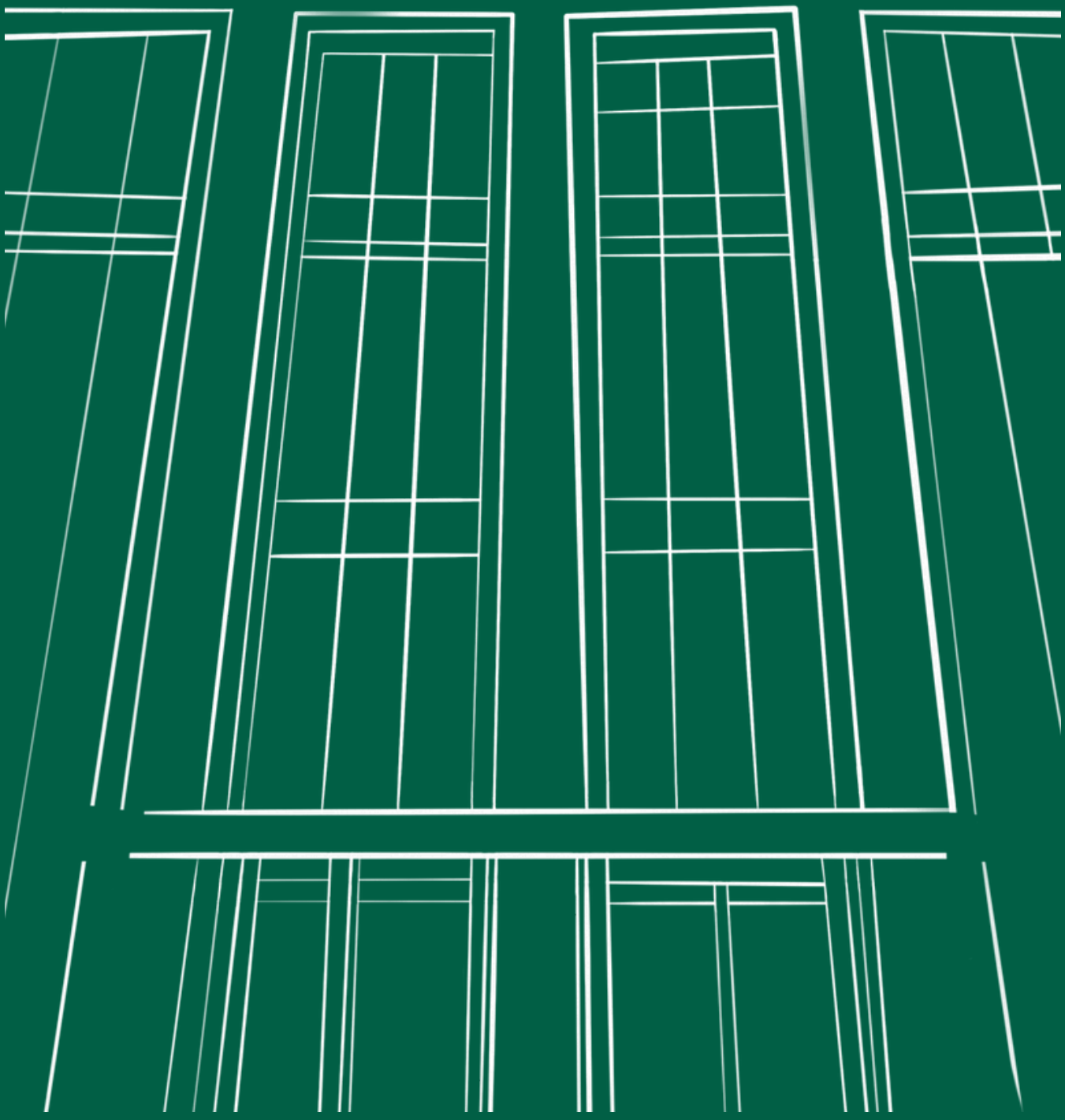

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CAS Bulletin
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Editorial

The Court of Arbitration for Sport (CAS) opened two temporary offices in Milan for the 2026 Olympic Winter Games (the Games) that were held from 6 to 22 February 2026 in Milan /Cortina (Italy). The CAS Ad Hoc Division, which resolves any legal disputes that arise during the Games, operates on-site at every edition of the Summer and Winter Olympic Games since 1996. Since Olympic events require swift decisions on issues related to athlete selection, equipment, judging or discipline, the CAS Ad hoc Division has tailored and simplified rules to resolve legal disputes quickly, sometimes less than 24 hours after a case is filed. Athletes and sporting federations are guaranteed free access to quality dispute resolution services that are compatible with the Olympic competition schedule.

The second temporary office was a section of the CAS Anti-Doping Division (CAS ADD) which adjudicates anti-doping-related matters arising during the Games as a first-instance authority. Cases are referred to the CAS ADD by the International Testing Agency (ITA) and decided in accordance with the anti-doping rules of the International Olympic Committee (IOC). The CAS ADD first opened for the Rio 2016 Summer Olympics and became a permanent structure at CAS in 2019.

Both CAS offices were located within the Hilton Milan and operated from 27 January 2026 until 22 February 2026. As part of the system guaranteeing access to CAS during the Milan /Cortina Olympics, the Milan Bar Association played an important role by providing the sports movement with pro bono lawyers helping athletes to proceed before the CAS ad hoc divisions. All in all, the preparation and organization of the CAS offices went smoothly, thank also to the assistance of the Organizing Committee of the Games.

The CAS Ad Hoc Division was composed as follows: President, Mr Michael Lenard (USA); Co-President, Ms Corinne Schmidhauser (Switzerland). The arbitrators present in Milan were Mr James Drake (Australia/United Kingdom); Dr Isabelle Fellrath, (Switzerland); Prof. Luigi Fumagalli (Italy); Prof. Joongi Kim (Korea); Ms Annett Rombach, (Germany); Ms Marianne Saroli (Canada). Available remotely were Prof. Stefano Bastianon (Italy); Mr André Brantjes (the Netherlands); Mr Jordi Lopez (Spain).

The CAS ADD in Milan was composed as follows: President, Mr Ivo Eusebio (Switzerland); Deputy President, Mr David W. Rivkin (USA). The arbitrators present in Milan were Prof. Maria Beatrice Deli (Italy); Mr Markus Manninen (Finland). The arbitrators available remotely were Ms Susan Ahern (Ireland); Mr Pekka Ilmivalta (Finland).

During the Olympic Games, the CAS Ad Hoc Division dealt with nine cases whereas no case has been brought before the CAS ADD (no athlete tested positive for doping during the Games). A selection of awards rendered by the CAS Ad Hoc Division appears in this issue, including the two so-called "helmet cases".

The twelve cases rendered by the CAS Appeal Division selected for this issue are highly diverse in terms of both the sports involved (athletics, aquatics, wrestling, boxing, table tennis, football) and the legal issues addressed (doping, disciplinary, contractual, eligibility, multi-club ownership, governance, participation of Russian and Belarusian athletes in international competitions).

A selection of extracts from judgments rendered in 2025 by the Swiss Federal Tribunal (SFT) in connection with CAS decisions has also been included in this Bulletin.

In terms of public policy, the SFT consistently recapped that only the outcome of an award — not its reasoning — may

violate public policy, confirming the narrow scope of review (4A_616/2024; 4A_608/2024; 4A_28/2025). Prior to the Grand Chamber judgment in Semenya v. Switzerland issued on 10 July 2025, the SFT maintained that the ECHR guarantees fall within the restrictive framework of Art. 190(2)(e) PILA and declined to apply them directly (4A_682/2024; 4A_544/2024). The SFT also confirmed that criminal law principles do not directly apply to sports disciplinary proceedings (4A_682/2024; 4A_544/2024; 4A_474/2024). The SFT also held that disregarding a liquidated-damages clause does not breach public policy where the arbitral tribunal deemed the clause void (4A_638/2024).

Regarding the right to be heard, many alleged violations were dismissed. The SFT confirmed its restrictive understanding of the right to be heard in international sports arbitration (4A 334/2025). The SFT held that there is no breach where a panel implicitly addresses and dismisses arguments (4A_608/2024; 4A_168/2025), including challenges to the reliability of the Laboratory Information Management System (LIMS) evidence (4A_544/2024). Nor must CAS specifically identify each evidentiary element relied upon, provided it was on record and debated at the hearing (4A_474/2024). Moreover, separate reliance on Art. 6 ECHR to reiterate the reasons related to compliance with due process was deemed inadmissible (4A_474/2024).

Regarding the notion of sporting succession in the context of FIFA jurisdiction and arbitration agreements, the SFT held in 4A_180/2025 that although compatible with international public policy such a concept does not form part of Swiss law for jurisdictional purposes. Consequently, *lex sportiva* concepts including sporting succession cannot expand the scope of arbitration agreements to non-signatories in a context of sporting succession beyond the framework of Art. 178 PILA. In 4A_230/2025, the SFT explained the implications of the distinction between jurisdiction and admissibility in multi-tier FIFA–CAS clauses. If FIFA declares a claim time-barred, the parties cannot bypass that outcome by seizing CAS.

Eventually, the SFT dealt with two revision requests under Art. 190a PILA. In 4A_654/2024, brought by Russian figure skater Kamila Valieva, the Court dismissed the application, finding no procedural fraud in the alleged non-disclosure of an expert report. By contrast, in 4A_268/2025, the SFT granted revision where a final state court judgment established the forgery of a document decisive to the CAS award.

Finally, it is important to mention the appeal filed by US gymnast Jordan Chiles challenging the independence and impartiality of the President of the Panel (H. Gharavi), as well as her request for revision of a CAS award rendered during the 2024 Olympic Games in Paris, relating to the women's floor exercise final in gymnastics. USA Gymnastics also submitted a request for revision. The SFT rejected Jordan Chiles' appeal concerning the alleged lack of independence and impartiality of the arbitrator in question. However, it accepted both requests for revision. It considered that the new evidence submitted by the Applicants, not available at the time of the CAS procedure, could potentially lead to a modification of the CAS award. The SFT has therefore referred the case back to the CAS for a new ruling, taking into account the probative value of the new evidence in question (SFT 4A_494/2024, 4A_510/2024 and 4A_512/2024, published on the SFT website).

In general, the 2025 SFT's judgements related to CAS jurisprudence confirm a restrictive and deferential line with strong protection of arbitration agreements, limited avenues for jurisdictional or public policy challenges and strict procedural discipline in multi-tier systems.

I wish you a pleasant reading of this new edition of the CAS Bulletin.

Matthieu Reeb
CAS Director General

Jurisprudence notable*
Cases of interest
Casos de interés

* Nous attirons votre attention sur le fait que la jurisprudence qui suit a été sélectionnée et résumée par le Greffe du TAS afin de mettre l'accent sur des questions juridiques récentes qui contribuent au développement de la jurisprudence du TAS.
We draw your attention to the fact that the following case law has been selected and summarised by the CAS Court Office in order to highlight recent legal issues which have arisen, and which contribute to the development of CAS jurisprudence.
Llamamos su atención sobre el hecho de que la siguiente jurisprudencia ha sido seleccionada y resumida por la Secretaría del TAS con el fin de poner de relieve las recientes cuestiones jurídicas que han surgido y que contribuyen al desarrollo de la jurisprudencia del TAS.

CAS ad hoc Division (OG Milano-Cortina) 26/004
British Bobsleih & Skeleton Association Ltd (BBSA) v. International Bobsleigh & Skeleton Federation (IBSF)
award of 7 February 2026

Skeleton; Equipment compliance (helmet) with the IBSF Rules for the purpose of use at the Olympic Winter Games 2026; CAS jurisdiction and exhaustion of internal remedies; Nature of the dispute; Burden of proof; International Federations' discretion to interpret and apply technical rules; Method of manufacture not determinative of compliance

Panel
Ms Marianne Saroli (Canada) President
Prof. Luigi Fumagalli (Italy)
Prof. Joongi Kim (Republic of Korea)

1. **The CAS Ad Hoc Division has jurisdiction to deal with an application where (i) the dispute arose within the ten-day period preceding the Olympic Games Opening Ceremony, as required by Article 1 of the CAS Ad Hoc Rules and (ii) the exception to the exhaustion of internal remedies applies. Indeed, the requirement to exhaust internal remedies is subject to an express exception where the time required to do so would render recourse to the CAS Ad Hoc Division ineffective. This reflects the specific function of the CAS Ad Hoc Division in providing urgent and effective dispute resolution during the Olympic Games period. An internal remedy whose procedure, timing, and jurisdiction are uncertain cannot be regarded as sufficiently effective for the purposes of the exhaustion requirement.**

2. **Pre-competition administrative determinations of equipment compliance with written rules constitute matters of rule interpretation and application, routinely within the remit of arbitral tribunals. Conversely, the "field of play" doctrine is confined to discretionary, real-time decisions made during competition — not to pre-competition administrative determinations of this nature.**

3. **Pursuant to Article 10.16.1 of the IBSF International Skeleton Rules 2025, where a national federation seeks affirmative relief in the form of a declaration of equipment compliance, it bears the burden of proof.**

4. **International Federations must retain reasonable discretion to interpret and apply technical rules expressed in general terms and applied to novel designs. Such discretion warrants deference absent arbitrariness, bad faith, or manifest error. Moreover, technical equipment rules cannot anticipate every conceivable design variation and must be interpreted purposively rather than as an exhaustive catalogue of prohibited configurations.**

5. **Compliance with equipment rules cannot depend solely on whether an element is attached after manufacture. A helmet produced as a single integrated unit may nonetheless fall outside the scope of**

permitted configurations if its form produces the effects the rule seeks to prevent. Permitting otherwise would allow manufacturers to circumvent equipment regulations by integrating prohibited features at the design stage.

I. PARTIES

1. The Applicant, British Bobsleigh & Skeleton Association Limited ("BBSA"), is the national federation for bobsleigh and skeleton in the United Kingdom, headquartered at Bath, United Kingdom, and member of the International Bobsleigh and Skeleton Federation and of the British Olympic Association ("BOA").

2. The Respondent, International Bobsleigh and Skeleton Federation ("IBSF"), is the international organization that administers the sports of bobsleigh and skeleton, headquartered in Lausanne, Switzerland.

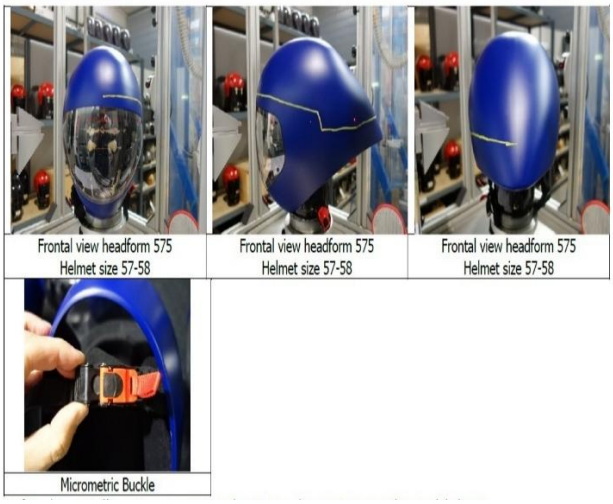
II. FACTS

A. Background Facts

3. The elements set out below are a summary of the main relevant facts as considered established by the Panel by way of a chronology on the basis of the submissions of the Parties. Additional facts may be set out, where relevant, in the legal considerations of the present award.

4. The present dispute concerns the compliance, under Article 10.16.1 of the IBSF International Skeleton Rules 2025 (Release Date September 2025) (the "IBSF Rules"), of a newly developed skeleton helmet manufactured by the Applicant (the "Helmet"), and the Respondent's email dated 29 January 2026 stating its *"opinion that the helmet does not comply with the IBSF skeleton Rules"*.

5. The following pictures of the Helmet were provided by the Applicant:



6. Article 10.16.1 of the IBSF Rules governs the mandatory wearing of safety helmets in competitions and training and sets out detailed requirements relating, *inter alia*, to helmet shape, surface characteristics, protrusions, padding, and aerodynamic elements. Article 10.16.1 further provides that, starting from the 2026-2027 season, helmets must comply with, and be certified under, both ASTM 2040 and EN 1077 (Class A) standards.

7. Article 10.16.1 provides as follows:

"10.16.1 ***Helmet***

Wearing of a safety helmet is mandatory for all competitions, during both training and races. It is the duty and the responsibility of the National Federations to comply with the safety standards.

Only helmets whose shell and padding cover the head and at least the ear area are allowed.

Helmets with spoilers or protruding edges are not allowed.

The bottom edge of the helmet shell must maintain the shape of the helmets normally available on the market. Chin guards and clasps are not allowed to be positioned excessively low.

The chin guard, the visor and the hardware for attaching them are the only protruding elements allowed. These elements cannot, however, have aerodynamic coverings.

For safety reasons, all helmets must have a smooth surface.

A safety helmet

a) has to be without any additionally attached aerodynamic elements or adhesive tape (except that used to fix the visor or the goggle strap), and

b) one piece of adhesive tape is allowed on the chin guard with a maximum size of 50mm x 70mm.

c) One piece of foam padding may be added on the chin strap with adhesive tape, the addition may not exceed a maximum size of 100mm along the length of the strap with 50mm width and 6mm thickness.

d) On the inside of the chin guard padding may be applied but may not exceed a maximum size of 50mm width with 10mm thickness, according to Figure 8 & 8a.

e) the helmet shell must not have any concave shape except for the recesses for the visor, and

f) the padding may protrude a maximum of 3 cm below the shell.

Please see the drawing in article 12.10.

Requirements valid from the season 2026/2027 onwards

Helmet model must meet ASTM 2040 and EN 1077 (Class A) and be certified under both.

In addition, the helmet model must pass an additional specific test under EN 1077 test methods, but at a higher test speed of 6.8 m/s".

8. The requirement for ASTM 2040 and EN 1077 (Class A) certification was first introduced by the Respondent into the IBSF Rules in 2022, with intended mandatory application from the 2023-2024 season. Its enforcement was subsequently postponed, first to the 2024-2025 season and later to the 2026-2027 season, due to the limited availability of suitable certified helmets. It is common ground between the Parties that such requirement does not apply to the Olympic Winter Games Milano-Cortina 2026 ("OWG 2026") since they fall within the 2025-2026 season.

9. Against this background, the Applicant undertook the development and manufacture of a new helmet, which it asserts complies with both ASTM 2040 and EN 1077 (Class A) standards. The Applicant states that it obtained the relevant certifications and made the Helmet available for use by its athletes in preparation for the OWG 2026.

10. On 1 January 2026, representatives of the Respondent, Mr Christoph Langen (Head of Material, Technology and Innovation) and Mr Christian Senge,

(Material Controller IBSF), attended a meeting at the Applicant's hotel in Winterberg, Germany.

11. The meeting lasted approximately one hour. Representatives of the Applicant, including Ms Natalie Dunman, Mr David Short and Mr Matthias Guggenberger, presented several items of equipment intended for use at the OWG 2026 skeleton competitions, including the Helmet. The Respondent's representatives examined the equipment and asked questions concerning its design and characteristics.

12. The Parties disagree as to whether any approval of the Helmet was given during this meeting and, if so, with what legal effect. The Applicant asserts that the Respondent's representatives confirmed that the Helmet met the requirements of the IBSF Rules and was approved for use at the OWG 2026. The Respondent denies having given any binding approval, characterizing the meeting as informal and stating that Mr Langen expressly reserved the right for the Helmet to be reviewed by the IBSF Material Controllers.

13. Following the meeting, British athletes began using the Helmet during training sessions in St. Moritz, Switzerland, where it was visible to other teams.

14. By email dated 26 January 2026, Mr Langen informed the Applicant that, following internal review and discussion, the Helmet, in its current form, was considered not to comply with the IBSF Rules. The email cited concerns relating to protruding elements, aerodynamic features, and the illustrative drawings in Article 12.10, stating in relevant part (emphasis in original):

"[…] *It has been reviewed and discussed, and it has been decided that the helmet, in its current form, does not comply with our regulations.*

The decision is based on the following points of the regulations:

1. The chin guard, the visor and the hardware for attaching them are the ***only protruding elements allowed****.*

2. Helmets with spoilers or protruding edges are not allowed.

3.A safety helmet has to be without any additionally attached aerodynamic elements or adhesive tape (except that used to fix the visor or the goggle strap).

4. 12.10. Equipment

Drawing for article 10.16.1 ***no aerodynamic modification allowed****.*

We therefore consider that the presented helmet design does not comply with these three points. […]*"*

15. By email dated 28 January 2026, the Applicant contested this assessment, asserting that the Helmet complied with Article 10.16.1 and that the Respondent's position represented a reversal of the understanding reached on 1 January 2026. The Applicant addressed each of the provisions cited by Mr Langen, emphasizing that the Helmet was manufactured as a single integrated form without attached elements and had not been aerodynamically modified after manufacture. In particular, the Applicant argued that the Helmet *"does comply with the rules for the following reasons:*

1. The chin guard, the visor and the hardware for attaching them are the only protruding elements allowed.

Response*: There are no protruding elements. The helmet has been manufactured as one solid form.*

2. *Helmets with spoilers or protruding edges are not allowed.*

   Response*: There is no spoiler or protruding edges.*

3. *A safety helmet a) has to be without any additional attached aerodynamic elements or adhesive tape (except that used to fix the visor or the goggle strap).*

   Response*: There are no attached aerodynamic elements or adhesive tape on the helmet. The helmet is one solid form - there is nothing attached.*

4. *12.10. Equipment: Drawing for article 10.16.1 no aerodynamic modification allowed*

   Response*: There has been no aerodynamic modification. The helmet has been produced in a form that meets the rules and has not been modified in any way".*

16. On 29 January 2026, the Respondent's Sports Manager, Mr Gatis Gūts, responded as follows:

    "Based on the new shape of the helmet, we have reviewed the documentation provided, and the Material Controllers are of the opinion that the helmet does not comply with the IBSF Skeleton Rules.

    In order to further assess the technical development of your proposed helmet prototype, we intend to organise a call within the next few days with the relevant Skeleton Sport experts, e.g. members of the Skeleton Sport and Skeleton Material Committees. We would propose that you present the prototype during this call for evaluation.

    Should you not be available for this call, we would kindly ask you to provide the relevant information, which we could then circulate to the committee members for their assessment".

17. Later that day, the Applicant responded that, while disappointed with the outcome, it acknowledged the Respondent's position that the Helmet was considered non-compliant. The Applicant reiterated its disagreement and objected to the proposal to share information regarding the Helmet with the *"Skeleton Sport and Materials Committees"*, asserting that such assessment was not normal procedure during the competitive season and that the matter should be treated as confidential between the Parties.

18. On 30 January 2026, the Respondent confirmed that no information had been shared with other parties, while noting that members of the relevant committees were aware of the Helmet due to its visible use in training sessions in St. Moritz. The Respondent further indicated that equipment could be presented to IBSF Material Control during official OWG 2026 training sessions in Cortina for review and feedback, and that *"[t]he approval of used items during the race is done during each material control check as one may amend or change the previously presented material for the race".*

19. It is against this factual background that the Applicant filed its application before the CAS Ad Hoc Division.

20. The central issue in the present arbitration is whether the Helmet complies with Article 10.16.1 of the

IBSF Rules for purposes of use at the OWG 2026. The Applicant maintains that the Helmet is compliant because it is manufactured as an integrated whole without any elements *"attached"* to it and does not have *"aerodynamic modifications"*. The Respondent maintains that, based on its overall shape and design, the Helmet incorporates prohibited spoilers, protruding edges, or aerodynamic elements and therefore does not comply with the applicable rules.

III. CAS PROCEEDINGS

21. On 2 February 2026 at 13:17 (time of Milan), the Applicant filed an Application with the CAS Ad Hoc Division against the Respondent to challenge the decision of the Respondent contained in its email that was sent to the Applicant on 29 January 2026, mentioning the BOA as interested party.

22. On 2 February 2026, at 15:59 and at 16:02 (time of Milan), the CAS Ad Hoc Division notified the Application to the Respondent and to the interested parties, namely the BOA and the International Olympic Committee ("IOC").

23. On 2 February 2026 at 17:01 (time of Milan), the CAS Ad Hoc Division notified the Parties of composition of the Arbitral Tribunal:

    President:

    Ms Marianne Saroli, Attorney-at-law, Montreal, Canada

    Arbitrators:

    Mr Luigi Fumagalli, Professor and Attorney-at-law, Milan, Italy

    Mr Joongi Kim, Professor of Law, Seoul, Republic of Korea

24. On 2 February 2026, at 17:32 (time of Milan), the CAS Ad Hoc Division invited the Respondent to file a Reply by 3 February 2026 at noon (time of Milan) and informed the BOA that it was entitled to file an *amicus curiae* within the same deadline. The CAS Ad Hoc Division further summoned the Parties to appear before the Panel of the CAS Ad Hoc Division on 3 February 2026 at 15:00 (time of Milan).

25. On 3 February 2026, at: 06:21 (time of Milan), the Applicant provided the list of persons attending the hearing.

26. On 3 February 2026 at 10:02 (time of Milan), the Respondent filed its Reply with the CAS Ad Hoc Division, including a defence on lack of jurisdiction and procedural requests.

27. On 3 February 2026 at 11:07 (time of Milan), the CAS Ad Hoc Division invited the Applicant to file its reply on jurisdiction with the CAS Ad Hoc Division.

28. On 3 February 2026 at 12:54 (time of Milan), the Applicant filed its reply on jurisdiction with the CAS Ad Hoc Division.

29. On 3 February 2026, at 13:14 (time of Milan), the CAS Ad Hoc Division informed the Parties that the issue of the jurisdiction of the CAS Ad Hoc Division would be decided in the final Arbitral Award, and that the hearing scheduled for today at 15h00 shall be a Case Management Conference ("CMC") during which the Panel shall consider any further procedural steps required in the present matter.

30. On 3 February 2026 at 15:00 (time of Milan), a CMC was held in presence of the Panel, the CAS Ad Hoc Division Counsel and Clerk as well as the Parties' representatives.

31. On 3 February 2026 at 17:33 (time of Milan), after having heard the Parties on the procedural requests made by the Respondent, the Panel issued Further Procedural Directions including the Panel's order for the Parties to appoint an expert and provide a joint expert protocol on the compliance of the Helmet with the IBSF Rules. The CAS Ad Hoc Division also informed the Parties that a hearing will be held on 5 February 2026 at 13:00 and invited the Parties to provide the name of the persons attending the hearing.

32. On 3 February 2026 at 17:53 (time of Milan), the IOC informed the CAS Ad Hoc Division that it did not wish to intervene in the present proceedings as interested party.

33. On 3 February 2026 at 18:32 (time of Milan), the President of the CAS Ad Hoc Division extended the time-limit for the Panel to give a decision until 6 February 2026 at 14h00 (time of Milan).

34. On 4 February 2026 at 09:47 (time of Milan), the Respondent requested the Panel to revisit its Further Procedural Directions informing the Panel that it wished to withdraw part of its procedural requests.

35. On 4 February 2026 at 09:52 (time of Milan), the Applicant provided the name of its party appointed expert.

36. On 4 February 2026 at 13:53 (time of Milan), upon the CAS Ad Hoc Division's invitation to reply, the Applicant filed its comments to the IBSF's withdrawal of part of its procedural requests.

37. On 4 February 2026 at 14:51 (time of Milan), the CAS Ad Hoc Division informed the Parties that the Panel confirmed its Further Procedural Directions.

38. On 5 February 2026, at 10:37 (time of Milan), the employees of the Parties appointed as experts by them provided a joint protocol on the compliance of the Helmet with the IBSF Rules. At the request of the Parties, the hearing time was postponed to 14:00 (time of Milan).

39. On 5 February 2026 at 14:00 (time of Milan), a hearing was held with the participation of the following persons, in addition to the Panel, Counsel to the CAS and Clerk to the CAS:

<u>For the Applicant</u>:

- Mr Mike Townley, Counsel (attending by video)
- Ms Natalie Dunman, Executive Performance Director of the Applicant (attending in person)
- Mr Dave Short, Employee appointed as expert by the Applicant (attending in person)

<u>For the Respondent</u>:

- Mr Stephen Netzle, Counsel (attending by video)
- Ms Heike Grösswang, Secretary General of the Respondent (attending by video)

- Mr Gatis Güts, Employee appointed as expert by the Respondent (attending in person)

- Mr Christoph Langen, Head of Material, Technology and Innovation of the Respondent (attending by video)

40. At the hearing, the Parties confirmed that they had no objections to the composition of the Panel. Each Party was afforded the opportunity to present its arguments on jurisdiction issue and on the merits of the case. The Parties heard the evidence of the experts and were given the opportunity to examine and cross-examine them. Prior to their depositions, all appointed experts and witnesses were duly informed of their obligation to tell the truth. During the hearing, the Parties also presented various samples of the Helmet, along with one sample each of the JURK helmet (formerly known as UVEX) and the Suomy helmet.

41. Before the hearing was concluded, the Parties expressly stated that they did not have any objection to the procedure adopted and how the proceeding was conducted by the Panel and confirmed that their right to be heard and to be treated equally was respected.

IV. THE PARTIES' SUBMISSIONS AND REQUESTS FOR RELIEF

42. The Parties' submissions and arguments shall only be referred to in the sections below if and when deemed necessary, even though all such submissions and arguments have been thoroughly considered.

A. The Applicant

a. Applicant's Submissions

i. Jurisdiction

43. The Applicant's submissions may be summarized, in essence, as follows:

- The Applicant argues that the CAS Ad Hoc Division has jurisdiction under Rule 61 of the Olympic Charter and Article 1 of the CAS Ad Hoc Rules, as the dispute arose in connection with the OWG 2026 and the exhaustion of internal remedies would render CAS relief ineffective given the Olympic time constraints.

- The Applicant further submits that the Respondent's internal appeal rules do not provide for any expedited procedure suitable for resolving Games-time disputes and that no such procedure was communicated to member federations in advance of the OWG 2026. According to the Applicant, the Respondent's suggestion that the IBSF Appeals Tribunal could hear the dispute on an expedited basis was made only after the present Application was filed and is not grounded in any established procedural framework.

- In any event, the Applicant submits that even if the IBSF Appeals Tribunal could render a decision before the first official training session, this would leave no opportunity for a subsequent appeal to the CAS Ad Hoc Division, thereby rendering such appeal ineffective.

ii. Nature of the dispute

- The Applicant submits that the present dispute does not concern a *"field of play"* matter but rather raises a question of legal interpretation and application of

the Respondent's written equipment rules.

- The email of 29 January 2026 was issued well before any competition, based on a review of documentation and the design of the Helmet. The essential issue is whether the Respondent, as rule-maker, has correctly applied Article 10.16.1 of the IBSF Rules. This, according to the Applicant, is a matter falling within the jurisdiction of the Panel.

- The Applicant clarifies that it does not seek to enforce any alleged verbal approval given at the meeting of 1 January 2026. That meeting is relied upon only as factual context. The Applicant requests the Panel to determine, as a matter of rule interpretation and application, that the Helmet complies with Article 10.16.1 of the IBSF Rules.

iii. Equipment approval process and compliance with Article 10.16.1

- The Applicant disputes the Respondent's assertion that equipment inspection and approval occur exclusively during competition. It submits that the Respondent's emails of 26 and 29 January 2026 demonstrate that determinations of compliance or non-compliance may be, and in this case were, made prior to competition.

- The Applicant refers in particular to the Respondent's email of 30 January 2026, which states that in-competition material controls serve to verify that equipment presented has not been amended prior to use. According to the Applicant, this confirms that pre-competition assessments of compliance do take place.

- The Applicant further submits that evidence from Ms. Natalie Dunman demonstrates that pre-approval or pre-assessment of equipment has occurred in practice, albeit without a formalised procedure.

- Ultimately, the Applicant contends that the Helmet complies with Article 10.16.1 of the IBSF Rules and that the Respondent's contrary conclusion is based on an incorrect interpretation of the rule. In this respect, the Applicant emphasizes that Article 10.16.1 prohibits helmets with *"additionally attached aerodynamic elements"*, the term *"attached"* being decisive. It claims that the Helmet is manufactured as a single, integrated structure and contains no elements affixed or added after manufacture. Similarly, the Applicant submits that the prohibition of *"aerodynamic modifications"* applies to changes made to an existing helmet. The Helmet has not been modified as it was produced in its current form. It also does not feature spoilers or protruding edges, complies with the limitation on permitted protruding elements, and has a smooth surface as required by the rules. Moreover, the diagrams in Article 12.10 illustrate prohibited add-on aerodynamic elements and modifications, none of which are present in the Helmet.

- With this, the Applicant submits that safety is the paramount consideration underlying Article 10.16.1, which places responsibility on National Federations to comply with safety standards. It stresses that the Helmet already meets the ASTM 2040 and EN 1077 (Class A) certification standards that will become mandatory from the 2026-2027 season. Testing demonstrates that the Helmet provides superior protection against

serious head injury compared to helmets currently in use. As such, preventing athletes from using such equipment would be inconsistent with the safety objectives of the IBSF Rules and the Olympic Charter. Any ambiguity in Article 10.16.1 should be resolved in favour of permitting the use of equipment that demonstrably enhances athlete safety.

- Lastly, the Applicant states that any rule providing for the finality of Jury decisions does not apply in the present case. The email of 29 January 2026 was issued by the Respondent's Sports Manager based on the opinion of Material Controllers and was not a decision of a competition Jury. In any event, the Applicant submits that decisions taken in breach of applicable rules must remain subject to review.

b. Applicant's Requests for Relief

44. The Applicant's Requests for relief, as described in the Application, are as follows

"13.Claimant asks the CAS Ad Hoc Division for the 2026 OWG to set aside the decision of the IBSF and to rule that use of the Certified Helmet is permitted during the Skeleton competition at the 2026 OWG".

"23.The Claimant requests the CAS Ad Hod Division to rule that the Certified Helmet is compliant with the Rules, that it is safe to use in the Skeleton Competition at the OWG 2026 and future IBSF competitions, and that based on its safety certifications it is objectively proven to be more safe and beneficial to athletes' health and safety than any of the other available helmets being used by athletes at IBSF and Olympic Games Skeleton Sport competitions".

"24. CAS is asked to condemn Respondent for seeking prohibit the use of the Certified Helmet and to force athletes to wear uncertified helmets that fail to provide the safety guarantees rigorously tested for and established by the bodies that administer the ASTM 2040 and EN 1077 standards".

45. This notwithstanding, the Applicant clarified its Requests for relief during the hearing. In particular, it confirmed that paragraph 13 of the Application accurately reflects the relief sought, namely that the Panel declare that the Helmet complies with the applicable IBSF Rules and may be used in the Skeleton competitions at the OWG 2026. The Applicant further confirmed that its Requests for relief are limited exclusively to the OWG 2026 and do not extend to future IBSF competitions or seasons. The Applicant also clarified that the dispute does not concern the intrinsic safety of the Helmet as such. While the Applicant maintains that the Helmet is safe, it acknowledged that safety is not the principal issue for determination in these proceedings. Rather, the central issue is whether the Helmet complies with the applicable equipment rules in force for the OWG 2026.

B. The Respondent

a. Respondent's Submissions

46. The Respondent's submissions may be summarized, in essence, as follows:

i. Jurisdiction :

- The CAS Ad Hoc Division lacks jurisdiction because the Applicant failed to exhaust all the internal remedies available to it. The IBSF Appeals Tribunal is competent to decide on the

present matter under Article IV.A. iii of the IBSF Appeals Tribunal Code (the "Appeals Tribunal Code") as this is a dispute between the IBSF and one of its Members. The IBSF Appeals Tribunal is furthermore available from 6 February 2026 onwards partially from Cortina d'Ampezzo and capable to render its decision in time before the first official skeleton training in Cortina d'Ampezzo.

- Accordingly, the Respondent maintains that the IBSF Appeals Tribunal would be able to render a decision before the first official training session on 9 February 2026, and well in advance of the first competition on 12 February 2026.

- The Respondent also submits that the Applicant's athletes qualified for the OWG 2026 using helmets other than the Helmet at issue and could continue to use those helmets during training pending any decision.

ii. Nature of the dispute

- The Respondent submits that the only legal issue capable of judicial determination is whether it granted unconditional approval of the Helmet at the meeting held on 1 January 2026. The Respondent categorically denies that any such approval was given.

- The Respondent further submits that the technical compliance of the Helmet with Article 10.16.1 constitutes a *"field of play"* matter requiring specialised technical expertise and is therefore not suitable for determination by an arbitral tribunal.

- According to the Respondent, granting the Applicant's request would require the Panel to substitute its own technical assessment for that of the Material Controllers.

- Furthermore, the meeting of 1 January 2026 was informal in nature and did not constitute a formal equipment inspection. No decision was made on behalf of the Respondent, and Mr Langen expressly reserved the right for the Helmet to be reviewed by the Material Controllers. The Applicant was aware that no approval had been granted, as evidenced by the fact that the Helmet was not used in subsequent competitions.

iii. Equipment approval process and compliance with Article 10.16.1

- The Respondent submits that there is no pre-season homologation or certification system under its rules. Equipment compliance is assessed during competition through inspection by Material Controllers.

- The Helmet represents a novel design and its compliance with Article 10.16.1 is a technical question requiring expert judgment.

- The Respondent's opinion, communicated on 29 January 2026 and reaffirmed in the joint protocol dated 5 February 2026, is that the Helmet does not comply with Article 10.16.1 due to its shape and design, which were considered to incorporate prohibited spoilers, protruding edges, or aerodynamic modifications. The fact that the Helmet is manufactured as a single integrated form does not render it compliant. The prohibitions in Article 10.16.1 apply to helmet features regardless of how they are manufactured.

- The purpose of the design restrictions in Article 10.16.1 is to prevent unfair competitive advantages derived from aerodynamically enhanced helmet designs, while ensuring adequate safety protection. According to the Respondent, the aerodynamic characteristics of the Helmet, irrespective of its safety performance, raise legitimate concerns under the existing rules.

iv. Procedural Matters

- The Respondent initially requested expert inspection procedures but subsequently withdrew those requests on the basis that the decisive issue was whether any binding approval had been given on 1 January 2026.

- Following the Panel's decision to order expert inspection, a joint protocol was filed on 5 February 2026, confirming the Respondent's position that the Helmet does not comply with Article 10.16.1.

b. Respondent's Requests for Relief

47. The Respondent's Requests for relief, as described in the Reply, are as follows

"1) Not to accept the Application because of lack of jurisdiction.

2) Subsidiarily, and in case the Panel accepts jurisdiction of the CAS Ad Hoc Division, it shall dismiss the Application in its entirety to the extent that it is admissible".

V. JURISDICTION AND ADMISSIBILITY

48. Rule 61.2 of the Olympic Charter provides as follows:

"61 Dispute Resolution

[...]

2. Any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport (CAS), in accordance with the Code of Sports-Related Arbitration".

49. Article 1 of the CAS Arbitration Rules for the Olympic Games (hereinafter referred to as the "CAS Ad Hoc Rules") provides as follows:

"Article 1. Application of the Present Rules and Jurisdiction of the Court of Arbitration for Sport (CAS)

The purpose of the present Rules is to provide, in the interests of the athletes and of sport, for the resolution by arbitration of any disputes covered by Rule 61 of the Olympic Charter, insofar as they arise during the Olympic Games or during a period of ten days preceding the Opening Ceremony of the Olympic Games.

In the case of a request for arbitration against a decision pronounced by the IOC, an NOC, an International Federation or an Organising Committee for the Olympic Games, the claimant must, before filing such request, have exhausted all the internal remedies available to him/her pursuant to the statutes or regulations of the sports body concerned, unless the time needed to exhaust the internal remedies would make the appeal to the CAS Ad Hoc Division ineffective".

50. As consistently held in CAS jurisprudence, including CAS OG 22/02, the jurisdiction of the CAS Ad Hoc Division is limited. Jurisdiction exists only where the cumulative requirements set out in Article 1 of the CAS Ad Hoc Rules are satisfied. In particular, the dispute submitted to the Panel must:

(a) arise on the occasion of, or in connection with, the Olympic Games within the meaning of Rule 61.2 of the Olympic Charter; and
(b) arise during the Olympic Games or within the ten-day period preceding the Opening Ceremony;
(c) where the request is directed against a decision of a sports body, either follow the exhaustion of available internal remedies or fall within the exception provided in Article 1 of the CAS Ad Hoc Rules where the time required to exhaust such remedies would render recourse to the CAS Ad Hoc Division ineffective.

A. Subject matter jurisdiction

51. As a preliminary matter, the Panel notes that in its Requests for relief, the Applicant requests this Panel to find that the Helmet is safe to be used in *"future IBSF competitions, and that based on its safety certifications it is objectively proven to be more safe and beneficial to athletes' health and safety than any of the other available helmets being used by athletes at IBSF and Olympic Games Skeleton Sport competitions"* and that the Respondent be condemned *"for seeking prohibit the use of the Certified Helmet and to force athletes to wear uncertified helmets that fail to provide the safety guarantees rigorously tested for and established by the bodies that administer the ASTM 2040 and EN 1077 standards"*.

52. At the Hearing, the Applicant confirmed that its Requests for reliefs were limited to the present OWG 2026.

53. The Panel notes that, pursuant to Rule 61.2 of the Olympic Charter, the jurisdiction of the CAS Ad Hoc Division is limited to *"any dispute arising on the occasion of, or in connection with, the Olympic Games"*.

54. Therefore, even if the Applicant had decided to maintain its Requests for relief beyond the present OWG 2026, the Panel would lack jurisdiction to rule on matters exceeding its limited mandate under Rule 61.2 of the Olympic Charter and Article 1 of the CAS Ad Hoc Arbitration Rules.

55. Further, the Panel also notes that the Respondent characterizes the dispute as a *"field of play"* matter involving technical compliance determinations by Material Controllers, and therefore submits that it is not appropriate for arbitral review.

56. The Panel, however, does not accept this characterization. The Applicant does not assert that the Respondent is bound by any alleged verbal approval given on 1 January 2026, which it describes as contextual only. The Applicant seeks a determination as to whether the Helmet complies with Article 10.16.1 of the applicable rules for use at the OWG 2026.

57. The Respondent's position of non-compliance was communicated by email on 29 January 2026, following a review of documentation and the Helmet's design. It was not a split-second decision taken by officials during competition.

58. The question whether equipment complies with written rules is a matter of rule interpretation and application. While it may involve technical evidence, it is ultimately a legal question of the type routinely addressed by arbitral tribunals.

59. The doctrine of *"field of play"* restraint applies to discretionary, real-time decisions made during competition. It

does not extend to pre-competition administrative determinations regarding equipment compliance. To hold otherwise would insulate such determinations from any form of review.

60. Moreover, the Respondent cannot have it both ways. It cannot argue to this Panel that the matter is a *"field of play"* issue beyond legal review while simultaneously asserting that the Applicant should have use the internal remedies of the IBSF Appeals Tribunal, which expressly lacks jurisdiction over field of play matters. If the IBSF Appeals Tribunal would lack jurisdiction, then there is no internal remedy to exhaust.

B. Jurisdiction ratione temporis

61. The Parties disagree as to whether the Respondent's email of 29 January 2026 constituted a final decision or merely a provisional opinion. The email stated that *"the Material Controllers are of the opinion that the helmet does not comply with the IBSF Skeleton Rules"*, while also indicating that *"in order to further assess the technical development of your proposed helmet prototype, we intend to organise a call within the next few days with the relevant Skeleton Sport experts, e.g. members of the Skeleton Sport and Skeleton Material Committees. We would propose that you present the prototype during this call for evaluation"*.

62. For the purposes of jurisdiction, however, the precise characterization of the 29 January 2026 email is not decisive. This is because the Parties agree that a dispute arose on 28 January 2026, when the Applicant contested the Respondent's position communicated on 26 January 2026 and sought reconsideration. The Respondent's reply of 29 January 2026 confirmed its position that the Helmet did not comply with the applicable rules.

63. The Parties agree that the dispute arose within the ten-day period preceding the Opening Ceremony, as required by Article 1 of the CAS Ad Hoc Rules.

64. Hence, the jurisdictional requirements relating to the existence of a dispute connected to the Olympic Games and arising within the relevant temporal window are satisfied. The remaining issue is whether, assuming *arguendo* that the 29 January 2026 email constitutes a *"decision"* within the meaning of Article 1 of the CAS Ad Hoc Rules, the Applicant was required to exhaust internal remedies prior to seizing the CAS Ad Hoc Division, or whether the exception to that requirement applies.

C. Exhaustion of internal remedies

65. Where a request for arbitration is directed against a decision of an International Federation, Article 1 of the CAS Ad Hoc Rules requires exhaustion of available internal remedies, unless the time required to exhaust such remedies would make recourse to the CAS Ad Hoc Division ineffective.

66. The requirement to exhaust internal remedies serves important purposes, including respect for the autonomy of sports governing bodies and affording them the opportunity to resolve disputes internally in the first instance.

67. That requirement is, however, expressly subject to an exception where *"the time needed to exhaust the internal remedies would make the appeal to the CAS Ad Hoc Division ineffective"*. This exception reflects the specific function of the CAS Ad Hoc Division, namely to provide urgent and

effective dispute resolution during the Olympic Games period, when ordinary appeal timelines are incompatible with competition schedules.

