Respondent considered the Pullman meeting as “illegal” and that the association had sent a letter to all PSSI members advising them that the Pullman meeting and the Pullman Declaration were illegal. In addition, the spokesman stated in the press article that therefore no extraordinary congress would be organised unless FIFA ordered the PSSI to do so.

On 10 January 2012 the Exco held a meeting and decided to decline the request in the Pullman Declaration to hold an extraordinary congress.

On 30 December 2011 the Appellants filed a statement of appeal with the Court of Arbitration for Sport (CAS) against the decision of the Exco not to convene an extraordinary congress. The statement of appeal provided that in case the CAS should not qualify the present procedure as an “Appeals Arbitration Procedure” within the meaning of Art. R47 *et seq.* of the Code of Sports-related Arbitration and Mediation Rules (the “Code”) the statement of appeal was to be considered as a “request for arbitration” within the meaning of Art. R38 of the Code.

On 9 January 2012, the CAS Court Office informed the parties, as well as AFC and FIFA that the case had been assigned to the Appeals Arbitration Division of the CAS and should therefore be dealt with according to Art. R47 *et seq.* of the Code. The CAS Court Office further invited the Respondent as well as AFC and FIFA to submit to the CAS an answer containing – *inter alia* – a statement of defence, any defence of lack of jurisdiction, and any exhibits or specification of other evidence upon they intend to rely.

On 11 January 2012 the Appellants withdrew their appeals as far as AFC and FIFA were concerned.

On 18 January 2012 the Appellants amended their statement of appeal.

On 3 February 2012 the CAS Court Office informed the parties that it had not received a Respondent’s answer to the appeal within the prescribed deadline that had expired 31 January 2012.

By fax dated 17 February 2012, the Respondent requested to “reopen the discussion” and claimed the CAS’ lack of jurisdiction.

On 20 February 2012 the CAS Court Office invited the Appellants to express their view regarding the admissibility of the Respondent’s submission on or before February 2012.

On 21 February 2012 the Appellants informed the CAS Court Office that they did not oppose the inclusion of the Respondent’s answer in the file.

On 2 March 2012 the CAS Court Office informed the parties that the Panel had decided that the Respondent’s answer filed on 17 February 2012 was admissible and that the Panel would deal with the issue of jurisdiction on a preliminary basis.

## LAW

### CAS Jurisdiction

1. As Switzerland is the seat of the arbitration and all parties involved are non- Swiss entities or persons, the provisions of the Swiss Private International Law Act (the “PILA”) apply,



pursuant to its Article 176 para. 1. In accordance with Art. 186 of the PILA the CAS has the power to decide upon its own jurisdiction.

2. Art. R27 of the Code provides that the Code applies whenever the parties have agreed to refer a sports-related dispute to the CAS. Such disputes may arise out of a contract containing an arbitration clause, or be the subject of a later arbitration agreement or involve an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies, or a specific agreement provides for an appeal to the CAS. Therefore, in order for the CAS to have jurisdiction to hear an appeal, either:
  - the statutes or regulations of the sports federation whose decision is being appealed *expressly* provides for an arbitration clause in favor of the CAS, or
  - a *specific* arbitration agreement referring the matter in dispute to CAS has been concluded between the parties.
3. Furthermore, Art. R47 of the Code provides two additional prerequisites in order for the Panel to decide the matter according to the rules applicable to the Appeals Arbitration Procedures, i.e. that the Appellant has exhausted all (internal) legal remedies available to him prior to the appeal to CAS and that the appeal is directed against a “decision” within the meaning of Art. R47 of the Code.
4. The Appellants do not claim that the Parties have entered into a specific (contractual) arbitration agreement that refers the case to the CAS. Instead, they submit that the CAS jurisdiction follows from the rules and regulations of the Respondent (PSSI), FIFA and the AFC. The Respondent contests the interpretation of the rules and regulations by the Appellants and submits that BAKI is the competent forum to hear the case.
5. As a preliminary note, the Panel finds that CAS would not be competent to hear the present case if a provision existed in the PSSI Statutes that referred the present dispute explicitly and exclusively to the BAKI and by that excluding the competence of the CAS. However, no such provision exists in the PSSI statutes. Furthermore, there seem to be serious doubts as to whether or not BAKI is operational and therefore capable of assuming any functions possibly conferred upon it. However, no decision in this respect has to be made by the Panel. The Panel’s scope in the case at hand is to decide on the CAS’ jurisdiction. If the Panel cannot establish such jurisdiction, it is irrelevant which sport’s entity or state court has jurisdiction in the present matter. According to the analysis of the Panel the rules and regulations submitted by the Parties in the present case do not confer jurisdiction on the CAS.