68. The question for the Panel is therefore whether, in the circumstances of the present case, requiring the Applicant to exhaust the internal remedies of the IBSF Appeals Tribunal would render recourse to the CAS Ad Hoc Division ineffective.

69. *In casu*, the dispute arose on 28 January 2026. The first official training session is scheduled for 9 February 2026, and the first competition for 12 February 2026.

70. The Respondent submits that the IBSF Appeals Tribunal could render a decision prior to 9 February 2026. Even accepting this assertion arguendo, the relevant question is whether there would thereafter be sufficient time for meaningful review by the CAS Ad Hoc Division.

71. If the IBSF Appeals Tribunal were to issue a decision shortly before the first training session, the Applicant would have, at most, one day to file an application with the CAS Ad Hoc Division, prepare the necessary documentation, serve the opposing party, allow for submissions, constitute a panel, and obtain a decision. In the Panel's view, this would not amount to an effective or meaningful opportunity for CAS Ad Hoc review.

72. The exhaustion requirement is not intended to operate in a manner that effectively forecloses access to the CAS Ad Hoc Division. Where insistence on internal remedies would, as a practical matter, eliminate the possibility of timely CAS review, the exception in Article 1 applies (*CAS OG 22/004*).

73. The Respondent further submits that the IBSF Appeals Tribunal could act expeditiously and notes that its Chairman would be present in Cortina d'Ampezzo from 6 February 2026, with other members available by videoconference.

74. However, the Respondent has not identified any published or established expedited procedure governing Games-time appeals before the IBSF Appeals Tribunal. Nor has it explained which procedural rules would apply, what timelines would govern submissions and deliberations, or whether member federations had been notified of the existence of such expedited procedures.

75. The mere availability of tribunal members does not amount to an established, effective, and expedited remedy upon which the Applicant could reasonably rely. An internal remedy whose procedure, timing, and jurisdiction are uncertain cannot be regarded as sufficiently effective for the purposes of the exhaustion requirement.

D. Conclusion

76. In light of the foregoing, and given the circumstances of the present case, the Panel finds that it has jurisdiction to hear this dispute.

VI. APPLICABLE LAW

77. Under art. 17 of the CAS Ad Hoc Rules, the Panel shall decide the dispute *"pursuant to the Olympic Charter, the applicable regulations, general principles of law and the rules of law, the application of which it deems appropriate"*.

78. The Panel notes that the *"applicable regulations"* in this case are the IBSF Rules.

VII. DISCUSSION

A. Legal framework

79. These proceedings are governed by the CAS Ad Hoc Rules enacted by the International Council of Arbitration for Sport ("ICAS") on 14 October 2003 (amended on 8 July 2021). They are further governed by Chapter 12 of the Swiss Private International Law Act of 18 December 1987 ("PILA"). The PILA applies to this arbitration as a result of the express choice of law contained in Article 7 of the CAS Ad Hoc Rules and as the result of the choice of Lausanne, Switzerland as the seat of the CAS Ad Hoc Division and of the Panel, pursuant to Article 7 of the CAS Ad Hoc Rules.

80. According to Article 16 of the CAS Ad Hoc Rules, the Panel has *"full power to establish the facts on which the application is based"*.

B. Merits

81. The Applicant seeks a declaration that the Helmet complies with Article 10.16.1 of the IBSF Rules and authorization to use it at the OWG 2026. Both Parties however agree that safety is not an issue to be determined by the Panel in the framework of the present proceedings.

82. The Panel notes at the outset that this dispute arises in a context of rapid technological development in athlete safety and performance innovation. In addition to its aerodynamic innovations, the Helmet presented by the Applicant is alleged to be independently certified to international safety standards, and designed to enhance athlete protection.

83. The question is, however, whether, on the evidence before it, the Applicant has sufficiently established that the Panel can determine that the alleged aerodynamic innovations of the Helmet comply with the design and configuration requirements of Article 10.16.1 as currently applicable to the OWG 2026.

a. Burden of Proof

84. Article 10.16.1 provides in its opening paragraph that: *"Wearing of a safety helmet is mandatory for all competitions, during both training and races. It is the duty and the responsibility of the National Federations to comply with the safety standards"*.

85. The rule thus expressly places responsibility for compliance with the applicable standards on National Federations. Where a National Federation seeks affirmative relief in the form of a declaration of compliance and advance authorization for use at the OWG 2026, it necessarily bears the burden of proof.

86. The Panel emphasizes that it is not tasked with determining whether the Helmet represents an improvement over existing equipment, nor with deciding what the equipment rules ought to be. Its role is confined to assessing whether the Applicant has sufficiently demonstrated that the Helmet complied with the rules as they currently stand.

87. The Panel is also mindful that it should not substitute its own technical judgment for that of the Respondent's Material Controllers or the Jury. Rather, it must determine whether the Applicant has provided sufficiently clear and

convincing evidence that the Helmet falls within the range of equipment permitted by Article 10.16.1.

b. Analysis

88. The evidence establishes that after the 2022 Beijing Winter Olympic Games the Respondent does not, typically, operate a pre-competition equipment homologation or certification system. Equipment controls are now ordinarily conducted on-site before competition to verify compliance.

89. That said, the absence of a formal homologation procedure does not deprive the Respondent of authority to *"assess"* compliance prior to competition. The Respondent's emails of 26 and 29 January 2026 demonstrate that pre-competition *"assessments"* of equipment compliance can sometimes occur in practice.

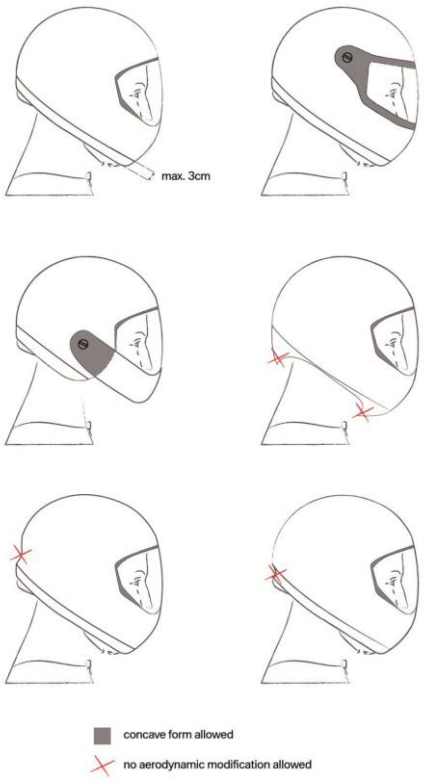
90. The issue for determination by the Panel is therefore whether the Applicant has sufficiently established that the Helmet complies with Article 10.16.1.

91. In connection with examining whether the Applicant has discharged its burden of proof, the Panel finds it should also consider whether the Respondent exercised its regulatory authority in a manner consistent with the applicable rules.

92. Although the Respondent enjoys discretion in administering its equipment control system, such discretion must be exercised within the framework of the written rules. The Panel's task is therefore confined to determining whether the Applicant has sufficiently demonstrated, on the basis of those rules and the evidence, that the Helmet falls within the scope of equipment permitted under Article 10.16.1.

93. The Applicant submits that the relevant provisions are ambiguous and should be interpreted in its favour, invoking both the principle of **contra proferentem** and the maxim that what is not expressly prohibited is permitted.

94. The Respondent counters that the rules are clear and submits that Article 10.16.1 of the IBSF Rules must be read together with the illustrative drawings contained in Article 12.10, which depict a standard helmet shape and configuration and identify prohibited features.



95. The Panel considers that Article 10.16.1, read in conjunction with the drawings in Article 12.10, provides guidance as to the helmet configurations that are permitted and those that are not. In accordance

with Article 15.3, the terms used in the rule, such as *"attached"*, *"modified"*, *"spoilers"*, and *"protruding edges"*, should be interpreted in context and in light of the rule's underlying purpose.

96. The Respondent further relies on Article 15.3 of the IBSF Rules on interpretation, which provides that: *"[i]f an article in these Rules should be ambiguously defined so that multiple interpretations are possible, the interpretation should be used that matches the underlying meaning for which the article was written"*.

97. The Panel accepts that the drawings in Article 12.10 illustrate a baseline or *"standard"* helmet shape and configuration and serve as a visual aid to understanding the types of shapes and configurations the rules are intended to permit and prevent, including aerodynamic enhancements that depart from that baseline.

98. The Panel further notes that the maxim that what is not prohibited is permitted is not without limits in a regulatory sporting context. Technical equipment rules cannot anticipate every conceivable design variation and must therefore be interpreted purposively rather than as an exhaustive catalogue of prohibited configurations.

99. Against this framework, the Respondent maintains that the Helmet departs from the standard shape and configuration illustrated in the rules. While the Applicant emphasizes that the Helmet is manufactured as one integrated piece and therefore has no *"attached"* elements, this argument focuses on the method of manufacture rather than on the resulting shape and configuration assessed against the regulatory standard.

100. Article 10.16.1 provides that *"[t]he bottom edge of the helmet shell must maintain the shape of the helmets normally available on the market"*. This provision presupposes a reference configuration against which compliance is assessed. Avoiding separately attached elements is not, in itself, sufficient if the integrated design departs from *"the shape of helmets normally available on the market"*.

101. The Applicant's experts submit that several helmets currently available on the market exhibit a profile along the lower edge similar to that of the Helmet at issue. The Applicant further notes that, in other sections of the IBSF Rules (in particular Articles 12.3 to 12.6), equipment requirements are accompanied by detailed measurements and corresponding technical drawings. By contrast, the rules governing helmets do not contain equivalent dimensional criteria. The Applicant argues that, had the Respondent intended to regulate helmet shape in a precise manner, it could have adopted detailed design specifications similar to those applied in other sports.

102. The Respondent's expert submits that the relevant provisions are intended to regulate helmet shape so as to ensure general uniformity and to prevent the development of helmets conferring an aerodynamic advantage. According to the Respondent's expert, the absence of precise measurements reflects an intentional choice to permit case-by-case assessment by competent technical officials.

103. The Panel notes the absence of detailed technical specifications and lack of precise clarity in some terms in the IBSF Rules but finds that it does not deprive

the Respondent of regulatory authority to control helmet shape. Rather, the rules rely on functional standards rather than prescriptive measurements. While this approach necessarily involves an element of discretion, that discretion is directed toward a legitimate regulatory objective, namely preserving equipment uniformity and preventing aerodynamic advantage.

104. Unless the Applicant can demonstrate that the Respondent applied this discretion arbitrarily, inconsistently, in a discriminatory fashion, or contrary to the purpose of the rules, for instance, the lack of precise drawings or the existence of similar market-available helmets does not, in itself, establish that the Respondent exercised its discretion in an arbitrary way.

105. In the present case, the evidence indicates that the Helmet departs from the standard *"shape of helmets normally available on the market"*, as illustrated under Article 12.10. The Applicant has not demonstrated that the Helmet maintains such a standard shape. Rather, the Helmet reflects a novel design specifically developed to enhance aerodynamic performance where the rear considerably protrudes. While such innovation may be commendable for aerodynamics, the decisive issue for the Panel is whether the Helmet complies with the requirements of the rules currently in force.

106. A clear distinction must therefore be drawn between innovation and regulatory compliance. The Panel is not criticizing the design as unsafe or undesirable. Rather, it emphasizes that the Applicant bears the burden of proving that the design falls within the category of equipment permitted by Article 10.16.1, particularly from an aerodynamic standpoint. Against this background, the Panel turns to the question of whether the Helmet incorporates prohibited aerodynamic features within the meaning of the rule.

107. The question then becomes whether the Helmet possesses spoilers, protruding edges, or other aerodynamic elements within the meaning of Article 10.16.1. The joint protocol indicates that the Parties' experts reached opposing conclusions on this issue.

108. The IBSF Rules prohibit helmets with spoilers and protruding edges, while permitting only the chin guard, the visor, and their attachment hardware as protruding elements, provided they do not include aerodynamic coverings.

109. The Applicant submits that the Helmet contains no spoilers, no protruding edges, and no aerodynamic coverings, and that it is manufactured as a single, integrated unit. On that basis, the Applicant argues that the Helmet complies with the IBSF Rules.

110. The Respondent contends that compliance cannot be determined solely by the presence or absence of attached elements. According to the Respondent, the Helmet's overall shape produces a spoiler effect, the back section constitutes a protruding edge or *"element"*, and the Helmet's shape and form may confer an aerodynamic advantage. The resolution of this dispute turns first on the reasonable interpretation of Article 10.16.1.

111. In ordinary usage, *"attached"* refers to something affixed to another object, and *"modified"* suggests a change from an

original state. These terms, however, cannot be read in isolation from the remainder of Article 10.16.1 or from its purpose.

112. Article 10.16.1 prohibits helmets *"with spoilers or protruding edges"*. This prohibition is not limited to features added after manufacture. It applies to helmets that possess such features, irrespective of how or when they were created.

113. Likewise, the requirement that helmets have a smooth surface and the prohibition on aerodynamic coverings are not confined to separately attached components.

114. Against this textual background, the Respondent's position emphasises the functional effect of the Helmet's overall shape. The Panel accepts that compliance cannot depend solely on whether an element is attached after manufacture, but must also consider whether the design, irrespective of how it is produced, results in an impermissible aerodynamic effect.

115. In this respect, the Applicant's reliance on one-piece manufacture is not decisive. A helmet may be produced as a single integrated unit and nonetheless fall outside the scope of permitted configurations if its form produces the effects the rule seeks to prevent.

116. If the Applicant's interpretation were accepted, a manufacturer could circumvent the rules by integrating prohibited features into the initial design rather than adding them later. Such an interpretation would undermine the purpose of Article 10.16.1.

117. The Panel therefore considers that there has been a "modification" to the helmet, within the meaning of Article 10.16.1, compared to the standard market configuration, even when the change producing the aerodynamic effects has been implemented at the manufacturing stage.

118. In these circumstances, the Applicant has not sufficiently demonstrated that the Helmet falls within the permitted equipment shape and configuration under Article 10.16.1.

119. The Panel does not consider that the principle of *contra proferentem* can resolve this issue. While relevant in certain contexts, it must be applied cautiously in the regulatory setting of sports equipment rules.

120. International Federations must retain reasonable discretion to interpret and apply technical rules expressed in general terms and applied to novel designs. Such discretion warrants deference absent such factors as arbitrariness, bad faith, or manifest error.

121. The Panel finds that the Respondent's assessment, which appears non-binding, that the Helmet does not comply with Article 10.16.1 falls within the range of reasonable interpretations and applications of the rule.

122. The Panel fully acknowledges the Applicant's commitment to athlete safety. Article 10.16.1 itself emphasizes safety as a core objective. Mandatory certification requirements will enter into force only in the 2026-2027 season. For the OWG 2026, helmets must comply with the design and configuration requirements of Article 10.16.1 as currently drafted.

123. The Helmet has obtained ASTM 2040 and EN 1077 (Class A) certifications, and the evidence suggests improved impact safety performance compared with helmets currently in use. Yet, it has not been argued that the innovative, protruding rear section in controversy was for safety purposes. To the contrary, it was only for aerodynamic purposes.

124. The Panel cannot substitute its own assessment of optimal safety policy for the regulatory choices made by the Respondent. If the Applicant believes the current rules inadequately prioritize safety or should be amended to permit certified helmets regardless of aerodynamic design shape and configuration, the appropriate forum for that argument is the Respondent's rule-making process, not this arbitration.

125. That said, the Panel expresses the hope that the Respondent will give due consideration to the safety benefit aspects of the Helmet and will continue to develop rules that appropriately balance safety innovation and competitively fair performance innovation.

126. Although the Application must be dismissed for failure to meet the necessary burden of proof, the Panel offers for consideration certain observations regarding regulatory clarity.

127. The Respondent does not maintain a published or transparent procedure for pre-competition equipment approval or for expedited resolution of equipment disputes. Greater procedural clarity could benefit both the Respondent and its member federations.

128. The events surrounding the meeting of 1 January 2026 illustrate this point. A lengthy meeting attended by senior technical representatives reasonably gave rise to expectations on the part of the Applicant that the equipment had been substantively reviewed. The subsequent communication of non-compliance, issued weeks later, created undesirable uncertainty at a critical stage of Olympic preparation.

129. The Panel does not, in any way, suggest that the Respondent acted in bad faith or that the meeting created a binding approval. However, clearer communication as to the status and consequences of such meetings could have reduced the risk of misunderstanding.

130. Finally, the Panel notes the inherent tension between encouraging safety innovation, reflected in forthcoming mandatory certification requirements, and maintaining competitive fairness through reasonable design restrictions on performance enhancement. This tension warrants clearer expression in the rules so that National Federations are not left to speculate as to what degree innovative, novel equipment will be permitted.

131. Drafting technical rules capable of keeping pace with evolving technology is a complex task. The present case nonetheless demonstrates that the current framework would benefit from greater precision and transparency.

c. Conclusion

132. For the reasons set out above, in view of the information available to date, the Panel concludes that the Applicant has not discharged its burden to sufficiently establish that the Helmet complies with

the IBSF Rules. The Application must therefore be dismissed.

VIII. COSTS

133. According to Article 22 para. 1 of the CAS Ad Hoc Rules, the services of the CAS Ad Hoc Division "are free of charge".

134. According to Article 22 para. 2 of the CAS Ad Hoc Rules, parties to the CAS Ad Hoc proceedings *"shall pay their own costs of legal representation, experts, witnesses and interpreters"*.

135. None of the Parties sought costs. Accordingly, there is no order as to costs.

DECISION

The Ad Hoc Division of the Court of Arbitration for Sport renders the following decision:

1. The CAS Ad Hoc Division has jurisdiction to deal with the application filed by the British Bobsleigh & Skeleton Association Limited on 2 February 2026 at 13:17 (time of Milan).

2. The application filed by the British Bobsleigh & Skeleton Association Limited on 2 February 2026 at 13:17 (time of Milan) is dismissed.

3. All other and further motions or prayers for relief are dismissed.

CAS ad hoc Division (OG Milano-Cortina) 26/007
Rebecca Passler v. Nado Italia, World Anti-Doping Agency (WADA), Federazione Italiana Sport Invernali (FISI), International Olympic Committee (IOC), International Testing Agency (ITA), International Biathlon Union (IBU), Comitato Olimpico Nazionale Italiano (CONI)
award of 11 February 2026

Biathlon; CAS jurisdiction regarding the merits of a provisional suspension imposed in connection with a disputed doping offence; Exhaustion of internal remedies; Standing to be sued

Panel
James Drake(United Kingdom), President
André Brantjes (The Netherlands)
Jordi López Batet (Spain)

1. **Article 1 of the CAS Ad Hoc Rules requires an applicant to exhaust internal remedies available under the statutes or regulations of the sports body concerned, unless the time needed to exhaust such remedies would render the CAS Ad Hoc appeal ineffective. An International-Level Athlete has a right to appeal to CAS against a provisional suspension only where that decision arises from a provisional hearing held by the National Anti-Doping Tribunal (NADT). An athlete who bypasses available internal procedures cannot invoke CAS Ad Hoc jurisdiction as a shortcut. An ex parte provisional suspension, not preceded or followed by a provisional hearing, does not trigger a right of appeal to CAS.**

2. **Where a party is named as a respondent without any basis in the governing rules, that party has no standing to be sued and shall be removed from the proceedings.**

I. THE PARTIES

1. The Applicant is Ms Rebecca Passler, an Italian biathlete (the "Athlete").

2. The First Respondent is NADO Italia Antidoping ("NADO Italia" or the "First Respondent"), the National Anti-Doping Organisation in Italy (based in Rome) and a signatory to the World Anti-Doping Code (the "WADC"). From time to time, it issues anti-doping rules in accordance with the WADC including in particular the Anti-Doping Sports Code dated from 11 February 2025 (the "ADSC") supplemented by the Results Management Procedure dated from 1 February 2023 (the "RMP").

3. The Second Respondent is the World Anti-Doping Agency ("WADA" or the "Second Respondent"), a Swiss private law foundation with its registered seat in Lausanne, Switzerland and its headquarters in Montreal, Canada. WADA was created in 1999 to promote, coordinate and monitor the fight against doping in sport on the basis of the WADC.

4. The Third Respondent is the Italian Winter Sports Federation (Federazione Italiana Sport Invernali ("FISI" or the "Third Respondent"), the winter sports federation for Italy, which

organises, promotes and coordinates winter sports in Italy.

5. The Fourth Respondent is the International Olympic Committee (the "IOC" or the "Fourth Respondent"), the world governing body of Olympic sport, with its registered offices in Lausanne, Switzerland. One of the IOC's primary responsibilities is to organise, plan, oversee, and sanction the Milano-Cortina 2026 Winter Olympic Games (the "2026 OWG"), fulfilling the mission, role and responsibilities assigned by the Olympic Charter (the "OC"). In addition, it has issued the 'International Olympic Committee Anti-Doping Rules applicable to the XXV Olympic Winter Games Milano Cortina 2026 (17 March 2025)' (the "IOC ADR"), by which the Athlete was bound.

6. The International Testing Agency ("ITA") was named as the Fifth Respondent by the Athlete. It was responsible for, on behalf of the IOC, all anti-doping responsibilities at the 2026 OWG. (It is to be noted that it objected to its inclusion as a respondent, which the Panel addresses below.)

7. The Sixth Respondent is the International Biathlon Union (the "IBU" or the "Sixth Respondent"). It is the international governing body for the sport of biathlon, seated in Salzburg, Austria.

8. The Seventh Respondent is the Italian National Olympic Committee (in Italian, Comitato Olimpico Nazionale Italiano) ("CONI" or the "Seventh Respondent").

9. The First through Seventh Respondents are collectively referred to herein as the "Respondents".

10. The Athlete and the Respondents are collectively referred to herein as the "Parties".

II. OUTLINE OF THE MATTER

11. This matter has been commenced by way of an application (the "Application") to the Court of Arbitration for Sport ("CAS") Ad Hoc Division for the 2026 OWG pursuant to the CAS Arbitration Rules for the Olympic Games (the "CAS Ad Hoc Rules").

12. As more fully described below, the Athlete underwent an out-of-competition urine test on 26 January 2026 (at her home), the result of which for the A Sample was positive for Letrozole Metabolite Bis Methanol, and which result was confirmed subsequently by the B Sample. Letrozole Metabolite Bis Methanol, is an aromatase inhibitor prohibited under the 2026 WADA Prohibited List in section S4.1 "Hormones and Metabolic Modulators" under S4.1 "Aromatase inhibitors". It is a Specified Substance under these rules.

13. As a result, upon the application of NADO Italia to what is known in English as the National Anti-Doping Tribunal (the "NADT"), in a decision dated 2 February 2026 the NADT provisionally suspended the Athlete (the "Decision").

14. By her Application, the Athlete seeks (*inter alia*) *"an annulment"* or a *"lifting"* of that provisional suspension on the basis that the positive result must have

been caused by cross-contamination with her mother's medication, her mother having been prescribed Letrozole as part of her treatment and care for breast cancer.

III. FACTUAL BACKGROUND

15. Set out below is a summary of the relevant facts and allegations based on the Parties' submissions and from matters of public knowledge. The Panel has considered all matters put forward by the Parties, but reference is made below only to those matters necessary to explain the Panel's reasoning and its decision.

16. The Athlete was selected to represent Italy in the biathlon competition at the 2026 OWG.

17. On 26 January 2026, the Athlete took part in out-of-competition testing at her home in Antholz-Anterselva in Bolzano, Italy conducted by NADO Italia. The sample was, as per usual, divided into the A Sample and the B Sample. The analysis was positive for the presence the prohibited substance Letrozole Metabolite Bis Methanol. This is the Adverse Analytical Finding (the "AAF").

18. On 2 February 2026, the Procura Nazionale Antidoping (the prosecutorial office of NADO Italia (in English, the "NADP") sent to the Athlete a "Notification of Adverse Analytical Finding" (the "AAF Notice") putting her on notice that:

    a. her A Sample had returned positive for "Letrozole metabolite bis-(cyanophenyl) methanol";

    b. the fact that the AAF may result in an anti-doping rules violation ("ADRV");

    c. the Athlete had the right to request the analysis of the "B" Sample within three (3) days, it being understood that, in the absence of such a request within the indicated period, the analysis of "B" Sample shall be considered to have been waived;

    d. the Athlete had the opportunity to attend the "B" Sample opening and analysis;

    e. the Athlete had the right to request a copy of the analytical documentation pertaining to Samples "A" and "B", if the analysis of the B Sample is required;

    f. the Athlete had the opportunity to provide written observations and/or to request to be heard; and

    g. the Athlete had the opportunity to provide substantial assistance as set out under ADSC Article 11.7.1 to admit to the ADRV.

19. On the same day, 2 February 2026, the NADT issued the Decision, which was in the following terms (free translation):

    "Having regard to the request for the immediate provisional suspension of the athlete Rebecca Passler, registered with FISI, submitted by the PNA on 2 February 2026 to the National Anti-Doping NADT;

    Noting that the athlete concerned tested positive following the analysis of biological

sample A, and that, at present, elements of responsibility attributable to her exist;

Having regard to the Sporting Anti-Doping Code (CSA) currently in force;

Having regard to the Results Management Procedure (PGR) currently in force;

ORDERS

The immediate provisional suspension of the athlete Rebecca Passler.

This decision shall be communicated to the person concerned, the PNA, WADA, the IBU, FISI, and the athlete's club.

Pursuant to Article 3.3.2 of the PGR, the athlete has the right to submit an application for revocation of the present provisional suspension and to produce any supporting documentation, within the mandatory time limit of three (3) days from notification of this decision".

20. On an unknown date, the Athlete requested the analysis of the B Sample.

21. On 5 February 2026, the B Sample was analysed and the analysis was issued by NADO Italia on 6 February 2026. It confirmed the presence of Letrozole (in an estimated concentration of 1.1 ng/ml).

IV. SUMMARY OF THE PROCEEDINGS BEFORE THE CAS AD HOC DIVISION

22. On 6 February 2026 at 17:38 (Milan time), the Athlete filed her Application with the CAS Ad Hoc Division.

23. On 7 February 2026, the President of the CAS AHD:

a. acknowledged receipt of the Athlete's application;

b. sent to the Respondents a copy of the Athlete's application; and

c. notified the Parties of the constitution of the Panel as follows:

i. President: Mr James Drake KC, Barrister and Arbitrator in London, United Kingdom; and

ii. Arbitrators: Mr André Brantjes, Attorney-at-law in Amsterdam, The Netherlands and Mr Jordi López Batet, Attorney-at-law in Barcelona, Spain (both acting remotely).

24. Also on 7 February 2026, the Panel issued procedural directions, including as follows:

a. The Athlete was invited to submit all evidence on which she intends to rely by 17:00 Milan time on 8 February 2026.

b. The Respondents were invited to submit their Replies by 17:00 Milan time on 9 February 2026.

c. A hearing was listed for 10:30 Milan time on 10 February 2026.

25. On 8 February 2026, the Athlete filed with the CAS Ad Hoc Division all of the evidence on which she relies, together with what was called an "Authorised Submission" containing further, supplemental submissions in support of her Application (the "Supplemental Submission").

26. On 9 February 2026:

a. NADO Italia submitted its Answer to the Athlete's Application.

b. WADA and the IBU submitted their joint Reply to the Athlete's Application.

c. The IOC submitted its Answer to the Athlete's Application.

d. The ITA sent an email to the CAS Ad Hoc Division setting out its position with respect to the Application.

27. On 10 February 2026, the Panel conducted a hearing in person in Milan at the offices of the CAS Ad Hoc Division in which hearing the following people participated (either in person or remotely):

a. The Panel

i. Mr James Drake KC, President
ii. Mr Jordi López Batet, Co-Arbitrator
iii. Mr André Brantjes, Co-Arbitrator
iv. Mr Antonio de Quesada, CAS Counsel

b. The Athlete

i. Ms Rebecca Passler, the Athlete
ii. Mr Ernesto De Toni, Counsel
iii. Ms Maria Laura Guardamagna, Counsel
iv. Mr Luca Colombo, Counsel
v. Ms Herlinde Kargruber, the Athlete's mother
vi. Professor Donata Favretto, Expert

b. First Respondent

i. Mr Pierfilippo Laviani, Counsel
ii. Ms Lorenza Mel, Counsel

c. Second and Sixth Respondents

i. Mr Nicolas Zbinden, Counsel
ii. Prof. Martial Saugy, Expert
iii. Prof. Mario Thevis, Expert

d. Fourth Respondent

i. Mr Antonio Rigozzi, Counsel
ii. Mr Patrick Pithon, Counsel

e. **Independent Observer**:

i. Mr Thomas Capdevielle

f. Interpreters

i. Mr Peter Sand
ii. Mr Alexander Schmit

28. The Athlete is scheduled to compete in her first event on 14 February 2026, the 7.5km Sprint.

V. SUMMARY OF THE PARTIES' EVIDENCE AND SUBMISSIONS

29. The Panel has read with care the evidence and submissions put forward by the Parties with respect to the Athlete's request for a stay of the provisional sanction. What follows is a

summary of the essential matters advanced by the Parties.

A. The Athlete

30. As noted above, the Athlete filed the Application on 6 February 2026 as well as the Supplemental Submission on 8 February 2026.

31. In her Application, the Athlete provided the following *"brief explanation of facts and legal arguments"*:

> *"The athlete tested positive in an out-of-competition anti-doping control on 26 January 2026 for the substance LETROZOLE METABOLITE BIS-(4-CYANOPHENYL) METHANOL, a substance included on the WADA List under category S4 – Hormone and Metabolic Modulators. The positive result was contested with the adverse analytical finding notification of sample code 1570252, issued on 2 February 2026. On the same date, at the request of the National Anti-Doping Prosecutor's Office, the Athlete was provisionally suspended by the National Anti-Doping NADT. Today, 6 February 2026, the positive result was confirmed following the B-sample analysis, and it was determined that the amount of Letrozole detected in the Athlete is 1.1 ng/ml. This is a clear case of inadvertent contamination with no fault of the Athlete. The contamination occurred because the Athlete's mother, Ms. Herlinde Kargruber, who lives with her, unfortunately suffers from breast cancer and takes the medication Letrazolo Teba, which contains the contested substance, on a daily basis. The Athlete was not aware of her mother's use of the medication. The medication was under the exclusive control of Ms. Kargruber and was not stored together with other commonly used household medications".*

32. In her further written submissions dated 8 February 2026, the Athlete made submissions as to a number of matters including, most importantly: (a) that there was a strong *prima facie* case of inadvertent exposure to Letrozole and (b) that the requirement of irreparable harm is clearly met.

33. The Athlete submitted that there was a strong *prima facie* case that there had been an innocent, inadvertent exposure to the prohibited substance. The Athlete made the following (*inter alia*) points:

a. The analytical finding was of a very low concentration, 1.1ng/ml.

b. In light of her mother's prolonged daily intake of Letrozole, it is medically and scientifically plausible that trace amounts were present in her saliva and were inadvertently transferred to the shared food.

c. From a pharmacokinetic standpoint, Letrozole is characterised by (i) near complete oral bioavailability; a long terminal elimination half-life, extending to several days at steady state; and (iii) detectability at trace levels following minimal exposure.

d. The factual and scientific framework provides a coherent and credible explanation for an isolated low-level finding, not incompatible with innocent

exposure, and does not support any inference of intentional use.

e. The previous doping control on 29 December 2025 was negative.

f. Letrozole has no demonstrated performance-enhancing effect in female athletes.

34. The Athlete also submitted that she would suffer irreparable harm should the provisional suspension not be lifted and that the balance of interests were in her favour:

a. The continuation of the suspension would result in the Athlete being excluded from participation in the 2026 OWG "an event which, by its very nature, represents a unique, non-recurring and time-limited opportunity within an elite athlete's career.

b. The CAS Ad Hoc Division has consistently recognised that exclusion from the Olympic Games constitutes irreparable harm, since no subsequent decision on the merits or award of damages can restore the opportunity to compete in the particular edition of the Olympic Games: see CAS OG 22/08, 22/09 & 22/10.

c. The harm is "especially acute" here because the 2026 OWG are taking place in the Athlete's home country, a once-in-a-lifetime opportunity.

d. If the suspension is not lifted, the Athlete will suffer irreversible prejudice to her sporting career, as well as lasting reputational harm.

e. The *"balance of urgency and equity"* weighs decisively in favour of granting a stay of the provisional suspension.

a. The Athlete's Evidence

35. In support of her submission that it was appropriate for the Panel to stay the provisional suspension on the basis that the positive result was due to cross-contamination from her mother's medicine, the Athlete adduced, *inter alia*, the following evidence:

a. A statement from the Athlete's mother, Ms Herlinde Kargruber Passler ("Ms Kargruber"), with whom the Athlete lives (together with the Athlete's father and younger sister). Ms Kargruber gave evidence that in October 2024 she was diagnosed with invasive ductal breast carcinoma and that, to treat that condition, she underwent two surgical operations in October and November 2024 and subsequently chemotherapy and radiotherapy. Since June 2025, she has been prescribed Letrozole Teva, which she takes daily by mouth. She said that it is normal in her household to use the same cutlery and to touch the same food with their hands; and that when she prepares meals she may use a utensil to taste the food and then use the same utensil to stir the food. They also wash the dishes by hand. They also all share a bathroom. There

is a jar of Nutella in the kitchen pantry which she eats using a spoon and directly from which the Athlete ate some Nutella at breakfast on 25 January 2026.

b. A medical report from the South Tyrol Health Authority (per the Head of the Department, Dr Leitner) dated 3 October 2025 reporting on a follow-up visit by Ms Kargruber on 2 October 2025. Amongst other things, it records that Ms Kargruber was first diagnosed in October 2024 with invasive ductal carcinoma of the left breast and that she has been taking Letrozole since June 2025, in 2.5mg tablets taken orally.

c. A report dated 8 February 2026 from Dr Elia Del Borrello, Specialist in Oncology and Former Head of the Forensic Toxicology Laboratory, Department of Medical and Surgical Sciences at the University of Bologna. Dr Del Borrello's opinion was that *"Ultimately, applying medico-legal criteria, all findings—both analytical and circumstantial—are univocal and convergent, with a very high probability, towards the only plausible interpretation, namely an* ***environmental contamination****, with the relevant environment being the family home where the mother lives, which involved the athlete unknowingly, excluding any hypothesis of intent and/or negligent conduct".*

d. A report dated 8 February 2026 from Professor Donata Favretto, Associate Professor in Forensic Toxicology at the University of Padova where she teaches Clinical and Forensic Toxicology, Legal Medicine and Public Health. She is also the Director of the Laboratory of Clinical and Forensic Toxicology Laboratory at Padova University Hospital. In Dr Favretto's opinion: *It is my opinion that the most likely cause of positive test for Letrozole Ml metabolite in urine was the accidental, unaware contact with the content of her mother's bodily fluid by using the same cutlery or tableware and/or the same food the day before she submitted her 26 January 2026 urine sample".*

b. The Requests for Relief

36. By her Application, the Athlete sought the following relief:

"Annulment of the Provisional … suspension due to lack of intent and negligence, with the consequent possibility to participate [sic] in the Olympics".

37. The Athlete also requested a stay of the provisional suspension. The Athlete submitted that:

"The request for a stay is justified by the need to prevent serious and irreparable harm pending a final determination, in particular since there is a prima facie plausible indication that the adverse finding may be attributable to inadvertent exposure and an absence of fault in the athlete's conduct, as in the present case.

Given the non-punitive nature of provisional measures, maintaining the suspension in such circumstances would be clearly unfair and

disproportionate, as it would irreversibly deprive the athlete of the unique opportunity to compete at the Olympic Games and would materially prejudice the applicant's position".

38. By her Supplemental Submission, the Athlete set forth the following prayer for relief:

"The Athlete respectfully requests the CAS Ad Hoc Division to:

a.Uphold the present Application for provisional measures in its entirety;

b. Order the immediate lifting of the provisional suspension imposed on the Athlete;

c. Declare that the Athlete is eligible to participate in the upcoming Olympic Games pending the final determination of the merits of the case".

B. The First Respondent

39. NADO Italia opposed the Athlete's Application on the following bases (elaborated below):

a. The CAS AD Hoc Division lacks jurisdiction.

b. The Application is inadmissible in that the Athlete has failed to exhaust internal remedies.

c. The Application should be rejected on the merits because the NADT's Decision was neither irrational nor unreasonable.

d. Subsidiarily, because the requirements of Article 14 of the CAS Ad Hoc Rules (namely, likelihood of success on the merits, irreparable harm, balance of interest) have not been satisfied.

a. Jurisdiction and Admissibility

40. The Application falls outside the jurisdiction of the CAS Ad Hoc Division and is inadmissible.

a. Pursuant to Article 17 .1 of the RMP, provisional suspensions imposed by the NADT are subject to appellate review before the National Anti-Doping Appeal Board ("NADAB").

b. Pursuant to the NADAB's Procedural Rules: (i) Article 3.1 provides that *"Against the provisional suspension measure referred to in art. 3 of the [RMP] of NADO Italia an appeal is allowed before the NADAB"*; and (ii) Article 3.7 provides that the decision of the NADAB is final and not subject to appeal.

c. The CAS Ad Hoc Division cannot assume jurisdiction in substitution of or in parallel with the NADAB. The Athlete's decision to bypass the appeal to the NADAB cannot create jurisdiction in the CAS Ad Hoc Division where none exists.

d. The CAS Ad Hoc Division lacks jurisdiction *ratione materiae* over the dispute because under Rule 61(2) of the OC *"the CAS AHD may only hear disputes arising on occasion of, or in connection with, the Olympic Games".*

e. The challenged decision is the provisional suspension imposed

by the NADT following a positive sample collected on 26 January 2026; i.e., 11 days before the opening ceremony. The doping control was neither conducted on the occasion of nor in connection with the 2026 OWG.

f. The fact that the provisional suspension *"incidentally affects"* the Athlete's eligibility for the 2026 OWG *"does not suffice to create the jurisdictional nexus required under Rule 61(2)"*.

g. The Application is also inadmissible in that the Athlete has failed to exhaust all available internal remedies pursuant to Article 1 of the CAS Ad Hoc Rules.

h. Under the RMP, the Athlete had the right: (i) to request the NADT to lift the provisional suspension within three days of notification of the Decision; and (ii) to appeal to the NADAB.

i. There was sufficient time available to the Athlete to take these steps. The Athlete did neither.

b. Merits

41. The NADT's Decision was neither irrational nor unreasonable.

a. The measure was adopted in strict application of the anti-doping framework following the AAF, thereby triggering the optional suspension regime.

b. The NADT's discretion ought not to be second-guessed or revisited by the CAS Ad Hoc Division.

c. *"Indeed, the legal test governing provisional measures, including the three cumulative prongs of likelihood of success, irreparable harm and balance of interests, is not designed to displace or override an imposed anti-doping suspension grounded in a confirmed AAF"*.

42. The requirements of Article 14 of the CAS Ad Hoc Rules (namely, likelihood of success on the merits, irreparable harm, balance of interest) have not been satisfied.

43. As to the likelihood of success on the merits, this is *"manifestly low"*:

a. The Athlete tested positive for a prohibited substance and the B Sample confirmed the result.

b. Letrozole is a non-threshold substance prohibited at all times and is scientifically recognised as capable of altering hormonal balance by inhibiting aromatase activity, thereby enhancing muscle development and endurance performance.

c. Under the ARSC (and the WADC), presence alone constitutes an ADVR, and intention or negligence is irrelevant to the violation.

d. The Athlete's defence of inadvertent contamination therefore pertains exclusively to the sanction.

e. The control took place on 26 January 2026, immediately preceding the Olympic Games period. This temporal proximity *"heightens competitive relevance since the substance was present in the lead up"* to the 2026 OWG. *"The potential performance impact is therefore sufficiently demonstrated"*.

f. The Athlete's factual narrative mirrors that of Sara Errani (CAS 2017/A/5301 and CAS 2017/A/5302). In that case, the athlete claimed contamination from her mother's medication but CAS nevertheless imposed a 10-month period of ineligibility. This confirms that such explanations *"do not negate fault entirely"*.

g. The medical report from the South Tyrol Health Authority dated 3 October 2025 "raises concerns as to its *"completeness, formation and reliability"* in that the initial part is in German and the latter part in Italian and page two is missing. It also refers to a prescription for Letrozole dated 2 February 2026, which post-dates the suspension.

h. The contamination scenario put forward by the Athlete "appears highly unlikely or even impossible" given that the tablets are film-coated, which protects the core of the tablet, ensures stability, and makes it easier to swallow. Such film-coated tablets *"do not release any contamination on fingers/hands when touched either in the mouth during its assumption [sic]"*.

i. The Athlete has failed to provide a photograph of the back of the Letrozolo Teva package where the warning red "DOPING" label can be seen. It was therefore easy to know that in the Athlete's house there was a drug containing a prohibited substance.

j. There is a disqualification risk; i.e., if the Athlete is sanctioned in due course, all of her results from the date of the sample collection would be disqualified. This would create *"irreversible sporting disruption"*.

44. As to the balance of interest, they *"overwhelmingly favour maintaining provisional suspension"* for the following reasons:

a. *"The integrity of the Olympic competition is paramount and allowing an athlete with a confirmed AAF in the very proximity of the Games to compete would undermine fair play, anti-doping enforcement and confidence of the sports system and other stakeholders (including competitors and the general public)"*.

b. The Athlete competes in the biathlon *"where there are formats in which the mere presence of an additional athlete affects group formation, race pacing, drafting resistance, shooting lane rhythm and psychological pressure, thereby influencing the performance of the other competitors"*.

c. The Athlete's presence therefore *"may directly affect drafting dynamics, shooting lane pressure and race pacing"*

and "may therefore distort both performance conditions and final rankings".

c. Relief

45. NADO Italia sought the following relief:

"For all the foregoing reasons, NADO Italia respectfully requests that the Panel:

a) Declare that the CAS Ad Hoc Division lacks jurisdiction to entertain the Application.

b) In the alternative to a), declare the Application inadmissible for failure to exhaust the internal remedies.

c) *Subsidiarily, on the merits, dismiss the Application for a stay in its entirety and confirm the provisional suspension imposed on 2 February 2026".*

C. The Second and Sixth Respondents

46. WADA and the IBU submitted a joint Reply. Their submissions are summarised below. They also arranged for Professor Martial Saugy and Professor Mario Thevis to appear (remotely) at the hearing to address the scientific matters raised by the Athlete's experts. (Prof. Saugy was Associate Professor, Director of the Center of Research & Expertise in Antidoping Sciences (Reds) Institute of Sports Sciences of the Lausanne University (ISSUL) University of Lausanne (Switzerland); Prof. Theves is Professor for Preventive Doping Research and Director of the Institute of Biochemistry/Center for Preventive Doping Research at the German Sport University Cologne.)

a. Jurisdiction and Admissibility

47. The legal framework is as follows:

a. Article 8.3 of the ADSC provides that provisional suspensions are to follow the procedure set out in the RMP.

b. Article 8.3 of the ADSC provides that *"Mandatory and Optional Provisional Suspensions follow the procedure set out in the RMP".*

c. Article 3.2 of the RMP states that *"*[f]*ollowing an Adverse Analytical Finding related to any Specified Substance in the List, NADO Italia, through the NADP, may apply with the NADT for the infliction of a Provisional Suspension on the Athlete".*

d. Per 3.3.1 of the RMP adds that in *"the cases of the Article 3.1 and 3.2, the NADT will, as a matter of urgency as well as ex parte, reach its decision serving immediate notice to the NADP, the individual concerned, the Club, the NSF/ASD/SPE as well as the relevant International Federation, National Anti-Doping Organization (if different from NADO Italia) and WADA. By the same decision, a mandatory period of three (3) days is granted to the individual concerned to produce evidence in order to possible withdrawal of the Provisional Suspension".*

e. Per 3.3.2 of the RMP, *"*[t]*he Party shall, within three (3) days, request the NADT which adopted the Provisional Suspension, to review the decision enclosing the supporting evidence. The NADT shall immediately and in any case no later than four (4) days hold*

the hearing, in order to hear the individual concerned. At the end of the hearing, the NADT decides, giving immediate notice to the NADP, to the individual concerned, to the Club, to the National Sports Federation/Associated Sports Discipline/Sports Promotion Entity and other relevant Sports Organizations and to WADA. This is without prejudice to the right of the Athlete or of any other Person to appeal against the Provisional Suspension decision, within the deadline set out in Article 17.1".

f. Article 17.1 of the RMP states that *"*[a]*n appeal against a Provisional Suspension as under Article 3 may be filed by the Athlete or other Person upon whom the Provisional Suspension is imposed. The appeal must be filed with the NADAB according to the applicable procedural rules, within and not later than ten (10) days after notice of the decision of Provisional Suspension".*

g. Article 18.2 of the ADSC lists all the decisions, which can be subject of an appeal. Relevantly, the provision states that *"a decision to impose, or lift, a Provisional Suspension as a result of a Provisional Hearing […] may be appealed exclusively as provided in this Article 18.2".*

h. Per Article 18.2.1 of the ADSC, *"*[i]*n cases arising from participation in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS".*

48. This framework reflects the provisions of the WADC.

a. Pursuant to Article 7.4.2 of the WADC, *"*[a] *Signatory may adopt rules, applicable to any Event for which the Signatory is the ruling body or to any team selection process for which the Signatory is responsible or where the Signatory is the applicable International Federation or has Results Management authority over the alleged anti-doping rule violation, permitting Provisional Suspensions to be imposed for anti-doping rule violations not covered by Article 7.4.1 prior to analysis of the Athlete's B Sample or final hearing as described in Article 8".*

b. Article 7.4.3 adds that *"*[n]*otwithstanding Articles 7.4.1 and 7.4.2, a Provisional Suspension may not be imposed unless the rules of the Anti-Doping Organization provide the Athlete … with: (a) an opportunity for a Provisional Hearing either before the imposition of the Provisional Suspension or on a timely basis after the imposition of the Provisional Suspension. […] The rules of the Anti- Doping Organization shall also provide an opportunity for an expedited appeal against the imposition of a Provisional Suspension, or the decision not to impose a Provisional Suspension, in accordance with Article 13".*

c. Pursuant to Article 13.2 of the WADC *"a decision to impose, or lift, a Provisional Suspension as a result of a Provisional Hearing […] may be appealed exclusively as provided in this Article 13.2".*

d. Article 13.2.1 of the WADC states that *"*[i]*n cases arising from participation in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS".*

49. In light of this framework it is clear that, where a Specified Substance is concerned (as is the case here), a provisional suspension is imposed by the NADT upon the request of the NADP, and the athlete is granted a deadline of three days "to request a withdrawal" of the provisional suspension.

50. This reflects Article 7.4.3 of the WADC which provides that a provisional suspension cannot be imposed unless the rules of the anti-doping organisation provide the athlete a right to a provisional hearing either before the imposition of the provisional suspension or on a timely basis after its imposition. In the ADSC, the provisional hearing is provided for after the imposition of the provisional suspension.

51. The Athlete did not request withdrawal of the provisional suspension within the deadline. She filed with the CAS Ad Hoc Division instead.

52. The Athlete's failure to do so *"is fatal"* to her Application:

a. As made clear by Article 1 of the CAS Ad Hoc Rules, an applicant is required to exhaust internal remedies available to them pursuant to the statutes or regulations of the sports body concerned, unless the time needed to exhaust the internal remedies would make the appeal to the CAS Ad Hoc Division ineffective.

b. Here, the Athlete had an internal remedy available to her, viz. a right to request a withdrawal of the Provisional Suspension under 3.3.1 of the RMP. Assuming that she had a right to take the matter to the CAS Ad Hoc Division, this ought to have been done after exhausting this remedy.

c. Further, there can be no argument that there was insufficient time to proceed with the internal remedy. Article 3.3.2 makes clear that the request shall be made within three days, and that NADT shall no later than four days hold the hearing. Therefore, bearing in mind that the Decision was issued on 2 February 2026, even assuming that the Athlete had taken the full three days to apply for a withdrawal, and the NADT had taken the full four days to convene a hearing and issue a decision (which is a maximum), the resulting decision would have been issued on 9 February 2026, which is five days before the Athlete's competition.

d. This was made clear in the Decision, which stated in terms that the Athlete had the right to submit a request for revocation within three days. The Athlete decided to circumvent this process, without any basis in the rules.

e. The Athlete is seeking to create a right of appeal to CAS which is not provided for under the applicable rules: As mentioned above, the ADSC (as well as the WADC) are clear that an appeal can only be filed against *"a decision to impose, or lift, a Provisional Suspension as a result of a Provisional Hearing"* (see Article 18.2 of the ADSC; Article 13.2 of the WADC; emphasis added). The Appealed Decision was, however, not issued *"as a result of a Provisional Hearing"*, because the Athlete did not request one. It follows that, per the clear language of the ADSC and WADC, the Appealed Decision is not appealable as per Article 18 of the ADSC, or Article 13 of the WADC.

f. The IBU and WADA are conscious that Article 3.3.2 of the RMP *"reserves"* Article 17.1 of the RMP, which states that *"*[a]*n appeal against a Provisional Suspension as under Article 3 may be filed by the Athlete or other Person upon whom the Provisional Suspension is imposed. The appeal must be filed with the NADAB according to the applicable procedural rules, within and not later than ten (10) days after notice of the decision of Provisional Suspension"*.

g. This provision in the RMP ought to be interpreted in line with the ADSC and the WADC, and therefore cannot create an independent appeal right against a decision that is not said to be appealable under the ADSC and WADC.

h. Even assuming that the Decision were covered by Article 17.1, the appeal is to the NADAB and the RMP do not provide for a further right of appeal to the CAS against its decision.

i. Article 61 of the Olympic Charter is not meant to create a right of appeal to CAS in circumstances where the applicable rules do not provide for one.

53. For these reasons, the Application must be considered inadmissible, outside of the jurisdiction of the CAS Ad Hoc Division or should be dismissed.

b. Merits

54. WADA and the IBU's following submissions on the merits may be summarised as follows:

a. The RMP provides that the NADT may impose a provisional suspension,

b. Article 6.2.2 of the International Standard for Results Management (the "ISRM") makes clear that whether or not to impose a suspension is a matter for the Results Management Authority *"to decide in its discretion, taking into account all the facts and evidence"*.

c. It is consistent with CAS case law that the threshold review of a discretionary decision is very high and may only be reviewed where *"clearly arbitrary, grossly*

disproportionate, irrational or perverse or otherwise outside the margin of discretion": CAS 2018/A/6239; CAS 2009/A/1918; CAS 2019/A/6393.

d. There is no reason here to interfere with the Decision by the NADT.

i. A specific explanation was provided by the Athlete on 8 February 2026. This explanation will need to be scrutinised by NADO Italia but Prof. Saugy and Prof. Thevis both consider that the explanation put forward by the Athlete possible but implausible.

ii. The Athlete's contamination scenario cannot necessarily be excluded but the scenario put forward by the Athlete does not work, and the Panel is left with pure speculation as to how the substance may have entered the Athlete's body.

iii. Even assuming that the Athlete's mother was the source, without a specific scenario, there cannot be any proper analysis of the Athlete's degree of fault, and therefore of the potential resulting sanction.

iv. The factual evidence provided by the Athlete in support of her submission of yesterday is less than optimal. At this stage, apart from her mother's short statement, the Athlete has only provided one medical document from 2 October 2025 indicating that her mother had received a letrozole therapy starting in June 2025, and a prescription for letrozole dated 3 February 2026, i.e. after the Athlete's AAF.

v. Caution should be exercised when assessing an explanation of source in an expedited process.

vi. The discretion exercised by the NADT to impose a provisional suspension was neither arbitrary nor unreasonable,

c. Relief

55. WADA and the IBU sought the following relief:
"The IBU and WADA respectfully request the CAS Ad Hoc Division to rule as follows:

1. The CAS Ad Hoc Division lacks jurisdiction over the Application filed by Rebecca Passler, or alternatively the Application filed by Rebecca Passler is inadmissible, or in the further alternative shall be dismissed".

D. The Third Respondent

56. FISI did not respond to the Application and did not participate in the hearing or the proceedings.

E. The Fourth Respondent

57. The IOC opposed the Application on the following grounds:

a. The Panel lacks jurisdiction to hear the dispute.

b. The Application should be summarily dismissed insofar as it is directed at the IOC.

c. On the merits of the Application, the request for a stay should be rejected.

a. Jurisdiction and Admissibility

58. As a preliminary matter, the Panel lacks jurisdiction to hear the dispute.

59. The Panel lacks jurisdiction to hear appeals against the decisions of NADO Italia in relation to provisional suspension.

a. The matter is governed by the ADSC and the RMP.

b. The RMP provides that an order for provisional suspension may be made by the NADT on an *ex parte* basis upon a request from the NADP.

c. This is what happened here: the NADP requested the NADT to issue an order for provisional suspension of the Athlete in light of the AAF, and the NADT did so on 2 February 2026.

d. Under the RMP, the following remedies are available in cases of provisional suspension: (i) per Article 3.3 of the RMP, a request to the NADT to lift the suspension; and (ii) per Article 3.3 of the RMP, an appeal to the NADAB against the provisional suspension.

i. The former must be submitted within three days of the suspension and the NADT is to issue its decision within a further four days.

ii. The latter be brought within 10 days of the notice of suspension; and its decisions are final and cannot be appealed.

e. Therefore, under the RMP, CAS has no jurisdiction to hear appeals imposed against a provisional suspension imposed by the NADT. That jurisdiction lies with the NADAB, irrespective of whether the athlete is an international-level athlete; and the decisions of the NADAB cannot be appealed to CAS.

f. The Athlete's requested relief to annul the order imposing the provisional suspension is outside the jurisdiction of CAS.

60. The Panel lacks jurisdiction *ratione personae* with regard to NADO Italia.

a. As the Decision is not appealable before CAS under the ADSC, the CAS Ad Hoc Division can only assert jurisdiction over NADO Italia if NADO Italia has agreed to provide for CAS jurisdiction under Rule 61 of the OC.

b. NADO Italia is not bound by the OC, NADO Italia is not a "constituent" of and does not belong to the Olympic

Movement within the meaning of Rule 1 of the OC. NADO Italia is therefore not bound by the OC.

61. The Athlete did not exhaust the internal remedies available to her.

a. Article 1(2) of the CAS Ad Hoc Rules provides that when an application is directed *"against a decision pronounced by the IOC, an NOC, an International Federation or an Organising Committee for the Olympic Games"*, the jurisdiction of the CAS AHD further requires that the applicant has *"exhausted all the internal remedies"* available against the challenged decision.

b. If the OC is to be interpreted as allowing an athlete to rely on the arbitration clause contained in Rule 61 of the OC to challenge at CAS a decision by an entity that is not bound by the OC, then the requirement to exhaust internal remedies would also apply to the decision take by that entity. Hence, the Athlete would need to exhaust the NADO Italia's internal remedies

c. The Applicant failed to exhaust the provisional hearing pursuant to Article 3.3.2 NADO RMP. A remedy that has been waived must be considered as not having been exhausted.

d. Even if the Athlete is still allowed to file an appeal before the NADAB, the reality is that she did not.

e. The Panel should thus decline jurisdiction also on the ground that the Athlete did not exhaust the internal appeal available under Article 17 NADO RMP, *"unless the time needed to exhaust the internal remedies would make the appeal to the CAS Ad Hoc Division ineffective"* per Article 1(2) of the CAS Ad Hoc Rules.

f. According to CAS case law, the exception under Article 1(2) is extraordinary in nature and only applies in particular circumstances of, e.g., extreme, evidenced urgency: CAS OG 22/04. In addition, the Athlete bears the burden to prove the existence of exceptional circumstances.

g. The Athlete has neither alleged nor demonstrated that exhausting the internal remedies available to her would have rendered an appeal to the CAS Ad Hoc Division ineffective or illusory. Quite apart from the fact that it was her decision to waive such remedy, the reality is that the 10-day time limit to appeal defines the last moment in which the appeal to the NADAB can be made.

h. One must suppose that the Athlete could have filed an appeal with NADAB on the same date that she filed her Application, i.e., 6 February 2026. It was thus her burden to establish that the NADAB would not have been in a position to rule on her appeal by 11 February 2026, that is 24

hours before the date she is requesting the CAS Ad Hoc Division to issue its award.

i. As the Athlete has not alleged, let alone established, that the NADAB is not in a position to adjudicate an appeal against a provisional suspension within six days, the appeal to the NADAB cannot be considered as being ineffective.

j. Hence the Applicant's lack of exhaustion of the available internal remedies prevents the CAS Ad Hoc Division from assuming jurisdiction over the present case. This is a second independent reason why the Panel should decline jurisdiction in the present matter.

b. Merits

62. The Athlete's request for provisional measures should be rejected.

a. The Athlete must show likelihood of success, irreparable harm and that the balance of interests is in her favour. The Athlete did not address the latter and so has failed to meet her burden.

b. The Panel will conduct a hearing on 10 February 2026 which gives the Panel ample time to issue a decision on the merits before the Athlete's next events which are scheduled between 11 and 21 February 2026.

c. Relief

63. The IOC sought the following relief:

"41. In light of the above, the IOC respectfully requests the Panel:

a. to dismiss the applicant's request for provisional measures;

b. to decline jurisdiction to hear the Application and, subsidiarily, dismiss the Application as far as it is directed against the IOC".

F. The ITA (named as the "Fifth Respondent")

64. The ITA took the position that it had been wrongly joined as a Respondent in this matter. It explained that, in accordance with the IOC ADR, the ITA is tasked with the implementation of the anti-doping programme for the 2026 OWG and that, since the sample collected from the Athlete which led to the provisional suspension imposed on her was collected under the authority of NADO Italia, the applicable regulation is NADO Italia's ADSC.

65. The ITA thus did not make submissions and did not participate in the hearing.

Relief

66. The ITA asked for the following relief:

"In light of the foregoing, the ITA was wrongly designated by the Athlete as a Respondent. The ITA thus respectfully requests that the application should be dismissed to the extent it is directed against the ITA and asks the CAS Ad Hoc Division to remove the ITA from the list of parties to this arbitration".

G. The Seventh Respondent

67. CONI did not respond to the Application and did not participate in the hearing or the proceedings.

VI. JURISDICTION AND ADMISSIBILITY

68. Rule 61 of the OC is headed *"Dispute Resolution"* and para. 2 provides as follows:

> *"2. Any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport (CAS), in accordance with the Code of Sports-Related Arbitration".*

69. Article 1 of the CAS Ad Hoc Rules is headed *"Application of the Present Rules and Jurisdiction of the Court of Arbitration for Sport (CAS)"* and provides as follows:

> *"The purpose of the present Rules is to provide, in the interests of the athletes and of sport, for the resolution by arbitration of any disputes covered by Rule 61 of the Olympic Charter, insofar as they arise during the Olympic Games or during a period of ten days preceding the Opening Ceremony of the Olympic Games.*
>
> *In the case of a request for arbitration against a decision pronounced by the IOC, an NOC, an International Federation or an Organising Committee for the Olympic Games, the claimant must, before filing such request, have exhausted all the internal remedies available to him/her pursuant to the statutes or regulations of the sports body concerned, unless the time needed to exhaust the internal remedies would make the appeal to the CAS Ad Hoc Division ineffective".*

70. The CAS Ad Hoc Division thus enjoys jurisdiction to resolve by arbitration any dispute that arises on the occasion of, or in connection with, the Olympic Games, defined by Article 1 of the CAS Ad Hoc Rules to mean either during the Olympic Games or during a period of ten days preceding the Opening Ceremony of the Olympic Games. In the context of the 2026 OWG, which had its Opening Ceremony on 6 February 2026, this means that the CAS Ad Hoc Division enjoys jurisdiction over disputes which arise during the 2026 OWG and for the 10-day period commencing 27 January 2026.

71. In this matter, there is little doubt that the dispute between the Parties has arisen during the Olympic Games or during a period of ten days preceding the Opening Ceremony of the Olympic Games, namely after 27 January 2026. Whilst the doping control of the Athlete took place on 26 January 2026, the NADT's Decision on 2 February 2026 to impose a provisional suspension on the Athlete was squarely within the jurisdictional window. The dispute is not about the collection of the sample or the relevant test, or whether there has been a violation of an anti-doping rule or not; it is, indisputably, a dispute about whether the Decision imposing a provisional suspension should be annulled or lifted, and whether it should be stayed or not pending that determination, and the outcome of this dispute will impact the Athlete's further participation in the 2026 OWG.

72. *Prima facie* then, the CAS Ad Hoc Division enjoys jurisdiction to hear this appeal. It was, however, the submission of WADA, the IBU and the IOC that, despite the *prima facie*

position, the CAS Ad Hoc Rules cannot create jurisdiction where none otherwise exists and it was nevertheless a matter for the Athlete to show that she enjoyed the right to appeal to the CAS Ad Hoc Division.

73. It is thus necessary to ask whether the Athlete has the right to bring her appeal to the CAS Ad Hoc Division in the manner that she has. In order to assess this issue, one must recognise that the Athlete's Application is, in the first instance, an application for an order that the Decision imposing a provisional suspension is *"annulled"* or, as it was sometimes put by the Athlete, that the provisional suspension be *"lifted"*. That being so, the Application is a challenge to the Decision or an appeal against the Decision. Secondarily, the Application also seeks a stay of the provisional suspension; i.e., that the provisional suspension of the Athlete be stayed pending the determination of the merits of her Application – not, it is important to note, pending the determination of the merits of any proceedings that may come to pass with respect to her ADRV.

74. The doping control in this case was undertaken pursuant to and is governed by the relevant provisions of the ADSC and the RMP; similarly, they provide the rules and regulations relating to provisional suspensions. The starting point is Article 8.3 of the ADSC which provides that provisional suspensions are to follow the procedure set out in the RMP.

75. Under the RMP, the position is as follows, as to which there appears to be no or little disagreement:

a. Article 3.2 of the RMP provides that NADO Italia, acting through its prosecutor, the NADP, may, upon the return by an athlete of an AAF, apply to the NADT for an order provisionally suspending the athlete.

b. The NADT is to consider such an application on an urgent – and *ex parte* – basis; that is, the athlete is not heard at this stage of the proceeding.

c. In the event that the NADT decides to impose a provisional suspension – something which is within its discretion to do – then the athlete has the right to apply to the NADT to review its decision. If the athlete wishes to do so, they must do so, supported by any evidence, within three days of the notice of provisional suspension.

d. In the event that the athlete does apply for a review, the NADT must immediately and in any event within four days hold an *inter partes* hearing at which the athlete is heard and, at the end of that hearing, the NADT must decide whether or not to maintain the provisional suspension, and give notice of its decision to, amongst others, the athlete.

e. This right of the athlete to review is without prejudice to the athlete's right to appeal against the *ex parte* imposition of the provisional suspension directly to the NADAB.

f. If the athlete wishes to take this route of appeal (as opposed to asking the NADT to review), the athlete must do so within 10 days of the notice of the NADT *ex parte* decision imposing the provisional suspension.

g. Pursuant to its own procedural rules, the NADAB: (i) requests the case file from the NADT, which the NADT must provide within three days of the request; (ii) must hold a hearing within 10 days following receipt of the file from the NADT; and (iii) at the end of the hearing, must issue the operative part of its decision, which is a final decision that cannot be appealed.

76. In its turn, Article 18.2 of the ADSC (which is in substantively the same terms as the more familiar Article 13 of the WADC) enumerates those decisions which can be the subject of an appeal and by whom. This states that *"a decision to impose, or lift, a Provisional Suspension as a result of a Provisional Hearing"* may be appealed exclusively as provided in Article 18.2. And Article 18.2.1 of the ADSC provides as follows: *"In cases arising from participation in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS".*

77. It is therefore to be noted that:

a. An International Level athlete has the right to appeal to CAS against a decision to impose a provisional suspension where the decision is taken at a provisional hearing held by the NADT in accordance with the framework limned above.

b. There is, however, no right to appeal to CAS from the *ex parte* decision of the NADT; if an athlete wishes to appeal that decision, he or she must appeal to the NADAB.

c. No appeal is permitted with respect to the decision of the NADAB on appeal. From that decision, there is no right of appeal, whether to CAS or at all, and the decision is final.

78. For the Athlete, an International Level athlete, this means that the position is as follows:

a. Upon receipt on 2 February 2026 of the notice of the NADT Decision imposing a provisional suspension, the Athlete had the right to submit a request (supported by evidence) to the NADT to review its decision. She was required to do so within three days, i.e., by 2 February 2026 (at the earliest) and 5 February 2026 (by the latest).

b. Had she done so, the NADT would have been obliged to hold a provisional *inter partes* hearing within four days, i.e., by 9 February 2026 (at the latest) and the NADT would have been obliged to render its decision on that request for a review immediately, i.e., by 9 February 2026 (at the latest).

c. Accordingly, had the Athlete chosen to apply to the NADT to review the NADT's *ex parte*

Decision, and had a provisional hearing been held in accordance with the procedural framework set forth above, and had the suspension been maintained, she would have had the right to appeal to CAS, including to the CAS Ad Hoc Division – as expressly confirmed by WADA during the course of the hearing.

d. In the event that the Athlete had applied to the NADT to review the *ex parte* Decision, and the NADT had failed to comply with its (stated) duty to render its decision on the review within the required four days, the CAS Ad Hoc Division would have had the possibility to entertain an appeal in light of Article 1 of the CAS Ad Hoc Rules. However, this question did not arise as the Athlete did not submit such a request for review.

e. In the absence of any such application by the Athlete, and thus the absence of a further decision by the NADT in a provisional hearing, she has no right to appeal to CAS and no right to appeal to the CAS Ad Hoc Division.

f. The Athlete enjoys a right to appeal to the NADAB provided that she exercises that right within 10 days of the date on which she received notice of the NADT Decision, i.e., by 12 February 2026.

g. It must be said, however, that Article 3.7 of the NADAB's procedural rules provides that the decision of the NADAB on appeal is final and not subject to appeal.

79. It follows from the preceding account that the Athlete has no right to appeal to the CAS Ad Hoc Division from the Decision such that the CAS Ad Hoc Division lacks jurisdiction to hear the Athlete's Application. Should however the Athlete wish to appeal the Decision, she may do so to the NADAB, provided of course that she does so before the deadline of 12 February 2026 – tomorrow.

VI. ITA STANDING TO BE SUED

80. As noted above, the ITA took the position that it had been wrongly joined as a Respondent in this matter on the basis that the doping control was not conducted by it but by NADO Italia.

81. There was no submission by the Athlete to gainsay this and indeed it was the case. That being so, the Panel agrees that the ITA had no standing to be sued and was wrongly named as a respondent.

82. The Panel therefore rules that the ITA should be removed as a Respondent in these proceedings.

VII. CONCLUSION

83. In the result, the Panel concludes the CAS Ad Hoc Division does not have jurisdiction to hear the Application.

84. Accordingly, it is both unnecessary and inappropriate for the Panel to consider the various further matters advanced by the Parties and, in particular, the Panel says nothing at all as to the merits of the Athlete's Application nor, of

course, as to the merits of the ultimate dispute between (principally) the Athlete and NADO Italia in relation to the alleged ADRV.

VIII. COSTS

85. According to Article 22 of the CAS Ad Hoc Rules:

86. The facilities and services of the CAS Ad Hoc Division *"are free of charge"*.

87. The parties to CAS ad hoc proceedings *"shall pay their own costs of legal representation, experts, witnesses and interpreters"*.

DECISION

The Panel hereby rules that:

1. The CAS Ad Hoc Division has no jurisdiction to hear the Athlete's Application.

CAS ad hoc Division (OG Milano-Cortina) 26/009
Vladyslav Heraskevych v. International Bobsleigh & Skeleton Federation (IBSF) & International Olympic Committee (IOC)
award of 17 February 2026 (operative part of 13 February 2026)

Luge; Eligibility to participate in a competition; Nature and scope of the CAS ad hoc Division's mandate; Freedom of association and limits; Duty of international sports federations to respect fundamental rights, Proportionality of restrictions to the freedom of expression; Authority to take pre-emptive measures to prevent the occurrence of an imminent breach; Proportionality of a competition ban

Panel
Mrs Annett Rombach (Germany), Sole Arbitrator

1. **As the competent judicial instance entrusted with the resolution of disputes arising during the Olympic Games, the CAS ad hoc Division must examine whether a decision affecting athletes' rights is based on legally valid rules by which the athletes are bound, and whether the application of such rules is lawful in the specific circumstances of an individual case. Beyond the question of the lawfulness of a challenged decision, it is not for the CAS ad hoc Division to assess the political, sociological or economic implications of a case before it, much less to be influenced in its legal analysis by respective public discussions.**

2. **International Federations are principally free to adopt the appropriate legislative and other decision-making procedures as they see fit. However, the freedom of associations finds its limits in fundamental human rights athletes enjoy.**

3. **Fundamental rights are enshrined, *inter alia*, in the European Convention on Human Rights (ECHR). While the direct application of the ECHR is limited to its signatory states (*i.e.* public authorities), its fundamental guarantees must also be respected by international sports federations enjoying a market-dominant position in the organisation, planning and execution of major sports events. The reason for the required (indirect) application of the ECHR to such market-dominant federations seated in a signatory state of the ECHR (such as Switzerland) is their ability to dictate terms on athletes who wish to participate in respective events.**

4. **The right to freedom of expression enshrined in Article 10 (1) ECHR is not absolute. As provided in Article 10 (2) ECHR, freedom of expression may be subject to conditions and restrictions where necessary *"in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others"*. The IOC Guidelines on Athlete Expression (Milano-Cortina 2026) provide, as a rule, an extensive list of opportunities for athletes to express**

their views during the Olympic Games and at Olympic venues, with only limited exceptions during competition on the field of play, ceremonies, and in the Olympic Village. Against this background, the IOC Guidelines on Athlete Expression (Milano-Cortina 2026) provide a fair and reasonable balance between athletes' fundamental right of freedom of expression and the IOC's legitimate aim to provide a "safe space" for athletes during the core moments of their performance in competition, to ensure that public attention during such moments is fully focused on sport.

5. The IOC's legal authority to take pre-emptive measures to avoid a breach of the Olympic Charter can be deduced, by means of an *argumentum a fortiori*, from its authority to sanction rule violations once the breach has occurred. Measures available for the sanctioning of a breach must, *a fortiori*, also be available to prevent the occurrence of an imminent breach, to the extent they are reasonable and proportionate under the circumstances. This includes the exclusion from competition.

6. A competition ban is the most severe measure possible to respond to a breach, much more so when the breach has not (yet) happened. As such, it must remain the *ultima ratio*, which means that it can only be applied if the breach is imminent and cannot be remedied or prevented through less intrusive means. However, if the only other option is to allow an athlete to compete and sanction him retroactively, this cannot be considered less intrusive as federations are not required to tolerate a breach of their rules. In these circumstances, a competition ban can be considered reasonable and proportionate.

I. PARTIES

1. The Applicant is Mr Vladyslav Heraskevych (the "Applicant" or the "Athlete"), an athlete from Ukraine, who had been scheduled to compete in the Men's Skeleton Olympic event at the Milano-Cortina 2026 Olympic Winter Games (the "2026 OWG").

2. The First Respondent is the International Bobsleigh & Skeleton Federation (the "First Respondent" or the "IBSF"), the world governing body for the sports of bobsleigh and skeleton, headquartered in Lausanne, Switzerland.

3. The Second Respondent is the International Olympic Committee (the "Second Respondent" or the "IOC"), the organisation responsible for the Olympic movement, headquartered in Lausanne, Switzerland; The First and Second Respondents are collectively referred to as the "Respondents"; The Applicant and the Respondents are collectively referred to as the "Parties".

II. INTRODUCTION

4. The present case has been commenced by way of an application to the Court of Arbitration for Sport ("CAS") Ad Hoc Division for the 2026 OWG pursuant to the CAS Arbitration Rules for the Olympic Games (the "CAS Ad Hoc Rules").

5. This matter concerns the challenge of the decision issued on 12 February 2026 by the Jury of the Olympic Skeleton Competition at the Olympic Winter Games 2026 Milano Cortina (the "IBSF Jury"), whereby the Applicant was withdrawn from the starting list of the Men's Skeleton Olympic event (the "Challenged Decision").

III. FACTS

6. The elements set out below are a summary of the main relevant facts as established by the Sole Arbitrator by way of a chronology based on the submissions of the Parties. Additional facts may be set out, where relevant, in the legal sections below.

7. Prior to the 2026 OWG, the Applicant made a number of public statements to the media concerning the war in Ukraine, including the following:

> "I truly want people just to pay more attention to what's going on in Ukraine, because it's a huge scale of war. [...] I hope it [the 2026 OWG] will be a great celebration of sports and, of course, support Ukraine"
>
> (Interview with *The Athletic (New York Times)*, article of 6 February 2026).
> "For me, (the) important thing is to represent my country in the best possible way and bring some attention to my country … and to spread the truth of what's going on in Ukraine"
>
> (Interview with *CNN*, article of 6 February 2026).

8. As a participating athlete in the 2026 OWG, the Applicant signed the Milano Cortina 2026 Conditions of Participation, which provide*, inter alia*, the following:

> *"1. Compliance with the Olympic Charter and other rules. My participation in the Olympic Winter Games Milano Cortina 2026 is subject to me complying with certain fundamental rules which aim at ensuring the integrity of the Olympic Winter Games Milano Cortina 2026, protecting the health of the Participants to the Olympic Winter Games Milano Cortina 2026 and protecting clean athletes.*
>
> *[…]*
>
> *I agree to comply with all these rules and responsibilities in particular those arising from the following:*
>
> *a.the provisions of the Olympic Charter, including the peace mission of the Olympic Movement;*
>
> *[…]*
>
> *f. any other set of rules and instructions (including any update thereof) related to my participation to the Olympic Winter Games Milano Cortina 2026".*

9. On 9 February 2026, during the official Men's Skeleton training heats, the Applicant wore a helmet featuring images of Ukrainian athletes killed during Russia's invasion of Ukraine (the "Helmet"). The Helmet looks as follows:

10. On the same day, the IBSF notified the IOC of the Applicant's use of the Helmet.

11. On the same day, the IOC met with the Applicant's coach and the Deputy Chef de Mission of the National Olympic Committee ("NOC") of Ukraine to explain that the Helmet was not compliant with the Olympic Charter and detailed the different options which were available to athletes to express themselves.

12. On 10 February 2026, the IOC sent the following letter to the Chef de Mission of the NOC of Ukraine, with the Applicant copied on the correspondence:

"Dear Mrs. Panchenko,

Thank you for your letter which we received this morning.

Sadly, today's world is divided and full of conflicts and tragedies. The IOC cares deeply about the situation of athletes all around the globe. The IOC has addressed from the beginning the situation of Ukrainian sports following the Russian invasion of Ukraine. The IOC fully understands the desire of the athletes to remember their friends, who have lost their lives as a result of many conflicts around the world.

During our teams' informal discussion in the Cortina Olympic Village yesterday with members of your delegation and Mr. Heraskevych's coach, we reiterated our understanding of his athlete's wish to pay tribute to fellow Ukrainian athletes and of expressing sorrow during his training sessions and on his social media.

With that said, we would like to remind you that, as a participating athlete at the Milano Cortina 2026 Olympic Winter Games, Mr. Heraskevych, like all other participating athletes, must respect the Olympic Charter, the Conditions of Participation, as well as the IOC's Guidelines on Athlete Expression.

As those Guidelines state, the focus of the Olympic Games must remain on athletes' performances, sport and the international unity and harmony that the Olympic Games seek to advance. It is a fundamental principle, applied equally to all delegations and athletes, that sports at the Olympic Games must be separated from political, religious or any other type of interference. Specifically, the focus on the field of play and during the ceremonies must be on athletes' performances.

This letter is to reiterate and confirm that Mr. Heraskevych, like all other athletes, will not be

able to compete with a personalized helmet (as he used in training sessions and posted on social media) or any other item that contravenes the above-mentioned Guidelines and rules, as personalized equipment would not meet the requirements applicable to all athletes. This being said, and as explained in yesterday's meeting, the IOC is willing to make an exception to the Guidelines in this specific case should the athlete wish to pay tribute to his fellow athletes and express his sorrow by wearing a black armband or ribbon without any personalization.

In addition, and to support him and all other athletes in difficult times, the IOC and the Milano Cortina Organising Committee have made available prayer rooms and access to spiritual support in the Olympic Villages. The IOC has also established a place of mourning in the Olympic Village in Milan so that grief can be expressed with dignity and respect.

Finally, in Mr. Heraskevych's social media posts last night, he exposed one of our IOC colleagues by posting a photo of him and identifying him by name. Our colleague was simply explaining to his coach that his helmet would not be in line with the IOC Guidelines or the Conditions of Participation Mr. Heraskevych has signed. As a direct result, our colleague is now at risk of being exposed to online abuse. This is unacceptable and we ask that you ensure that Mr. Heraskevych takes down this post immediately.

We thank you for your understanding.

Kind regards,

James Macleod

Director NOC Relations".

13. At a press conference held on the evening of the same day, the Applicant publicly stated that he had decided to wear the Helmet in competition.

14. On 11 February 2026, the IOC Executive Board delegated its powers to decide on the participation of the Applicant in the 12 February 2026 Skeleton event to the Permanent Chair of the Disciplinary Commission.

15. On the same day, the IOC sent the following letter to the Applicant, informing him that he would not be allowed to compete in the Skeleton event scheduled for 12 February 2026 while wearing the Helmet (the "IOC Decision"):

"Dear Mr. Heraskevych,

The International Olympic Committee (IOC) recognizes that honoring the memory of fellow athletes is natural and deeply meaningful, and it fully supports athletes in doing so. At the same time, the field of play at the Olympic Games is meant to be a safe and respectful space for all athletes, where the focus, during competitions and ceremonies alike, should remain on their performances and achievements.

On 9 February 2026, during the official Men's Skeleton training heats, it came to our attention that you wore a helmet featuring images that you indicated were athletes killed during Russia's invasion (the Helmet).

As indicated in our letter of 10 February 2026, the Helmet is not compliant with your obligation to respect the Olympic Charter, and other rules, in particular the IOC's Guidelines on Athlete Expression, which were adopted with the full support of the IOC Athlete's Commission. This was formally reiterated in our letter to your NOC Chef de Mission to which you were copied, with the clear indication that you agreed to be bound by these regulations when signing the

Milano Cortina 2026 Conditions of Participation and that you will thus not be able to compete with the Helmet.

We understand that at a press conference held on the evening of 10 February 2026, you indicated that you would use the Helmet in competition despite what you understood being an explicit prohibition by the IOC, thus effectively publicly conveying the message that you would openly defy the IOC's rules.

Faced with such an unprecedented conduct, the IOC cannot allow an announced breach of the applicable regulations. Hence, ***the IOC has decided that you will not be allowed to start the Men's skeleton event of 12 February 2026 wearing the Helmet****.*

IBSF, which has, among other rules, incorporated the IOC's Guidelines on Athlete Expression in the IBSF's sport rules for the Olympic Winter Games Milano Cortina 2026, has been informed and agrees with this decision. ***The IBSF will take the necessary steps to implement it.***

We truly hope that you will understand that the focus of the Olympic Games must remain on athletes' performances and sport without any other type of interference, and that you will find other ways to express your sorrow, including by accepting the IOC's exceptional authorization to pay tribute to your fellow athletes by wearing a black armband or ribbon without any personalization.

Sincerely yours,

Denis Oswald

Acting upon delegation of the IOC Executive Board"

[emphasis added].

16. In the afternoon of 11 February 2026, the IBSF conducted a technical check of the Applicant's equipment. The Equipment Check Protocol, in its section *"Additional notes"*, contains the following handwritten note:
"The athlete confirms that the presented helmet will be worn at the men's skeleton race at the OWG Milano Cortina 2026 in competition by the athlete".

17. The Equipment Check Protocol was signed by the Applicant at 12:45 pm.

18. Following the equipment check, a further in-person conversation was held between the IOC, the Applicant and the Chef de Mission of the NOC of Ukraine, where both the IOC and the Applicant reiterated their respective positions.

19. In the morning of 12 February 2026, upon his arrival at the competition venue, the Applicant met with the IOC President, Ms Kirsty Coventry, who explained to him the IOC's position. The Applicant reiterated his insistence to compete with the Helmet.

20. Later that day, the IBSF Jury issued the Challenged Decision, the operative part of which reads as follows:

"In light of the above, in its capacity as the "highest authority of the competition" that "implements control with the right to make final judgments within the scope of the IBSF International Rules" (Article 6.4.1 of the IBSF International Skeleton Rules), the IBSF Jury hereby decides as follows:

1.

- Mr. Vladyslav Heraskevych is withdrawn from the starting list for

the Men's skeleton event of 12 February 2026.

- The present decision is final, incontestable and takes effect immediately".

21. Following the issuance of the Challenged Decision, and still on 12 February 2026, the IOC withdrew the Applicant's accreditation. The IOC later delivered a letter to the Applicant allowing him, in the end, to retain his accreditation on an exceptional basis.

22. The first two runs of the Olympic skeleton competition took place on 12 February 2026, at 9:30 and 11:08. Run 3 and 4 were scheduled to take place on 13 February 2026, at 19:30 and 21:05 (all Milan time).

IV. THE CAS PROCEEDINGS

23. On 12 February 2026 at 16:25 (Milan time), the Applicant filed an Application with the CAS Ad Hoc Division against the Respondents with respect to the Challenged Decision (the "Application"), including an Urgent Request for Provisional Measures (the "Provisional Measures Application").

24. On 12 February 2026 at 17:53 (Milan time), the CAS Ad Hoc Division notified the Application to the Respondents. On the same day, at 18:13 (Milan time), the CAS Ad Hoc Division notified the Parties of the composition of the Panel:

    Sole Arbitrator: Ms Annett Rombach, Attorney-at-Law, Frankfurt, Germany

25. On 12 February 2026 at 18:41 (Milan time), in accordance with Article 15 lit. b) of the CAS Ad Hoc Rules, the Sole Arbitrator issued procedural instructions to the Parties, inviting the Respondents to file their respective replies to the Provisional Measures Application ("Reply") by no later than 12 February 2026, at 22:00. Upon a written request, this time limit was later extended to 22:45. A hybrid hearing regarding the Application was scheduled to take place on 13 February 2026, at 09:00 am. The Respondents were invited to file their respective answers on the merits of the Application at the hearing.

26. On 12 February 2026 at 22:34 and 22:38, respectively, the Second Respondent and the First Respondent filed their Replies to the Provisional Measures Application.

27. On 13 February 2026, at 00:12, the CAS Court Office notified to the Parties the operative part of the decision to dismiss the Applicant's Provisional Measures Application. The CAS ad hoc Division informed the Parties that the grounds of this decision will be communicated in this Arbitral Award.

28. On 13 February 2026, at 04:08, the Applicant filed a written submission with further comments on the merits of the case.

29. On 13 February 2026, at 06:53, the First Respondent requested confirmation that the Respondents' answers to the Application on the merits were expected to be given orally during the hearing, and that no further written submissions were required. The CAS Court Office so confirmed at 06:58.

30. In accordance with Article 15 lit. c) of the CAS Ad Hoc Rules, the Parties participated at the hearing which was held in hybrid form on 13 February

2026, from 9:00 to appr. 11:25. The Sole Arbitrator was assisted by Mr Antonio de Quesada, Head of Arbitration at the CAS, and Mr Andrés Redondo, Counsel at CAS, and joined by the following persons:

- for the Applicant:

  Mr Vladyslav Heraskevych, party (in person);

  Mr Mykhailo Heraskevych, Applicant's father and coach (in person);

  Mr Yevhen Pronin, counsel (remotely).

- for the First Respondent:

  Dr Stephan Netzle, counsel (remotely);

  Ms Heike Größwang, General Secretary.

- for the Second Respondent:

  Prof. Antonio Rigozzi, counsel (in person);

  Mr Eolos Rigopoulos, counsel (in person);

  Mr André Sabbah, in-house lawyer IOC.

31. The Parties had a full opportunity to present their cases, to submit their arguments and answer the questions posed by the Sole Arbitrator. The Applicant had several opportunities to make statements and answered questions from the Sole Arbitrator.

32. Before the hearing was concluded, the Parties confirmed that their right to be heard had been respected and that they had been treated equally.

33. On 13 February 2026, at 11:34, the Second Respondent filed a written version of its Opening Statement, as discussed during the hearing with no objection from any Party.

34. The Sole Arbitrator confirms that she carefully heard and took into account in her decision all of the submissions, evidence, and arguments presented by the Parties, even if these have not been specifically summarised or referred to in this Award.

V. THE PARTIES' SUBMISSIONS AND REQUESTS FOR RELIEF

35. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced by the Parties. The Sole Arbitrator confirms, however, that she has carefully considered all the submissions made by the Parties, whether or not there is specific reference to them in the following summary.

A. The Applicant

36. The Applicant's submissions can be summarized as follows:

37. Regarding jurisdiction:

(i) Jurisdiction exists as the present case does not concern a field-of-play decision. The field-of-play doctrine applies to timing, scoring, and judging performance. The present case concerns eligibility, disciplinary exclusion, and the interpretation of Olympic rules. CAS case law is clear that eligibility

and disciplinary exclusions are reviewable by CAS, even during the Olympic Games.

38. Regarding the request for provisional measures:

- The Challenged Decision is manifestly disproportionate. The Respondents do not claim any technical or safety violation, but base the Applicant's disqualification solely on symbolic memorial imagery honouring deceased Ukrainian athletes.

- The Applicant's exclusion causes immediate and irreparable sporting harm, as (i) the Olympic competition is unique and non-repeatable; (ii) missed participation cannot be compensated by damages; (iii) delay would render the CAS proceedings devoid of practical effect.

39. Regarding the merits of the case:

- The Applicant was excluded from participation without having breached any rules. Using the Helmet during trainings was in full compliance with the Olympic Charter ("OC") and the IOC Guidelines on Athlete Expression (Milano-Cortina 2026) (the "Expression Guidelines"). The Respondents did not even give him a chance to appear at the competition venue and compete with a proper helmet. The metadata of the Challenged Decision confirms that the exclusion decision had already been finalized more than one hour before the competition commenced and before the Applicant was even admitted to the actual competition venue. He had no opportunity to even present his equipment, helmet, or skeleton sled. The sanction was therefore premature. This is incompatible with the right to be heard, procedural fairness, and fundamental principles consistently protected in CAS jurisprudence.

- There are multiple analogous examples of memorial remembrance at the Olympic Games, including from the present 2026 OWG, were athletes publicly honoured deceased relatives, teammates, or victims, without that the IOC took any disciplinary action or imposed a sanction. This demonstrates selective enforcement and inconsistent application of expression-related rules within the Olympic environment.

- The present case does not require any determination of geopolitical issues. It requires a strictly legal assessment of whether the complete exclusion of a rule-compliant Olympic athlete constitutes a lawful and proportionate sporting measure under the applicable regulations and the principles governing Olympic justice.

- The Helmet was a commemoration of killed Ukrainian athletes, members of the Olympic family. Such commemoration is not

propaganda, and it is not political. No other athlete complained about the Helmet, which has not caused any disruption despite its use during training runs. There was therefore no reason not to allow the use of the Helmet during competition.

- The Respondents have failed to identify any specific provisions, rules, or articles that the Applicant allegedly breached. His equipment passed the official technical and safety inspection. Hence, the Challenged Decision lacks any legal basis.

- The Applicant has not breached Rule 50 of the OC, which prohibits political, religious, or racial propaganda at the Olympic Games. In the present case there is no political, religious, or racial propaganda whatsoever. The imagery represents memorial portraits of deceased Ukrainian athletes. It expresses mourning and remembrance, not propaganda. The OC itself is founded on human dignity, peace, and respect for human life. Sanctioning remembrance of fallen athletes is irreconcilable with those values and constitutes an unjustified interference with athlete expression. Furthermore, neutrality of the field of play cannot mean absence of humanity.

- Skeleton athletes regularly compete with individually designed helmets.

- The Respondents' reliance on the Expression Guidelines, which restrict demonstrations of a political nature on the field-of-play, is declaratory. No specific provision of the Expression Guidelines allegedly breached by the Applicant has been identified. There has been no analysis of the nature of the message, its context, or the proportionality of the restriction.

- As regards the IBSF Code of Conduct, it is a derivative of the OC and the IOC's rules and, in itself, does not establish a distinct and specific prohibition of memorial symbolism. It does not contain any rule that the Applicant allegedly breached. Consequently, the IBSF Code of Conduct cannot constitute an independent legal basis for the most severe sporting sanction.

- The sanction imposed – total exclusion from Olympic competition – is the most severe possible. It is excessive and unnecessary, ignores less restrictive alternatives and violates the principle of proportionality.

40. The Applicant submits the following requests for relief:

*"**A. Provisional measures***

1. *Immediate* ***reinstatement into the Olympic competition;***

or alternatively

2. Authorization to ***perform an official CAS-supervised run****, with results either:*

- *counted in standings, or*

• *provisionally recorded pending final award.*

B. Final relief

3. ***Annulment of the IBSF Jury decision*** *of 12 February 2026.*

4. *Declaration of* ***full Olympic eligibility****.*

5. *Any* ***further equitable relief*** *deemed appropriate"*

[emphasis in the original].

B. The First Respondent (IBSF)

41. The Second Respondent's submissions can be summarized as follows:

42. Regarding jurisdiction:

- The IBSF objects to the jurisdiction of the CAS Ad Hoc Division to accept and hear the Appellant's case because the Challenged Decision is final and not subject to any challenge.

- The IBSF Jury issued the Challenged Decision at the venue of the Olympic Skeleton Competition, after the Applicant arrived there, deposited his skeleton in the parc fermé and met the IOC President for a final attempt to settle the matter. It was therefore a field-of-play decision which cannot be reviewed by the CAS.

43. Regarding the request for provisional measures:

- The requirements for the requested provisional measures are not met.

- The urgency was caused by the Applicant himself. The IOC repeatedly warned him that his Helmet together with his public explanation about the purpose of the design constituted a political statement and that he would risk not being admitted to the competition.

- Several attempts were made especially by the IOC until immediately before the start to admit him to the competition, which he refused.