#### *A. The PSSI Statutes*

6. The only provision in the PSSI Statutes expressly providing for the jurisdiction of the CAS is Art. 71. According to the wording of this provision the present matter is not covered by the scope of applicability of said provision, since Art. 71 of the PSSI Statutes deals with appeals

against binding decisions by FIFA only. As no such decision by FIFA is appealed against, Art. 71 of the PSSI Statutes does not apply to the present case.

7. The jurisdiction of the CAS cannot be based on Art. 70 either. According to para. 1 of the provision the members of the PSSI (including the Appellants) are not allowed to take disputes to state courts unless specifically provided for in the PSSI Statutes. In all other disputes jurisdiction lies with PSSI or FIFA. According to Art. 70 para. 2 of the PSSI Statutes PSSI shall have jurisdiction in internal disputes, i.e. disputes between parties belonging to PSSI whereas FIFA shall have jurisdiction in international disputes, i.e. disputes between parties belonging to different Associations and / or Confederations. As all Appellants are members of PSSI; the case at hand qualifies as an internal dispute within the meaning of Art. 70 para. 2 of the PSSI Statutes. Therefore, in the first instance, the PSSI Statutes refer the case to PSSI, not CAS. It is not quite clear, however, how “jurisdiction” according to Art. 70 para. 2 of the PSSI Statutes shall be exercised by the PSSI. It seems rather doubtful whether PSSI – as a potential party of internal disputes within the meaning of Art. 70 of the PSSI Statutes – can decide disputes in a final and binding manner. It rather seems as if Art. 70 of the PSSI Statutes does not deal with arbitration, but rather with the associations’ internal review mechanism. Therefore, Art 70 of the PSSI Statutes is to be interpreted in the context of Art. 69 of the PSSI Statutes. The latter provides for the establishment of a legitimate arbitration court by PSSI which shall deal – among others – with all internal disputes between PSSI and its members. Hence, Art. 69 of the PSSI Statutes contains the relevant arbitration clause for the case at hand.
8. It is disputed between the parties if the arbitration tribunal provided for in Art. 69 of the PSSI Statutes has been established. The Appellants claim that the Respondent – according to Art. 70 para. 1 of the PSSI Statutes – prohibit the Appellants to bring their case in front of a state court while, on the other hand, no tribunal within the meaning of Art. 69 of the PSSI Statutes has been established. According to the Panel, this alone does not establish the jurisdiction of the CAS. It goes without saying that the Respondent cannot preclude the Appellants from any access to justice. However, it seems likely to the Panel that under such conditions PSSI would only be excluded to invoke Art. 70 of its Statutes according to which the Appellants are prevented to bring their case before state courts. Therefore, it is of no importance whether such (national) arbitral tribunal has been established as the absence of such tribunal cannot confer jurisdiction on the CAS.

*B. The FIFA Statutes*

9. The Respondent and the Appellants have also submitted to the Statutes of FIFA. The Respondent is directly bound by his membership. The Appellants’ obligation follows from Art. 12 para. 3b of the PSSI Statutes according to which the latter must declare to be bound by the FIFA Statutes in order to become a member of the PSSI.