- The harm of not being able to participate in the Olympic Skeleton Competition was therefore self-inflicted and cannot be subsequently reinterpreted as irreparable damage.

- The Applicant has no prospect of success on the merits, as the Challenged Decision is based on the clear wording of the OC and the Expression Guidelines. The Applicant has repeatedly confirmed that the design of the Helmet shall send a message to the spectators and the world, namely that the depicted athletes lost their lives because of the Russian invasion of Ukraine. This is a political message which goes beyond the sporting competition. Olympic competitions shall not be used for such purposes, however understandable the Applicant's anger, grief and compassion may be.

- The requested relief is impossible to fulfil, as two of the four runs have already been carried out.

- In addition, the requested relief would by no means pass the test of weighing up the interests involved.

44. Regarding the merits of the case:

- The First Respondent repeated its arguments made in the written submission on the Provisional Measures Application orally during the hearing and added the following points:

- The Applicant's exclusion from competition was not only based on his intent to use the Helmet during the race, but also based on his public statements in which he explained the purpose of the Helmet.

- The IBSF does not have to wait until the actual breach of the rules occurred, but can take action already when it becomes aware of a clear intention to breach the rules.

- The Helmet clearly conveys a political message. It is not decisive what the Applicant's subjective motive is, but how the message is or may be perceived by others. The Applicant must have been aware of the potential effect of him wearing the Helmet.

45. The First Respondent submits the following request for relief:

"1. Not to accept the Application for provisional measures because of lack of jurisdiction.

2. ***Subsidiarily****, and in case the Panel accepts jurisdiction of the CAS Ad Hoc Division, it shall dismiss the Application in its entirety to the extent that it is admissible".*

C. The Second Respondent (IOC)

46. The Second Respondent's submissions can be summarized as follows:

47. Regarding the request for provisional measures:

- The Applicant's request for provisional measures shall be rejected, as the cumulative requirements governing the grant of such relief – namely (i) the risk of irreparable harm, (ii) a sufficient likelihood of success on the merits, and (iii) a balance of interests in favour of the Applicant – are not met, for the reasons set out below.

- The remedy requested by the Applicant is not capable of preventing the alleged irreparable harm considering that the immediate reinstatement into the Olympic competition is impossible as the first two runs had been completed. An impossible remedy is by definition not capable of avoiding an alleged irreparable harm. The Applicant's alternative provisional relief sought, namely an *"[a]uthorization to perform an official CAS-supervised run"* is also uncapable of occurring, as the conditions that the Applicant would be subject to would be different from those of the other participants. This could be affecting the integrity of the competition. Hence, the Challenged Decision does not

cause any risk of irreparable harm to the Applicant.

- The Applicant's case on the merits has no chances of success. For this second independent reason alone, his request for provisional measures should be rejected.

- The Applicant did not address the third cumulative requirement to obtain provisional measures, namely that the interests of the Applicant outweigh those of the opponent or of other members of the Olympic Community. This is yet another independent reason in and of itself to reject the Applicant's request for provisional measures. Be that as it may, by no standard can the balance of interest tip in favour of the Applicant.

48. Regarding the merits of the case:

- The IOC Decision, which was subsequently implemented by the IBSF Jury in the Challenged Decision, is lawful, and the Applicant's challenges against his prohibition from wearing the Helmet during the 12 February 2026 Skeleton event are meritless.

- The case is not a disciplinary matter, where the IOC punished an athlete who breached the rules. This is a case where:

  i. the IOC informed the Applicant that what he intended to do was not consistent with Rule 40.2 OC, as implemented by the Expression Guidelines, and that he would not be allowed to compete, but (this notwithstanding),

  ii. the Applicant clearly and repeatedly indicated that he would compete in a way he had been told was in breach of Rule 40.2 OC as implemented by the Expression Guidelines, and, as a result,

  iii. the IOC decided to prevent the announced breach by not allowing the Applicant to participate in a way contrary to Rule 40.2 OC as implemented by the Expression Guidelines.

- The IOC Decision is based on the Expression Guidelines implementing Rule 40.2 OC. The IOC Decision, which forms the basis of the Challenged Decision, is not based on Rule 50 OC, but on Rule 40.2. OC and the Expression Guidelines.

- The Expression Guidelines provide a long and non-exhaustive list of places and situation where *"[d]uring the Olympic Games Participants* […] *have the opportunity to express their views"*, as well as three clearly defined *"limitations"* where such *"expressions are not permitted"*:

  - During official ceremonies (including Olympic medal ceremonies, opening and closing ceremonies);

  - During competition on the field of play;

  - In the Olympic Village.

- Wearing the Helmet during the 12 February 2026 Skeleton event would have been an expression of a view on the field of play prohibited by Rule 40.2 OC as implemented by the Expression Guidelines.

- The Applicant did not intend to simply wear a personalized helmet. He chose to wear the Helmet depicting victims of the war in Ukraine. And he did that while having made clear in numerous instances immediately prior to the 2026 OWG that his intent was to send a message about the war in Ukraine.

- In such circumstances, it is clear that wearing the Helmet was a way for the Applicant to *"spread the truth of what's going on in Ukraine"*, which can only be understood as an expression of view that is prohibited on the field of play by the Expression Guidelines.

- The political nature of the Helmet is also confirmed by the reactions that the Challenged Decision created (e.g. Ukrainian President Zelensky granting the Applicant the "Order of Freedom", *"[f]or selfless service to the Ukrainian people, civic courage, and patriotism in upholding the ideals of freedom and democratic values"*.

- The Applicant's comments regarding "safety" are totally irrelevant as the Challenged Decision is not based on a "safety" concern.

- The IOC Executive Board was competent to render the IOC Decision pursuant to Article 19.3 OC, as it has the power to make all decisions necessary to ensure the proper implementation of the OC and the organisation of the Olympic Games, as well as all decisions not attributed by law or by the OC to the Session or to the President.

- The IOC's competence was properly delegated to the Permanent Chair of the Disciplinary Commission in accordance with Article 19.4 OC.

- The Challenged Decision, namely the withdrawal of the Applicant from the Skeleton event, is proportional. There were no *"less restrictive alternatives"* as any other alternative would have resulted in the actual breach being committed and disciplinary proceedings being opened.

- Claiming that the *"sanction imposed – total exclusion from Olympic competition – is the most severe possible"* is a sophism. Quite apart from the fact that there was no sanction, the "exclusion" from the event was the only way to avoid the breach of the rules.

- The same applies to the claim that the *"sanction is premature"*. The reason why the Applicant was not admitted to the actual competition is precisely because he insisted on competing with the Helmet despite having been repeatedly warned that he would not be allowed to do so.

- There is no *"*[u]*njustified interference with athlete expression"*. The athletes

can express their views during the Olympic Games without interference. The Applicant could showcase his Helmet in countless social media posts and use it in training rides, including televised training rides. The message he wanted to convey with the Helmet was indeed widely conveyed. The IOC rules only prohibit wearing the Helmet in competition.

- Finally, the IOC Decision and the Challenged Decision are not inconsistent with the *"fundamental Olympic values, human dignity and memorial context"* as Rule 40.2 OC is explicitly based on the "Fundamental Principles of Olympism", and in accordance with the Guidelines determined by the IOC Executive Board.

- The IOC recognizes that honoring the memory of fellow athletes is natural and deeply meaningful, and it fully supports athletes in doing so. As repeatedly indicated to the Applicant, including by the IOC President in her last-minute personal attempt to convince him to refrain from his announced breach of the IOC rules, the issue is not the message but the place and the moment in which it has been conveyed (i.e., on the field of play in competition as explicitly prohibited by the Expression Guidelines). What the Applicant calls the "memorial context" was indeed fully acknowledged by the IOC Decision.

49. On the Provisional Measures Application, the First Respondent submits the following request for relief:

"For the reasons set out in this response, the IOC respectfully invites the Sole Arbitrator to reject the Applicant's request for provisional measures".

50. The Respondent submits the following request for relief:

"For the reasons set out above, the IOC respectfully requests the Panel to issue an arbitral award dismissing the Application".

VI. JURISDICTION

51. This Panel has been formed under the arbitration rules applicable to the CAS Ad Hoc Division, a special adjudication authority with jurisdiction limited to specific disputes occurring within a strictly set timeframe. The jurisdiction of the CAS Ad Hoc Division is set out in Article 61 of the OC and Article 1 of the CAS Ad Hoc Rules.

52. Rule 61 [*"Dispute Resolution"*] of the OC provides:

"2. Any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport (CAS), in accordance with the Code of Sports-Related Arbitration".

53. Article 1 of the CAS Ad Hoc Rules provides:

"The purpose of the present Rules is to provide, in the interests of the athletes and of sport, for the resolution by arbitration of any disputes covered by Rule 61 of the Olympic Charter, insofar as they arise during the Olympic Games or during a period of ten days preceding the Opening Ceremony of the Olympic Games.

In the case of a request for arbitration against a decision pronounced by the IOC, an NOC, an International Federation or an Organising

Committee for the Olympic Games, the claimant must, before filing such request, have exhausted all the internal remedies available to him/her pursuant to the statutes or regulations of the sports body concerned, unless the time needed to exhaust the internal remedies would make the appeal to the CAS Ad Hoc Division ineffective".

54. The First Respondent has challenged the CAS Ad Hoc Division's jurisdiction, arguing that the decision of the IBSF Jury is a final and incontestable field of play decision taken within the context of the actual competition. It argues that the IBSF Jury is the highest authority of the competition and takes final decisions within the scope of IBSF International Skeleton Rules and the Appeals Tribunal Code.

55. The Sole Arbitrator disagrees. The purpose of the Challenged Decision was only to implement the IOC Decision. Undisputedly, the IOC Decision is not a field of play decision. The Sole Arbitrator notes that the Challenged Decision itself did not allow the Applicant to enter the field of play. The mere fact that the IBSF issued the Challenged Decision shortly before the beginning of the competition at the Competition venue to implement what the IOC requested it to do does not render the measure a field of play decision.

56. Furthermore, during the Olympic Games, the OC takes precedence over the rules of the IBSF. This includes Rule 61 OC, which provides that *"[a]ny dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport (CAS)".*

57. As a result, the CAS Ad Hoc Division has jurisdiction to decide the present case.

VII. ADMISSIBILITY

58. Where a request for arbitration is directed against a decision of the IOC or an International Federation, Article 1 of the CAS Ad Hoc Rules requires exhaustion of available internal remedies, unless the time required to exhaust such remedies would make recourse to the CAS Ad Hoc Division ineffective.

59. In the present case, there are no internal remedies against the Challenged Decision. To the contrary, the Challenged Decision expressly provides that it is final and incontestable.

60. As a result, the Application is admissible.

VIII. THE PROVISIONAL MEASURES APPLICATION

61. The Sole Arbitrator has the power to consider an application for provisional measures pursuant to Article 14 of the CAS Ad Hoc Rules.

62. According Article 14 CAS Ad Hoc Rules and to well established CAS jurisprudence, provisional relief may be granted if (1) it is necessary to protect the applicant from irreparable harm, (2) there is a likelihood of success on the merits of the claim, and (3) when the interests of the applicant outweigh those of the opponent or of other members of the Olympic Community (see, e.g., CAS OG 20/013; CAS 2003/O/486; CAS

2001/A/329; CAS 2001/A/324; CAS 2007/A/1317; CAS 2010/A/2071).

63. The three requirements for the grant of provisional measures (i.e., "irreparable harm", "likelihood of success" and "balance of interests") are cumulative (see CAS 2007/A/1403; TAS 2007/A/1397; CAS 2010/A/2071).

64. The Provisional Measures Application was dismissed, because the Applicant has failed to substantiate that all three requirements are met in his case.

65. The requested interim measure is not "necessary" to protect the Applicant from irreparable harm. The Applicant has failed to establish how, after the first two runs of the competition had already been completed at the time he submitted the Provisional Measures Application, it was still possible for him to participate in the competition.

66. For the reasons set forth below in the merits section, there was also no likelihood of success on the merits of his case.

67. For each of these two reasons individually, the Provisional Measures Application had to be dismissed.

IX. APPLICABLE LAW

68. The rules of law applicable to the merits of these proceedings are determined by Article 17 of the CAS Ad Hoc Rules, which reads as follows:

> *"The Panel shall rule on the dispute pursuant to the Olympic Charter, the applicable regulations, general principles of law and the rules of law, the application of which it deems appropriate".*

69. The Challenged Decision was rendered by the IBSF Jury on the basis of the IBSF Regulations, in particular the IBSF Statutes and the IBSF Sport Rules for the 2026 Olympic Winter Games Milano Cortina, which incorporate, *inter alia*, the OC and the Expression Guidelines.

70. Hence, this dispute is governed by the OC and the IBSF Regulations. As the IOC is a Swiss association within the meaning of Articles 60 et seq. of the Swiss Civil Code ("CC"), Swiss law may be taken into account by the Sole Arbitrator subisdiarily.

X. MERITS

71. The issue in the present case is whether the Respondents were entitled to withdraw the Applicant from the Olympic Skeleton competition as a result of the Applicant's announcement to wear the Helmet during the race.

A. Preliminary remark: The mandate of the CAS Ad Hoc Division

72. As a preliminary remark, the Sole Arbitrator wishes to reiterate the nature and scope of her mandate in assessing the present dispute.

73. As the competent judicial instance entrusted with the resolution of disputes arising during the 2026 OWG, the task of the CAS Ad Hoc Division is the legal review of decisions rendered by the IOC and International Federations, inter alia. More particularly, the CAS Ad Hoc Division must examine whether a decision affecting athletes' rights is based on legally valid rules by which the athletes are bound, and whether the application

of such rules is lawful in the specific circumstances of an individual case.

74. Beyond the question of the lawfulness of a challenged decision, it is not for the CAS Ad Hoc Division to assess the political, sociological or economic implications of a case before it, much less to be influenced in its legal analysis by respective public discussions.

75. For its part, the CAS Ad Hoc Division must resist any temptation to confuse issues of law with issues of political feasibility. It is the fundamental task of the judiciary, to which the CAS Ad Hoc Division belongs, to strictly separate its tasks from the tasks of other bodies and powers.

76. It is against this background that the Sole Arbitrator will now address, in turn,

- the applicable legal framework underlying the Challenged Decision (below at **B.**);

- whether the Expression Guidelines, on which the Challenged Decision rests, comply with athletes' fundamental human right of freedom of expression (below at **C.**); and

- whether the Respondent's decision to exclude the Applicant from the skeleton competition in reaction to his announcement to wear the Helmet during the Olympic Competition is lawful under the circumstances (below at **D.**).

B. The applicable legal framework

77. The Challenged Decision must be reviewed in conjunction with the IOC Decision rendered on 11 February 2026. The IOC Decision (quoted above) informed the Applicant that he *"will not be allowed to start the Men's skeleton event of 12 February 2026 wearing the Helmet",* and that the IBSF was entrusted to *"take the necessary steps to implement"* the prohibition. The Challenged Decision, pursuant to which the Applicant was withdrawn from the competition, constitutes the measure implementing the IOC Decision. Reviewing the Challenged Decision means that the Sole Arbitrator must – at least incidentally – also review the underlying IOC Decision, despite the fact that the IOC Decision has not been challenged by the Applicant in these proceedings.

78. Pursuant to Article 1.5 of the IBSF Statutes, the IBSF *"recognises and observes the Olympic Charter".* The IBSF International Skeleton Rules incorporate the Olympic Charter, which, in turn, includes the Expression Guidelines.

79. The IOC Decision (and, in turn, the Challenged Decision) is based on Rule 40.2 OC, which reads as follows:

"All competitors, team officials or other team personnel in the Olympic Games shall enjoy freedom of expression in keeping with the Olympic values and the Fundamental Principles of Olympism, and in accordance with the Guidelines determined by the IOC Executive Board".

80. The guidelines referred to in Rule 40.2 OC are the Expression Guidelines. Contrary to the Applicant's submission, the Expression Guidelines are explicitly referred to in the IOC Decision as the legal basis for the Applicant's prohibition to wear the Helmet during the field of play, *i.e.* in competition.

81. The Respondents clarified during the hearing that the Challenged Decision is not based on Rule 50.2 OC, which provides that *"[n]o kind of demonstration or political, religious or racial propaganda is permitted in any Olympic sites, venues or other areas"*. Consequently, the legal standard for the Sole Arbitrator's review of the Challenged Decision is not whether the Applicant's announcement to wear the Helmet in competition constitutes a *"demonstration"* or *"political propaganda"*. The relevant legal standard is whether the use of the Helmet during the Olympic race is compliant with the Expression Guidelines, which enshrine the scope and limits of athletes' freedom of expression during the Olympic Games. The substantive scope of the Expression Guidelines, which refers to any *"expression of views"*, is wider than the concept of *"political propaganda"* addressed in Rule 50.2 OC.

C. Compliance of the Expression Guidelines with athletes' fundamental right of freedom of expression

82. At the outset, the Sole Arbitrator notes that International Federations are principally free to adopt the appropriate legislative and other decision-making procedures as they see fit (CAS OG 22/005, para. 7.17). Absent any breach of the otherwise applicable law or the substantive *ordre public*, the Sole Arbitrator is not called upon to rewrite the rules for the Olympic Games (CAS 2024/A/10588 see para. 126; on the wide autonomy of associations to regulate and determine their own affairs under Article 63 of the CC see also CAS 2024/A/10387, para. 135 *et seq*., quoting to SFT decision BGE 97 II 108, consid. 3).

83. The freedom of associations the Respondents enjoy finds its limits in fundamental human rights athletes enjoy. Although not expressly referred to by the Appellant, the Sole Arbitrator notes that the Applicant has a fundamental right of freedom of expression, which is enshrined, *inter alia*, in Article 10 of the European Convention on Human Rights ("ECHR"). In relevant part, Article 10 ECHR provides as follows:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. […]

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others […]*"*.

84. Importantly, while the direct application of the ECHR is limited to its signatory states (*i.e.* public authorities), its fundamental guarantees must also be respected by international sports federations enjoying a market-dominant position in the organisation, planning and execution of major sports events (*see* ECtHR, decision of 2 October 2018, 40575/10 and 67474/10 [Mutu/Pechstein], relating to Article 6 (1) ECHR; see also CAS 2008/C/1619 para. 4.8 & 5.3). This is true for the IOC as the organizer of the Olympic Games. The reason for the required (indirect) application of the ECHR to such

market-dominant federations seated in a signatory state of the ECHR (such as Switzerland) is their ability to dictate terms on athletes who wish to participate in respective events.

85. For the 2026 OWG, all participating athletes (including the Applicant) had to sign the Milano Cortina 2026 Conditions of Participation (quoted above), through which they became bound by the OC and the Expression Guidelines. These conditions are non-negotiable. Athletes must sign them to be eligible to compete. While the IOC has a legitimate interest in submitting all athletes to the same rules – to ensure a level playing field and equal treatment of all participants – its conditions must not be abusive and must not violate the fundamental rights athletes enjoy.

86. This includes Article 10 (1) ECHR and the right to freedom of expression. Such right, however, is not absolute (CAS 2014/A/3516, para. 116). As provided in Article 10 (2) ECHR, freedom of expression may be subject to conditions and restrictions where necessary *"in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others"*.

87. The Sole Arbitrator's task is to assess whether Rule 40.2 OC as implemented in the Expression Guidelines (and its respective application in the Applicant's case) is compliant with Article 10 (1) ECHR. More specifically, the question is whether the limitations to freedom of expression in the Expression Guidelines, on which the Respondents rely to justify the Challenged Decision, falls within the exceptions of Article 10 (2) ECHR, and whether they are reasonable and proportionate. Only in such case may the Respondents rely on its Expression Guidelines to justify the Applicant's prohibition to wear the Helmet during field of play.

88. The limitations listed in the Expression Guidelines read as follows:

> *"[E]xpressions [of views] are not permitted in the following instances:*
> - *During official ceremonies (including Olympic medal ceremonies, opening and closing ceremonies)*
> - *During competition on the field of play*
> - *In the Olympic Village"*.

89. The relevant limitation under scrutiny in this case is the second one: Expressions of views are not permitted during competition on the field of play. The purpose of this limitation, as explained by the IOC, including in its letters to the Applicant, is to ensure that the focus on the field of play remains on athletes' performances, and is not distracted by the expression of (political) views. This purpose is endorsed by the IOC Athletes' Commission, after an outreach to and after requesting comments from Olympians, in establishing the Expression Guidelines (including the quoted limitations to freedom of expression), and which contributed the following introduction to the Expression Guidelines, demonstrating the elaborate consultation process between the IOC and athletes in establishing the Expression Guidelines:

> *"As athletes, we are passionate about our sports and achieving our sporting performance goals. For each and every one of us, that passion*

continues into everyday life, where we advocate change on issues of great importance to us and our world. That desire to drive change can naturally make it very tempting to use the platform of an appearance at the Olympic Games to make our point.

However, all of us are at the Olympic Games because, one day, we dreamt of being an Olympian and maybe even an Olympic champion. The unique nature of the Olympic Games enables athletes from all over the world to come together in peace and harmony. We believe that the example we set by competing with the world's best at the Olympic Games and staying in the Olympic Village while respecting each other's differences is a uniquely positive message tosend to an increasingly divided world.

The IOC Athletes' Commission and the IOC are fully supportive of freedom of expression. This is highlighted in the Athletes' Rights and Responsibilities Declaration which emphasises the centrality of nondiscrimination, equality, freedom of expression and due process in the Olympic Movement. Building on the results of our consultation with more than 3,500 athletes prior to the Olympic Games Tokyo 2020, the IOC has clarified the opportunities for athlete expression during the Olympic Games. The present Guidelines reflect the same principles […]*".*

90. The Sole Arbitrator accepts that the purpose with which the IOC seeks to justify the limitations to freedom of expression enshrined in the Expression Guidelines is legitimate. The Olympic Games are often considered the highlight of athletes' careers, and they only take place every four years. Athletes have a right that the core moments of their participation in this special event – the field of play and the ceremony – remains undisturbed from anything that does not relate to the sports performance as such. They trained and worked hard for years to have their special sporting moments during the Olympic Games, and they deserve that the public pays undivided attention to their performances and successes in competition, and during celebration.

91. Importantly, this does not mean that athletes cannot express views during the Olympic Games. To the contrary, the Expression Guidelines highlight that both athletes and the IOC *"are fully supportive of freedom of expression"*, and they provide a detailed list of opportunities for athletes to express their views during the Olympic Games and at Olympic venues, including the following:

- In the mixed zones, including when speaking to media
- In the International Broadcasting Centre (IBC) or the Main Media Centre (MMC), including when speaking to the media
- During press conferences in the venue or in the MMC
- During interviews
- At team meetings
- In traditional media or digital media
- Through social media channels
- On the field of play prior to the start of the competition (i.e. after leaving the "call room" or during the introduction of the individual athlete or team).

92. This list is, in fact, extensive. It demonstrates that the athletes' right to express views during the Olympic Games is the rule, and the limitations to express them during field of play, ceremonies, and in the Olympic Village is the exception. Athletes have wide opportunities to spread their messages and views around the world with full media coverage, including, for example, during broadcasted training sessions, and including until immediately before and after the competition.

93. Against the background of these wide opportunities to express views at Olympic sites during the Olympic Games, the Sole Arbitrator finds that the Expression Guidelines provide a fair and reasonable balance between athletes' fundamental right of freedom of expression and the IOC's legitimate aim to provide a "safe space" for athletes during the core moments of their performance in competition, to ensure that public attention during such moments is fully focused on sport.

94. As a result, the Sole Arbitrator finds that the Expression Guidelines, including the field of play exception, are compliant with Article 10 ECHR, and are thus applicable in the present case.

D. Lawfulness of the Applicant's exclusion from competition

95. The next question the Sole Arbitrator needs to address is whether the Respondents' decision to withdraw the Applicant from the Olympic skeleton competition as a result of his announcement to wear the Helmet was lawful under the circumstances. In view of the Parties' submissions, this question can be divided into three sub-questions, namely:

i. Does wearing the Helmet during the Olympic skeleton race constitute a breach of Rule 40.2 OC and the Expression Guidelines (below at **1.**)?

ii. Can the Respondents take pre-emptive measures to prevent an announced breach from occurring? (below at **2.**)?

iii. Was the Applicant's exclusion from the competition reasonable and proportionate under the circumstances (below at **3.**)?

1. Does wearing the Helmet during the Olympic skeleton race constitute a breach of Rule 40.2 OC and the Expression Guidelines?

96. The Applicant contends that wearing the Helmet does not fall within the scope of the Expression Guidelines, because it constitutes a personal act of commemoration of deceased fellow athletes, which is private mourning rather than the *"expression of a view"*.

97. It can be left undecided here whether there exist acts of remembrance that fall outside the scope of the Expression Guidelines, such as, for example, personal remembrance of close relatives in entirely non-political contexts. The present case is no such case. The present case involves an act of commemoration for athletes that were killed in a war. Wars always have political connotations. The Applicant himself repeated on various occasions before and during the Olympic Games that, by wearing the Helmet, he wanted to raise awareness for

the situation of Ukraine and Ukrainians who have been defending themselves against Russia's invasion for more than four years. This is political, and it was perceived as being political in public. As such, wearing the Helmet constitutes the *"expression of a view"* within the meaning of Expression Guidelines.

98. For the avoidance of doubt, the Sole Arbitrator highlights that the Applicant has every right to raise awareness for the situation in Ukraine, even and including during the Olympic Games. The Fundamental Principles of Olympism enshrined in the OC endorse peace and respect for internationally recognized human rights and fundamental ethical principles. The Helmet is fully in line with such values and principles. Accordingly, the Applicant was allowed to use the Helmet during his training runs and during appearances in the media. He had the opportunity to present the Helmet and send his message to the world.

99. This case, however, is about the use of the Helmet during the core of the field of play. As explained above, the prohibition to express views during competitions seeks to avoid any distraction from athletes' performance during the field of play *per se*, no matter how important or commendable a message is. This is the current stance the Expression Guidelines take, and this concept has been expressly approved by the Athletes' Commission. The involved stakeholders are certainly free to discuss an adjustment of that concept going forward, but this is a legislative issue outside the scope of the present proceedings. The current existing system enshrined in the Expression Guidelines does not violate athletes' fundamental right to freedom of expression, and should be applied, as it is not for the Sole Arbitrator to rewrite the rules.

100. As a conclusion, the Sole Arbitrator finds that wearing the Helmet during the Olympic skeleton competition would have constituted a breach of Rule 40.2 OC and the Expression Guidelines to which the Applicant submitted himself to by signing the Milano Cortina 2026 Conditions of Participation.

2. Can the Respondents take pre-emptive measures to prevent an announced breach from occurring?

101. The next question is whether the Respondents were entitled to take measures against the Applicant pre-emptively in view of the fact that, undisputedly, the breach had not (yet) occurred. His use of the Helmet during the training runs was permitted under Rule 40.2 OC (in conjunction with the Expression Guidelines), just as the presentation of the Helmet at other occasions was fully in line with the applicable framework.

102. As such, the decision to withdraw the Applicant from the skeleton competition was not a disciplinary measure, because a disciplinary measure necessarily requires a rule breach.

103. The Respondents argue that the Applicant's announcement that he would wear the Helmet in competition was sufficient for them to be entitled to take action. The Applicant maintains that the Respondents' decision to not even allow him enter the competition venue on the race day was illegal, as it deprived him of any chance to perform with rule-compliant equipment.

104. The Sole Arbitrator notes that this case is unusual in the fact that the Applicant made it clear, both towards the IOC and in public, that he would wear the Helmet during the race despite the IOC's warnings (evidenced in the letter of 10 February 2026 and in the IOC Decision). In fact, rather than appealing the IOC Decision that he would *"not be allowed to start the Men's skeleton event of 12 February 2026 wearing the Helmet"* to the CAS Ad Hoc Division, the Applicant chose to reiterate his clear intent to wear the Helmet still after receipt of the IOC Decision, including in a discussion with the IOC President that took place less than 2 hours before the beginning of the competition. It has not been disputed by the Applicant in these proceedings that he stood by his intention to wear the Helmet still when he spoke to Ms Coventry in the morning of the race day, and that he had no intention to enter the competition with rule-compliant equipment. In view of these circumstances, the threat of a breach of the Expression Guidelines was imminent.

105. It has been suggested that the Respondents should rather have allowed the Applicant to commit the breach and sanction him after the competition. In the Sole Arbitrator's view, this is a dangerous suggestion. Rules exist to be abided by. If the Applicant believed that the IOC Decision was wrong, he had every right to appeal it, including by seeking provisional measures in an attempt to enforce his presumed right to compete with the Helmet. But he cannot ignore that a decision was in place, and that such decision expressly prevented him from using the Helmet. Even if the IOC Decision had been wrong, he had no right to ignore it, but was required to take legal action, as any individual must do when it believes that it has been treated unlawfully.

106. Therefore, while the Sole Arbitrator has greatest respect for the Applicant's dedication to stand up for his country and raise awareness for the devastating situation of the Ukraine people suffering in the war, he has to bear the legal consequences arising from his choice to fight a legal decision by rebellion rather than by using the judicial system. The Sole Arbitrator's sympathy for the Applicant's cause is no reason for overlooking unambiguous and properly adopted rules (see also CAS OG 22/005, para. 7.19).

107. The Respondents' legal authority to take pre-emptive measures to avoid a breach of the OC can be deduced, by means of an *argumentum a fortiori*, from its authority to sanction rule violations once the breach has occurred. The IOC's disciplinary authority is enshrined in Rule 59.2 OC. It includes the following:

> *"**In the context of the Olympic Games, in the case of any violation of the Olympic Charter**, of the World Anti-Doping Code, or of any other decision or applicable regulation issued by the IOC or any IF or NOC, including but not limited to the IOC Code of Ethics, the Olympic Movement Code on the Prevention of Manipulation of Competitions or of any applicable public law or regulation, or in case of any form of misbehaviour:*
>
> *2.1 **with regard to individual competitors** and teams: **temporary or permanent ineligibility or exclusion from the Olympic Games, disqualification or withdrawal of accreditation**; in the case of disqualification*

or exclusion, the medals and diplomas obtained in relation to the relevant infringement of the Olympic Charter shall be returned to the IOC. In addition, at the discretion of the IOC Executive Board, a competitor or a team may lose the benefit of any ranking obtained in relation to other events at the Olympic Games at which he or it was disqualified or excluded; in such case the medals and diplomas won by him or it shall be returned to the IOC (Executive Board); […]*"*.

108. The Sole Arbitrator finds that disciplinary measures available for the sanctioning of a breach must, *a fortiori*, also be available to prevent the occurrence of an imminent breach, to the extent they are reasonable and proportionate under the circumstances (on this aspect see below at 3.). This includes the exclusion from competition.

109. Additionally, the IOC's authority to safeguard compliance with its own rules also stems from Article 69 CC and Article 19.3 OC. Based on these provisions, the IOC Executive Board has the power to make all decisions *"necessary to ensure the proper implementation of the Olympic Charter and the organisation of the Olympic Games"*, as well as all decisions *"not attributed by law or by the Olympic Charter to the Session or to the President"*. This authority was delegated here to the Permanent Chair of the Disciplinary Commission, in accordance with Rule 19.4 OC.

3. Was the Applicant's exclusion from the competition reasonable and proportionate under the circumstances?

110. The final question is whether the decision to withdraw the Applicant from the competition was reasonable and proportionate under the circumstances.

111. As duly noted by the Applicant, a competition ban is the most severe measure possible to respond to a breach, much more so when the breach has not (yet) happened. As such, it must remain the *ultima ratio*, which means that it can only be applied if the breach is imminent and cannot be remedied or prevented through less intrusive means.

112. As established above, the breach was imminent, which is demonstrated by the fact that the Applicant still insisted on wearing the Helmet in the morning of the competition day, and made it clear that he would not be willing to compete with rule-compliant equipment.

113. The Sole Arbitrator also finds that, based on the circumstances pleaded by the Parties, no other – less intrusive – measures, were available to the Respondents. The only option with which the Respondents were left was allowing the Applicant to compete with the Helmet and sanction him retroactively. As established above, the Respondents were, however, not required to tolerate a breach of their rules, even more so when these rules are the product of an elaborate consultation process with athlete representatives.

114. On the other hand, it would have been bearable for the Applicant to participate in the race with a different helmet and challenge the prohibition to use his Helmet in the aftermath of the race. The IBSF credibly submitted that other helmets would have been available, although they would have required some adjustments to fit the Applicant. Hence, the Applicant was left with a viable

option to ensure his participation at the Olympic Games, while at the same time maintaining his right to appeal the prohibition to compete with his Helmet after the competition.

115. Once again, the Sole Arbitrator fully accepts that the Applicant did not consider this option to be viable for him personally, in light of his aim to stand up for his country by remembering Ukrainian athletes who became victims of the war. Yet, in weighing the different interests from the required objective perspective, and considering the many options the Applicant had to express his view (including by showing the Helmet in training runs and in interviews, and including by expressing his grief even during the competition through the exceptional use a black armband or ribbon, as offered to him by the IOC), it was more bearable for him to compete with a different helmet than for the Respondents to tolerate a breach of its rules.

116. The Sole Arbitrator appreciates that the Second Respondent chose to reconsider its decision to revoke the Applicant's accreditation. Withdrawing his accreditation was not necessary to prevent the breach in question (use of the Helmet during the competition).

117. Finally, the Sole Arbitrator notes that neither the IOC Decision nor the Challenged Decision become disproportionate in light of six other examples mentioned by the Applicant, in which the IOC allegedly failed to take action against athletes expressing views during the Olympic Games in similar contexts. Irrespective of whether or not these examples compare to the case of the Applicant, which the Sole Arbitrator is unable to assess in view of rather limited information provided on these examples during these proceedings, the IOC's alleged failure to sanction other breaches has no bearing for this case, which alone is before the Sole Arbitrator.

118. In summary, the Sole Arbitrator finds that the Respondents' decision to withdraw the Applicant from the skeleton competition was proportionate under the circumstances.

E. Summary

119. As a result of all of the above, the Application is dismissed.

XI. COSTS

1. According to Article 22 para. 1 of the CAS Ad Hoc Rules, the services of the CAS ad hoc Division *"are free of charge"*.

2. According to Article 22 para. 2 of the CAS Ad Hoc Rules, parties to CAS Ad Hoc proceedings *"shall pay their own costs of legal representation, experts, witnesses and interpreters"*.

3. Consequently, there is no order as to costs.

DECISION

On these grounds, the Ad Hoc Division of the Court of Arbitration for Sport renders the following decision:

1. It has jurisdiction to hear the application filed by Vladyslav Heraskevych on 12 February 2026.

2. The application filed by Vladyslav Heraskevych on 12 February 2026 is dismissed.

CAS 2022/A/8856
Table Tennis Federation of Russia (TTFR) v. European Table Tennis Union (ETTU)
award of 26 September 2025 (operative part of 4 June 2024)

Table tennis; Exclusion of Russian and Belarussian clubs and athletes from participation in ETTU competition; Consequences of a late answer; Extent of the principle of deference and respect to the autonomy of the association; De novo review; Nature of a sport governing body decision banning a national federation's right of participation to sport competitions; ETTU jurisdiction to decide a ban on participation to sport competitions; Application of anti-discrimination principles in sport; Burden of proof regarding discrimination and proportionality; Proportionality of bans on national symbols

Panel
Mr James Drake KC (United Kingdom), President
Mr Bernhard Welten (Switzerland)
Mr João Nogueira da Rocha (Portugal)

1. **There is no rule in the CAS Code that a respondent loses the right to be a party to the proceedings and/or to defend itself in the subsequent stages of the arbitration proceeding if it files a late answer. Indeed, Article R56 of the CAS Code does not preclude the respondent from pleading at the CAS hearing within the scope of the submissions it made in the first instance proceedings.**

2. **CAS panels afford sports governing bodies a wide margin of appreciation in decision-making so that the power of a CAS panel does not extend to an evaluation of the merits or the substantive value of a decision. But this deference is not absolute. Sport governing bodies must act fairly, in accordance with their own rules and applicable law, and not irrationally, capriciously, or arbitrarily.**

3. **Under Article R57 of the CAS Code, even if there had been a procedural irregularity in the first instance decision-making process such as the appellant's right to be heard, any such irregularity was cured by the hearing before the ETTU Board of Appeal and the *de novo* review conducted by the CAS panel.**

4. **Decisions by sports governing bodies that are not based on past misconduct are administrative in nature, not disciplinary, even if they have punitive effects. Suspending a national federation's right of participation will have economic and other effects on the federation (and its athletes) in circumstances where the federation had no role in and no responsibility for the situation that has led to the suspension i.e. an unforeseen military conflict unrelated to *"inappropriate conducts and violation of the Constitution and Regulations"*. This is the inherent disciplinary effect of such decision.**

5. **Under Article 5.2.1.13 of the ETTU Constitution, the ETTU Executive Board had the necessary constitutional power to act in respect of the urgent circumstances, as the Russia-Ukraine War gave rise to urgent and current business that required immediate action, and no**

other ETTU organ had been allocated responsibility for such matters.

6. Sports governing bodies are bound by anti-discrimination principles enshrined in their constitutions and the Olympic Charter. Decisions that discriminate based on nationality or national origin are *prima facie* unlawful and require justification. It is therefore impermissible for the ETTU to discriminate against a member association on the bases of race, politics, or national origin. It therefore follows that under the IOC Charter, the ETTU has undertaken an express constitutional obligation not to discriminate on racial (including colour, ethnic or national origin, and nationality) or political grounds. Further, the warrant against discrimination is also an essential part of the right to equal treatment, considered to be a fundamental right in the law of sport.

7. The party seeking to challenge an allegedly discriminatory regulation bears the burden of establishing that the rule discriminates based on a protected ground. If the regulation did so discriminate, the burden of proof shifted to the other party to establish that the regulation was necessary, reasonable and proportionate. A decision directed at a national federation solely because of its nationality, thereby discriminates on the basis of race, national origin, and nationality, in violation of Article 1.3.1 of the ETTU Constitution and the IOC Charter. Even where a sports governing body has a legitimate objective such as safety and integrity of its events, it must demonstrate that any discriminatory measure is necessary, reasonable, and proportionate. A complete ban on participation is a severe measure and must be justified as a last resort, with evidence that less restrictive alternatives such as closed-door events or neutral venues were considered.

8. Bans on national symbols, flags, and anthems may be upheld as moderate and proportionate measures to maintain safety and integrity, as they impose minimal restrictions on athletes' ability to participate in sport events.

I. THE PARTIES AND OTHERS

1. The Appellant is the Table Tennis Federation of Russia (the "Appellant" or the "TTFR"), the national table tennis association ("NTTA") for the Russian Federation (the "Russian Federation" or "Russia") for the sport of table tennis, with its seat in Moscow. It is the national federation ("NF") for and the governing body of Russian table tennis, which, amongst other things, administers table tennis at all levels in Russia, including the national team.

2. The Respondent is the European Table Tennis Union (the "ETTU" or the "Respondent"). It is the "Continental Table Tennis Federation for Europe" for the sport of table tennis, being recognised as such by the International Table Tennis Federation (the "ITTF") and has its seat and headquarters in Luxembourg. The ETTU deals with all matters relating to table tennis at a European level, including the development and promotion of the sport in the territories controlled by its

member associations, and the organisation of continental table tennis competitions, including the European Championships.

3. The ETTU member associations are the NTTAs from the following countries: Albania, Andorra, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, England, Estonia, Faroe Islands, Finland, France, Georgia, Germany, Gibraltar, Greece, Greenland, Guernsey, Hungary, Iceland, Ireland, Isle of Man, Israel, Italy, Jersey, Kosovo, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Moldova, Montenegro, Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, Russia, San Marino, Scotland, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, and Wales.

4. The ITTF is the governing body for all national table tennis associations, recognised as such by the International Olympic Committee (the "IOC"). The ITTF is responsible for the organisation of numerous international competitions, including the World Table Tennis Championships. By its constitution, it provides that *"there shall be five Continental Federations, one each from the geographical regions of Africa, America, Asia, Europe, and Oceania. Such Federations shall be supported and encouraged by the ITTF, which shall co-operate with them in all matters, provided that the constitution, general principles, rules and policy of the Continental Federation conform to those of the ITTF"*. The "ITTF Group" comprises the ITTF itself, World Table Tennis (the commercial and event business arm of the ITTF), and the ITTF Foundation (the corporate social responsibility arm of the ITTF).

5. The parties shall be referred herein collectively as the "Parties".

II. OUTLINE OF THE APPEAL

6. This is an appeal by the TTFR against a decision by the Board of Appeal of the ETTU (the "ETTU BoA") on 26 April 2022 (the "Appealed Decision") by which the ETTU BoA upheld, in part, decisions of the Executive Board of the ETTU (the "ETTU EB"), *inter alia*, *"not to let Belarussian and Russian players and officials be invited or allowed in events hosted by ETTU and no Belarusian or Russian national symbols, flags or anthems will be displayed until further notice"* and that *"Russian clubs will not be permitted to compete in any European Club competitions for the 2021-2022 season"*.

7. The Appealed Decision was made against the backdrop of commencement of the Russia-Ukraine War (defined below) on 24 February 2022 and the febrile atmosphere in February and March of 2022.

III. FACTUAL BACKGROUND

8. Set out below is a summary of the relevant facts based on the Parties' written submissions, pleadings and evidence in these proceedings and from matters of public knowledge. While the Panel has considered all matters put forward by the Parties, reference is made in this Award only to those matters necessary to explain the Panel's reasoning and its decision.

9. The Respondent organises events between national teams and individuals in the sport of table tennis. The Respondent's events include the following: the Men's Champion's League, the Women's Champions League, the European Championships,

the Europe Cup (Men), the Europe Cup (Women), and the Europe Trophy. The Men's Champions League for the 2021-2022 season began in late 2021 and was scheduled to finish in March / April 2022.

10. On 15 February 2022, the Russian State Duma voted to submit a request to the President of Russia to recognise the independence of certain areas of the Donetsk and Luhansk regions of Ukraine.

11. On 16 February 2022, Fakel Gazprom Orenburg of Russia ("Fakel Gazprom") won the first leg of its semi-final against TTSC UMMC of Russia ("TTSC UMMC") in the Men's Champions League 2021-2022.

12. On 20 February 2022, Borussia Dusseldorf (of Germany) won the first leg of its semi-final against FC Saarbrücken TT of Germany in the Men's Champions League 2021-2022.

13. On 21 February 2022, the Russian Federation issued two decrees by which it recognised the independence the Luhansk People's Republic and the Donetsk People's Republic.

14. On 23 February 2022, the European Council adopted a package of sanctions and travel bans against various Russian State Duma officials and certain other Russian individuals.

15. On 24 February 2022, to put it neutrally, the Russian-Ukraine conflict began. This will be described herein as the "Russia-Ukraine War".

16. Also on 24 February 2022:

(i) The IOC issued a press statement according to which it *"condemn*[ed] *the breach of the Olympic Truce by the Russian government"*.

(ii) The Ukraine Table Tennis Federation (the IF for table tennis in Ukraine) withdrew one of its athletes, Margaryta Pesotska, from the Europe Top 16 Cup being held in Montreux, Switzerland on 26-27 September 2022.

17. On 25 February 2022, the United Nations Security Council met and voted upon a draft resolution by which, *inter alia*, the Russian Federation was called upon *"immediately* [to] *cease its use of force against Ukraine and shall refrain from any further unlawful threat or use of force against any UN member state"* and *"shall immediately, completely, and unconditionally withdraw all of its military forces from the territory of Ukraine within its internationally recognized borders"*. The draft was submitted by Albania and the United States, supported by 11 members of the Security Council. The Russian Federation vetoed the draft resolution and China, India and the United Arab Emirates abstained.

18. Also on 25 February 2022, the Executive Board of the IOC (the "IOC EB") issued the following statement:

"The Executive Board (EB) of the International Olympic Committee (IOC) reiterated today the IOC's strong condemnation of the breach of the Olympic Truce by the Russian government and the government of Belarus through its support in this. […] The Olympic Truce began seven days before the start of the Olympic Games, on 4 February 2022, and ends seven days after the closing of the Paralympic Games. The IOC EB today urges

all International Sports Federations to relocate or cancel their sports events currently planned in Russia or Belarus. They should take the breach of the Olympic Truce by the Russian and Belarussian governments into account and give the safety and security of the athletes absolute priority. […] The IOC EB expresses its deep concerns about the safety of the members of the Olympic Community in Ukraine and stands in full solidarity. …".

19. On 26 February 2022, the ITTF Group issued the following statement:

"The ITTF Group is very concerned about the conflict in Ukraine.

We are monitoring the situation and have tasked the ITTF Foundation with reaching the Ukraine Table Tennis Federation to offer support where possible.

The ITTF Group is aligned with the Executive Board of the International Olympic Committee and will follow its recommendations. We ask the Continental Federations and the Member Associations to act accordingly.

Ping Pong Diplomacy has been at the heart of our sport for more than half a century. The ITTF Group strongly believes that constructive dialogue is the solution to any disputes. We hope for a rapid return to peace".

20. On 27 February 2022, the ETTU EB postponed the second leg of the Men's Champions League semi-final between Fakel Gazprom and TTSC UMMC: *"The ETTU Executive Board has decided to postpone the Champions League Men second semi-final match Fakel-Gazprom Orenburg - TTSC UMMC initially scheduled for Friday 4th March to a date between the 8th and 10th April 2022. ETTU is considering an alternative location for the match".*

21. On 28 February 2022, the IOC EB issued a resolution as follows (the "IOC EB Resolution"):

"The IOC EB has therefore today carefully considered the situation and, with a heavy heart, issued the following resolution:

1. *In order to protect the integrity of global sports competitions and for the safety of all the participants, the IOC EB recommends that International Sports Federations and sports event organisers not invite or allow the participation of Russian and Belarusian athletes and officials in international competitions.*

2. *Wherever this is not possible on short notice for organisational or legal reasons, the IOC EB strongly urges International Sports Federations and organisers of sports events worldwide to do everything in their power to ensure that no athlete or sports official from Russia or Belarus be allowed to take part under the name of Russia or Belarus. Russian or Belarusian nationals, be it as individuals or teams, should be accepted only as neutral athletes or neutral teams. No national symbols, colours, flags or anthems should be displayed.*

Wherever, in very extreme circumstances, even this is not possible on short notice for organisational or legal reasons, the IOC EB leaves it to the relevant organisation to find its own way to effectively address the dilemma described above.

In this context, the IOC EB considered in particular the upcoming Paralympic Winter Games Beijing 2022 and reiterated its full

support for the International Paralympic Committee (IPC) and the Games.

3. The IOC EB maintains its urgent recommendation not to organise any sports event in Russia or Belarus, issued on 25 February 2022.

4. The IOC EB has, based on the exceptional circumstances of the situation and considering the extremely grave violation of the Olympic Truce and other violations of the Olympic Charter by the Russian government in the past, taken the ad hoc decision to withdraw the Olympic Order from all persons who currently have an important function in the government of the Russian Federation or other government-related high-ranking position, including the following:

- *Mr Vladimir Putin, President of the Russian Federation ...*
- *Mr Dmitry Chernyshenko, Deputy Prime Minister of the Russian Federation ...*
- *Mr Dmitry Kozak, Deputy Chief of Staff of the Presidential Executive Office ...*

5. The IOC EB welcomes and appreciates the many calls for peace by athletes, sports officials and members of the worldwide Olympic Community. The IOC admires and supports in particular the calls for peace by Russian athletes.

6. *The IOC EB reaffirms its full solidarity with the Ukrainian Olympic Community. They are in our hearts and thoughts. The IOC EB commits to continue and strengthen its efforts for humanitarian assistance. Therefore, the IOC EB has today established a solidarity fund. In this context, the IOC expresses its gratitude to the National Olympic Committees (NOCs) and International Sports Federations that are already supporting Ukrainian athletes and their families.*

The IOC EB, assisted by the IOC Task Force, continues to closely monitor the situation. It may adapt its recommendations and measures according to future developments".

22. On 1 March 2022, the ITTF Executive Committee met and decided to follow the IOC EB recommendations directing that *"until further notice, no Russian or Belarusian players and officials will be invited or allowed in events hosted by the ITTF Group, and no Russian or Belarusian national symbols, colours, flags, or anthems will be displayed. Please note no ITTF Group events are currently scheduled in Russia or Belarus"*. The ITTF Group issued the following statement:

"The ITTF Group remains highly concerned by the outbreak of war in Ukraine. It expresses its solidarity with the people of Ukraine and wishes to send a powerful message of peace and unity to the entire world.

The ITTF Executive Committee met on March 1st, 2022, after consulting with the sport community, and took the decision to follow the recommendations made by the IOC Executive Board with immediate effect.

Therefore, until further notice, no Russian or Belarusian players and officials will be invited or allowed in events hosted by the ITTF Group, and no Russian or Belarusian national symbols, colours, flags, or anthems will be displayed. Please note no ITTF Group events are currently scheduled in Russia or Belarus.

The ITTF Athletes' Commission also expressed their deep concern and sympathy, and fully support these decisions.

The ITTF Group will continue to monitor the situation and will review its decision in light of future developments".

23. On 2 March 2022, the General Assembly of the United Nations adopted a resolution headed "Aggression against Ukraine" which provided (in relevant part) as follows:

"The General Assembly,

Reaffirming the paramount importance of the Charter of the United Nations in the promotion of the rule of law among nations,

Recalling the obligation of all States under Article 2 of the Charter to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations, and to settle their international disputes by peaceful means,

Recalling also the obligation under Article 2 (2) of the Charter, that all Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the Charter,

Taking note of Security Council resolution 2623 (2022) of 27 February 2022, in which the Council called for an emergency special session of the General Assembly to examine the question contained in document S/Agenda/8979,

…

Bearing in mind the importance of maintaining and strengthening international peace founded upon freedom, equality, justice and respect for human rights and of developing friendly relations among nations irrespective of their political, economic and social systems or the levels of their development, …

Condemning the 24 February 2022 declaration by the Russian Federation of a "special military operation" in Ukraine,

Reaffirming that no territorial acquisition resulting from the threat or use of force shall be recognized as legal,

Expressing grave concern at reports of attacks on civilian facilities such as residences, schools and hospitals, and of civilian casualties, including women, older persons, persons with disabilities, and children,

Recognizing that the military operations of the Russian Federation inside the sovereign territory of Ukraine are on a scale that the international community has not seen in Europe in decades and that urgent action is needed to save this generation from the scourge of war,

Endorsing the Secretary-General's statement of 24 February 2022 in which he recalled that the use of force by one country against another is the repudiation of the principles that every country has committed to uphold and that the present military offensive of the Russian Federation is against the Charter,

Condemning the decision of the Russian Federation to increase the readiness of its nuclear forces,

Expressing grave concern at the deteriorating humanitarian situation in and around Ukraine, with an increasing number of internally displaced persons and refugees in need of humanitarian assistance,

Expressing concern also about the potential impact of the conflict on increased food insecurity globally, as Ukraine and the region are one of the world's most important areas for grain and agricultural exports, when millions of people are facing famine or the immediate risk of famine or are experiencing severe food insecurity in several regions of the world, as well as on energy security,

Welcoming the continued efforts by the Secretary-General and the Organization for Security and Cooperation in Europe and other international and regional organizations to support de-escalation of the situation with respect to Ukraine, and encouraging continued dialogue,

1. Reaffirms its commitment to the sovereignty, independence, unity and territorial integrity of Ukraine within its internationally recognized borders, extending to its territorial waters;

2. Deplores in the strongest terms the aggression by the Russian Federation against Ukraine in violation of Article 2 (4) of the Charter;

3. Demands that the Russian Federation immediately cease its use of force against Ukraine and to refrain from any further unlawful threat or use of force against any Member State;

4. Also demands that the Russian Federation immediately, completely and unconditionally withdraw all of its military forces from the territory of Ukraine within its internationally recognized borders;

5. Deplores the 21 February 2022 decision by the Russian Federation related to the status of certain areas of the Donetsk and Luhansk regions of Ukraine as a violation of the territorial integrity and sovereignty of Ukraine and inconsistent with the principles of the Charter;

6. Demands that the Russian Federation immediately and unconditionally reverse the decision related to the status of certain areas of the Donetsk and Luhansk regions of Ukraine;

7. Calls upon the Russian Federation to abide by the principles set forth in the Charter and the Declaration on Friendly Relations;

8. Calls upon the parties to abide by the Minsk agreements and to work constructively in relevant international frameworks, including in the Normandy format and Trilateral Contact Group, towards their full implementation;

9. Demands all parties to allow safe and unfettered passage to destinations outside of Ukraine and to facilitate the rapid, safe and unhindered access to humanitarian assistance for those in need in Ukraine, to protect civilians, including humanitarian personnel and persons in vulnerable situations, including women, older persons, persons with disabilities, indigenous peoples, migrants and children, and to respect human rights;

10. Deplores the involvement of Belarus in this unlawful use of force against Ukraine, and calls upon it to abide by its international obligations;

11. Condemns all violations of international humanitarian law and violations and abuses of human rights, and calls upon all parties to respect strictly the relevant provisions of

international humanitarian law, including the Geneva Conventions of 19492 and Additional Protocol I thereto of 1977,3 as applicable, and to respect international human rights law, and in this regard further demands that all parties ensure respect for and the protection of all medical personnel and humanitarian personnel exclusively engaged in medical duties, their means of transport and equipment, as well as hospitals and other medical facilities;

12. Demands that all parties fully comply with their obligations under international humanitarian law to spare the civilian population, and civilian objects, refraining from attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population, and respecting and protecting humanitarian personnel and consignments used for humanitarian relief operations;

13. Requests the Emergency Relief Coordinator to provide, 30 days after the adoption of the present resolution, a report on the humanitarian situation in Ukraine and on the humanitarian response;

14. Urges the immediate peaceful resolution of the conflict between the Russian Federation and Ukraine through political dialogue, negotiations, mediation and other peaceful means;

15. Welcomes and urges the continued efforts by the Secretary-General, Member States, the Organization for Security and Cooperation in Europe and other international and regional organizations to support the de-escalation of the current situation, as well as the efforts of the United Nations, including of the United Nations Crisis Coordinator for Ukraine, and humanitarian organizations to respond to the humanitarian and refugee crisis that the aggression by the Russian Federation has created;

16. Decides to adjourn the eleventh emergency special session of the General Assembly temporarily and to authorize the President of the General Assembly to resume its meetings upon request from Member States".

24. On 2 March 2022, the ETTU EB met (remotely), in which meeting it was decided to *"follow the ITTF decision"* (i.e., the ITTF decision of 1 March 2022 referred to at para. 22 above). This is referred to in this Award as the "ETTU Decision of 2 March 2022". The minutes of the meeting record in material part as follows:

"TTTF Executive Committee decision 1.3.2022 Russia and Belarus

The Acting President informed the Executive Board members about the ITTF Executive Committee decision during its meeting on March 1st, 2022, to follow the recommendations made by the IOC Executive Board with immediate effect, not to invite or allow Russian nor Belarusian players and officials in events hosted by the ITTF Group, and no Russian or Belarusian national symbols, colours, flags, or anthems to be displayed.

The ETTU Executive Board accepted to follow the ITTF decision and decided not to let Belarusian and Russian players and officials be invited or allowed in events hosted by ETTU and no Belarusian or Russian national symbols, flags or anthems will be displayed until further notice. …".

25. This ETTU Decision of 2 March 2022 was not disseminated beyond the ETTU.

26. On 3 March 2022, Borussia Dusseldorf won the second leg of the Men's Champions League semi-final against FC Saarbrücken TT.

27. Also on 3 March 2022, the ETTU EB met (remotely) once again. At the meeting, the ETTU EB decided that *"Russian clubs will not be permitted to compete in any European Club competitions for the 2021-2022 season"*. This decision will be referred to herein as the "ETTU Decision of 3 March 2022". In relevant part, the minutes of the meeting state as follows:

"… 1. European Club competitions season 2021-2022 Russian clubs.

The ETTU Executive Board decided that Russian clubs will not be permitted to compete in any European Club competitions for the 2021-2022 season. This includes Russian clubs due to compete in the semi-final and the final of the Men's Championships League. The decision, taken in order to protect the integrity of the competitions and the safety of those involved, is in line with the recommendations of the ITTF Group and follows on from the Executive Board's decision from March 2nd, 2022 not to invite or allow Belarusian and Russian players and officials to participate in events hosted by ETTU until further notice. …".

28. On the same day, 3 March 2022, the ETTU EB sent a letter to its member associations in the following terms:

"Luxembourg, 3rd March 2022

To the ETTU Member Associations

Dear friends,

The ETTU Executive Board met today to discuss further action needed to protect the integrity of our competitions and the wellbeing of our athletes.

After careful deliberation, the ETTU Executive Board decided that Russian clubs will not be permitted to compete in any European Club competitions for the 2021-2022 season. This includes Russian clubs due to compete in the semi-final and final of the Men's Champions League.

This decision is in line with the previous ETTU decision to not invite or allow Belarusian and Russian players and officials to participate in events hosted by ETTU until further notice and follows the recommendations set by the International Olympic Committee (IOC) and ITTF. In addition, no Belarusian or Russian national symbols, flags or anthems will be displayed at ETTU events until further notice.

The ETTU Executive Board also informs that both Vladimir Samsonov and Polina Mikhailova have self-suspended from their positions on the Executive Board, immediately after Igor Levitin's self-suspension from the Presidency, until further notice.

The ETTU Executive Board accepts their decision and will continue to operate as normal, in full compliance with the ETTU Constitution, in order to best serve European table tennis.

As the ITTF has repeatedly stated, Ping Pong Diplomacy has been at the heart of our sport for more than half a century and we join them in hoping that constructive dialogue can be the solution to any disputes.

As a table tennis family, we are united in our hope that peace will soon return to Europe.

Yours sincerely,
ETTU Executive Board".

29. It will be apparent that, as a matter of fact, the ETTU EB made two, separate decisions, one on 2 March 2022 (the ETTU Decision of 2 March 2022) and the other on 3 March 2022 (the ETTU Decision of 3 March 2022) as follows:

(i) The ETTU Decision of 2 March 2022:

i. Belarusian and Russian players and officials will not be invited or allowed to participate in events hosted by ETTU.

ii. No Belarusian or Russian national symbols, flags or anthems are to be displayed during events hosted by ETTU until further notice.

(ii) The ETTU Decision of 3 March 2022:

i. Russian clubs are not permitted to compete in any European Club competitions for the 2021-2022 season, including in particular the Men's Champions League 2021-2022.

30. These decisions will be referred to collectively as the "ETTU EB Decision".

31. It will also be apparent from a reading of the chronology set forth above that an immediate effect of the ETTU EB Decision was that the two Russian clubs (affiliates of the Appellant), Fakel Gazprom and TTSC UMMC (together, the "Clubs"), who were at that point in time scheduled to compete in the second leg of one of the semi-finals of the Men's Champions League 2021-2022, were precluded from doing so by the ETTU, and thus precluded from advancing to the final.

32. On 21 March 2022, the Respondent announced that Borussia Dusseldorf was the winner of the Men's Champions League 2021-2022. The press release was in the following terms:

"The ETTU Executive Board confirmed at its meeting on 19th March 2022 that German club Borussia Düsseldorf is the winner of the European Champions League men 2021-2022 season following their semi-final victory over 1.FC Saarbrücken TT on 3 March.

Borussia Düsseldorf beat 1.FC Saarbrücken TT having won 3:0 in straight matches in the first leg and 3:1 in the second leg.

The other semi-final was cancelled after the ETTU Executive Board decided on 3 March that Russian clubs would not be permitted to compete in any European Club competitions for the 2021-2022 season.

The trophy will be delivered to Borussia Dusseldorf at the earliest opportunity".

IV. PROCEEDINGS BEFORE THE ETTU BOARD OF APPEAL

33. On 22 March 2022, the TTFR, together with Fazel Gazprom and TTSC UMMC whose match had been cancelled (see above), appealed the ETTU EB Decision to the ETTU BoA seeking the following relief (where the TTFR is described as "Appellant 1", Fazel Gazprom as "Appellant 2", and TTSC UMMC as Appellant 3):

"As an interim measure:

1. Grant the suspensive effect to the present Appeal and/or, if needed, order ETTU to take all necessary measures to reinstate immediately all Russian teams, whether national representative teams or club teams, for participation in ETTU competitions, including, but without limitation, in the competitions mentioned in the present Appeal.

2. Order ETTU to organize the celebration of all matches initially scheduled to be held initially in Men's Champions League 2021-2022 (semi-final between the Appellant 2 and Appellant 3, and the final) to be celebrated in the available dates.

On the merits:

3. Set aside the decision of the ETTU Executive Board dated March 3rd, 22

4. Set aside the decision or ETTU of proclaiming the winner of Men's Champions League 2021-2022

5. Reinstate all Russian teams, whether national representative teams or club teams, for participating in ETTU competitions

6. Order ETTU to organize all remaining unplayed games in Men's Champions League

7. Order ETUU to bear all costs incurred with the present procedure.

8. Order ETTU to pay Appellants a contribution towards its legal and other costs, in the amount to be determined at the Board of Appeal discretion".

34. On 26 April 2022, the ETTU BoA issued the Appealed Decision by which it upheld the appeal in part and confirmed the ETTU EB Decision in part. In the decision, the ETTU BoA said this in relation to that part of the ETTU EB Decision barring Russian clubs from competing and not inviting Belarusian and Russian players and officials to ETTU events:

"With its decision dated March 3rd 2022 the ETTU Executive Board decided that the "(...) Russian clubs will not to be permitted to compete (….)" and "(….) to not invite or allow Belarusian and Russian players and officials in events hosted by ETTU (….)".

Both sanctions are however not part of the disciplinary sanctions foreseen in the Handbook, 'Catalogue of Disciplinary Sanctions' or any other relevant Regulations and are therefore to be qualified as beyond the competences of the ETTU Executive Board.

As an addition the following.

Clause 1.3.3 Handbook states: "ETTU is committed to providing a sport environment free of harassment on any basis without exception".

Olympic Charter, Fundamental Principles cipher 4: "The practice of sport is a human right. Every individual must have the possibility of practising sport, without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play".

There is no doubt that the Olympic idea includes the peaceful coexistence of people from all over the world. In this context, it can also be seen as an Olympic task to make a contribution to a peaceful coexistence. This should also include that conflicts are not increased on the level of sport, but rather de-escalated. In this sense, possibilities must be sought for Club teams and athletes, even if the political situation in their home countries may be difficult, to live this Olympic idea together peacefully. Apart from

these generic Olympic principles, the ETTU commitment is clear and unmistakable: ETTU is committed to providing a sport environment free of harassment on any basis without exception. Therefore, not permitting Appellant 2 and 3 to compete and to not invite or allow Belarusian and Russian players and officials in events hosted by ETTU does not seem to be appropriate from a sporting point of view and discriminator [sic, discriminatory]. *ETTU Executive Board has failed to credibly argue that the measures are about more than a political measure/statement".*

35. The "conclusion" and "decision" of the ETTU BoA were as follows:

*"**Conclusion***

The BoA rejects the application of the Appellant 1 to reinstate Russian national team for participation in ETTU competitions. That also applies to Appellant 2 and 3, also because they have no direct interest to it. Concerning the Men's Champions League 2021-2022 the BoA finds the reasoning of the Appellants more convincing than the rather not too reasoned position of the ETTU Executive Board. The BoA will use its Competence (clause 1.1. of Annex Handbook) not only to confirm or reject a juridical decision made by one of the ETTU judicial bodies, but also modify it. In this case by specifying it with regard to the actual competition.

Given the changing and unpredictable circumstances caused by the conflict, parties are referred to clause 13 of the Handbook in case such situation would occur.
A revision of the judgement may be requested if new facts or new circumstances have emerged, which have not been not known at the time of the BoA resolutions. This request, including detailed information, has to be sent via the Secretariat to the BoA Chair, who shall decide upon the appropriateness of a new settlement of the case.

Decision

The ETTU decisions of March 3rd 2022 are modified:

a) Appellant 2 and Appellant 3 will be permitted to compete in the semi-final and final of the Men's Champions League 2021-2022.

b) To set aside the proclamation by ETTU of the winner of the Men's Champions League 2021-2022 of March 3rd 2022.

Any other decisions are confirmed, including the decision of March 2nd 2022 that no Belarusian or Russian national symbols, flags or anthems will be displayed at ETTU events until further notice".

36. On 26 April 2022, upon receipt of the Appealed Decision, the Appellant wrote to the ETTU BoA asking for clarification of the Appealed Decision. The Appellant asked for clarification of the applicability of the decision to future competitions under ETTU jurisdiction – *"would Russian teams be allowed to participate in future competitions, for instance, the next edition of the Champions League? It is not clear from the wording of the decision, however, I can only make my suggestion based on the line from the decision: 'Therefore, not permitting Appellant 2 and 3 to compete and not to invite or allow Belarusian or Russian players and officials in events hosted by ETTU does not seem to be appropriate form a sporting point of view and discriminator".*

37. On 29 April 2022, the ETTU BoA replied saying: *"The decision of the BoA with regard to players and officials is limited to the*

semi-final and final. The other measures set by the ETTU remain unchanged".

38. The ETTU EB met with the Appellant and the Clubs on 29 April and 6 May 2022 in order *"to discuss the conditions under which the unplayed semi-final and finals of the Men's Champion's League 2021-2022 could be staged"* (according to the minutes of the ETTU EB meeting of 12 May 2022).

39. In these meetings, the Appellant and the Clubs put forward a *"Proposition for the conditions of semifinal and final matches of the TTCLM* [Table Tennis Champions League Men] *season 2021-2022 from Table tennis club 'Fakel Gazprom' (Orenburg) and Table tennis sports club UMMC (Verkhanya Pyshma)".* The proposition was as follows:

(i) Play the unplayed second leg of the semi-final between the Clubs on 10 June 2022 in Orenburg, Russia.

(ii) Nominate a Russian umpire team for that match.

(iii) Set the dates for the two final matches of the Men's Champions League after the completion of the semi-final.

(iv) Play the first of the final matches either at Orenburg or Verkhanya Pyshma, depending on who wins the semi-final.

(v) Reimburse the travel expenses of the Clubs for organising and staging the matches.

40. In a meeting held on 12 May 2022, the ETTU EB considered the said proposition and decided against it. In particular:

(i) The ETTU EB decided against holding the second semi-final match on 10 June 2022 on the basis that such would mean that the final would be played during July at the earliest, at which time Borussia Dusseldorf may not have eligible players under contract.

(ii) The ETTU EB decided against nominating a Russian umpire team on the basis that it had already been decided that *"Russian officials are not allowed to be invited or allowed in events hosted by ETTU".*

(iii) The ETTU EB decided against hosting one of the finals matches in Russia as proposed. *"From a security perspective, ETTU would not be able to guarantee the safety of the German's* [sic] *team athletes in Russia. Nor would ETTU be able to guarantee the safety of Russian's* [sic] *team athletes in Germany, to play the second match of the final, or even if they were allowed to enter the country. The safety of the athletes and all participants shall be ETTU's first priority. In addition the EB's position, from a competition integrity perspective, it is clear some, if not all, players from Borussia Dusseldorf would be unwilling to travel to Russia or even refuse to play against any of the Russian Teams".*

41. On 15 May 2022, the ETTU EB submitted a request to the ETTU BoA, pursuant to clause 13 of the ETTU Constitution, to revise the Appealed Decision on the basis that new facts and circumstances had emerged (i.e., those facts and matters set forth above at para. 40(iii)). The ETTU BoA was asked to set aside the decision that that ETTU was obliged to organise the unplayed semi-

final between the Clubs. The ETTU EB submitted that *"there are no conditions to organize the unplayed matches of the Men's Champions League 2021-2022 without undermine [sic] the integrity of the competitions and assuring the safety of all involved and so wishes to declare the Men's Champions League 2021-2022 finished with no declared winner"*.

42. There is no response on the file from the ETTU BoA to this request.

V. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

43. By a Statement of Appeal and Urgent Request for Provisional Measures dated 10 May 2022, submitted in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "CAS Code"), the Appellant appealed to CAS against the Appealed Decision. In its Statement of Appeal and Urgent Request for Provisional Measures, the Appellant (a) made an urgent request to stay the Appealed Decision and for provisional measures, (b) requested that a panel of three arbitrators be appointed, and (c) appointed Mr Bernhard Welten as an arbitrator.

44. By letter dated 23 May 2022, the Respondent filed its Answer to the Request for Provisional Measures.

45. By letter dated 11 May 2022, the CAS Court Office granted the Appellant an extension of time of five (5) days in which to file its Appeal Brief, i.e., by 25 May 2022.

46. The Appellant filed its Appeal Brief on 25 May 2022, in accordance with Article R51 of the CAS Code.

47. By letter dated 25 May 2022, the CAS Court Office informed the Parties that the Respondent was granted a deadline of 20 days from 25 May 2022 to file its Answer (i.e., 14 June 2022).

48. On 14 June 2022, the ETTU emailed the CAS Court Office a copy of its Answer (titled "Response to the Appeal Brief") informing the CAS Court Office that it had been unable to upload the document to the CAS Court Office e-filing platform as a result of technological difficulties with the platform.

49. On 4 July 2022, the Appellant drew *"the attention of CAS that, in principle, the time limit for the provision by the Respondent of its answer has already lapsed. Without any prejudice, I have not been yet notified of the contents of the Respondent's answer"*. The Appellant also indicated its preference for a hearing.

50. On the same day, in response to the Appellant's letter, the CAS Court Office noted that the Respondent was granted a deadline of 20 days from receipt of the Appeal Brief on 25 May 2022 to file its Answer and that such deadline expired on 14 June 2022. The office stated: *"To date, the CAS Court Office has not received the Respondent's Answer or any communication from the Respondent in this regard. In accordance with Article R55 of the [Code] if the Respondent fails to submit its Answer by the stated time limit, the Panel may, nevertheless proceed with the arbitration and deliver an award"*.

51. Also on 4 July 2022:

(i) The Respondent replied stating that it had *"sent an email containing its Response within the time limit"* (attaching its email of 14 June 2022, see paragraph [ref] above) and stated that *"At the time we tried to upload the file on the e-filing portal but*

we were not able to recover the password, as explained in the attached email. No new password was sent until now, and for that reason we cannot recover access to the e-filing portal".

(ii) The Appellant responded, citing Article R31 of the CAS Code, and noted that the Respondent was obliged to submit its Answer within 20 days of receipt of the Appellant's Appeal Brief on 24 May 2022, which the Respondent failed to in accordance with the requirements of Article R31 of the CAS Code. It was said that the consequence was that the Respondent's Answer was *"invalid and inadmissible"*. The Appellant requested *"CAS to declare the Answer of the Respondent as inadmissible and invalid, as filed in violation of CAS Code"*.

52. On 5 July 2022, the CAS Court Office responded to the Parties. The office acknowledged receipt of the Respondent's Answer, received at the CAS Court Office on 4 July 2022 by email and uploaded on the CAS E-filing platform on 5 July 2022 at 12:40 (CET) and informed the Parties that *"it will be for the Panel, once appointed, to decide on the admissibility of the Answer"*.

53. By undated letter from the Respondent sent on 7 July 2022, the Respondent stated that (a) the email containing the Respondent's Answer was successfully sent at 21.58.40 UCT to the CAS Court Office, thereby in time and (b) the Respondent was agreeable to a hearing in this matter.

54. On 11 July 2022, the CAS Court Office replied to the Respondent's letter. The office referred the Respondent to Article R31(3) of the CAS Code *"pursuant to which the Answer is to be filed by courier, in at least six (6) copies or uploaded on the CAS e-Filing platform"*.

55. On 5 August 2022, the Deputy President of the CAS Appeals Arbitration Division issued an order in respect of the Appellant's application for provisional measures, deciding as follows: (1) The application for provisional measures filed by the Table Tennis Federation of Russia on 10 May 2022 in the matter CAS 2022/A/8856 Table Tennis Federation of Russia v. European Table Tennis Federation is dismissed. (2) The costs of the present Order shall be determined in the final award or any other final disposition of this arbitration.

56. On 24 October 2022, the CAS Court Office confirmed receipt of the Parties' payments of the advance of costs for this procedure and informed the Parties that, pursuant to Article R54 of the CAS Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the panel appointed to decide this reference was constituted as follows: Mr Bernhard Welten, Attorney-at-law, Bern, Switzerland; Mr João Nogueira Da Rocha, Attorney-at-law, Lisbon, Portugal; and Mr James Drake K.C., Barrister, London, United Kingdom (as President).

57. On 6 December 2022, the Parties signed and returned the Order of Procedure, which stated (inter alia) as follows:

"1 Jurisdiction

The Appellant relies on Article 8.4.1 of the ETTU Constitution as conferring jurisdiction on the CAS. The jurisdiction of the CAS is not contested by the Respondent and is confirmed by the signature of the present order.

…

8.3 In accordance with Article R55 of the Code, the Respondent filed its Answer on 14 June 2022 (according to the Respondent) or 4 July 2022 (according to the Appellant".

58. A hearing took place on Friday, 3 February 2023, in which the following people participated:

a. The Panel:

i. Mr James Drake K.C., President

ii. Mr Bernhard Welten, Arbitrator

iii. Mr João Nogueira Da Rocha, Arbitrator

b. The Appellant:

i. Mr Ivan Bykovskiy, Counsel

ii. Ms Inga Agoshkova, Counsel

c. The Respondent:

i. Mr Jose Ricardo Gonçalves, Counsel

ii. Mr Sergio Castanheira, Counsel

iii. Mr David Valente Bastos, Counsel

iv. Mr Pedro, Acting President of the Respondent

v. Mr Pierre Kass, General Secretary of the Respondent

vi. Ms Galia Dvorak, Deputy General Secretary of the Respondent

d. CAS Court Office:

i. Mr Fabien Cagneux, Managing Counsel

59. Prior to the commencement of the hearing, the Panel enquired of the Parties whether they wished to take advantage of the fact that the Parties and their representatives were gathered in the one place in order to meet and discuss a possible resolution. The Parties did so wish and met in the absence of the Panel. In the event, the Parties informed the Panel that discussions had been worthwhile but no resolution was reached. The hearing thus proceeded in the ordinary way. At the close of the hearing, the Panel indicated to the Panel that, in order to allow the Parties further time to discuss the matter inter partes, the Panel would allow a period of 30 days from the date of the hearing (i.e., until 4 March 2023) before the Panel deliberated and began drafting the Award.

60. At the commencement of the hearing, the Parties confirmed that they had no objection to the jurisdiction of CAS or to the constitution of the Panel. At the conclusion of the hearing, the Parties expressly confirmed that their right to be heard had been fully respected.

61. Subsequent to the hearing:

(i) On 2 March 2023, the Parties requested that the proceedings be suspended until 31 March 2023 in order to allow the Parties a further opportunity to resolve the dispute.

(ii) On 5 April 2023, the Appellant informed the CAS Court Office that the matter had not been resolved but that the Parties had

established a *"working group"* and asked that the *"CAS proceeds in due course"*. The Respondent replied on the same date providing an agreed-upon schedule for the *"working group"*.

(iii) On 31 May 2023, the Respondent informed the CAS Court Office that the Parties had met on 12 May 2023 and were drafting *"a document in order to achieve a final solution"* and that the Respondent would keep the CAS Court Office informed.

(iv) On 19 June 2023, the Appellant informed the CAS Court Office that *"the Parties have not reached a Settlement Agreement until today"* and suggested that the Panel should proceed with the drafting of the Award, pending any further notification from the Parties.

(v) On 22 June 2023, the Respondent informed the CAS Court Office that the Parties had not yet reached a settlement of the dispute and requested a further period of suspension of 30 days.

(vi) On 27 June 2023, the Respondent informed the CAS Panel that no settlement had been reached and the Appellant suggested that the Panel *"proceeds in due course with drafting the award"*.

(vii) On 28 June 2023, the CAS Court Office informed the Parties that the Panel *"will proceed with the drafting of the Award"*.

VI. SUBMISSIONS OF THE PARTIES

A. The Appellant's Submissions

a) The Admissibility of the Answer

62. As a preliminary matter, the Appellant submitted that the Respondent's Answer was out of time and therefore inadmissible. In this respect it was said that, by Article R31 of the CAS Code, the Respondent was required to submit its Answer via the E-filing platform or by courier mail and that it did neither but submitted its Answer by email. The Appellant repeated what it had said in correspondence (see para. 49 above) and that the Answer was therefore *"inadmissible and invalid"*.

63. As to the merits of the matter, and its challenge to the Appealed Decision, the Appellant's submissions are summarised below in three parts: (a) the nature of the Appealed Decision; (b) the procedural flaws in the Appealed Decision; and (c) the *"material flaws"* in the Appealed Decision. As to the last-mentioned, the Appellant submits that the Appealed Decision: (i) lacks a legal basis; (ii) violates the ETTU Constitution; (iii) *"violates the duty of political neutrality"*; (iv) is discriminatory; (v) *"violated the personality rights of the Appellant, its teams, and athletes"*; (vi) is disproportionate; (vii) *"violates the fundamental principle of equal treatment"*; and (viii) violates the principle of *venire contra factum proprium*.

b) The Nature the Appealed Decision

64. As to the nature of the Appealed Decision, the submissions on the part of the Appellant may be summarised as follows:

(i) In suspending the Appellant's right to delegate its national teams, clubs and athletes to ETTU

competitions *"is nothing else than a purely disciplinary decision"*.

(ii) CAS 2008/A/1583 and CAS 2008/A/1584 provide that, usually, measures taken by an association are divided into (a) acts of administration and (b) disciplinary measures, albeit that all disciplinary measures are also acts of administration. Where, as is typical, a disciplinary measure imposes a sanction, it is *"subject to a stricter test"* and *"certain protective standards must apply"*. Whether something has a disciplinary character one must consider the effects on the addressee.

(iii) The suspension of the Appellant's representative teams, clubs, and athletes from participation in ETTU competitions *"obviously imposes negative consequences on the Appellant"*.

(iv) It should therefore be characterised as a decision of a disciplinary nature.

c) The Procedural Flaws in the Appealed Decision

65. The Appellant submitted that there were a number of what it called *"procedural flaws"* in the Appealed Decision which rendered the Appealed Decision *"null and void"*. Its submissions in this regard were in summary as follows:

(i) The right to be served process in a fair and timely manner is a fundamental procedural right, part of the right to be heard. This is a fundamental and general principle which derives from the elementary rules of natural justice: see CAS 2021/A/7220. The ETTU did not respect this right. Before publishing the ETTU Decision of 3 March 2022, *"ETTU did not even consult the Appellant"*. The Appellant was not invited to provide its position and had no opportunity to *"pronounce"* until after the decision was taken.

(ii) The decision *"to not invite Russian teams and athletes to participate"* in ETTU competitions and the ETTU BoA's decision *"to sustain this prohibition"* does not contain any reference to any regulations or rules of law that would justify the decision.

(iii) The ETTU EB lacked the authority to make such a decision. By Article 5 of the ETTU Constitution, the ETTU EB can only *"impose disciplinary sanctions for inappropriate conduct and violations of the Constitution and Regulations which are not expressly attributed to another body within ETTU"*. That is not the case here. Neither the Appellant, its teams, nor its athletes has violated any provision of the ETTU Regulations that warrants a sanction *"with such a severe measure"*. This means that the decision *"was adopted beyond the scope of the jurisdiction of the Respondent, having no authority nor competence to do so"*.

d) The Material Flaws in the Appealed Decision

66. The Appellant also contended that the Appealed Decision suffered from a number of *"material flaws"*, i.e. substantive errors. These were said to be:

(a) the Appealed Decision lacked a legal basis; (b) the Appealed Decision violates the ETTU Constitution and the ETTU Regulations; (c) the Appellant has a statutory right to take part in all ETTU competitions; (d) the Appealed Decision violates the duty of political neutrality; (e) the Appealed Decision is discriminatory; (f) the Appealed Decision violates the personality rights of the Appellant, its teams, and athletes; (g) the Appealed Decision is disproportionate; (h) the Appealed Decision violates the fundamental principle of equal treatment; and (i) the Appealed decision offends the principle of *venire contra factum proprium*.

1) The Appealed Decision lacks a legal basis

67. It was first said that the Appealed Decision lacks a legal basis. In this respect, the Appellant's submissions may be summarised as follows:

(i) No superior decision or order justifies the Appealed Decision. The IOC EB Resolution *"refers to no legal provision, being pure of generic in nature"*. It was merely a recommendation with no binding effect on the ETTU and nothing in the Olympic Charter, the ITTF Constitution, the ETTU Constitution or the ETTU regulations imposes *"a binding effect of such a recommendation"*.

(ii) The Respondent is not *"released"* from its obligations under various international conventions, namely: Article 14 of the European Convention on Human Rights (the prohibition of discrimination); Article 1 of Protocol No.12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (prohibition on discrimination); Articles 2, 7, 12, 29 and 30 of the Universal Declaration of Human Rights. The Appealed Decision does not comply with these obligations.

(iii) The ETTU should have assessed whether or not the IOC EB Resolution complied with the principle of *"political neutrality"* and the obligation not to discriminate.

2) The Appealed Decision violates the ETTU Constitution and the ETTU Regulations

68. It was next submitted by the Appellant that the Appealed Decision violates both the ETTU Constitution and the ETTU Regulations.

69. The Appellant's submissions in this respect may be summarised in the following way:

(i) Article 2.3.6 of the ETTU Constitution provides that: *"The Executive Board may act to suspend an Association pending the Congress provided the Association is afforded an opportunity to present its case and all Associations having been informed of the suspension and provided with reasons"*.

(ii) A member association *"can only be suspended immediately (as is the case here) if it has seriously violated its obligations"* and yet the Appealed Decision *"does not refer to or even mention any such breach by the Appellant"*. This was *"for a good reason: the Appellant did not violate the slightest of its obligations!"*

(iii) There is nothing in the ETTU Regulations that provides the basis for a sanction *"not to permit to compete"* or *"not to invite"*. All of the permissible sanctions are set forth in Article 3.2 of Annex B Catalogue of Disciplinary Sanctions of the ETTU Regulations and there is no mention of these sanctions. The legal principle *nulla poena sine lege* (one cannot be punished for doing something that is not prohibited by law) applies. *"Even if the Respondent is a governing body in European table tennis, it is not empowered to 'invent' measures for the specific situation, which are not embodied in any legal rule"*.

(iv) As was recognised by the ETTU BoA, the ETTU is under an obligation to justify its decision, and it has failed to do so here. The ETTU *"decided to hide behind general excuses of 'safety of the athletes' and 'integrity of competitions' without providing any proof whatsoever"*.

(v) Any sanction must be *"predictable"* and *"proportionate"*. CAS 2017/A/5031 provides that *"the principle of proportionality requires an assessment of whether a sanction is appropriate to the violation committed in the case at stake"*. In this case, the Respondent *"overreacted"* and should have *"considered milder consequences for the Appellant (if any sanction at all)"*. The Respondent *"had ample opportunity to consider and apply the measures less strict that the total suspension of the Appellant's athletes and teams"*.

3) The Appellant has a statutory right to take part in all ETTU competitions

70. In this respect, it was submitted by the Appellant that:

(i) Articles 1-3 of the ETTU Regulations list the eligibility requirements for players and Articles 2.4 and 2.5 of the ETTU Constitution set forth the rights and obligations of member associations. The Appellant therefore has a right to participate in ETTU competitions.

(ii) The ETTU EB Decision *"frontally violated this right"* which the ETTU BoA sought to mitigate by declaring the decision discriminatory and reinstating the two Russian clubs for the 2021-2022 season. Nevertheless, the Appealed Decision *"lacks any ruling regarding the following seasons"*.

4) The Appealed Decision violates the duty of political neutrality

71. The Appellant next submitted that the Appealed Decision violated the ETTU's duty to remain politically neutral.

(i) Article 1.3 of the ETTU Constitution provides for political neutrality, independence and good governance.

(ii) Article 1.3.1 provides that *"The principles of ETTU shall be general unity of action, mutual respect of Associations in their dealings with one another and the inadmissibility of discrimination against Associations or individuals on racial, political, religious, gender or other grounds"*.

(iii) According to the Appellant, the *"general principle of political neutrality in sport is of the essence because any decision taken based on political circumstances in the sport directly affects the individuals who participate in the championship, the athletes, depriving them of fundamental rights they were given"*.

(iv) The decision to ban athletes leaves them and their families *"without means of subsistence"*.

5) The Appealed Decision is discriminatory

72. The Appellant submitted that the Appealed Decision discriminated against the Appellant. Its submissions in this respect may be summarised as follows:

(i) Article 1.3.1 (see above) of the ETTU Constitution prohibits discrimination.

(ii) Article 1.3.2 and Article 1.3.3 of the ETTU Constitution go on to provide as follows:

"1.3.2 ETTU is committed to providing a sport and work environment in which all individuals are treated with respect and dignity. Each individual has the right to participate and work in an environment which promotes equal opportunities and prohibits discriminatory practices.

1.3.3.*ETTU is committed to providing a sport environment free of harassment on any basis without exception"*.

(iii) Not inviting or allowing Belarusian and Russian players and officials in events hosted by the ETTU is discriminatory.

6) The Appealed Decision violates the Appellant's personality rights

73. It was submitted by the Appellant that the Appealed Decision violates the personality rights of the Appellant, its teams, and its athletes.

74. The submissions in this respect may be summarised as follows:

(i) Sanctions and measures imposed by a federation that do not merely ensure the smooth running of the game but also impinge on the legal interests of the persons concerned are subject to judicial review.

(ii) This applies in particular where the sanction imposed seriously violates *"the personal right to economic freedom"*. According to Swiss law, measures taken by sports federations which may seriously impair the personality rights of their members are only permissible if justified by the interests of the federation.

(iii) The Respondent's suspension of the Appellant's teams for future seasons *"clearly violates their personality rights. They should find themselves de facto excluded from championships …. The Appellant will be prohibited from sending any athlete or team affiliated with it to future competitions. Hence this decision infringes the Appellant's and the Appellant's teams' rights to* [their] *own economic development"*.

(iv) Further, there is no time limit on the prohibition, *"making such sanctions indefinite"*. There is *"no overriding ETTU interest to justify this severe violation"* of personality rights.

7) The Appealed Decision is disproportionate

75. It was submitted by the Appellant that the Appealed Decision was disproportionate. The submissions in this respect may be summarised as follows:

(i) In sporting matters, there is a doctrine that requires sporting bodies to weigh the individual interest of the member against the general interest of the association or federation. The athlete *"is thus entitled to the mildest possible measure that is still likely to achieve the intended goal (Hans Bodmer, Vereinsstrafe une Verbandsgerichtsbarkeit – Dargestellt am Beispel des SFV, St. Gallen/ Berne/Stuttgart, 1989, p.100)"*.

(ii) It is obvious that, even if the Appellant had infringed the ITTF, ETTU or IOC Constitutions, *"many less incisive measures could be taken"*.

(iii) The *"prohibition to participate in the following competitions derived from personal assessment of ETTU of the fault in actions of the government of the Russian Federation is an extreme and misconceived measure towards the Appellant and its teams which is not justified"*.

(iv) The Appellant's athletes and teams *"suffer an actual boycott"*. *"They are made to bear the responsibility for an unfortunate situation provoked by government of the Russian Federation in which the Appellant, its affiliated athletes, and clubs had nothing to do nor ever participated or supported hostile actions nor violated founding documents of ETTU, ITTF, or IOC"*.

(v) The sanction also violates the presumption of innocence, with the Respondent applying the presumption of guilt on the Appellant and its affiliates.

8) The Appealed Decision violates the fundamental principle of equal treatment

76. It was submitted by the Appellant that the Appealed Decision violates fundamental principle of equal treatment. The submissions in this respect may be summarised as follows:

(i) *"The principle of equal treatment is mandatory under Swiss association law. It is however only violated when two similar situations are treated differently. Any party alleging the discriminatory nature of a sanction bears the burden of proof for this allegation"*. CAS/2013/A/3297.

(ii) In application of this principle, the Appellant notes that the ETTU did not react in the same way with respect to various other recent conflicts from the war in Afghanistan through to the conflict in Yemen.

(iii) Even if the decision had been to provide peace in the championship, then both Russian and Ukraine teams should have been excluded *"as no organisation nor association can arbitrarily decide which fault was it and whom to blame"*.

9) The Appealed Decision violates the principle of venire contra factum proprium

77. It was submitted by the Appellant that, in the Appealed Decision, the ETTU BoA made a number of statements

from which the Appellant cannot now resile in violation of the principle of *venire contra factum proprium*.

78. These include statements to the effect that: (a) the sanctions imposed are not part of the disciplinary sanctions in the ETTU Handbook or Regulations and are therefore beyond the competence of the ETTU EB; (b) the ETTU Decision was discriminatory; no punishment should be applied to athletes for the decisions of their governments if the athletes are not involved in them; (d) the measures adopted by the ETTU *"were merely political"*.

10) Relief

79. The Appellant seeks the following relief on this appeal:

"The Appellant respectfully requests that the CAS:

1. Sets aside the decision of the ETTU Board of Appeal in part that it did not uphold the previous appeal, i.e., the non-inviting of Russian athletes and teams (including the National team) to the competitions organized by the ETTU and the prohibition of the Russian anthem, symbols, and flag.

2. Reinstates all Russian teams, whether national representative teams or club teams, and athletes for participation in ETTU competitions, including, but without limitation, in the competitions mentioned in the present appeal and any other future competitions.

3. Reinstates the Appellant in its right to register its national representative teams, clubs, and athletes, in the future competitions organised by ETTU without any limitation.

4. Orders ETTU to bear all costs incurred with the present procedure.

5. Orders ETTU to pay the Appellant a contribution towards its legal and other costs in the amount to be determined at CAS discretion.

The Appellant reserves the right to amend its requests for relief considering, but without limitation, further possible ETTU decisions in the matter of admission of Russian teams and athletes for participation in ETTU competitions and/or membership of the Table Tennis Federation of Russia".