10. The jurisdiction of the CAS in the case at hand cannot be based on Art. 61-64 of the FIFA Statutes. According to Art. 61 para. 1 of the FIFA Statutes appeals against decisions passed by Confederation, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question. According to para. 3 (c) the scope of this arbitration clause does, however, not cover the appeal against decisions against which an appeal to an independent and duly constituted arbitration tribunal recognised under the rules of an Association or Confederation is possible. As shown above, it is disputed between the parties whether or not such a national arbitration panel exists. Again, the Panel does not have to decide this matter as the jurisdiction of the CAS cannot be based on Art. 61 of the FIFA Statutes even in absence of such tribunal. The latter provision is not sufficient – by itself – to confer jurisdiction on the CAS. Moreover, Art. 62 para. 3 of the FIFA Statutes states that it is in the sole competence of the FIFA member, whose decision is under appeal, to decide upon and implement the means of recourse against its decisions. Thus, Art. 61 of the FIFA Statutes does not confer any immediate rights to the Appellants to take their appeal against a decision of PSSI to the CAS. This view held by this Panel is also backed by CAS jurisprudence. In CAS 2005/A/952, the panel at marg. no. 8.1 held that “[i]n order for the CAS to have jurisdiction to rule on an appeal, article R47 of the Code requires that a direct reference to the CAS be contained in the statutes or regulations of the body whose decision is being appealed against”. Equally in CAS 2011/A/2472 another Panel held (marg. no. 56):  
  
*“A landmark decision has been rendered in this regard by a CAS Panel in CAS 2005/A/952 [...], award of 24 January 2006. In [CAS 2005/A/952] the Panel (...) remarked that the CAS jurisprudence suggests that if the FIFA Statutes did compel the national federation or the league to provide for a right of appeal from its decisions, no right of appeal to the CAS would exist until the national federation or the league had made provision for this right in its statutes or regulations. In this respect, indeed, another CAS Panel (award of 15 December 2004, CAS 2004/A/676 [...]) had held that the FIFA rules that came into force on 1 January 2004 (which first recognized the CAS jurisdiction) do not constitute per se a basis for arbitration. Instead, they constitute an instruction to introduce a regulation providing for CAS arbitration”.*
11. The legal regime of the FIFA Statutes has not changed since these decisions. Art. 62 para. 1 of the FIFA Statutes obliges the Confederations, Members and Leagues to recognize CAS as an independent judicial authority and to ensure that their members, affiliated Players and Officials comply with the decisions passed by CAS. Art. 62 para. 3 of the FIFA Statutes further states that the Associations shall insert a clause in their statutes or regulations, stipulating that it is prohibited to take disputes in the Association or disputes affecting Leagues, members of leagues, clubs, members of clubs, Players, Officials and other Association Officials to ordinary courts of law. Instead of recourse to ordinary courts of law, provision shall be made for arbitration. Such disputes shall be taken to an independent and duly constituted arbitration tribunal recognised under the rules of the Association or Confederation or to CAS. As shown above, the Respondent did not foresee a clause in its statutes that would explicitly refer the present case to CAS. Therefore the conditions for a valid arbitration agreement stipulated in CAS 2005/A/952 are not met. On the contrary, the PSSI has adopted in Art. 69 and 70 of its Statutes provisions to submit internal disputes – like the dispute at hand – to an arbitration tribunal. Even though – in failing to actually establish the envisaged tribunal – the Respondent has waived its right to exercise jurisdiction in the case

at hand (see *supra* 8), CAS has no subsidiary jurisdiction in the matter. Moreover, FIFA grants its members in Art. 62 para. 3 of its Statutes a real alternative to either provide for jurisdiction by their own arbitral tribunals *or* by CAS. Hence, FIFA itself does not foresee the mandatory jurisdiction of the CAS. Also for this reason, Art. 62 of the FIFA Statutes cannot be seen as an arbitration agreement required by Art. R27, R47 of the Code.