B. The Respondent's Submissions

80. By its Answer, the ETTU seeks to maintain the Appealed Decision and argued as follows.

The Admissibility of the Answer

81. In relation to the Appellant's contention that the Answer was inadmissible because it had been filed out of time, the Respondent submitted that, as had been explained in correspondence at the time, as a result of technological difficulties with the CAS E-filing platform, the Respondent was unable to lodge the Answer electronically and, instead, emailed a copy of the Answer to the CAS Court Office on the due date, namely 14 June 2022.

82. It was submitted that, accordingly, the Answer was filed on time and was admissible.

83. However, for the reasons that will be explained below at paragraphs 92 to 96,

the Respondent's Answer is inadmissible and, accordingly, its content is to be disregarded. As noted below, however, the Respondent was permitted to present its case orally at the hearing of the appeal.

VII. JURISDICTION

84. 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 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 Player has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body".

85. The Appellant referred to Article 8.4 of the ETTU Constitution, Article 1.4 of Annexe A to the ETTU Constitution and Article J.5.8 of the ETTU Club Competitions Men. The Respondent made no submissions as to the jurisdiction of CAS.

Article 8.4 of the ETTU Constitution provides as follows:

"8.4.1 ETTU recognises the Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes arising from this Constitution or other ETTU rules and regulations, or decisions of ETTU which cannot be settled by the ETTU appeals process. The parties concerned shall undertake to comply with the Statutes and procedural rules of this Court of Arbitration for Sport and to accept and enforce its decisions, which are final".

Article 1.4 of Annexe A to the ETTU Constitution states:

"The decisions of the BoA [Board of Appeal] shall be final and binding to all parties concerned".

Article J.5.8. of the ETTU Club Competitions Men states:

"In case of any appeal against the decision of the ETTU Board of Appeal at the Court of Arbitration for Sports shall be made within 14 days of the notification of the decision of the ETTU Board of Appeal, which should be communicated to the ETTU Secretariat".

86. The Panel notes that the Respondent did not contest the CAS jurisdiction and that the Parties agreed to the jurisdiction of the CAS to decide this appeal by signing the Order of Procedure.

87. The Panel, therefore, confirms that based on Article 8.4 of the ETTU Constitution and Article 1.4 of Annexe A of the ETTU Constitution CAS has jurisdiction to decide this appeal.

VIII. ADMISSIBILITY

88. 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 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 it prior to the appeal, in accordance with the statutes or regulations of that body. […]".

89. 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 in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties".

90. As to time limit, there is none set forth in Article 8.4.1 (as just cited) of the ETTU Constitution. However, Article J.5.8. of the ETTU Club Competitions Men does provide for a period of 14 days to appeal to the CAS.

91. The Appealed Decision, dated 26 April 2022, was communicated to the Appellant on 26 April 2022. The Appellant submitted its appeal on 10 May 2022, within the 14-day period.

92. The Panel, therefore, confirms that the Appellant's appeal is admissible.

93. A question arises, however, as to the admissibility of the Answer. In this respect, as noted above, the Appellant contends that the Respondent's Answer was out of time and therefore inadmissible. The Appellant contends that the Respondent filed its Answer late, beyond the deadline of 20 days provided by Article R55 of the Code and ordered in the letter of the CAS Court Office of 25 May 2023. According to the Respondent, its Answer was filed on 14 June 2022; according to the Appellant, the Respondent's Answer was filed on 4 July 2022. The difference in this regard was recorded in the Order of Procedure signed by the Parties and, on 5 July 2022, the Parties were informed that the issue would be for the Panel, once appointed, to decide on the admissibility of the Respondent's Answer.

94. Article R31 of the CAS Code provides (in relevant part) that a party's submissions *"must be filed by courier delivery to the CAS Court Office by the parties in as many copies as there are other parties and arbitrators, together with one additional copy for the CAS itself, failing which the CAS shall not proceed. If they are transmitted in advance by facsimile or by electronic mail at the official CAS email address (procedures@tas-cas.org), the filing is valid upon receipt of the facsimile or of the electronic email by the CAS Court Office provided that the written submission and its copies are also filed by courier or uploaded to the CAS e-filing platform within the first subsequent business day of the relevant time limit".*

95. It is apparent from the chronology of events set out above that the Respondent did not comply with the requirements of Article R31 of the CAS Code in that, whilst it emailed its Answer to the CAS Court Office on the due date, 14 June 2022, it did not also provide the required number of copies by courier or by upload onto the CAS e-filing platform within the time stipulated. Strictly speaking, therefore, the proviso set forth in Article R31 of the CAS Code was not met; the Answer is late and formally inadmissible.

96. The Respondent says, however, that its inability to do so was the result of technical failure with the CAS E-filing platform in that, despite attempts to do so, the Respondent was unable to

recover its password. This may well be so but, as soon as it became apparent that it would not be able to upload the Answer (and copies) onto the CAS e-platform, the Respondent, acting conservatively, should have arranged for the documents to be sent to the CAS by courier within time.

97. Nevertheless, there is no rule in the CAS Code that a respondent loses the right to be a party to the proceedings and/or to defend itself in the subsequent stages of the arbitration proceeding if it files a late Answer: see, e.g., CAS 2019/A/6463 at para. 104ff. Indeed, it is well understood that *"Article R56 of the CAS Code does not preclude the Respondent from pleading at the hearing within the scope of the submissions it made in the first instance proceedings"*. Bearing that in mind, the Panel took the view that, in the particular circumstances of this case, it was in the interests of justice and fairness that the Respondent be permitted to make the same points in oral submissions at the hearing and this is how the hearing proceeded.

IX. APPLICABLE LAW

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

> *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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"*.

99. In this appeal:

(i) The applicable regulations are the relevant provisions of the ETTU Constitution and the ETTU regulations.

(ii) There is no express choice of law by the Parties.

(iii) The Respondent is domiciled in Luxembourg.

100. It follows that the Panel shall decide this appeal according to the provisions of the ETTU Constitution and the ETTU regulations and, subsidiarily, the laws of Luxembourg.

101. The ETTU Constitution provides in relevant part as follows:

> *"PRINCIPLES*
>
> *1.3.1 The principles of ETTU shall be general unity of action, mutual respect of Associations in their dealings with one another and the inadmissibility of discrimination against Associations or individuals on racial, political, religious, gender or other grounds.*
>
> *1.3.2 ETTU is committed to providing a sport and work environment in which all individuals are treated with respect and dignity. Each individual has the right to participate and work in an environment which promotes equal opportunities and prohibits discriminatory practices.*
>
> *1.3.3 ETTU is committed to providing a sport environment free of harassment on any basis without exception.*
>
> *1.3.3.1 The Executive Board of ETTU shall impose appropriate disciplinary sanctions from warnings to exclusions from all kind of activity in ETTU, when a complaint of harassment has*

been substantiated. The same range of disciplinary sanctions can be imposed if a false accusation has been substantiated.

1.3.3.2 The Executive Board has the power to delegate any of its duties or obligations to a competent body such as a disciplinary or ethics committee.

1.3.4 ETTU is committed to take a responsible approach to safeguarding the environment and managing resources through its practices in hosting events and in managing its operations.

1.3.5 ETTU shall observe the general and fundamental principles of Good Governance, the ITTF Code of Ethics; the Olympic Movement Code on the Prevention of the Manipulation of Competitions, the Olympic Movement Medical Code, the ITTF Anti-Doping Rules, the International Paralympic Committee (IPC) Handbook; and no provision of this Constitution shall be deemed to conflict with or derogate from those principles.

1.3.6 ETTU shall co-operate with ITTF, the European Olympic Committees (EOC), the European Paralympic Committee (EPC), and other organisations that recognise it as the controlling and governing authority for table tennis throughout Europe.

1.4 OBJECTIVES

1.4.1 The objectives of ETTU shall be:

1.4.1.1 to uphold the principles of ETTU and to develop the spirit of friendship and mutual assistance among Associations, officials, coaches and players;

1.4.1.2 to seek continual improvement in the technical standard of table tennis and to promote participation of table tennis throughout Europe;

1.4.1.3 to foster friendly sporting competition and to eliminate unfair and unsporting practices such as match fixing, match corruption, irregular and illegal betting, doping or illegal equipment;

1.4.1.4 to apply and enforce the Constitution, the Regulations for ETTU title competitions and events, the ITTF Regulations for International Competitions, the ITTF Anti-Doping Rules, the ITTF Code of Ethics, the ITTF Anti-Harassment Policy and Procedures and other ETTU regulations;

1.4.1.5 to promote and to supervise ETTU title competitions and events;

1.4.1.6 to employ the funds of ETTU as may be expedient in the interests of European table tennis;

1.4.1.7 to endeavour to increase participation at all levels, to enhance the popularity of the sport, to develop new sources of revenue, and to manage the sport through a systematic planning process;

1.4.1.8 to encourage players, coaches and officials to present the sport positively in the best ways to enhance its image.

…

RIGHTS OF THE ASSOCIATIONS

2.4.1 The Associations have the following rights:

2.4.1.1 to appoint up to two (2) representatives (referred to as delegates) to take part in the Congress;

2.4.1.2 to submit proposals or resolutions for inclusion in the agenda of the Congress;

2.4.1.3 to nominate candidates for election or appointment according to the specific rules;

2.4.1.4 to enter players for participation in competitions organised under the authority of ETTU according to the specific qualification rules of each competition;

2.4.1.5 to take part in and benefit from ETTU's assistance, development and educational programmes;

2.4.1.6 to exercise all other rights arising from the Constitution or other ETTU regulations.

…

EXECUTIVE BOARD

5.2.1. The Executive Board has the following duties and responsibilities:

5.2.1.1 to determine the internal operations and procedures;

5.2.1.2 to appoint the Secretary General of ETTU;

5.2.1.3 to appoint the chair of the Board of Appeal among the members elected by the Congress;

5.2.1.3 to appoint the Committee chairs and members, Officials and working groups, except the chair and members of the Athletes Commission;

5.2.1.4 to impose disciplinary sanctions for inappropriate conducts and violation of the Constitution and Regulations which are not expressly attributed to another body within ETTU;

5.2.1.5 to determine the terms of reference for all Committees, Commissions, working groups or panels that the Executive Board may establish from time to time;

5.2.1.6 to establish an ETTU strategic plan to be submitted to the Congress;

5.2.1.7 to appoint the bank accounts of ETTU and the persons with signature on them;

5.2.1.8 to decide a remuneration of the President or any elected Executive Board member, if applicable. Such decisions shall be minuted with specific mention of the names and amounts and shall be reflected in the annual budget and the annual statement of accounts;

5.2.1.9 to review all applications for new membership and make recommendations on acceptance to the Congress;

5.2.1.10 to submit propositions and resolutions to the Congress;

5.2.1.11 to define the use of the ETTU name and logo;

5.2.1.12 to represent ETTU in all juridical matters;

5.2.1.13 to deal with all other current or urgent business and to assume all responsibilities which are not expressly attributed to another body within ETTU.

5.2.2 The Executive Board shall consist of the President, the Deputy President, the Vice President for Finance and five (5) Vice Presidents, all from different Associations, and the chair of the Athletes Commission.

5.2.3 The Executive Board shall meet at least four (4) times a year and otherwise when convened by the President or at the request of three (3) Executive Board members shall be convened within thirty (30) days. …".

102. The ETTU Regulations provide, in relevant part, as follows:

*"**Annex B***

Catalogue of Disciplinary Sanctions

1. General provisions

1.1 Member Associations, clubs, club teams, players and coaches, as well as umpires and other persons fulfilling an official task at a Competition (= officials) shall all behave in accordance with the principles of loyalty, integrity and sporting spirit.

1.2 Any Member Association, club, club team, player, coach or official may be sanctioned in the case of a violation of the Constitution, the Regulations or the official decisions of relevant Authorities.

1.3 In any case, any Member Association is fully responsible for the clubs, club teams, players, coaches, officials and other persons representing it, affiliated to it or otherwise under its authority.

1.4 The judicial bodies may impose disciplinary measures and sanctions according to their jurisdiction after the Constitution and regulations either to the present 'Catalogue of Disciplinary Sanctions' or to other relevant Regulations.

2. Disciplinary sanctions in direct connection with Competitions

2.1 There are two types of competitions to be distinguished:

a) 'short-term' competitions, as e.g. tournaments, staged at one venue and played continuously,

b) 'long-term' competitions, as e.g. leagues, played at different venues and at different times,

throughout a major part of one or more playing seasons.

Protests and appeals shall be made as follows:

- at 'short-term' Competitions: according to the relevant ITTF rules or regulations;

- at 'long-term' Competitions: according to the respectively relevant Regulations.

2.2 Any serious infringement upon ITTF or ETTU Regulations or rules, committed by a team, a player, a coach or an official, and which in the opinion of the referee, the organiser or the Jury of a Competition is of such a gravity to require a disciplinary sanction or another follow-up action, shall be brought to the knowledge of the Executive Board.

2.3 In disciplinary matters, ETTU shall generally follow the ITTF policy, i.e. to disqualify the trespasser (team, player, coach, official) from the running Competition concerned and to report the case to its/his nominating

Association, which shall take an appropriate action and/or impose an appropriate sanction.

3. Disciplinary sanctions by the Executive Board

3.1 In addition to the cases mentioned in 2 of this Catalogue, the following offences shall as well be subject to disciplinary action by the Executive Board:

i) according to Constitution 1.3.3.1: appropriate disciplinary, when a complaint of harassment has been substantiated;

ii) according to Constitution 5.2.1: sanctions for inappropriate conducts and violation of the Constitution and Regulations which are not expressly attributed to another body within the ETTU

and

a) a non-compliance with or a violation of official decisions, taken by relevant Authorities according to the Constitution and Regulations;

b) the supply on purpose of false or incomplete information to the Executive Board or to a Juridical Board in a case or an appeal brought forward;

c) any other unreasonable conduct which may bring the table tennis sport, ETTU, a Member Association or a club affiliated to a Member Association into disrepute;

d) any other non-conformity with or violation of ITTF and/or ETTU Regulations.
In the case of, a full report of the facts, including the names and addresses of all persons concerned by the case as well as of any witnesses, shall be sent to the Secretariat.

3.2 The disciplinary sanctions which may be imposed by either the Executive Board or the judicial bodies to Member Associations, clubs, club teams, players, coaches or officials are:

a) a warning;
b) a financial fine;
c) a disqualification;
d) a suspension (*).

(*) according to the relating provisions of the Constitution, an eventual suspension of a Member Association by the Executive Board shall be confirmed and endorsed by a relating decision to be taken by the Congress at its next following Meeting.

Doping cases are regulated separately".

103. The Parties also relied upon the IOC Charter, and the *"Fundamental Principles of Olympism"* stated therein, in particular principles 4, 5 and 6:

"4. The practice of Sport is a human right. Every individual must have the possibility of practising sport, without discrimination of any kind and in the Olympic spirit which requires mutual understanding with a spirit of friendship, solidarity and fair play.

5. Recognising that sport occurs within the framework of society, sports organisations within the Olympic Movement shall apply political neutrality. They have the rights and obligations of autonomy, which includes freely establishing and controlling the rules of sport, determining the structure and governance of their organisations, enjoying the right of elections free from any outside influence and the responsibility for ensuring that principles of good governance be applied.

6. The enjoyment of the rights and freedoms set forth in this Olympic Charter shall be secured without discrimination of any kind, such as race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status".

104. As to Luxembourg law, which applies subsidiarily pursuant to Article R58 of the CAS Code, the Parties proceeded on the basis of the applicability of Swiss law and made no submissions and put no material before the Panel, in relation to Luxembourg law. In those circumstances, the Panel is prepared to proceed on the basis that Swiss law and Luxembourg law are substantively the same in respect of the matters in this dispute.

X. THE MERITS OF THE APPEAL

105. The appeal is against the Appealed Decision which, as has been noted, upheld in part the ETTU EB Decision on the basis that the ETTU EB was acting lawfully within its constitutional powers. The principal relief sought by the Appellant is the setting aside of that part of the Appealed Decision that confirmed the ETTU EB Decision.

106. The Panel makes the following general observations as to its approach in respect of this challenge to the Appealed Decision.

107. First, the Panel gratefully adopts, with two important qualifications, the overarching approach outlined in CAS 2020/A/7090 (and adopted in CAS 2022/A/8708 at para. 110) as follows:

"148. In this sense, the many CAS precedents mentioned by the First Respondent – e.g., CAS 2017/O/5264 & 5265 & 5266, TAS 2007/A/1424, CAS 2018/A/5888, CAS 2016/A/4722 and CAS 2014/A/3523 – do in fact confirm the soundness of the idea expressed above; that is, that the power of a Panel such as this one does not extend to an evaluation of the merits or the substantive value of a decision, and that deference and respect to the autonomy of sporting federations … is of paramount importance in sports law.

149. Deference to the autonomy and freedom of the association and the decisions its main bodies freely adopt should thus be considered a basic principle of sports law.

150. However, it is also true that this principle of deference and respect to the autonomy of the associations is not absolute – as no legal principle in fact is – and has indeed been qualified by the CAS panels in the cases cited above. As the Panel in CAS 2018/A/5888, to mention one example, held, this principle may yield when there are "exceptional circumstances", such as "arbitrariness", a "misuse of its discretionary power", or "discrimination" or "breaches any relevant mandatory legal principle".

151. There is no doubt in the opinion of this Panel that the bar for determining these "exceptional circumstances" must be set very high, lest it converts itself into a Trojan horse that subverts the principle itself. The arbitrariness, discrimination or breach must be blatant and manifest, and offend a basic sense of justice".

108. The first qualification is this. The phrase *"exceptional circumstances"* as used by the panel in that case is drawn from CAS 2018/A/5888 and was the statutory basis on which FIFA in that case was

empowered to remove the executive body of a member association, which was at the heart of that appeal; i.e., *"exceptional circumstances"* were a prerequisite for any intervention on the part of FIFA. In that case, the panel put its task in this way:

"198. In order to determine whether the Appealed Decision was lawful or not, the Panel must establish under what circumstances FIFA is entitled to remove from office the Executive Committee of an affiliated member association. In this regard, the Panel shall bear in mind that FIFA is an association incorporated and governed under Swiss law, which holds a wide degree of independence and self-governance. In particular, in accordance with the fundamental Swiss legal principle of freedom of association (Vereinsautonomie), as an association it has the right to freely organise itself and establish its own regulatory system, being thus free to establish the provisions that it deems convenient regarding its organisation and membership. Furthermore, the Panel notes that under Swiss law this freedom of association involves not only the right to create its own rules, but also the right to apply and enforce these associative rules, being only these rights limited by the due respect to Swiss law and, in particular, to personality rights.

199. In the present case, the Panel observes that Art. 8 para 2 of the FIFA Statutes grants FIFA the power and authority to intervene in the management of a member association, removing Executive Bodies and replacing them by a Normalisation Committee for a specific period of time, provided that "exceptional circumstances" so justify. In particular, in light of the literality of this statutory provision, if these exceptional circumstances occur, FIFA has discretion (i.e. it may do it or not) to take such decision. The Panel notes that the FIFA Statutes neither clarify the meaning of this concept (i.e. exceptional circumstances), nor define which conditions should be met to consider that "exceptional circumstances" indeed occurs. Therefore, this is an undetermined legal concept that shall be concretized in each specific case, in which such concept would acquire the relevant meaning. FIFA shall thus proceed accordingly in each particular case, assessing the circumstances at stake to infer whether the prerequisite of exceptional circumstances exists or not (tertium non datur).

200. In addition, considering the freedom of association that governs Swiss associations and hence the wide margin of autonomy, organization and self-government of FIFA, when reviewing FIFA's ascertainment of the concurrence in a particular case of these exceptional circumstances, CAS must act in a moderate manner, with certain respect towards FIFA's discretion and margin of assessment to the extent possible, that is to say intervening and annulling FIFA's decision if it is clearly incorrect or inappropriate in light of the circumstances that FIFA finds as "exceptional circumstances" justifying its intervention. Furthermore, in accordance with this statutory provision, once established by FIFA that these exceptional circumstances are met in the case at stake, FIFA will have discretion to decide whether to enforce its power of intervention (hence removing the member association's Executive Bodies and replacing it by a Normalisation Committee) or not ("Executive bodies of member associations may under exceptional circumstances be removed […]"). In this regard, once these exceptional circumstances are met, the opportunity and convenience of enforcing this statutory provision will exclusively belong to FIFA, being only possible for the CAS to review FIFA's decision in case it is unlawful because, for example, it entails arbitrariness, a

misuse of its discretionary power, leads to discrimination or breaches any relevant mandatory legal principle or if the decision entails a violation of FIFA's own Statutes and Rules.

201. When assessing the validity of such decision of FIFA, the Panel must balance between the very wide discretional power of FIFA under Art. 8 of its Statutes and the clear will of the association, accepted by its members, to leave it to FIFA to decide if indeed the circumstances at stake meet the undefined requirements of the term "exceptional circumstances", while at the other hand, taking into account the fact that the appointment of a normalisation committee to replace the executive bodies of a FIFA member and deprive them from their powers and authorities is a very severe – for sure one of the most severe – means that FIFA can take. In such assessment the Panel should also consider the specific effect of the decision of FIFA and if the Normalization Committee took over the responsibility of managing the member association without limitations in respect of scope and time or if the powers of the Normalisation Committee were limited in a reasonable way by FIFA in establishing, within the decision, the scope and time frame of the appointment of the normalization committee. In the framework of such an assessment the Panel will always consider and check whether the decision taken by FIFA was necessary as a matter of last resort and if the limits of the decision does not go beyond the necessary in order to achieve the legitimate goal of the intervention".

109. In CAS 2018/A/5888, the panel was concerned to establish whether the FIFA decision in that case was lawful in the sense that (a) it complied with Swiss law (and in particular personality rights thereunder) and with the FIFA Statutes and (b) it was proportionate in that it did not go beyond what was necessary to achieve the legitimate goal of the intervention. In this context, the panel did not describe the circumstances in which it is right for a CAS panel to intervene in the decision of a sports governing body as *"exceptional"*; rather it was concerned with whether or not there were *"exceptional circumstances"* so as to warrant (as a prerequisite) FIFA's decision to intervene in the affairs of the member association. In the Panel's view, to describe the circumstances in which it is right for a CAS panel to review a decision on the part of a sports governing body as *"exceptional"* is to add an unnecessary gloss.

110. The second qualification is of the same ilk. The Panel does not agree that circumstances in which a CAS panel may review a decision of a sports governing body should be *"blatant or manifest and offend a basic sense of justice"*. In the Panel's view that is to overstate the deference to be shown to sports governing bodies in their decision-making and to understate the importance of sports governing bodies being held to account for their decisions. As has been said elsewhere, it is right that tribunals should show deference to sports governing bodies, but this does not mean that a tribunal should show *"unthinking servile obeisance"*.

111. Second, as was explained in CAS 2022/A/8708, this deference for the decisions of sports governing bodies is not in conflict with the role of a CAS appellate panel in conducting a *de novo* review (pursuant with Article R57 of the CAS Code), *"both can and do coexist under CAS jurisprudence. Even though CAS panels may review sporting decisions made by sporting*

bodies with some deference, that review is de novo and anew and CAS panels have and will consider evidence of violation of the relevant rules, statutes, and law de novo in determining whether a decision should stand".

112. Third, in the Panel's view therefore a decision of a sports governing body, such as the Respondent here, will be afforded deference and respect, and a very wide margin of appreciation, subject however to obligations on the part of the body to behave in the following way:

(i) to act fairly (in a procedural sense);

(ii) to act in accordance with any applicable mandatory law(s) and with its own rules and regulations; and

(iii) to act in a way that is not irrational, capricious, or arbitrary.

113. Fourth, as applied to this appeal, the overarching task for the Panel is therefore to decide whether the Appealed Decision violated the ETTU Constitution and Regulations or any mandatory rules of Luxembourg (for which in this case read Swiss) law, or otherwise amounted to an improper use of power, all the while bearing in mind the ETTU's principles and objectives and the margin of autonomy it enjoys with respect to its decision-making in relation to its affairs: see CAS 2022/A/8708 at para. 129.

114. Fifth, it is important to understand that, in addressing these questions, the Panel will not take into account any events that have taken place after the date of the ETTU EB Decision, namely 2-3 March 2022. Instead, the Panel has focussed its attention on the facts, matters and circumstances at the time that the underlying ETTU EB Decision was rendered, having regard only to those matters that were either known or foreseeable to the ETTU at that time: see CAS 2022/A/8708 at para. 13. As was said in CAS 2012/A/2831 at para. 11: *"it is necessary to identify the basis on which the decision was taken; and for that purpose to focus on the most contemporary documentation rather than accept any ex post facto rationalisation".*

115. Finally, during the hearing, the Respondent referred to the fact that a number of other IFs have taken measures within their respective sports in response to the Russia-Ukraine War. That is no doubt the case, but it is important to note each instance should and will be determined on its own merits, according to the particular rules and regulations, the specific measures involved, and the manner in which those measures were decided and imposed; and this Panel must decide this appeal according to its own particular facts, matters and circumstances. This is all the more important with respect to the Respondent's reliance on CAS 2022/A/8708 in relation to FIFA's response to the circumstances surrounding the Russia-Ukraine War and the FIFA World Cup. This was expressly recognised by the panel in that case in this way (at para. 162):

"The Panel again does not find it helpful in the present case to compare the approaches of other sports federations, whether more or less stringent, to the participation of Russian teams or athletes in their respective competitions. With all respect to the sports involved, they are not of the same global scale as football and their statutes, regulations, and decision-making processes will differ to FIFA's. There will also be different factors or different weightings applied to certain

factors that were considered when each sport responded in the manner in which it did. The Panel finds accordingly that comparisons to the decisions of other sports federations taken in materially different circumstances and for different reasons, which the Panel cannot and does not pronounce, do not assist in the present case".

116. Turning to this appeal in particular, by way of summary, by the Appealed Decision the BoA decided (in relevant part) that:

(i) The ETTU EB had jurisdiction pursuant to Articles 5.2.1.4 and/or 5.2.1.13 of the ETTU Constitution to make the ETTU EB Decision.

(ii) The Clubs were to be permitted to complete the second leg of their semi-final in the Men's Champions League 2021-2022. (There is, of course, no appeal against this and it can be put to one side.)

(iii) The announcement by the Respondent that Borussia Dusseldorf was the winner of the Men's Champions League 2021-2022 (see paragraph [32] above) was set aside.

(iv) The other decisions of the ETTU EB were confirmed.

117. There is, however, some uncertainty as to what precisely was so confirmed.

118. When one reads the body of the BoA Decision, it appears that the ETTU BoA took the view that the decision on the part of the ETTU EB *"to not invite or allow Belarusian and Russian players and officials in events hosted by ETTU"* was not part of the disciplinary sanctions provided for in the ETTU Regulations and, additionally, offended both Article 1.3.3 of the ETTU Constitution (*"ETTU is committed to providing a sport environment free of harassment on any basis without exception".*) and the Olympic Charter (*"The practice of sport is a human right. Every individual must have the possibility of practising sport, without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play"*).

119. The ETTU BoA went on to say this:

"There is no doubt that the Olympic idea includes the peaceful coexistence of people from all over the world. In this context, it can also be seen as an Olympic task to make a contribution to a peaceful coexistence. This should also include that conflicts are not increased on the level of sport, but rather de-escalated. In this sense, possibilities must be sought for Club teams and athletes, even if the political situation in their home countries may be difficult, to live this Olympic idea together peacefully. Apart from these generic Olympic principles, the ETTU commitment is clear and unmistakable: ETTU is committed to providing a sport environment free of harassment on any basis without exception. Therefore, not permitting Appellant 2 and 3 to compete and to not invite or allow Belarusian and Russian players and officials in events hosted by ETTU does not seem to be appropriate from a sporting point of view and discriminator [sic, discriminatory]. *ETTU Executive Board has failed to credibly argue that the measures are about more than a political measure/statement".*

120. The Panel reads this passage as a clear determination on the part of the ETTU BoA that the decision by the ETTU EB *"to not invite or allow Belarusian and Russian players and officials in events hosted by ETTU"*

was inappropriate and discriminatory and that the ETTU BoA was *not* persuaded by the ETTU EB that the decision in this respect was something other than a political measure or statement.

121. However, when asked to clarify its decision in this respect the ETTU BoA stated that *"The decision of the BoA with regard to players and officials is limited to the semi-final and final. The other measures set by the ETTU remain unchanged"*. This plainly contradicts the passage just cited and would appear to suggest that the ETTU BoA did not intend to set aside that part of the ETTU EB Decision *"to not invite or allow Belarusian and Russian players and officials in events hosted by ETTU"*. This is the basis on which the Appellant proceeded, and the Panel shall do likewise.

122. By its appeal, the Appellant seeks, primarily, to set aside these decisions of the ETTU EB as confirmed by the ETTU BoA (save for that at paras. 129(b) and (c) above). The Appellant also seeks more wide-ranging relief as follows:

(i) The reinstatement of all Russian teams (whether national or club teams) and athletes for participation in ETTU competitions *"including, without limitation, the competitions mentioned in the present appeal and any other future competitions"*.

(ii) The reinstatement of the Appellant's *"right to register its national representative teams, clubs, and athletes, in the future competitions organised by ETTU without any limitation"*.

123. The Appellant contends that the Appealed Decision is flawed both procedurally and substantively.

(i) As to the former, the Appellant submitted that its procedural rights were violated by the ETTU EB during the course of its decision making.

(ii) As to the latter, the Appellant submitted that, contrary to the ETTU BoA's determination, the ETTU EB did not have the jurisdiction to make the ETTU EB Decision; and that, even if it had the jurisdiction to do so, its decision was unlawful and the ETTU BoA should have set it aside.

124. It follows that, in light of the matters outlined above as to the Panel's general approach, the questions for the determination by the Panel are as follows:

(i) Did the ETTU EB breach the Appellant's procedural rights?

(ii) Did the ETTU EB have the power to make the ETTU EB Decision?

(iii) Was the ETTU EB Decision an improper use of that power?

A. Question 1: Have the Appellant's Procedural Rights been Breached?

125. As summarised above, the Appellant contends that the ETTU EB violated various of the Appellant's procedural rights in coming to its decision(s), including, in particular, a breach of its right to be heard.

126. In the event, this can be dealt with quite shortly. The Appellant's procedural complaint is that it was denied its right to be heard before the ETTU EB at the time that it was taking the ETTU EB Decision. Even if the Appellant's complaint in this respect was valid, as to which the Panel expresses no view, any procedural irregularity has been cured not once but twice. In the first place, the Appellant enjoyed a hearing before the ETTU BoA and was heard and represented by counsel. And second, pursuant to Article R57 of the CAS Code, the Panel *"has full power to review the facts and the law"* and it *"may issue a new decision which replaces the challenged decision or annul the decision and refer back to the previous instance"*. This is well settled: see e.g., CAS 2016/A/4648; and Mavromati & Reeb, The Code of the Court of Arbitration for Sport, Commentary, Cases and Materials, p506ff. The hearing of this appeal is thus a hearing *de novo*, so that any procedural irregularity that may have taken place earlier is cured on appeal. There is no complaint on the part of the Appellant that there was any violation of its procedural rights before the BoA or the Panel; indeed, to the contrary, the Appellant has confirmed that it enjoyed a full and fair opportunity to put its case on this appeal.

B. Question 2: Did the ETTU EB have the power to make the ETTU EB Decision?

127. The next issue concerns whether or not the ETTU EB had the power to make the ETTU EB Decision.

128. Article 5 of the ETTU Constitution deals with "governance". It parcels out the separate areas of duties and responsibilities of the various ETTU organs, namely: the ETTU Congress, the ETTU EB; the ETTU Board of Directors; and the ETTU commissions, committees and officials. In this appeal, the underlying decision was taken by the ETTU EB. Its duties and responsibilities are set forth in Article 5.2 of the ETTU Constitution. It provides in the relevant provisions as follows (with emphasis added):

"EXECUTIVE BOARD

5.2.1. The Executive Board has the following duties and responsibilities:

[…]

5.2.1.4 to impose disciplinary sanctions for inappropriate conducts and violation of the Constitution and Regulations which are not expressly attributed to another body within ETTU;

[…]

5.2.1.13 to deal with all other current or urgent business and to assume all responsibilities which are not expressly attributed to another body within ETTU.

5.2.2 The Executive Board shall consist of the President, the Deputy President, the Vice President for Finance and five (5) Vice Presidents, all from different Associations, and the chair of the Athletes Commission.

5.2.3 The Executive Board shall meet at least four (4) times a year and otherwise when convened by the President or at the request of

three (3) Executive Board members shall be convened within thirty (30) days".

129. In the Appealed Decision, the ETTU BoA decided, as has been noted, that the ETTU EB acted within its competence pursuant to Article 5.2.1.4 and/or Article 5.2.1.13 of the ETTU Constitution. The oddity, however, is that the Respondent, during the hearing, did not contend that the ETTU EB was acting pursuant to Article 5.2.1.4. To the contrary, it took the position that the ETTU EB was not exercising a disciplinary function when it took the ETTU EB Decision and relied on what it described as the discretionary powers set forth in Article 5.2.1.13 of the ETTU Constitution, to be exercised in order to achieve the principles and objectives set forth in the ETTU Constitution, in Article 1.3 and Article 1.4, respectively.

130. In any event, there is a disagreement between the Parties as to the essential character of the ETTU EB Decision. The Appellant contends that the decision was *"a purely disciplinary decision"*; the Respondent replied that it is not a sanction but that it was of *"an administrative nature"* and not taken to suspend or otherwise punish the Appellant and its teams and athletes for the violation of any obligation pursuant to the ETTU Constitution or the ETTU Regulations.

131. For its part, the Appellant relied on CAS 2008/A/1583 and CAS 2008/A/1584. In those appeals, the panel was concerned with a decision taken by UEFA to exclude FC Porto from the upcoming season of the Champions League on the basis that it had been guilty of match fixing in the 2003/4 season. If the decision was disciplinary then the "principle of non-retroactivity" applied, but, if administrative, it would not. This was said in relation to the divide between administrative and disciplinary measures taken by sports associations (where "CL" refers to the UEFA Champions League):

"35. Usually, measures taken by an association are divided into acts of administration and disciplinary measures (cf. also CAS 2007/A/1381, no. 55 et seq.) However, it must thereby not be overlooked that all disciplinary measures are also acts of administration. The latter is therefore the generic term. Now, it is typical for a disciplinary measure that it imposes a "sanction" on the person affected and is therefore – in order to protect this person – basically subject to a stricter test. In the decision CAS 2007/A/1381, no. 92 et seq. the sole arbitrator at the time rightly justified this with the argument that there is an imbalance between the association and the person affected. This is expressed by the fact that the person affected only has the choice of whether to accept performing the sport under the conditions dictated by the association or to give up performing the sport altogether. Since this imbalance carries the risk that the association abuses its position of power, certain protective standards must apply … in the interests of the person affected. …

37. For the question of whether the provision in Art. 1.04 of the UCL-Regulations has a disciplinary character, one must consider, inter alia, the effects, which the application of the rule has on the addressee (CAS 2007/A/1381, nos. 109 et seq.). From the addressee's point of view it undeniably has a penal character for the person affected must feel that the exclusion from the CL because of particular past conduct is a penalty for said conduct. But also from UEFA's point of view, the provision in Art. 1.04 of the UCL-Regulations does not only have the purpose of ensuring the smooth running

of the competition; for admission to the CL is excluded in Art. 1.04 of the UCL-Regulations if – to use the words of the disciplinary inspector – the candidate has seriously violated the values and objectives of UEFA. The intent and purpose of non-admission to the CL is – according to the disciplinary inspector – that a club, whose violation of UEFA's values and objectives has been established, may not take part in the most prestigious competition unpunished. The text of the "réquisitions adressées à L'Instance de Contrôle et de Discipline de l'UEFA" of 29 May 2008 reads verbatim :

"Un club dont il vient d'être établi qu'il a contravenu de manière grave aux valeurs et objectifs de l'UEFA ne saurait participer impunément, dans les mois qui suivent la condamnation, à la compétition la plus prestigieuse pour le club" ["A club which has just been found to have seriously breached the values and objectives of UEFA cannot participate with impunity, in the months following the conviction, in the most prestigious competition for the club"].

38. In the light of this analysis of the interests one can take no other view than that the (possible) non-admission of the Second Respondent to the CL also has at least an inherent disciplinary aspect".

132. The Appellant relies on the language just cited and argues that, by precluding the Appellant from participating in the Respondent's events, the Appealed Decision has *"at least an inherently disciplinary aspect"* and is therefore to be characterised as a sanction.

133. As the Panel reads CAS 2008/A/1583 and CAS 2008/A/1584, the panel in those references took the view that the decision taken by UEFA to exclude the club from the Champions League was of a penal character because it was based on the club's past misconduct. That is an important point of difference. In this case, there is no suggestion – by either Party – that the Appealed Decision was made on the basis of any act or omission on the part of the Appellant. There is no past conduct of the Appellant that brought about the decision by the Respondent to suspend the Appellant from participation in the Respondent's events. It is, of course, right to say that suspending the Appellant's right of participation will have economic and other effects on the Appellant (and its athletes) in circumstances where the Appellant had no role in and no responsibility for the situation that has led to the suspension; this is the inherent disciplinary effect of the decision taken by the ETTU EB. But, as was the case in CAS 2022/A/8708, whatever the effects of the Appealed Decision, its intention was not penal.

134. All that being so, it is the Panel's view that the ETTU EB Decision is to be characterised as a decision of an administrative nature, taken by the Respondent in an attempt to deal with the consequences of an unforeseen military conflict in Ukraine and is unrelated to *"inappropriate conducts and violation of the Constitution and Regulations"*. That being so, Article 5.2.1.4 of the ETTU Constitution does not provide the necessary constitutional power.

135. Does Article 5.2.1.13 provide the necessary constitutional power to do so?

136. As is obvious from the language used, Articles 5.2.1 through 5.2.1.12 deal with specific (or relatively so) duties and responsibilities of the ETTU EB whilst Article 5.2.1.13 is what might be

described as a general or residual duty and responsibility. The question therefore is, on the proper construction of Article 5.2.1.13, did the ETTU EB have the constitutional power to take the ETTU EB Decision?

137. Article 5.2.1.13 of the ETTU Constitution is in two limbs. The first is that the ETTU EB is allocated constitutional power to act in respect of *"current"* or *"urgent"* business that arises from time to time; and the second is that it is allocated constitutional responsibility for all matters that are not otherwise allocated to another ETTU organ. It is perfectly understandable that a board of a sports association should be allocated residual powers in this way. A number of matters will arise throughout the year that cannot wait for consideration by the association in congress so that it falls to the board to attend to such matters in the best interests of the association. Likewise, it makes perfect sense that it is the board who should act in circumstances where there has been no specific allocation of responsibility to another organ or office.

138. In this case, it is clear that the Russia-Ukraine War gave rise, in sport as elsewhere, to a range of difficult considerations that had to be grappled with on an urgent basis; and it most certainly was a current item of business to be addressed: what the Respondent should do in response to the military conflict and, for that matter, in response to the IOC Resolution, were plainly both *"current"* and *"urgent"* questions. Moreover, the constitutional responsibility to act in respect of the Russia-Ukraine War in particular or even military conflict in general had not been allocated to any other ETTU organ or office. It is clear therefore that the organ with the duty and responsibility to act in response to these difficult matters was the ETTU EB.

139. On balance, the Panel takes the view that the ETTU EB enjoyed constitutional authority to act in respect of the urgent circumstances thrown up by the Russia-Ukraine War based on Article 5.2.1.13 of the ETTU Constitution and that it took the decision by reference to its principles and objective as adumbrated in the ETTU Constitution. Therefore, the Panel takes the view that the ETTU EB took the ETTU EB Decision in accordance with its authority under the ETTU Constitution.

C. Question 3: Was the ETTU EB Decision an improper use of power?

140. In light of the Panel's determination that the ETTU EB Decision was within the constitutional power of the ETTU EB to take, the question remains as to whether, nevertheless, the ETTU EB exercised its constitutional power lawfully. In this respect, the question is whether it violated the ETTU Constitution or any applicable mandatory law(s) or otherwise exercised its power improperly.

141. The Appellant attacked the Appealed Decision on the following grounds:

(i) The Appealed Decision lacked a legal basis.

(ii) In the Appealed Decision, the ETTU BoA made a number of statements from which the Appellant cannot now resile in violation of the principle of *venire contra factum proprium*.

(iii) The Appealed Decision violated the Appellant's statutory right to take part in all ETTU competitions.

(iv) The Appealed Decision violated the ETTU Constitution and the ETTU Regulations.

(v) The Appealed Decision violated the personality rights of the Appellant.

(vi) The Appealed Decision violated the principle of equal treatment.

(vii) The Appealed Decision discriminated against the Appellant.

(viii) The Appealed Decision violated the ETTU's duty to remain politically neutral.

(ix) The Appealed Decision was disproportionate.

142. These will be considered below, albeit out of order.

Discrimination / Political Neutrality / Proportionality

143. The principal complaint on the part of the Appellant was that the ETTU EB Decision violated the ETTU's obligations (a) to maintain political neutrality and (b) not to discriminate against the Appellant on racial or political grounds. In this respect the Appellant relied on three sources of law as imposing obligations on the Respondent not to discriminate and to remain politically neutral.

(i) The first source was the ETTU Constitution itself, which, so submitted the Appellant, imposed an obligation on the ETTU to comply with the principle of *"political neutrality"* and the obligation not to discriminate.

(ii) The second source was the IOC Charter, and its Fundamentals of Olympism, principles 3 through 6.

(iii) The third source was the international conventions: Article 14 of the European Convention on Human Rights (the prohibition of discrimination); Article 1 of Protocol No.12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (prohibition on discrimination); Articles 2, 7, 12, 29 and 30 of the Universal Declaration of Human Rights. It was said that the ETTU was bound by and did not comply with these obligations.

144. As to the international conventions, it is not at all clear to the Panel how these apply to the Respondent, at least directly, in circumstances where they apply to state actors and public authorities exercising state powers but not to private bodies not exercising state powers but quasi state powers being a monopoly organisation in a specific sport – such as the ITTU respectively the Respondent for the European Continent. Moreover, there was nothing before the Panel to show that the Respondent owed, as a matter of Luxembourg respectively Swiss law, any obligation under these international conventions. In this regard, the Panel notes what was said in this respect in CAS 2011/A/2426 that, *"international treaties on human rights are meant to protect the individuals' fundamental*

rights vis-à-vis governmental authorities and, in principle, they are inapplicable per se in disciplinary matters carried out by sports governing bodies, which are legally characterized as purely private entities". Whilst the Panel has decided that the present appeal does not concern a disciplinary matter, the Panel nevertheless considers that those observations are equally applicable to the Appellant's reliance on the international conventions in this case.

145. Having said that, it is plain that the Respondent does have the same or similar obligations expressly by dint of the IOC Charter, and the *"Fundamental Principles of Olympism"* stated therein, and the ETTU Constitution. These are set forth above but for ease of reference provide in relevant part as follows:

Principles 4, 5 and 6 of the IOC Charter:

"4. The practice of Sport is a human right. Every individual must have the possibility of practising sport, without discrimination of any kind and in the Olympic spirit which requires mutual understanding with a spirit of friendship, solidarity and fair play.

5. Recognising that sport occurs within the framework of society, sports organisations within the Olympic Movement shall apply political neutrality. They have the rights and obligations of autonomy, which includes freely establishing and controlling the rules of sport, determining the structure and governance of their organisations, enjoying the right of elections free from any outside influence and the responsibility for ensuring that principles of good governance be applied.

6. The enjoyment of the rights and freedoms set forth in this Olympic Charter shall be secured without discrimination of any kind, such as race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status".

Article 1.3.1 of the ETTU Constitution:

"1.3.1 The principles of ETTU shall be general unity of action, mutual respect of Associations in their dealings with one another and the inadmissibility of discrimination against Associations or individuals on racial, political, religious, gender or other grounds".

146. It is therefore "inadmissible" (which the Panel reads as "impermissible") for the ETTU to discriminate against a member association on the bases of race, politics, or national origin. In this respect, it is generally accepted that, as a protected characteristic, "race" includes colour, ethnic or national origin, and nationality: see, for example, Article 3 of the United Nations Declaration on Race and Racial Prejudice. It therefore follows that, in confirmation of the tenets set forth in the IOC Charter to this effect, the Respondent has undertaken an express constitutional obligation not to discriminate on racial (including colour, ethnic or national origin, and nationality) or political grounds.

147. The Panel notes further that the warrant against discrimination is also an essential part of the right to equal treatment, considered to be a fundamental right in the law of sport. As observed by Lewis, A and Taylor, J., 2022, *Sport: Law and Practice*,4th ed. London Bloomsbury, at B1.27, p. 329: *"But in sport the paramount importance of ensuring a level playing-field wherever the sport is played means that all of a [sport governing body's] regulations should apply equally to all participants in the sport, absent a good objective reason for different treatment. On this basis, any unequal treatment of participants is prima facie impermissible and requires*

justification in order to be enforceable, whether the unequal treatment is based on a characteristic protected by mandatory law or on some other ground".

148. Two questions arise:

(i) Was the ETTU EB Decision discriminatory in this respect?

(ii) If so, was the ETTU EB Decision a necessary and proportionate means of attaining a legitimate objective (as per CAS 2014/A/3759; CAS 2018/O/5794 & 5798; and CAS 2020/A/6807 at paras. 315, 321)?

149. The Panel notes that it was common ground in CAS 2014/A/3759 and CAS 2018/O/5794 & CAS 2018/A/5798 that the party seeking to challenge an allegedly discriminatory regulation bears the burden of establishing that the rule discriminates on the basis of a protected ground. It was also common ground in those cases that, if the regulation did so discriminate, the burden of proof shifted to the other party (the IAAF in those cases) to establish that the regulation was necessary, reasonable and proportionate. The Panel is of the view that the same approach should logically apply here.

150. In the Panel's view, the answer to the first question is plainly yes. The ETTU EB Decision was directed at the Appellant because it is Russian. There is no evidence that the Appellant (or its members) expressed any political opinion in relation to the Russia-Ukraine War (or anything else for that matter) or that the Respondent reacted according to any such expression of opinion. It is however clear enough to the Panel that the singular reason for the measures taken by the Respondent against the Appellant was due to the race, national origin, and nationality of the Appellant.

151. In this regard, the situation here is akin to the eligibility rules that were the subject of the challenge in CAS 2014/A/3759 (which expressly applied only to female athletes) and in CAS 2018/O/5794 & 5798 (which expressly applied only to athletes who were recognised at law as female or intersex) and which in both cases expressly imposed eligibility restrictions on a subset of those female/intersex individuals on the basis of certain biological characteristics possessed by those individuals. In light of the fact that the regulations only applied to certain female or intersex athletes and imposed restrictions on those individuals which were not imposed on either male athletes or female/intersex athletes who lacked the specified biological characteristics, the CAS panels in those cases held that the regulations were *prima facie* discriminatory and, therefore, the onus was on the IAAF to establish their validity. It is apparent that this conclusion was reached by reference to the anti-discrimination provisions in the IAAF's Constitution and the Olympic Charter, and did not turn on the application of any international human rights instrument or any provision of Monegasque law.

152. That is of a piece with the position here. The ETTU EB Decision offended the anti-discrimination provisions set forth in the ETTU Constitution and the IOC Charter and did not, directly, turn on the application of any of the international conventions.

153. It appears to the Panel that this was certainly the view of the ETTU BoA

itself. As described above, the ETTU BoA was of the view that the decision not to invite or allow Belarusian and Russian players and officials in events hosted by ETTU was not one of the sanctions provided for in the ETTU Regulations and that, moreover, the decision was contrary to the anti-discrimination provisions set forth in terms Article 1.3.3 of the ETTU Constitution and the Olympic Charter – and was discriminatory. The Panel agrees.

154. The Panel therefore concludes that the ETTU Decision is discriminatory.

155. Applying a similar approach to that applied in CAS 2014/A/3759 and CAS 2018/O/5794 & 5798, it follows that the ETTU therefore bears the burden of establishing that the ETTU EB Decision is a necessary, reasonable and proportionate means of attaining a legitimate objective. If the ETTU is unable to discharge that burden, then the Panel must declare this element of the ETTU EB Decision to be invalid.

156. Dealing first with the legitimate objective, it was submitted by the ETTU that the objective of the ETTU Decision was *"to protect the principles enshrined in article 1.3. and 1.4. of the ETTU Constitution"*. As noted above, Article 1.3 of the ETTU Constitution is headed "PRINCIPLES" and Article 1.4 is headed "OBJECTIVES".

157. As to the Principles, the particular principles relied upon by the Respondent during the hearing were Articles 1.3.1, 1.3.2, 1.3.3, 1.3.4 and 1.3.6. of the ETTU Constitution. As to these:

(i) Principle 1.3.1 provides that *"The principles of ETTU shall be general unity of action, mutual respect of Associations in their dealings with one another and the inadmissibility of discrimination against Associations or individuals on racial, political, religious, gender or other grounds"*. The Respondent provided no elucidation of how the ETTU EB Decision was made in furtherance of this principle. By contrast, the same principle was relied upon by the Appellant in support of its argument that the Respondent was bound by a constitutional principle not to discriminate.

(ii) Principle 1.3.2 provides that the ETTU *"is committed to providing a sport and work environment in which all individuals are treated with respect and dignity. Each individual has the right to participate and work in an environment which promotes equal opportunities and prohibits discriminatory practices"*. Once again, there was no explanation by the Respondent as to how it was that the ETTU EB Decision was made in furtherance of this principle; and, once again, the same principle was relied upon by the Appellant in support of its argument that the Respondent was bound by a constitutional principle not to discriminate.

(iii) Principle 1.3.3 provides that the ETTU *"is committed to providing a sport environment free of harassment on any basis without exception"*. The same comments apply.

(iv) Principle 1.3.4 provides that the ETTU *"is committed to take a responsible approach to safeguarding the environment and managing resources through its practices in hosting events and*

in managing its operations". The Respondent did not explain why this principle is relevant or how it was furthered by the ETTU EB Decision. It appears to the Panel to be plainly irrelevant here, relating as it does to the preservation of the environment.

(v) Principle 1.3.6 provides that the ETTU *"shall co-operate with ITTF, the European Olympic Committees (EOC), the European Paralympic Committee (EPC), and other organisations that recognise it as the controlling and governing authority for table tennis throughout Europe"*. Once again, there was no attempt by the Respondent to explain the application or furtherance of this principle. It does appear however that the ETTU EB Decision was taken in a manner of co-operation with the ITTF inasmuch as the minutes of the relevant ETTU EB meetings show that the ETTU EB *"accepted to follow the ITTF decision"*.

158. As to the Objectives, despite submitting that the ETTU EB Decision was made in furtherance of the ETTU objectives as set forth in the ETTU Constitution, the Respondent relied on no particular objective set forth in Article 1.4 of the ETTU Constitution. It suffices to say that, having read Article 1.4 of the ETTU Constitution, none appears to be engaged in this appeal save for that objective which provides that the ETTU shall advance the constitutional principles in Article 1.3.

159. Instead, the gist of the Respondent's position was that the ETTU Decision was taken in order protect the safety and integrity of the ETTU's competition.

160. This is reflected in the contemporaneous evidence:

(i) On 28 February 2022, the IOC EB Resolution was issued. It recommended that IFs *"not invite or allow the participation of Russian and Belarusian athletes and officials in international competitions"* on the basis that it was necessary to do so *"in order to protect the integrity of global sports competitions and for the safety of all the participants"*.

(ii) On 1 March 2022, the ITTF Executive Committee met and decided to follow the IOC EB recommendations directing that *"until further notice, no Russian or Belarusian players and officials will be invited or allowed in events hosted by the ITTF Group, and no Russian or Belarusian national symbols, colours, flags, or anthems will be displayed.* There was no stated basis for the decision.

(iii) On 2 March 2022, the ETTU EB met and decided to *"follow the ITTF decision"* (i.e., the ITTF decision of 1 March 2022). (This is the ETTU Decision of 2 March 2022.) The minutes are silent as to the objective of or the basis for the decision.

(iv) On 3 March 2022, the ETTU EB met again. At the meeting, the ETTU EB decided that *"Russian clubs will not be permitted to compete in any European Club competitions for the 2021-2022 season"* (This is the ETTU Decision of 3 March 2022.) The minutes of the meeting state that the decision was *"taken in order to protect the integrity of the competitions and the safety of those involved"*.

(v) On the same day, 3 March 2022, the ETTU EB sent a letter to its member associations informing them of the decision taken that day. It made no mention of the objective of the decision.

161. Accordingly, as is borne out by the contemporaneous record, the ETTU EB Decision was taken in order to protect the integrity of the competitions and the safety of those involved.

162. Neither of these concerns was developed by the Respondent at the time in the course of making the ETTU EB Decision. In its submissions, the issue of integrity was put on the basis that there was potential for its events to be disrupted by reason of travel bans to and from Russia and/or by the refusal on the part of organisers to host events. Whilst there was no evidence of any such disruption, potential or real, for any of the Respondent's events, the Panel is in no position to gainsay that there was not, at the time the ETTU EB Decision was made, the risk of such disruption.

163. It is, in any event, apparent that the safety of the athletes (and all others involved) was an issue at the time the ETTU EB Decision was taken. The Panel has said above that the ETTU EB Decision was made against the backdrop of commencement of the Russia-Ukraine war on 24 February 2022 and the febrile atmosphere in February and March of 2022, and febrile it was.

164. The Panel therefore accepts that the preservation of the safety and integrity of the Respondent's events was a legitimate objective for the Respondent to pursue.

165. The question thus arises as to whether the ETTU EB Decision was a necessary, reasonable and proportionate means of attaining that legitimate objective, the onus of so showing being on the Respondent. This question must, of course, be asked and answered according to the specific context of the sport of table tennis as it is organised and played in Europe at the time in question. It is of no assistance to consider what has happened or what might happen in any other sport in any other circumstances. It is necessary instead to have regard to this particular sport in this particular context.

166. The elements of the ETTU EB Decision that were confirmed by the ETTU BoA are (seemingly) as follows:

(i) Belarusian and Russian players and officials will not be invited or allowed to participate in events hosted by ETTU until further notice.

(ii) No Belarusian or Russian national symbols, flags or anthems are to be displayed during events hosted by ETTU until further notice.

167. As to each, was it necessary, reasonable and proportionate?

168. It is necessary to deal with each of these elements on its own because they are substantively different decisions with manifestly different consequences. Dealing with the latter first, the Panel takes the view that the Respondent's ban on national symbols is a moderate and modest means of diffusing the potential for conflict in an around an ETTU event. This measure imposes little difficulty on the athlete or club and, importantly, imposes no restriction on the ability to participate in the sport. The Panel readily accepts that this measure

was a necessary, reasonable and proportionate means of achieving the legitimate objectives of safety and integrity.

169. The former, however, is of a different ilk. The ban on participation by athletes in their chosen sport is not only severe but likely the most severe means available to a sports governing body. In CAS 2018/A/5888, in the context of Uruguayan football, the panel was concerned with a decision taken by FIFA pursuant to an express provision in the FIFA Statutes to intervene, in *"exceptional circumstances"* in the affairs of a member association by the appointment of a *"normalisation committee"*. The panel framed the issue in this way:

"201. When assessing the validity of such decision of FIFA, the Panel must balance between the very wide discretional power of FIFA under Art. 8 of its Statutes and the clear will of the association, accepted by its members, to leave it to FIFA to decide if indeed the circumstances at stake meet the undefined requirements of the term "exceptional circumstances", while at the other hand, taking into account the fact that the appointment of a normalisation committee to replace the executive bodies of a FIFA member and deprive them from their powers and authorities is a very severe – for sure one of the most severe – means that FIFA can take. In such assessment the Panel should also consider the specific effect of the decision of FIFA and if the Normalization Committee took over the responsibility of managing the member association without limitations in respect of scope and time or if the powers of the Normalisation Committee were limited in a reasonable way by FIFA in establishing, within the decision, the scope and time frame of the appointment of the normalization committee. In the framework of such an assessment the Panel will always consider and check whether the decision taken by FIFA was necessary as a matter of last resort and if the limits of the decision does not go beyond the necessary in order to achieve the legitimate goal of the intervention".

170. A similar approach is apt here in analogous circumstances. When assessing the validity of the ETTU EB Decision the Panel must balance, on the one hand, the very wide decision-making power of the Respondent, and the clear will of the association to allow the ETTU EB to act in the best interests of the association while, on the other hand, taking into account the fact that the ban on Russian (and Belarusian) participation in ETTU events is a most severe measure and having the effects of a disciplinary decision. The Panel must also ensure that the decision taken by the Respondent was necessary as a matter of last resort and that the limits of the decision do not go beyond what is necessary in order to achieve the legitimate goal of the intervention as an administrative act.

171. Reading the contemporaneous record, the materials that the Respondent appears to have relied upon, directly or indirectly, at the time the ETTU EB Decision was taken were as follows:

(i) the IOC EB's statement of 25 February 2022 condemning the Russian government's breach of the Olympic Truce;

(ii) the ITTF Group's statement of 26 February 2022 in support of Ukraine and in alignment with the IOC EB by which it called upon the Continental Federations (i.e., including the Respondent) to

follows its and the IOC EB's recommendations;

(iii) the IOC EB Resolution by which it recommended that, *"[i]n order to protect the integrity of global sports competitions and for the safety of all the participants, the IOC EB recommends that International Sports Federations and sports event organisers not invite or allow the participation of Russian and Belarusian athletes and officials in international competitions"*; and

(iv) the decision of the ITTF Executive Committee on 1 March 2022, by which it adopted the IOC EB recommendations.

172. As has been noted above, the ETTU EB met (on 2 and 3 March 2022) and decided to *"follow the ITTF decision"* (i.e., the ITTF decision of 1 March 2022) by which the ITTF agreed to follow the recommendations set forth in the IOC EB Resolution. There is no reference in the minutes or in any other material put before the Panel of any other basis for the decision or any other consideration brought to account in the making of that decision. It was said by the Respondent that the decision was taken for reasons of safety and integrity but there is nothing from the Respondent as to why and how the continued participation of the Appellant and its members and athletes would have – in the context of European table tennis – disrupted any particular event or rendered it unsafe, and if so how, and to what extent. What in particular were the safety concerns? Had there been any statement by any stakeholder (host countries and cities included) in the sport of European table tennis that brought about a reasonable concern for the conduct of any particular event? Was there any statement or act on the part of any party that suggested that the holding of any event with Russian athletes participating would disrupt the event or render it unsafe? There is nothing in the materials before the Panel that provides an answer to these questions. The Panel notes in this context that the Respondent relied on what it said was the refusal by a German (Ukrainian born) table tennis player to compete against the Russians. Having read the press clipping relied upon by the Respondent, it is clear to the Panel that the athlete did not go so far as to refuse to play; he was critical of playing against Russian teams, to be sure, but he did not state that he would not play against them. In any event, the athlete's comments appear to post-date the ETTU EB Decision.

173. Further, when the issue of proportionality is considered, there is no evidence of any discussion or consideration by the Respondent of steps that might have been taken that were short of a complete ban on Russian participation in ETTU events. Was it feasible to hold 'closed door' events, without any public participation? Was it feasible to play matches on neutral grounds / in neutral territories? Would either of those things have alleviated the risk to safety?

174. In the absence of anything from the Respondent in this respect, the Panel is unable to conclude that the Respondent has discharged its burden of showing that its decision to ban Russian (and Belarusian) athletes from participation in all ETTU events until further notice was a measure of last resort, and was a necessary, reasonable and proportionate

means of achieving a legitimate objective.

175. In the circumstances, the Panel takes the view that the ETTU EB Decision banning the participation of Russian (and Belarusian) clubs and athletes was unlawful and should be set aside.

176. Having decided that the Appellant's appeal is partially allowed in the manner described above, it is not strictly necessary for the Panel to assess the further submissions advanced by the Appellant. Nevertheless, having heard argument on them, the Panel sets out its views below.

No Legal Basis

177. It was said that the Appealed Decision lacked a legal basis. The Appellant submitted that there was no superior decision or order to justify the ETTB EB Decision. It was argued that the IOC EB Resolution was merely a recommendation with no binding effect on the ETTU and nothing in the Olympic Charter, the ITTF Constitution or the ETTU Constitution or the ETTU regulations imposes a binding effect of such a recommendation.

178. In light, however, of the Panel's determination as to the constitutional competence of the ETTU EB, the Respondent did not need an order from the IOC (or the like) in order to provide it with the competence to act – it enjoyed such competence according to its own Constitution.

Breach of Statutory Right to Compete/ Personality Rights

179. The Appellant argued that it enjoyed a statutory right to compete in the ETTU competitions and its personality rights had been infringed.

180. In this respect, the Appellant relied on Articles 1-3 of the ETTU Regulations (Regulation B) and Articles 2.4 and 2.5 of the ETTU Constitution. Articles 1-3 of the ETTU Regulations provide for 'International Eligibility', and lists the eligibility requirements for players for certain events and competitions. Articles 2.4 and 2.5 of the ETTU Constitution provide for, respectively, 'Rights of Associations' and 'Obligations of the Associations'. It is the former that is relevant here. It provides as follows (recalling that the Appellant is an association):

"2.4.1 The Associations have the following rights:

2.4.1.1 to appoint up to two (2) representatives (referred to as delegates) to take part in the Congress;

2.4.1.2 to submit proposals or resolutions for inclusion in the agenda of the Congress;

2.4.1.3 to nominate candidates for election or appointment according to the specific rules;

2.4.1.4 to enter players for participation in competitions organised under the authority of ETTU according to the specific qualification rules of each competition;

2.4.1.5 to take part in and benefit from ETTU's assistance, development and educational programmes;

2.4.1.6 to exercise all other rights arising from the Constitution or other ETTU regulations".

181. In this context, the following matters appear to be common ground:

(i) The Appellant (and/or its athletes) meets the applicable eligibility requirements pursuant to the ETTU Regulations.

(ii) The Appellant enjoys the rights as an association as set forth in Article 2.4 of the ETTU Constitution.

(iii) There has been no conduct on the part of the Appellant that would enable the Respondent to suspend those rights.

(iv) The Appealed Decision has, at least on a temporary basis, denied the Appellant the ability to enjoy those rights.

182. The question for the Panel is whether that denial is lawful.

183. The difficulty with this submission on the part of the Appellant is that it is clear that there are competing rights in tension here: the Appellant's rights as an association and its personality rights on the one hand and the Respondent's right to take steps in furtherance of a legitimate objective on the other. It is plain that none is an absolute right, to be enjoyed absolutely and without infringement or curtailment in any circumstances, with the result that it is a matter of balancing the respective rights.

184. In the abstract, therefore, it was open to the Respondent to curtail the Appellant's rights qua association provided that it did so lawfully. The decision to curtail the Appellant's rights of participation is not, of itself, an actionable breach of the ETTU Constitution by the Respondent.

Breach of the ETTU Constitution and the ETTU Regulations

185. It was next submitted by the Appellant that the Appealed Decision violated both the ETTU Constitution and the ETTU Regulations.

186. The Appellant's submissions in this respect are set forth above but, for present purposes, may be summarised in the following way:

(i) Article 2.3.6 of the ETTU Constitution provides the ETTU EB with the power to suspend an association member, provided that the member is afforded an opportunity to be heard and all other associations have been informed and provided with reasons. The Appellant was suspended but was not offered the opportunity to be heard.

(ii) It is only open to suspend an association if it has committed a serious violation of its obligations. The Appellant has violated no obligation, and none is alleged.

(iii) There is no power in the ETTU Regulations that provides the basis for a sanction *"not to permit to compete"* or *"not to invite"*. All of the permissible sanctions are set forth in Article 3.2 of Annex B Catalogue of Disciplinary Sanctions of the ETTU Regulations and there is no mention of these sanctions.

(iv) Any sanction must be *"predictable"* and *"proportionate"*. The sanction here is neither.

187. In light of the Panel's determination that the ETTU EB Decision is properly characterised as a decision of an administrative nature and not disciplinary, these submissions by the Appellant miss the mark. The ETTU EB Decision was not a sanction such that the constitutional safeguards with respect to sanctions are inapplicable. And whilst it is correct to say that the ETTU Regulations make no express provision to "not to invite" an association member, that is neither here nor there given that, as the Panel has held, Article 5.2.1.13 of the ETTU Constitution does provide the ETTU EB with the constitutional power to make such a decision.

Equal Treatment

188. It was submitted by the Appellant that the Appealed Decision violates what was said to be the fundamental principle of equal treatment. The gist of the submission in this respect was that the Respondent did not react in the same way when faced with various other recent conflicts, from the war in Afghanistan through to the conflict in Yemen.

189. It is enough to say that the Panel is unpersuaded by this submission. No two conflicts are the same (or even similar) and no two conflicts require the same response from an IF. In this respect, the Panel agrees with what was said at para. 160 of CAS 2022/A/8708 to the effect that it does not assist the Panel to compare and contrast other conflicts and the responses thereto by the international community and international sports governing bodies. Each conflict stands alone and the responses to each conflict are to be assessed independently.

190. In the result, the Panel does not consider that there has been any violation by the Respondent of the principle of equal treatment.

Venire Contra Factum Proprium

191. It was submitted by the Appellant that, in the Appealed Decision, the ETTU BoA made a number of statements from which the Appellant cannot now resile in violation of the principle of venire contra factum proprium.

192. The Panel takes the view that the invocation of the principle here is misconceived. The essence of the principle, whether described as *venire contra factum proprium* or estoppel, is that one party represents certain matters, or acts in a certain way, on which representations or conduct the other party relies to its detriment. See CAS OG 02/006 and CAS 2000/A/274 at para. 37:

"The prohibition against venire contra factum proprium, often compared to the common law principle of estoppel, is widely recognised under Swiss law. This prohibition is based upon the concept of abuse of right under Article 2 of the Swiss Civil Code. Where a party adopts a position contrary to one it has previously taken, its conduct may constitute an abuse of right when the other party has relied on the initial position to its detriment: TUOR/SCHNYDER/SCHMID, Das schweizerische Zivilgesetzbuch, 11th ed., Zurich 1995, p. 57; H. CAS 2000/A/274 S. / FINA, award of 19 October 2000 12 MERZ, Berner Kommentar, Kommentar zum schweizerischen Zivilrecht, Band I, Bern 1962, re: Art. 2 Swiss Civil Code, notes 402-403".

193. It is true that the ETTU BoA made a number of statements in the Appealed Decision, but these were made in the context of an appellate review and there is no suggestion, let-alone evidence, that the Appellant relied on these statements in any way to their detriment.

D. Conclusion

194. In view of all the above considerations, the Panel holds and determines that the Appellant's appeal succeeds in part in that Appealed Decision is set aside in part and upheld in part as follows:

(i) The decision that the ETTU EB had jurisdiction to make the ETTU EB Decision is upheld.

(ii) The decision that Russian teams, athletes and officials will not be invited or allowed to participate in events hosted by ETTU until further notice is set aside as unlawful.

(iii) The decision that Russian national symbols, flags or anthems are not to be displayed during events hosted by ETTU until further notice is upheld.

195. The other substantive relief sought by the Appellant is dismissed. There is no basis on which the Panel is able to make broad rulings reinstating all Russian teams for participation in ETTU competitions and/or reinstating the Appellant's so-called right to register its national teams, clubs and athletes in future ETTU competitions. Such relief is beyond the ambit of the Appealed Decision and therefore beyond the ambit of the Panel's jurisdiction on this appeal from the Appealed Decision.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the Table Tennis Federation of Russia on 10 May 2022 against the European Table Tennis Union in relation to the decision of its Board of Appeal of 26 April 2022 is partially upheld.

2. The decision of the Board of Appeal of the European Table Tennis Union of 26 April 2022 is upheld in part and set aside in part as follows:

2.1. The decision of the European Table Tennis Union of 2 March 2022 that no Belarusian or Russian national symbols, flags or anthems are to be displayed during events hosted by the European Table Tennis Union until further notice is upheld.

2.2. The decision of the European Table Tennis Union of 2 March 2022 that Belarusian and Russian players and officials will not be invited or allowed to participate in events hosted by the European Table Tennis Union is set aside.

2.3. The decision of the European Table Tennis Union of 3 March 2022 that Russian clubs are not permitted to compete in any European Club competitions for the 3021-2022 season, including in particular the Men's Champions League 2021-2022 is set aside.

2.4. The requests of the Table Tennis Federation of Russia (i) to

reinstate *"all Russian teams, whether national representative teams or club teams, and athletes for participation in ETTU competitions, including, but without limitation, in the competitions mentioned in the present appeal and any other future competitions"*; and (ii) to reinstate *"its right to register its national representative teams, clubs, and athletes, in the future competitions organised by ETTU without any limitation"* are dismissed.

3. (…).

4. (…).

5. All other and further claims or prayers for relief are dismissed.

CAS 2023/A/9979
Renato Kayzer de Souza v. Daejeon Hana Citizen Football Club
award of 27 January 2025

Football; Employment-related dispute; Burden of proof; Standard of proof; Standing to be sued; Tangible interest; Salaries during a recovery period

Panel
Mr Rui Botica Santos (Portugal), Sole Arbitrator

1. **Each party must fulfil its burden of proof to the required standard by providing and referring to evidence to convince a panel that the facts they plead are established.**

2. **The standard of proof plays an essential role as it ensures an objective evaluation of claims and defences. Above all, it ensures a minimum level of proof required by the parties, appropriate to the specifics of each case. The applicable standard of proof in a contractual dispute between a club and a player, is "comfortable satisfaction" or "balance of probabilities" which, in practical terms, means "free evaluation of evidence". This standard requires that there is greater evidence in favour of a particular claim, as opposed to the evidence adduced by the counterparty(ies).**

3. **The issues of legitimacy to bring forward a "claim" depend on the manner in which the "claim" is presented and constructed by the "claimant". It is up to the "claimant" to configure the scope of the dispute/claim, specifically by presenting the facts and the legal reasons underlying their request and by calling upon the parties they believe have the standing to be sued to be included in the claim. Under Swiss law, the issue of standing to be sued is an issue to be decided on the merits of a case.**

4. **Parties, who are sufficiently affected by a decision, and who have a tangible interest of a financial or sporting nature at stake, may bring a claim, even if they are not addressees of the measure being challenged.**

5. **Salaries not earned during the recovery period may fall within the concept of reparable damage but only until the agreed *terminus* of the existing temporary employment relationship.**

I. PARTIES

1. Mr Renato Kayzer de Souza (the "Appellant" or the "Player") is a Brazilian professional football player, born on 17 February 1996, and currently playing for the Brazilian club Fortaleza EC, which competes in the Brazilian First Division (Série A) of professional football.

2. Daejeon Hana Citizen Football Club (the "Respondent", the "Club" or "Daejeon") is a South Korean professional football club with headquarters in Daejeon, Republic of Korea, currently playing in the Korean First Division and is affiliated with the Korea Football Association, which in turn is affiliated with the *Fédération*

Internationale de Football Association ("FIFA").

3. The Appellant and the Respondent are hereinafter jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts and allegations based on the Parties' submissions. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. This factual background information is given for the sole purpose of providing a synopsis of the matter in dispute. Although the Sole Arbitrator has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, he refers in this award (the "Award") only to the submissions and evidence he considers necessary to explain his reasoning.

II.1 Background facts

A) The contractual relationship between the Player and Fortaleza Esporte Clube

5. On 8 February 2022, the Brazilian football club Fortaleza Esporte Clube ("Fortaleza") and the Player entered into an employment agreement in which the latter undertook to provide his services as a professional football player to Fortaleza between 9 February 2022 and 31 December 2025 (the "Fortaleza Employment Agreement").

6. According to Clause 4 of the Fortaleza Employment Agreement, the Player was entitled to receive the following amounts as fixed remuneration:

"4.1. For the services rendered, the CONTRACTOR will pay the [Player] for the period from 09/02/2022 to 31/12/2022 the gross monthly remuneration of R$ 138,000.00 (one hundred and thirty-eight thousand reais);

4.2. For the period from 01/01/2023 to 31/12/2023, the CONTRACTOR will pay the [Player] the gross monthly remuneration of R$ 150,000.00 (one hundred and fifty thousand reais);

4.3. For the period from 01/01/2024 to 31/12/2024, the CONTRACTOR will pay the [Player] the gross monthly remuneration of R$ 156,000.00 (one hundred and fifty-six thousand reais);

4.4. For the period from 01/01/2025 to 31/12/2025, the CONTRACTOR will pay the [Player] the gross monthly remuneration of R$ 162,000.00 (one hundred and sixty-two thousand reais)".

(Free translation provided by the Appellant and not disputed by the Respondent)

B) The loan of the Player from Fortaleza to Daejeon

7. On 30 June 2022, Fortaleza, the Player and the Club entered into a loan agreement for the temporary transfer of the Player to the Club (the "Loan Agreement"). The most relevant clauses of the Loan Agreement read as follows:

"1.2. FORTALEZA, as the legitimate holder of the federative rights (sports bond) of the PLAYER, with his consent, in this act and in the best form of law, assigns said rights to DAEJEON for the period from

07/01/2022 to 12/31/2022" ("Clause 1 of the Loan Agreement").

"2.1. As consideration for the temporary transfer of the PLAYER's federative rights, DAEJEON undertakes to pay FORTALEZA a fixed net transfer fee in the amount of USD 200,000 (two hundred thousand dollars), by crediting FORTALEZA's account on the date of presentation of the PLAYER at the headquarters of DAEJEON, to be paid in a single instalment until the date of the PLAYER's presentation" ("Clause 2 of the Loan Agreement").

"3.1. During the term of this temporary transfer, DAEJEON undertakes to sign an employment contract with the PLAYER, in accordance with the legislation applicable to the football player, also respecting FIFA regulations" ("Clause 3.1 of the Loan Agreement").

"3.2 DAEJEON undertakes to pay the entirety of the PLAYER's monthly salaries in the period indicated in Clause 1.2 above, based on a contract between DAEJEON and the PLAYER, as well as any charges arising from the relationship of work, leaving FORTALEZA expressly released from any responsibility in relation to such obligations during the term of the temporary transfer. In addition, the Parties agree that the PLAYER may not return to FORTALEZA during the period of the temporary transfer" ("Clause 3.2 of the Loan Agreement").

"4.1. DAEJEON shall take out an occupational accident insurance for the PLAYER, with the PLAYER himself as beneficiary, with an indemnity in the amount of USD 400,000.00 (four hundred thousand American Dollars), as well as an insurance to cover death, disability permanent and personal accidents of the PLAYER, with FORTALEZA as the beneficiary, with an indemnity in the amount of USD 2,000,000.00.

4.1.1. If there is no insurance contract that would have the PLAYER as the beneficiary the responsibility for any accident will fall exclusively on DAEJEON, with which the PLAYER expressly agrees at this time" ("Clause 4.1 of the Loan Agreement").

"DAEJEON is responsible for all expenses related to the PLAYER's clinical recovery, notably, but not exclusively, expenses arising from medical treatments and clinical examinations. The parties agree that the PLAYER may not return to FORTALEZA unless in perfect physical condition, proven by the competent medical certificate, in which case, if the PLAYER is not able, this temporary assignment shall be extended for the period corresponding to full recovery of the PLAYER, under the same terms of this instrument" ("Clause 4.3 of the Loan Agreement").

8. On 1 July 2022, the Player and the Club concluded an employment agreement (the "Daejeon Employment Agreement") which was valid for the period between 1 July 2022 until 31 December 2022 as per Clause 4.1 of the Daejeon Employment Agreement. The

most relevant clauses of the Daejeon Employment Agreement read as follows:

"5. The annual salary shall mean all remuneration paid in connection with the performance of this Contract ('Annual Compensation'). The Annual Compensation to be paid by the Club to the Player during [1 July 2022] to [31 December 2022] shall be as follows:

(1) Basic Annual Compensation USD 300,000 (USD 50,000 /Month).

The club will pay to player salary from July to Dec 2022" ("Clause 5 of the Daejeon Employment Agreement).

"10.2. Upon execution of this Contract, the Club shall purchase an insurance policy against the risk of the Player's injury or death in connection with the performance of this Contract" (Clause 10.2 of the Daejeon Employment Agreement).

"11.1. The Player shall immediately notify the Club of any injury or illness related to the Player Activities. The Player and Club shall discuss in good faith whether treatment is necessary, at which medical institution to receive treatment, and what kind of treatment (surgical, non-surgical, drug, etc.) will be provided. Expenses related to treatment shall be paid in accordance with each of the following Subsections:

(1) If the Player receives treatment at a hospital designated by the Club, the Club shall pay the full cost of treatment.

(2) If the Player receives treatment at a hospital other than the one designated by the Club, the difference from the treatment expenses in Subsection 1 shall be borne by the Player. In such case, the amount of treatment expenses under Subsection 1 shall be proved by the Club, and the Player may request disclosure of the details of the calculation of treatment expenses" (Clause 11.1 of the Daejeon Employment Agreement).

C) The Player's injury

9. On 25 October 2022, the Player ruptured his Achilles' tendon, an injury which required him to undergo medical surgery and, subsequently, a lengthy period of recovery. On this same day, the Club paid the Player's salary of October 2022 (*i.e.*, USD 50,000).

10. On the 26 October 2022, the Player underwent examination with a doctor appointed by the Club who confirmed the seriousness of his injury.

11. On 27 October 2022, the Player sent the Club, through his counsel, the following communication:

"(…).

Unfortunately, on 25 October 2022, the Player ruptured his Achilles' tendon while performing his duties for the Club. Such injury unfortunately will demand a medical surgery and, subsequently, a lengthy period of recovery lasting between 5 and 7 months.

Accordingly, we hereby inform you that the Player wishes to travel to Brazil as soon as possible to undergo the required medical procedure and subsequent rehabilitation.

In this sense, we hereby kindly request you to provide the Player with the necessary flight tickets to travel from Korea to Brazil.

Considering that the Club has the obligation of bearing the medical expenses regarding the treatment of the Player, we refer to Art. 11, par. 1, item (2) of the Employment Contract and kindly request it to disclose the details of the calculation of treatment expenses.

That notwithstanding, we herein kindly reiterate that in accordance with the terms of the Employment Contract, the Loan Agreement and the rules and regulations of FIFA, the Club should comply with the payment of the entire remuneration of the Player until the expiration of the Employment Contract.

Last but not least, we remind the Club of its obligation to comply with the payment of the insurance benefit to the Player under the insurance policy purchased with the Player as beneficiary in the amount of USD 400,000 as expressly provided for in the Loan Agreement and the Employment Contract.

In this sense, we kindly request you to inform us of the procedure to follow for the Player to receive the amount provided for in the Loan Agreement as insurance benefit, namely the USD 400,000.

(…)"

(emphasis added by the Sole Arbitrator).

D) The Dispute between the Parties

12. On 28 October 2022, a meeting between the Club, the Player and his Korean agent, Mr. Ho Yun Cho, took place, and the Club produced the following "memorandum of meeting":

"(…)

Subject: Player Renato Kayzer de Souza x Daejeon Verbal Agreement

Considering the current injury situation of the Player and his request to return to Brazil for treatment, the Club met with the Player (…) with his agent in Korea, ***to friendly discuss about the costs of treatment and the payment of his salaries.***

The Club informed the Player that in case the treatment takes place in Brazil, the Player would not be able to receive the insurance policy reward which the Player was entitled to, as of the terms of the Certificate of Insurance.

Based on the Medical Certificate issued by the Club's medical department doctor, which recommended a total of period of six months of rehabilitation after the operation, the following terms were proposed by the Player, through his agent, to the Club:

1. *The payment of an amount of USD 100,000.00 equivalent to two months of the Player's remainder salary (November and December 2022);*

2. *The payment of an amount of USD 150,000.00 equivalent to the net amount of four months of the Player's salary;*

3. *The payment of all medical expenses and costs related to the Player's treatment (including flight tickets to Brazil for the Player) by the Club.*

After all payments are made by the Club, the Player shall not be entitled to any other amount from the Club.

The Club accepted the terms 1 and 3 above, however, in regard to item number 2, the Club informed the Player that they would need to discuss it internally and afterwards would inform the Player about the acceptance of the proposal by December.

(…)"

(emphasis added by the Sole Arbitrator).

13. The "memorandum of meeting" was only signed by Mr. Soo Bok Kim (the Manager of the Club's Football Department) and Mr. Juwon Park (the Head of the Club's Football Department).

14. On 29 October 2022, the Club agreed to let the Player undergo surgery in Brazil at a hospital of his choice.

15. On 31 October 2022, the Player travelled to Brazil to be submitted to the necessary surgery and rehabilitation.

16. On 8 November 2022, the Player underwent surgery at a hospital in São Paulo, Brazil. The surgery was successful and a further period of 8 to 10 months of rehabilitation period was prescribed to the Player. The Player chose the facilities of the Brazilian club Athletico Paranaense to undergo physiotherapy and rehabilitation treatments.

17. On 17 November 2022, the Player sent to the Club, through his counsel, the following communication:

"As you are already aware, [the Player] has hired us to take care of his interests regarding the 'Professional Football Player Contract' concluded with your club.

Please find below a short summary of the events for your ease of reference.

(…)

On 1 July 2022, the Player and Club entered into the Professional Football Player Contract – For Foreign Players – with term until 31 December 2022 ('Employment Contract').

Unfortunately, on 25 October 2022, the Player ruptured his Achilles' tendon while performing his duties for the Club. Such injury unfortunately demanded a medical surgery and, subsequently, a lengthy period of recovery lasting between 8 and 10 months.

As explained in our correspondence of 27 October 2022, the Club has the obligation of bearing the medical expenses regarding the treatment of the Player, we refer to Art. 11, par. 1, item (2) of the Employment Contract.

On 29 October 2022, the Club acknowledged the seriousness of the injury sustained by the Player and permitted him to undergo the surgery at any hospital of his choice.

On 31 October 2022, the Player travelled to Brazil with the purpose to get the necessary medical treatment.

Subsequently, the player travelled to Curitiba, Brazil and a Magnetic Resonance Imaging (MRI) scan was performed on 1 November 2022, confirming the initial finding of the rupture of his Achilles tendon.

On 8 November 2022, the Player underwent surgery in São Paulo and will soon begin the necessary physiotherapy treatment at the facilities of Club Athletico Paranaense as from 22 November 2022 and such procedure shall be continue for about 8 to 10 months (see Exhibit – 1).

Therefore, we kindly request the Club to transfer the amount of R$ 69,166.59 (sixty-nine thousand and one hundred sixty-six Brazilian reais) corresponding to the medical expenses of the Player in his bank account as well as his travel expenses to get the appropriate medical care (see Exhibit – 2).

Lastly, we kindly remind you that the payment of the amount above is without any prejudice whatsoever to the payment of the remuneration due to the Player and set out in the Employment Contract, as well as the insurance amount of USD 400,000 indicated in the Loan Agreement.

(…)"

(emphasis added by the Sole Arbitrator).

18. On 25 November 2022, the Club paid the Player's monthly salary of November 2022 (*i.e.*, USD 50,000).

19. On 5 December 2022, in response to the Player's request for payment of his medical expenses, the Club communicated to the Player in writing that it needed time to check the relevant information and that it would revert to the Player by the end of December 2022.

20. On 6 December 2022, the Player sent to the Club the following communication:

"(…)

I acknowledge receipt your email forwarded to my attention last night (…).

I kindly request your best efforts regarding the reimburse of the expenses deriving from the medical surgery and treatment of Mr. Renato Kayzer (c.c.) as soon as possible, considering that the latter has already afforded with them couple of weeks ago.

As such, considering the relevant amounts already expended by [the Player] with the mentioned medical surgery and treatment, I kindly request your best attention in relation to said reimbursement.

(…)".

21. On 22 December 2022, the Club addressed the following communication to the Player:

"Dear Sir

(…)

It took a long time to review the mail and attached documents you sent.

I'm concerned about injury of [the Player]. (…).

We are willing to pay for Kayzer's treatment and recovery. However, in the case of flight tickets, we think it's hard to pay for a person named Puppi Gabriel who we don't know.

Therefore, we would like to pay ***R$ 66,851*** *for Kayzer's surgery and treatment by January 2023.*

If you accept it, please send us a letter saying that you accept the final amount.

The final amount will be remitted into the player's account.

(…)".

22. On 23 December 2022, the Club paid to the Player his monthly salary of December 2022, in the amount of USD 50,000, as well as the promotion bonus provided for in the Daejeon Employment Agreement also in the amount of USD 50,000.

23. On 28 December 2022, the Player replied to the Club as follows:

"Dear Sir,

(…)

On behalf of the Player, I herein confirm that the Player accepted the amount you intended to pay as reimburse of the medical expenses already supported, notably, R$ 66,851. As such, I kindly request you to transfer the referenced amount to the bank account of the Player as soon as possible. Once the referenced transfer is concluded, I kindly request you to forward me copy of the [sic]

In addition, the Player informed me that the representatives of the Daejeon F.C. offered to pay him USD 200,000 in lieu of USD 400,000 as insurance policy premium as set out in the loan agreement signed with EC Fortaleza. I am afraid to inform you though that the Player decided to decline the referenced offer. In contrast, the Player is intended to accept a reduction of the referenced total amount. Accordingly, the letter is ready to grant USD 50,000 discount, whether Daejeon F.C. undertakes to pay to the Player USD 350,000 on or before 15 January 2023.

Please, note that the counteroffer herein submitted on behalf of the Player to you attention will expire on ***30 January 2022 at 23h59 (BRT)****.*

(…)".

24. On 31 January 2023, the Club made the payment of USD 13,148.24/BRL 66,851.00 corresponding to the medical expenses incurred by the Player which the Club agreed to pay on 28 October 2022 (see para. 12 above):

"Dear Player (…).

(…).

All medical expenses related to Kayzer injury were paid today in accordance with Article 4 (2) and (3) of the loan agreement signed between Daejeon and Fortaleza.

Daejeon has paid all of Kayzer's claims, and Kayzer confirms will no longer charge the Daejeon club for medical expenses.

However, R$ 66,851 was deposited in USD due to Kayzer's bank account problem, and it is notified that it was paid in USD by applying the exchange rate on 31 Jan 2023.

Daejeon wishes for fast treatment and recovery of Kayzer.

(…)".

25. On 2 February 2023, the Player answered to the Club in the following manner:

"Dear Sir,

I acknowledge receipt the email forwarded to our attention (…).

I herein confirm that the [Player] received approx. USD 13,000 relating the reimbursement of his medical expenses, namely, surgery and the beginning of his psychotherapeutic treatment.

In addition, as you are certainly aware the referenced medical treatment will still last few more months. As such, I would really appreciate to hear from you asap about the payment of the (still outstanding) amount of USD 400,000 that the Club undertook to pay to the Player within the contents of clause 4.1 of said Loan Agreement concluded.

(…)".

26. On 15 March 2023, the Club sent the Player a copy of an insurance policy certificate which contained coverage for death, disability and other injuries, with coverage limited to KRW 73,200,000, which is equivalent to an average of USD 54,649.33.

27. On 31 July 2023, the Club initiated the request of the International Transfer Certificate (the "ITC") to return the Player back to Fortaleza via the FIFA Transfer Matching System (the "TMS").

28. On 1 August 2023, the Player's doctor, Dr Mauricio Póvoa Barbosa, issued the medical clearance which confirmed the full recovery of the Player from the injury suffered.

II.2 Proceedings before the Dispute Resolution Chamber of FIFA

29. On 24 February 2023, the Player filed a claim against the Club before the Dispute Resolution Chamber of the FIFA Football Tribunal (the "DRC") and in support of his requests for relief stated, *inter alia,* that the Loan Agreement determined that the Club had an obligation to take out an insurance policy for the Player with the latter himself as the beneficiary to cover the risk of occupational injuries.

30. On 3 April 2023, the Club filed its answer to the claim and, in support of its requests for relief, stated, *inter alia*, that the Player lacked standing to sue as he was not a part of the Loan Agreement. However, even if this was not the case, the Daejeon Employment Agreement clearly stated that the Club only had the obligation to contract a life and accident insurance and did not establish any amount to be covered; in addition, the Player had waived any previous understandings as per Clause 22.2 and 22.3 of the Daejeon Employment Agreement. Finally, the Club argued that the Parties had reached an understanding at a meeting on 28 October 2022 in which the Player agreed to receive a total of USD 250,000 plus reimbursement of his medical expenses and no other amount would be due by the Club.

31. On 7 July 2023, the DRC passed its decision (the "Appealed Decision") which concluded:

"1. The claim of the Claimant, Renato Kayzer De Souza, is rejected.

2. This decision is rendered without costs".

32. <u>The grounds of the Appealed Decision may be summarized as follows:</u>

i) The Player's claim is related to the payment of USD 400,000 as compensation per Clause 4.1 of the Loan Agreement.

ii) Clause 4.1 of the Loan Agreement mandates the Club to procure occupational accident insurance for the Player, with a USD 400,000 indemnity, and another insurance policy covering death, disability, and personal accidents, with

Fortaleza as beneficiary for USD 2,000,000.

iii) The "indemnity" provided for in Clause 4.1 of the Loan Agreement corresponds to the minimum insurance amount of USD 400,000 but it does not clearly grant the player a right to the entire USD 400,000 upon triggering the clause's provisions, *i.e.*, the occupational accident.

iv) As per Clause 4.1 of the Loan Agreement, in the absence of an insurance contract benefiting the Player, the Club would bear full responsibility for accidents affecting the Player.

v) As such, it's clear that the Club has the obligation to reimburse the Player for medical expenses or compensate him, based on Clause 4.1 of the Loan Agreement.

vi) The Player was adequately reimbursed for medical expenses, given evidence of costs incurred and the club's payment of USD 13,148.24, aligning with the medical report's estimate of treatment costs at approximately USD 11,692.70 (KRW 15,000,000).

vii) In view of the above, the Player's claim was rejected.

33. On 22 August 2023, the Parties were notified by FIFA of the grounds of the above decision of the DRC.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

34. On 12 September 2023, the Appellant filed his Statement of Appeal with the Court of Arbitration for Sport (the "CAS") against the Respondent with respect to the Appealed Decision, in accordance with Articles R47 and R48 of the CAS Code of Sports-related Arbitration (the "Code"). The Appellant also requested that the present case be submitted to a sole arbitrator.