*C. The AFC Statutes*

12. Respondent and Appellants have also submitted to the rules and regulations of the AFC. The Respondent is directly bound by his membership. The Appellants' obligation follows from Art. 12 para. 3b of the PSSI Statutes according to which the latter must declare to be bound by the AFC Statutes in order to become a member of the PSSI.
13. The jurisdiction of the CAS cannot be established based on Art. 8 para. 8 d), 11 f), 58- 61 of the AFC Statutes. Art. 8 para. 8 d), 11 of the AFC Statutes require the Respondent to recognise CAS and provide that any dispute requiring arbitration involving itself or one of its members in a case relating to the Statutes, Regulations, directives and decisions of FIFA and the AFC come solely under the jurisdiction of an appropriate arbitration tribunal recognised by the AFC and that any recourse to ordinary courts is prohibited. However, these provisions only refer to disputes relating to the Statutes, Regulations, directives and decisions of FIFA and the AFC. As shown above, the dispute at hand is a solely internal dispute within PSSI according to Art. 70 of the PSSI Statutes. Therefore, the present dispute is not covered by the scope of application of Art. 8 para. 8d), 11 f), 58-61 of the AFC Statutes.
14. The jurisdiction of the CAS can also not be based on Art. 58-61 of the AFC Statutes. The latter govern the jurisdiction of the CAS and foresee in Art. 58 – among others – that Member Associations, Clubs and Officials – like the Respondent and the Appellants – shall not refer disputes with FIFA, the AFC or Member Associations, Clubs, Leagues, Officials, Players, licensed match agents and players' agents to courts of law but, after exhausting all previous stages of appeal available at the AFC, FIFA, Member Associations or League level, may submit such disputes to CAS. Art. 61 of the AFC Statutes further states that CAS shall be entitled to hear appeals against final decisions passed by the AFC and against decisions passed by member associations or Leagues. The scope of Art. 58-61 of the AFC Statutes is broad and rather complex. The said provisions pursue several goals.
  - a) Art. 61 of the AFC Statutes
15. Art. 61, 59 para. 3 of the AFC Statutes fully correspond to Art. 61 of the FIFA Statutes. One can therefore assume that the above referenced CAS 2005/A/952 and CAS 2011/A/2472 decision also applies here. Hence, Art. 61, 59 para. 3 of the AFC Statutes cannot be seen as an arbitration agreement within the meaning of Art. R27, R47 of the Code. Instead, no right of appeal to the CAS would exist under these rules until the national federation had made

provision for this right in its statutes or regulations. But, as already shown above (see *supra* 6) the PSSI Statutes contain no such provision. Therefore Art. 61, 59 para. 3 of the AFC Statutes only regulate the proceedings in cases an arbitration agreement already exists.

b) Art. 58 of the AFC Statutes

16. Art. 58 of the AFC Statutes primarily obliges the Associations to implement rules and regulations in favor of arbitral tribunals to prevent that state courts can be seized when disputes in sport-related matters arise. It is questionable if a valid arbitration agreement can be based on the latter provision.

- (i) To begin with, Art. 58 of the AFC Statutes implements the association's duty to provide for arbitration in its statutes to prevent the seizure of state courts in sports-related matters according to Art. 61, 62 of the FIFA Statutes. In the context of Art. 8 para. 8 d), 11 f), 59-61 of the AFC Statutes, the provision undoubtedly refers disputes *against* AFC relating to the latter's Statutes, Regulations, directives, and decisions to CAS after having exhausted all previous stages of appeal available at the AFC.
- (ii) Whether Art. 58 of the AFC Statutes, in addition, *i.e.* in disputes without the participation of AFC and/ or not relating to the AFC's Statutes, Regulations, directives, and decisions, also provides for the jurisdiction of the CAS is questionable. The wording of the provision is not clear in its entirety. The Panel notes that even though the purpose of Art. 58 of the FIFA Statutes is to implement Art. 62 of the FIFA Statutes, the wording of both provisions is different. Unlike Art. 61 of the FIFA Statutes, Art. 58 para. 1 of the AFC Statutes does not give its member associations a clear and express choice whether to provide for recourse to a national arbitral tribunal in addition to CAS (see *supra* 10). It is still questionable, however, whether the provision foresees the exclusive jurisdiction of the CAS once all previous stages of appeal available have been exhausted. Doubts in that respect arise from the wording of the provision according to which the disputes "may" be submitted to CAS (instead of must). The latter implies – at least at first reading – that there is an alternative. Furthermore, it appears questionable whether AFC is after all competent to regulate jurisdiction in cases in which it is not involved. Neither the CAS 2005/A/952 decision, nor the CAS 2011/A/2472 decision *explicitly* address this question. Yet, both decisions would have likely denied such a competence. In CAS 2005/A/952, the court ruled that "*no right of appeal would exist until the Respondent had made provision for this right in its statutes or regulations*"<sup>2</sup>. Further, it even stipulated that "*article R47 of the Code requires that a direct reference to the CAS be contained in the statutes of the body whose decision is appealed against* [emphasis added by the Panel]"<sup>3</sup>. In the Panel's view it is debatable if a valid arbitration agreement within the meaning of Art. R27, R47 of the Code necessarily has to be established by the association whose decision is appealed against. The competences of AFC to not only oblige its members to adopt provisions for arbitration in their statutes

<sup>2</sup> CAS 2005/A/952, no 7.5.; also see CAS 2011/A/2472, no 56.

<sup>3</sup> CAS 2005/A/952, no 8.1.

and regulations, but to also directly refer the above mentioned disputes to CAS cannot be dismissed in general. First, it has to be taken into consideration that associations like the AFC have numerous members who again have numerous members themselves. These associations can indeed have a legitimate interest in setting up rules on jurisdiction even in cases that do not directly involve the association itself. Equal treatment of all members, clubs and athletes within AFC, general order within the (member-) associations, predictability of internal proceedings that could also (indirectly) affect other members of AFC or AFC itself, could – in exceptional cases – all be valid criteria to allow the AFC to refer disputes without its own direct participation to the jurisdiction of arbitration tribunals like the CAS to ensure that the dispute is resolved in an orderly manner.

- (iii) In the end, the Panel does not have to decide whether Art. 58 of the AFC Statutes can possibly be seen as an arbitration agreement within the meaning of Art. R27, R47 of the Code in cases that do not directly involve AFC and – in the affirmative – whether the AFC was at all competent to foresee such a clause. Not only is the present case a national, *i.e.* “internal” dispute within the meaning of Art. 70 para. 2 of the PSSI Statutes, beyond that it also concerns a matter of self- government of the PSSI. The question whether or not the Respondent is / would have been obliged to organize an extra-ordinary congress is determined by the question alone if the conditions stipulated in Art. 23 para. 2 of the PSSI Statutes, especially the necessary quorum, were met. In the Panel’s view, these administrative matters cannot affect the AFC’s interests to the extent that would allow the association to set up mandatory procedural rules to protect the interests of PSSI’s members. Moreover, the AFC’s interests in the present case are fully protected by Art. 58 para. 3 of its Statutes that allows AFC to sanction any violation of Art. 58 of the AFC Statutes in accordance with the said Statutes. The Respondent’s obligation towards the AFC and FIFA to adopt statutory clauses specifying that sports-related disputes come solely under the jurisdiction of the appropriate arbitration tribunal and that recourse to state courts is prohibited remains unaffected. Yet, it cannot establish the jurisdiction of the CAS in the case at hand.

#### *D. Conclusion*

- 17. In order for the CAS to have jurisdiction to rule on an appeal, Art. R47 of the Code requires that a direct reference to the CAS be contained in statutes or regulations of either the body whose decision is appealed against or that directly bind the latter body.
- 18. The PSSI Statutes do not provide for a right to appeal to the CAS.
- 19. The FIFA Statutes contain no provision which obliges PSSI to allow a right of appeal of its decisions to CAS.
- 20. The AFC Regulations at least contain no provision which obliges PSSI to allow a right of appeal of the matter in dispute to the CAS.

21. There is no specific agreement between the parties to allow the CAS to rule on the merits of this particular dispute.
22. The CAS does not have jurisdiction to rule on the appeal filed by the Appellants in the present arbitral proceedings.

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

1. The CAS has no jurisdiction to decide the present dispute between Persisam Putra Samarinda, Deltras Sidoardjo FC, Pelita Jaya FC, L., E. and Football Association of Indonesia (PSSI).
  2. The appeal filed by Persisam Putra Samarinda, Deltras Sidoardjo FC, Pelita Jaya FC, L. and E. on 30 December 2011 is dismissed and the proceedings *CAS 2012/A/2688 Persisam Putra Samarinda, Deltras Sidoardjo FC, Pelita Jaya FC, L. & E. v. Football Association of Indonesia (PSSI)* are hereby terminated.
- (...)
5. All other and further claims or prayers for relief are dismissed.