35. On 9 October 2023, within the extended time limit, the Appellant filed his Appeal Brief in accordance with Article R51 of the Code.

36. On 11 October 2023, the CAS Court Office informed the Parties that, pursuant to Article R54 of the Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the case was to be decided by a sole arbitrator, appointed as follows:

Sole Arbitrator: Mr Rui Botica Santos, Attorney-at-Law in Lisbon, Portugal.

37. On 11 January 2024, within the extended time limit, the Respondent filed its Answer in accordance with Article R55 of the Code (the "Answer").

38. On 16 January 2024, the Appellant informed the CAS Court Office that it would prefer that a hearing on this matter be held, if possible, in São Paulo, Brazil.

39. On 29 January 2024, the Respondent informed the CAS that they also agreed to the holding of a hearing in São Paulo, Brazil.

40. On 20 February 2024, the CAS Court Office invited the Parties to inform if they were available to attend a hearing in São Paulo, Brazil, on 11 April 2024.

41. On 6 March 2024, the CAS Court Office provided the Parties with the Order of Procedure, which was duly signed. The Parties agreed to hold a hearing on 11 April 2024 at 09h30 (local time), in São Paulo, Brazil.

42. On 11 April 2024, a hearing was held in São Paulo, Brazil. In addition to the Sole Arbitrator and Ms. Lia Yokomizo, Counsel to the CAS (via videoconference), the following persons also attended the hearing:

1. <u>For the Appellant</u>

- Mr. André Oliveira de Meira Ribeiro – Legal Counsel
- Ms. Gwenn Le Garric – Legal Counsel
- Ms. Alice Maria Salvatore Barbin Laurindo – Legal Counsel
- Mr. Vinicius França da Rosa – Legal Intern

2. <u>For the Respondent</u>

- Mr. Cristiano Caús – Legal Counsel
- Mr. Raphael Paçó Barbieri - Legal Counsel
- Mr. Iñigo Vicente Alustiza – Legal Counsel
- Mr. Leonardo Franco Belloti – Legal Counsel (via videoconference)
- Ms. Helena Resstel Meirelles e Silva – Legal Counsel (via videoconference)
- Mr. Soo Bok Kim – Witness (via videoconference)
- Mr. Ho Yun Cho – Witness (via videoconference)
- Mr. Yerem Kang – Translator

43. As a preliminary remark, the Parties were requested to confirm not having any objection to the appointment of the Sole Arbitrator, and they so confirmed. During the hearing all witnesses were allowed to provide their testimony and the Parties' counsels had the opportunity to examine and cross-examine the witnesses.

44. After the closing submissions, the Parties confirmed that they were given full opportunity to present their cases and submit their arguments. Furthermore, the Parties expressly stated that the equal treatment of the Parties and their right to be heard had been respected. Before closing the evidentiary proceedings, the Parties proposed to ask Fortaleza to clarify (i) if during the period from January 2023 until July 2023 the Player received any salary; and (ii) the nature of the payment made by Fortaleza on 4 August 2023 in the amount of R$ 108.999.16.

45. On 2 May 2024, the Player reported the clarifications received by Fortaleza in which it was confirmed that the Player had not received any salary payment related to the period comprised between January and July 2023 and that the amount paid on 4 August 2023 was the anticipation of the Player's August 2023 salary, since Daejeon had not paid his salaries during the recovery period.

46. On 7 May 2024, the CAS Court Office informed the Parties that the evidentiary proceedings were closed.

IV. THE PARTIES' SUBMISSIONS

47. The following summary of the Parties' positions is illustrative and does not necessarily comprise each contention put forward by the Parties. The Sole Arbitrator, however, has carefully considered all the submissions made by the Parties, even if no explicit reference is made in the summary that immediately follows.

A. The Appellant's Submissions

48. In its Appeal Brief, the Appellant submits the following prayers and requests to the CAS:

"(…)

FIRST – To uphold the present appeal and dismiss the Appealed Decision in its entirety;

SECOND – To order the Club to pay the Player USD 400,000 net, plus default interest at a rate of 5% annually as from 26 October 2022 until the date of effective payment;

Alternatively, and only in the event the above is rejected:

THIRD – To order the Club to pay the Player USD 350,000 plus default interest at a rate of 5% annually payable in the following manner:

- *USD 50,000 plus default interest at a rate of 5% annually as from 1 February 2023 until the date of effective payment;*
- *USD 50,000 plus default interest at a rate of 5% annually as from 1 March 2023 until the date of effective payment;*
- *USD 50,000 plus default interest at a rate of 5% annually as from 1 April 2023 until the date of effective payment;*
- *USD 50,000 plus default interest at a rate of 5% annually as from 1 May 2023 until the date of effective payment;*
- *USD 50,000 plus default interest at a rate of 5% annually as from 1 June 2023 until the date of effective payment;*
- *USD 50,000 plus default interest at a rate of 5% annually as from 1 July 2023 until the date of effective payment; and*
- *USD 50,000 plus default interest at a rate of 5% annually as from 1 August 2023 until the date of effective payment.*

Alternatively, and only in the event the above is rejected:

FOURTH – To order the Club to pay the Player BRL 1,935,000 plus default interest at a rate of 5% annually payable in the following manner:

- *BRL 255,000 plus default interest at a rate of 5% annually as from 1 February 2023 until the date of effective payment;*
- *BRL 150,000 plus default interest at a rate of 5% annually as from 20 February 2023 until the date of effective payment;*
- *BRL 255,000 plus default interest at a rate of 5% annually as from 1 March 2023 until the date of effective payment;*
- *BRL 255,000 plus default interest at a rate of 5% annually as from 1 April 2023 until the date of effective payment;*

- *BRL 255,000 plus default interest at a rate of 5% annually as from 1 May 2023 until the date of effective payment;*

- *BRL 255,000 plus default interest at a rate of 5% annually as from 1 June 2023 until the date of effective payment;*

- *BRL 255,000 plus default interest at a rate of 5% annually as from 1 July 2023 until the date of effective payment; and*

- *BRL 255,000 plus default interest at a rate of 5% annually as from 1 August 2023 until the date of effective payment.*

At any rate:

FIFTH - To order the Respondent to pay all arbitration costs and be ordered to reimburse the Appellant the minimum CAS court office fee of CHF 1,000 and any other advance of costs (if applicable) paid to the CAS; and

SIXTH – To order the Club to pay to the Player a contribution towards the legal and other costs incurred and regarding the ongoing proceedings in the amount of CHF 10,000".

49. The Appellant advanced the following submissions in support of his position:

The groundless nature of the Appealed Decision

i) The Club failed to fulfil its contractual obligations, namely providing the agreed insurance coverage due to the injury period.

ii) The DRC only considered the treatment costs as damages and completely ignored the fact the Player stopped receiving any salaries during his recovery period from January 2023 to July 2023. The remuneration is also, as per *lex sportiva*, the most important obligation that an employer must respect. The DRC has not clarified this issue in the Appealed Decision.

iii) The Player had to face the consequences of the injury without receiving any remuneration during the period of treatment.

The insurance obligation

i) As per FIFA Circular no. 1171, para. 4.9, clubs are obliged to contract an insurance policy for their players that covers illness and occupational accident situations.

ii) In loan agreements it is common practice to oblige the new club to take out insurance to cover any loss or damage that a player may suffer during the loan period. This is why Fortaleza and Daejeon agreed on Clause 4.1 of the Loan Agreement.

iii) As per Articles 1 and 18 of the Swiss Code of Obligations ("SCO"), the true and mutually agreed intention of the parties shall prevail as the correct interpretation of a contractual clause. The Swiss Federal Tribunal ("SFT") (ATF 129 III consid. 2.5 p. 122; 128 III 419, consid. 2.2 p. 422) and CAS jurisprudence (CAS 2007/A/1219 and CAS 2013/A/3133 & CAS 2013/A/3054, among others) also confirm this approach.

iv) Clause 4.1 of the Loan Agreement establishes an obligation for the Club to take out an insurance policy with the Player as beneficiary in order to cover any occupational accidental injury with coverage for an indemnity amount of USD 400,000.

v) Clause 4.1 of the Loan Agreement also clarifies that if the Club fails to conclude such an insurance policy, it shall be responsible towards the Player for any consequences deriving from any injury suffered by the latter.

vi) Fortaleza and Daejeon agreed that the Player was to return only when in "*perfect physical condition*" (Clause 4.3 of the Loan Agreement).

vii) The Fortaleza Employment Agreement, as well as any accessory contracts (*i.e.*, image rights contracts), were suspended until the end of the loan period.

viii) Clause 4.1 of the Loan Agreement extended the Loan Agreement and, consequently, the Daejeon Employment Agreement, until the Player fully recovered from his injury.

ix) Clause 4 of the Loan Agreement was intended to cover the Player's losses and damages during the recovery/treatment period of an injury.

x) The Loan Agreement is, for the Player, similar to a "contract for the benefit of a third party", and, as such, it grants the Player rights under Article 112 of the SCO, as confirmed by the legal doctrine on the subject (DOMINGUES R., *Les transferts de sportifs*, thesis, p. 44). Moreover, CAS jurisprudence confirms that a provision in a contract can be for the benefit of someone who is potentially not a party to that contract (CAS 2018/A/5950). Once the provision for the benefit of another has been brought to the knowledge of the beneficiary, the parties to said agreement and the obligee cannot revoke the benefit that they intended for the beneficiary anymore (Commentaire Romand, CO des obligations I, Art. 112, n. 10, p.889; TF 4C.346/2001).

xi) The Player was more than just a "third-party" to the Loan Agreement because he signed this contract and intervened as a "consenting party".

xii) The Player has the right to compel the Club to comply with Clause 4.1 of the Loan Agreement, considering his position as a beneficiary of such obligation by the Club.

Losses suffered by the Player

i) Considering the automatic extension of the Loan Agreement until the Player recovered to a "perfect physical condition", as well as the suspension of the Fortaleza Employment Agreement, the Club had the obligation to pay the Player's salaries until the end of the Loan Agreement.

ii) The Player suffered an injury that left him without the ability to play

football for 9 months and he received no remuneration for most of his rehabilitation period which lasted for 7 months.

iii) The Player was denied his rightful remuneration during the period comprised between January 2023 and July 2023.

iv) Considering the Player's monthly remuneration of USD 50,000, he suffered a loss of USD 350,000 (gross). However, if the Player had been fit and able to return to Fortaleza, he would have earned a total remuneration of USD 392,025.76 during that period. In light of those amounts, the insurance indemnity of USD 400,000 seems more than reasonable.

Conclusion

i) The Appealed Decision is legally groundless, unfair and must be set aside.

ii) The Club shall be held liable for the payment of USD 400,000 as per Clause 4.1 of the Loan Agreement for failing to take out an insurance policy with the Player as a beneficiary based upon what had been contractually agreed.

iii) Subsidiarily, the Player is entitled to be compensated for the losses and damages incurred under the Daejeon Employment Agreement, which amount to USD 350,000 (gross) or USD 392,025.76, if the Panel considers the remuneration set out in the Fortaleza Employment Agreement.

iv) In addition to the outstanding remuneration, the Club shall be ordered to pay default interest to the Player under Article 104 para. 1 of the SCO.

B. The Respondent's submissions

50. In its Answer, the Respondent submits the following prayers and requests to the CAS:

"(…), the Respondent respectfully requests that:

i. This appeal be rejected in its entirety as per the facts and legal arguments above and that the Decision rendered by the FIFA Dispute Resolution Chamber on 17 August 2023, reference number FPSD-9347, be confirmed;

ii. Determine that the Appellant shall bear the arbitration costs pertaining to these CAS proceedings; and shall pay the Respondent a contribution for its legal costs incurred in an amount of CHF 20,000 (twenty thousand Swiss francs).

iii. That the compensation be not higher than USD 100,000 (one hundred thousand dollars) as per point VI, d, i above; However, in the unlikely event that the Respondent is considered to have to pay the Appellant a compensation as per the Transfer Agreement:

iv. Alternatively, that the compensation be no higher than USD 156,990.44 (one hundred and fifty-six thousand nine hundred and ninety dollars and forty-four cents) as per point VI, d, ii above; or

v. In the last case, that the compensation be no higher than USD 244,990.44 (two hundred and forty-four thousand nine hundred and ninety dollars and forty-four cents) as per point VI, d, ii above".

51. The Respondent advanced the following submissions in support of its position:

(a) The Appellant cannot rely on Clause 4.1 of the Loan Agreement

i) The present Appeal shall be dismissed given the Appellant's lack of standing to sue.

ii) All the rights and obligations established in the Loan Agreement, including its Clause 4.1, only refer to the contracting parties, *i.e.*, the Club and Fortaleza. The Player was simply mentioned and granted his consent to the temporary transfer.

iii) Clause 4.1 of the Loan Agreement is linked with the Brazilian legislation which obliges clubs to pay the player's salaries during the recovery periods. This clause was established so that Fortaleza could be exempted from paying those salaries in the event of an injury.

iv) The wording of Clause 4.1 of the Loan Agreement reveals that the Appellant's consent was given solely as a way of exempting Fortaleza from any liability for compensation, indemnity, or payment of wages in the event of an injury.

v) The Club fulfilled its obligations.

vi) The Daejeon Employment Agreement superseded any other agreements. The Club complied with Clause 10.2 of the Daejeon Employment Agreement, which substituted Clause 4 of the Loan Agreement.

(b) The correct interpretation of Clause 4.1 of the Loan Agreement

i) As per Articles 2 of the Swiss Civil Code ("SCC") and 18 para. 1 of the SCO, and established CAS jurisprudence (CAS 2019/A/6569, CAS 2017/A/5183, and CAS 2010/A/2098, among others), the analysis and interpretation of contractual clauses must consider the real intention of the parties and their good faith in the negation process.

ii) As per Clause 4.1 of the Loan Agreement, the insurance was supposed to cover only the specific costs related to the occupational accidents that the Appellant could suffer and not his salaries during the injury period.

iii) To benefit from Clause 4.3 of the Loan Agreement (extension of the Daejeon Employment Agreement and payment of the salaries during that period), the Player had to agree on the extension of the Daejeon Employment Agreement and return to South Korea, but this never happened.

iv) The Player's salaries during the period he was injured cannot be considered as expenses in the sense of Clause 4.1 of the Loan Agreement, since that would mean the unjust enrichment of the Player. In that event, the Club would have to pay USD 400,000 plus the Appellant's salaries during the entire period of his injury.

v) It is clear that, when drafting Clause 4.1 of the Loan Agreement, the Parties could not have foreseen the duration of the Player's eventual injury and, as such, it is clear that they did not intend it to cover the loss of salaries. In addition, the amount provided for in said clause cannot be seen as a liquidated damages clause, since the Appellant claims the payment of his salaries during the injury period as "losses and damages", which means the Player has the obligation to prove such damages occurred (Article 42 para. 1 of the SCO).

(c) Subsidiarily, as to the compensation due to the Player

i) If the Club is obliged to pay any compensation to the Player, it should be noted that Daejeon has already paid USD 150,000 to the Player upon his return to Brazil, as well as USD 13,148.24 as reimbursement for the medical and travel costs incurred by him.

ii) The Parties had reached an agreement by virtue of which the Club would pay USD 250,000 and the medical expenses incurred by the Player. That amount corresponded to the salaries of November and December 2022 plus USD 150,000 corresponding to another 4 month's salary (net) of the Appellant's recovery.

iii) Despite the payment of November and December 2022 salaries, the Appellant did not comply with the proposed agreement. The Appellant's conduct constitutes *venire contra factum proprium* since he created confidence in the club that the aforementioned sums would be sufficient to settle any damages or claims to which the Player might be entitled.

iv) Any compensation in favour of the Player must consider the Parties' verbal agreement, as well as the

amounts already paid by the Club, which means that any compensation shall not be higher than USD 100,000.

(d) Alternatively, the amount indicated in Clause 4.1 of the Loan Agreement shall be reduced

i) If the amount indicated in Clause 4.1. of the Loan Agreement (*i.e.*, USD 400,000), is to be considered due in full, said amount must be reduced considering the sums paid by the Club to the Player.

ii) The Player's damages correspond only to the months in which he was injured.

iii) The Player's net salary was equal to USD 39,000. This means the Player would be entitled, during the period of the injury to a total of USD 312,000 (8 salaries x USD 39,000) and any calculation of compensation shall start from this amount.

iv) The Club paid USD 150,000 to the Player upon his return to Brazil, in addition to the USD 13,148.24 paid as reimbursement for the medical costs incurred by him, when these expenses were estimated to be USD 8,138.68.

v) The compensation to be awarded to the Player, if any, shall be equal to USD 156,990.44 and, if the compensation is considered to be the USD 400,000, the amount already paid by the Club shall be deducted and the total compensation shall be USD 244,990.44.

V. JURISDICTION

58. In accordance with Article 186 of the Swiss Private International Law Act (the "PILA"), the CAS has the power to decide upon its own jurisdiction (so-called *Kompetenz-Kompetenz).*

59. Article R47 para. 1 of the Code provides, *inter alia*, as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with 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 it prior to the appeal, in accordance with the statutes or regulations of that body".

60. Article 56 para. 1 of the FIFA Statutes (ed. May 2022) reads as follows:

"FIFA recognizes the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, members associations, confederations, leagues, clubs, players, officials, football agents and match agents".

61. Article 57 para. 1 of the FIFA Statutes (ed. May 2022) reads as follows:

"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or

leagues shall be lodged with CAS within 21 days of receipt of the decision in question".

62. The present appeal is directed against a final decision of the DRC and therefore, the CAS, considering the above provisions, has jurisdiction to rule on the appeal filed by the Appellant. Moreover, the Sole Arbitrator notes that the jurisdiction of the CAS, which is not disputed, is also confirmed by the Order of Procedure duly signed by the Parties.

63. It follows that the CAS is competent to decide on the present Appeal.

VI. ADMISSIBILITY

64. Article R49 of the 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".

65. The grounds of the Appealed Decision were notified to the Appellant on 22 August 2023 and the Statement of Appeal was filed on 12 September 2023. Therefore, the Appeal was filed within the deadline of 21 days set by Article 57 para. 1 of the FIFA Statutes. The Appeal complied with all other requirements of Article R48 of the Code, including the payment of the CAS Court Office fee.

66. The Sole Arbitrator also notes that the admissibility of the Appeal is not contested by the Parties.

67. It follows that the Appeal is admissible.

VII. APPLICABLE LAW

68. Article R58 of the Code reads as follows:

"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in absence of such 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".

69. In addition, Article 56 para. 2 of the FIFA Statutes (May 2022 edition) provides the following:

"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".

70. Considering the above, the Sole Arbitrator is satisfied that the various regulations of FIFA – in particular, the Regulations on the Status and Transfer of Players (the "RSTP") – constitute the applicable law to the matter in dispute and that, subsidiarily, Swiss law shall be applied should the need arise to fill a possible *lacuna* in the various regulations of FIFA. The Parties also concur on this matter and did not dispute this conclusion.

71. In accordance with Article 26 (1) and (2) of the RSTP currently in force (October 2024 edition) and considering that the claim before FIFA was initiated on 24 February 2023, the October 2022 edition of the RSTP applies to the matter at hand as to the substance of the dispute.

VIII. MERITS

A. Introduction

A.1) The Extent of the Powers of the CAS

72. Under Article R57 (1) of the Code, the Sole Arbitrator has *"full power to review the facts and the law"*. As repeatedly stated in the CAS jurisprudence (*e.g.* CAS 2007/A/1394), by reference to this provision, the CAS appeals arbitration procedure entails a *de novo* review of the merits of the case and is not confined merely to deciding whether the ruling appealed was correct or not. Accordingly, it is the function of the Sole Arbitrator to make an independent determination as to the merits of the case.

A.2) The Applicable Burden and Standard of Proof

73. In the case at hand, the Parties are essentially in dispute as to matters related with the interpretation of the Loan Agreement and the Daejeon Employment Agreement, meaning that the main facts of the case are not disputed by the Parties. Despite this, the Sole Arbitrator deems it useful to clarify who bears the burden of proof and which standard of proof is applicable to the present case.

74. The concept of burden of proof has been considered in many CAS decisions and is well-established CAS jurisprudence (see, among others, CAS 2003/A/506, para. 42, and CAS 2007/A/1380, para. 25). It follows that each party must fulfil its burden of proof to the required standard by providing and referring to evidence to convince the Sole Arbitrator that the facts they plead are established.

75. The *standard of proof* plays an essential role as it ensures an objective evaluation of claims and defences. Above all, it ensures a minimum level of proof required by the parties, appropriate to the specifics of each case. The Sole Arbitrator notes that the doctrine and the long-standing CAS jurisprudence (see, among others, CAS 2012/A/2908, CAS 2019/A/6187 and CAS 2020/A/7605) have developed the understanding that the applicable standard of proof, considering the nature of this dispute (contractual dispute between a club and a player), is "comfortable satisfaction" or "balance of probabilities" which, in practical terms, means "free evaluation of evidence". This standard requires that there is greater evidence in favour of a particular claim, as opposed to the evidence adduced by the counterparty(ies).

76. In light of the above observations, the Sole Arbitrator considers it most appropriate to apply the standard of comfortable satisfaction.

A.3) The Scope of the Appeal

77. Before assessing the legal issues at stake, the Sole Arbitrator deems it useful to clarify the scope of the Appeal – what is this case about?

78. In this appeal, the issue at stake is neither the payment of any labour claims due up until 31 December 2022, nor medical expenses or other expenses associated with treatments carried out by the Player as a result of his injury. The Daejeon Employment Agreement entered into

force in July 2022 and its term was agreed to occur on 31 December 2022. The Player remained injured from the 25 October 2022 until 1 August 2023. The Club has provided proof of payment of all the salaries and bonuses due from October 2022 until December 2022 (see paras. 9, 18, 22, and 24 above), as well as the Player's medical expenses.

79. Therefore, the Sole Arbitrator observes that the main issues to be determined are (i) whether Daejeon is responsible for the payment of the amount of USD 400,000 – the interpretation of Clause 4.1 of the Loan Agreement – which allegedly served as a kind of compensation to be paid to the Player in case of injury, regardless of the quantification of the damages suffered (a kind of "liquidated damages" clause); or, alternatively, (ii) whether the salaries claimed by the Player for the recovery period (from January to July 2023, inclusive) are part of the damages resulting from the injury suffered and should be considered as insured losses that the Club was obliged to insure and/or to pay to the Player.

80. Considering the scope of the Appeal, the Sole Arbitrator will address the following issues:

a) Does the Player have standing to sue the Club?

b) If so, how should Clause 4.1. of the Loan Agreement be interpreted?

c) What is the Club's liability to the Player as a result of his injury? Is the Player entitled to receive the sum of USD 400,000 as compensation for the injury suffered? Or, in the alternative, is the Player entitled to receive the salaries claimed during his recovery period (*i.e.*, from January to July 2023)?

B) The Decision

B.1) Does the Player have standing to sue the Club?

81. The Player's claim essentially relies on Clause 4.1 of the Loan Agreement (see para. 7 above), an agreement that was signed by the Daejeon, Fortaleza and the Player.

82. According to the Player, and taking into account Article 112 of the SCO, the Loan Agreement may be considered as an agreement for the benefit of a third party (*stipulation pour autrui*) and the Player has the right to demand that the Club comply with Clause 4.1 of the Loan Agreement. The Club argues that the Player intervened in the Loan Agreement only as a consenting party and that this agreement has not generated any right for him, especially because Clause 4.1 of the Loan Agreement had been "designed" to protect Fortaleza from future claims in the event of damages or losses resulting from accidents or injuries suffered by the Player.

83. The Sole Arbitrator notes that the issues of legitimacy to bring forward a "claim" depend on the manner in which the "claim" is presented and constructed by the "claimant". It is up to the "claimant" to configure the scope of the dispute/claim, specifically by presenting the facts and the legal reasons underlying their request and by calling upon the parties they believe have the standing to be sued to be included in the claim (CAS 2023/A/9955). The Sole Arbitrator

highlights that under Swiss law the issue of standing to be sued is an issue to be decided on the merits of a case, as per the consistent jurisprudence of the Swiss Federal Tribunal and CAS:

"According to the Swiss Federal Tribunal, the prerequisite of the standing to be sued is to be treated as an issue of merits and not as a question for the admissibility of an appeal (Decision of the Swiss Federal Tribunal ATF 136 III 365 at. 2.1). This jurisprudence has been followed by numerous CAS Panels (see DE LA ROCHEFOUCAULD E., Standing to be sued, a procedural issue before the [CAS], in CAS Bulletin 1/2010, p. 51 and references)" (CAS 2015/A/4335, para. 45).

84. In the case at hand, there is no doubt that the Appellant construed his claim before the DRC, and now before the CAS, under the argument that Clause 4.1 of the Loan Agreement has been violated by the Club and, as such, the Club should bear the consequences and adequately compensate the Player.

85. Furthermore, the Sole Arbitrator highlights that the Loan Agreement was signed by the Player as a *"consenting intervening party"*. The Loan Agreement is not limited to establishing rights and obligations for the Club and Fortaleza. The Loan Agreement has also established several obligations related to the Player that should be taken into consideration, such as (i) the temporary transfer of his federative rights, (ii) the suspension of the Fortaleza Employment Agreement and (iii) the entry into force of a new temporary employment relationship with the Club – the Daejeon Employment Agreement.

86. Moreover, the aforementioned contract being a loan, the Player's consent would always be required for it to produce the full extent of the desired effects.

87. Finally, it is important to bear in mind that the Player and the Club had an employment relationship, and that the Player's claim is based on damages resulting from an injury caused during this employment relationship with the Club.

88. In view of the above, the Sole Arbitrator is convinced that the Player has a direct, personal and effective interest in the proceedings, since the breach of the obligation provided for in Clauses 4.1 and 4.3 of the Loan Contract concerns him directly. This solution is *"(…) consistent with the general definition of standing that parties, who are sufficiently affected by a decision, and who have a tangible interest of a financial or sporting nature at stake may bring a claim, even if they are not addressees of the measure being challenged"* (CAS 2016/A/4924 and CAS 2017/A/4943, para. 85).

89. Consequently, the Player has the necessary standing to sue (appeal) the Club and claim from it any compensation that he feels may be due to him under the terms of the Loan Agreement which concern him – in this case, under Clause 4.1 of the Loan Agreement.

B.2) How should Clause 4.1 of the Loan Agreement be interpreted?

90. The Parties are in dispute as to the correct interpretation of Clause 4.1 of the Loan Agreement.

91. The Player states that the agreed sum of USD 400,000 is an "indemnity" that should be paid in full to him since the Club failed to take out the insurance or, as an alternative view, his salaries during the injury recovery period (January 2023 to July 2023) should be included in the concept of "occupational accident" and for this reason covered by the required insurance. The Club rejects this interpretation, arguing that Clause 4.1 of the Loan Agreement only obliged the Club to take out an "occupational accident insurance" for the Player with the minimum insured amount of USD 400,000, which could be used to cover only medical expenses in connection with the injury.

92. The Sole Arbitrator recognizes that it would have made sense to include Fortaleza in this dispute (from its very beginning at FIFA level), to the extent that, in addition to being a relevant party to the Loan Agreement, it is also one of the beneficiaries of the provisions of Clause 4.1 of the Loan Agreement. In this context, Fortaleza's participation could have helped to clarify the negotiation process and the meaning of Clause 4.1 of the Loan Agreement. In any event, Fortaleza's non-participation does not prevent the Sole Arbitrator from interpreting the meaning of Clause 4.1 of the Loan Agreement and deciding the Player's claim.

93. In this process of interpreting Clause 4.1 of the Loan Agreement, the Sole Arbitrator draws attention to the provisions of Article 18 para. 1 of the SCO: *"[w]hen assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement"*.

94. In view of the above, the Sole Arbitrator shares the DRC's interpretation in relation to Clause 4.1 of the Loan Agreement. The wording of this clause clearly indicates that the common intention of Fortaleza and Daejeon was for the latter to take out an "occupational accident" insurance for the Player, with a minimum sum insured of at least USD 400,000. This interpretation based on the common interest of the Parties dispenses the use of any objective elements of interpretation (see, among others, SFT 135 III 295, consid E.5.2). The term "indemnity" in Clause 4.1 of the Loan Agreement is, in fact, the minimum amount of damage covered under the insurance, had it been taken out. The same clause further clarifies that, in the absence of taking out the required insurance, Daejeon would be solely responsible for any accident that might occur to the Player.

95. The intention of the contractual parties was to guarantee that, in the event of an injury, the Player's recovery costs, as well as any direct damage or loss, would be insured, and, in the event that Daejeon did not take out the insurance, the responsibility for any injury would fall exclusively on the Club, exempting Fortaleza from any possible liability.

96. Therefore, the Sole Arbitrator rejects the Player's interpretation that Clause 4.1 of the Loan Agreement establishes compensation for the injury suffered in a manner similar to liquidated damages clauses. Notwithstanding this conclusion, the Sole Arbitrator must analyse and decide whether the salaries

claimed by the Player during the recovery period should be included in the concept of "insured damages" under the concept of "occupational accident".

B.3) What is the Club's liability to the Player as a result of his injury? Should the salaries claimed by the Player during the recovery period from his injury after 31 December 2022 be paid by Daejeon?

97. The Sole Arbitrator begins by stating that the Club does not dispute its liability for the damages suffered by the Player in relation to the injury occurred during his employment relationship. The dispute, as previously stated, is now whether it should cover the Player's salaries for the period from January 2023 to July 2023. The answer to this question necessarily involves the following analysis:

    i) Should the salaries claimed be considered damages or losses that should fall within the concept of "insured damages" for the purposes of Clause 4.1 of the Loan Agreement or, somehow, should fall under the concept of "compensable damages"?

    ii) If not, is the Player entitled to receive such salaries due under Clause 4.3 of the Loan Agreement or to the alleged extension of the Daejeon Employment Agreement?

B.3.1 Should the salaries claimed be considered damages or losses that should fall within the concept of "insured damages" for the purposes of Clause 4.1 of the Loan Agreement or, somehow, should fall under the concept of "compensable damages"?

98. The Player argues that the "indemnity" provided for in the Clause 4.1 of the Loan Agreement covers the treatment costs and the loss of salaries due over the entire injury period. The Club, in turn, argues that Clause 4.1 of the Loan Agreement was only intended to cover the costs incurred by the Player in case of an injury, and that the issue of the loss of salaries had to be resolved in accordance with Clause 4.3 of the Loan Agreement that states: *"DAEJEON is responsible for all expenses related to the PLAYER's clinical recovery, notably, but not exclusively, expenses arising from medical treatments and clinical examinations. (…)".*

99. The Sole Arbitrator points out that "occupational accident insurance" is an insurance that aims to provide financial protection to employers and employees in the event of work-related injuries. Generally, "occupational accident insurance" covers medical expenses and lost wages up to the limit of the policy that has been negotiated and taken out by the policyholder. The amount of the policy is intended to limit the liability of the insurance company, in case its beneficiary claims the payment of any damages and losses related to the insured event. In any case, both the insurance limit and the events (damages covered) depend on how the policyholder took out the insurance.

100. The employer – and not only the employee – is also a direct beneficiary of the insurance which, by contracting occupational accident insurance, can be protected and avoid paying damages and losses attributable to it. Normally, policyholders tend to protect themselves against undeterminable financial damage and losses, such as medical expenses related to surgery and medical treatment,

as well as the employees' salaries, but, as mentioned above, it all depends on how the insurance is arranged. The insurance limit, as well as the damages and losses covered by it, are matters that can be negotiated between the insured and the insurer and these limits do not exempt the employer from liability for any damages and losses that may be greater than the amount of insurance taken out or by damages/losses not covered by the policy.

101. It should be clarified that the case at hand does not pertain to a "mandatory occupational accident insurance" which the Club was obliged to undertake, but to a contractual clause by virtue of which Daejeon accepted to cover its liability for any injury occurred with the Player during the loan. Failure to comply with Clause 4.1 of the Loan Agreement would only result in Daejeon assuming full responsibility for the payment of damages and losses incurred by the Player as a result of an injury caused during the duration of his employment relationship.

102. In view of the above, and in the opinion of the Sole Arbitrator, the analysis of the concept of "occupational accident" is indifferent to the determination of whether Daejeon (as an employer) is liable for the damages claimed by the Player. This discussion would only make sense if the salaries were being claimed from the insurance company itself, which is not the case. The focus of the assessment is whether the unearned salaries should form part of the concept of reparable damage as a result of the injury. In the opinion of the Sole Arbitrator, in principle, the salaries owed to the Player must be paid, otherwise they would constitute a clear loss of personal income resulting from the injury.

103. Therefore, the Sole Arbitrator agrees with the Player that the salaries not earned during the recovery period may fall within the concept of reparable damage, a situation that is to some extent assumed by the Club since it paid the salaries due but only until the agreed *terminus* of the existing temporary employment relationship, *i.e.*, until the end of the Daejeon Employment Agreement.

104. The question that must be further examined is whether Daejeon is liable for the salaries allegedly owed after 31 December 2022 (the salaries claimed by the Player), taking into account that the Daejeon's Employment Contract constitutes a temporary employment relationship that ended on 31 December 2022. This issue will be analyzed below.

B.3.2 Was the Daejeon Employment Agreement extended and for this reason Daejeon is liable to pay the Player's claimed salaries?

105. Although the Player's salary may be considered as a "damage" or "loss of income" subject to compensation – as previously established – the question of Daejeon's liability for the payment of the claimed salaries will depend on the understanding of the alleged extension of Daejeon Employment Agreement and/or the content of Clause 4.3 of the Loan Agreement.

106. In the Player's opinion, the extension of the Daejeon Employment Agreement occurred by virtue of the automatic extension of the Loan Agreement; while in the Club's opinion, Clause 4.3 of the Loan Agreement did not extend the

employment relationship it had with the Player and does not provide for its liability to pay salaries to the Player until his physical recovery. The Club argues that such an extension would have to be agreed with the Player, who refused to return to South Korea.

107. In the view of the Sole Arbitrator, the answer to this question should be obtained by analyzing the Daejeon Employment Agreement (the source of the obligation allowing the Player to claim compensation for unearned salaries) and its interrelationship with the other contracts associated with the Player's loan, namely the Loan Agreement and the Fortaleza Employment Agreement.

108. Turning to the analysis and decision of the issue, the Sole Arbitrator begins by stating that the Daejeon Employment Agreement – unlike the Loan Agreement – does not contain any provision for automatic extension in the event of the Player's injury, and such alleged extension cannot be inferred or withdrawn indirectly.

109. It should also be remembered that the employment relationship between the Player and Daejeon is based on the "temporary" suspension of the Player's employment relationship with Fortaleza and that the expiry of the Daejeon Employment Agreement may have automatically activated the effectiveness of the Fortaleza Employment Agreement. The Sole Arbitrator states "may" as the absence of Fortaleza in this procedure requires caution as to the conclusions that can be reached in this decision.

110. However, and regardless of these cautions and limitations, the Sole Arbitrator is comfortable in concluding that the Daejeon Employment Agreement terminated on 31 December 2022, thereby ending the source of the Club's obligation to pay the Player's monthly salary in the amount of USD 50,000. In fact, from the testimony of the witness Mr. Ho Yun Cho – the Player's South Korean agent who accompanied his departure to Brazil –, it was clear that the Player returned to Brazil on the understanding that his employment relationship had ended at the end of 2022. The same witness also stated, with great certainty and conviction, that the Player stopped communicating with him in an attitude of someone who had completely disconnected from the professional relationship with the Club. Therefore, the Player did not meet his burden to prove that the Daejeon Employment Agreement automatically extended with the Loan Agreement.

111. With regard to the interpretation of Clause 4.3 of the Loan Agreement, it is the Sole Arbitrator's opinion that such clause does not assist the argument put forward by the Player that the Club had the obligation to pay his salaries from January to July 2023.

112. The wording of Clause 4.3 of the Loan Agreement only states that *"(…) Daejeon is responsible for all expenses related to the Player's clinical recovery, notably, but not exclusively, expenses arising from medical treatments and clinical examinations. (…)"*. The Loan Agreement makes no indication as to Daejeon's liability for the payment of the Player's salaries during the period of automatic extension of the Loan Agreement. If this clause is interpreted in the reverse direction, it would reinforce the understanding that

Daejeon's liability, beyond 31 December 2022, was limited only to expenses related to the Player's clinical recovery. The absence of the reference of the Player's salaries cannot be seen as a mere detail. Firstly, because it constitutes a relevant "liability" and, secondly, it would be necessary to determine the amount of salary owed, since the amount of salary earned under the contractual relationship with Daejeon is different from that agreed in the employment relationship with Fortaleza. Which of the two salaries earned by the Player should form the basis for calculating compensable damages: the salary paid by Daejeon or by Fortaleza? The answer to this question will remain unanswered.

113. The Sole Arbitrator further refers that, following his return to Brazil, the Player never focused his claim on the payment of salaries that might fall due during the period of his recovery beyond 31 December 2022, but rather on the payment of the sum of USD 400,000 as compensation for the injury suffered. This position is well demonstrated in the communications sent to the Club on 17 November and 6 December 2022, and later on 2 February 2023 (see para. 17, 20 and 25 above). The payment of salaries from January 2023 to July 2023 was only claimed later.

114. In light of the above, the Sole Arbitrator is comfortably satisfied that the Daejeon Employment Agreement was not extended and, as such, the Club has no obligation to pay to the Player the claimed salaries from January 2023 to July of 2023.

C. Conclusion

115. Considering the above, the Sole Arbitrator is comfortably satisfied that the "indemnity" mentioned in Clause 4.1 of the Loan Agreement should be interpreted as the minimum insured amount to cover losses and damages incurred by the Player as a result of an injury and not as a liquidated damages clause to be paid to the Player in case of an injury. This is the result of the interpretation of Clause 4.1 of the Loan Agreement having in mind its wording and the intention of the Parties.

116. The purpose of the insurance was to cover losses and damages that resulted of events occurred during the Daejeon Employment Agreement, *i.e.*, until 31 December 2022. The extension of the Daejeon Employment Agreement was not proved, and the Sole Arbitrator understands that the Club's obligation to pay the Player's salaries ended with expiry of the contract term of the Daejeon Employment Agreement, *i.e.*, on 31 December 2022. Clause 4.3 of the Loan Agreement did not extend the Club's liability to the Player's salary after 31 December 2022.

117. Consequently, the Appealed Decision must be confirmed and the Appeal dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 12 September 2023 by Renato Kayzer de Sousa against the decision issued on 7 July 2023 by the FIFA Dispute Resolution Chamber is dismissed.

2. The decision rendered on 7 July 2023 by the FIFA Dispute Resolution Chamber is confirmed.

3. (…).

4. (…).

5. All other and further motions or prayers for relief are dismissed.

CAS 2024/A/11051
Natalia Rok v. Polish Anti-Doping Agency (POLADA)
award of 24 September 2025

Boxing; Doping (cocaine, benzoylecgonine); New evidence after the submission of the appeal brief and the answer; Evidentiary standard for Substance of Abuse reductions; Concentration levels and timing analysis; Burden and standard of proof to dispose intent and reduce the sanction; Proportionality of the sanction; Starting date of the sanction and credit for provisional suspension

Panel
Prof. Stefano Bastianon (Italy), Sole Arbitrator

1. **Pursuant to Article R56 of the CAS Code, parties are not authorised to supplement evidence after submission of the appeal brief and answer absent agreement or exceptional circumstances. The fact that (i) evidence was introduced by a nonparty to the proceedings (the athlete's father), (ii) no exceptional circumstances was put forward and (iii) evidence was prepared after the hearing, does not amount to a valid justification.**

2. **To benefit from the application of the 'Substance of Abuse' clause provided in Article 10.2.4.1 of POLADA Anti-Doping Rules (ADR) i.e. a reduced sanction, an athlete must establish both that ingestion occurred out-of-competition and that it was unrelated to sport performance, requiring concrete and persuasive evidence beyond mere testimony, speculations and protestation of innocence.**

3. **The WADA Guidance Notice establishes that cocaine parent compound concentrations above 10 ng/ml are likely to correspond to in-competition use, and levels that more than double this threshold create significant challenges for athletes claiming out-of-competition ingestion.**

4. **Article 10.2 of the POLADA ADR governs the period of ineligibility for the presence or use of a prohibited substance and provides for a presumption on intentional use for non-specified substances (such as cocaine) as well as a 4-year base sanction if the athlete cannot rebut the presumption on intentional use. To disprove intent, an athlete has a stringent requirement to offer persuasive evidence that the explanation he offers for an Adverse Analytical Finding (AAF) is more likely than not to be correct, by providing specific, objective and persuasive evidence of his submissions. Protestation of innocence, the lack of sporting incentive to dope, or mere speculation by an athlete as to what may have happened (such as sabotage, manipulation, contamination, pollution, accidental use, etc.) does not satisfy the required standard of proof (balance of probability) and the mere allegation of a possible occurrence of a fact cannot amount to a demonstration that that fact did actually occur: unverified hypotheses based exclusively on the athlete own testimony are not sufficient.**

5. The World Anti-Doping Code, from which the POLADA ADR is derived and on which it is based, has been found repeatedly to be proportional in its approach to sanctions. Therefore, there is no basis for reducing the sanction further by applying the principle of proportionality.

6. The athlete's 4-year period of ineligibility shall commence as from the date of the provisional suspension, thus giving the athlete full credit for the time already served in accordance with Article 10.13.2.1 of the POLADA ADR.

I. PARTIES

1. Ms Natalia Rok (the "Appellant" or the "Athlete") is a Polish professional boxer.

2. The Polish Anti-Doping Agency (the "Respondent" or "POLADA") is the National Anti-Doping organisation in Poland and a signatory to the World Anti-Doping Code ("WADC"). Its registered office is in Warszawa, Poland.

II. Factual Background

A. Background facts

3. Below is a summary of the relevant facts and allegations based on the Parties' written submissions and the evidence produced. Additional facts and allegations 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, this Award refers only to the submissions and evidence he considers necessary to explain his reasoning.

4. On 10 December 2023, the Athlete was subject to an in-competition anti-doping control by POLADA. The anti-doping control reported an Adverse Analytical Finding ("AAF") for the presence of Cocaine and its metabolite Benzoylecgonine.

5. Cocaine is a non-Specified Substance listed under class S.6 (stimulants) of the 2023 WADA Prohibited Lists, which is prohibited in competition.

6. On 2 January 2024, POLADA decided to provisionally suspend the Athlete.

7. On 4 January 2024, the Athlete submitted a preliminary explanation to POLADA, in which she indicated that her attendance at a nightclub during the night of 8 to 9 December 2023 may have been the source of the presence of the prohibited substance detected.

8. According to the Athlete, during the course of that evening, she was approached by an unknown man, and she suspects that he may have spiked her drink without her knowledge or consent.

9. On 16 January 2024, the Athlete was charged with an Anti-Doping Rule Violation ("ADRV") pursuant to the POLADA Anti-Doping Rules ("POLADA ADR") in relation to the AAF.

B. The proceedings before the POLADA Disciplinary Panel

10. On 10 October 2024, the POLADA Disciplinary Panel ruled that the Athlete had violated Articles 2.1 and 2.2 of the POLADA ADR and imposed a four-year period of ineligibility.

11. On 6 November 2024, the POLADA Disciplinary Panel issued its reasoned decision (the "Appealed Decision"). In finding against the Appellant, the POLADA Disciplinary Panel held, *inter alia,* that the Athlete gave conflicting accounts during the proceedings (i.e. spiking or sabotage) and presented no convincing evidence to support any of them. Moreover, the witnesses did not confirm any team conflicts or behaviours that might indicate sabotage.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT ("CAS")

12. On 27 November 2024, pursuant to Article R47 of the Code of Sports-related Arbitration (the "CAS Code"), the Appellant filed a Statement of Appeal against the POLADA with respect to the Appealed Decision. In accordance with Article R48 and Article R50 of the CAS Code, the Appellant proposed that the Appeal be submitted to a Sole Arbitrator. The Appellant also requested that (i) the time limit to file her Appeal Brief be suspended until her application for legal aid was considered; (ii) the proceedings be conducted in Polish, given that both Parties have their registered office or residence in Poland, or, in the alternative, in English; and (iii) POLADA be required to submit the English version of the Appealed Decision.

13. On 5 December 2024, the CAS Court Office initiated the present CAS proceeding and informed the Parties as follows:

(i) the Respondent was invited to state, by 9 December 2024, whether it consented to the suspension of the Appellant's time limit to file her Appeal Brief until the Athletes' Commission of the International Council of Arbitration for Sport had decided on the Appellant's request for legal aid;

(ii) in the meantime, the deadline for the appellant to file her Appeal Brief was suspended as from 27 November 2024 until further notice;

(iii) the Respondent was invited to inform the CAS Court Office, within 5 days, whether it agreed to the appointment of a Sole Arbitrator;

(iv) as Polish is not a CAS working language, pursuant to Article R29 of the Code, the language of the proceedings shall be English;

(v) the Appellant's evidentiary request was duly noted.

14. On 10 December 2024, the Athlete received information from POLADA concerning the estimated concentration of the prohibited substance in her A sample (i.e. Cocaine 24.2 ng/ml; Benzoylecgonine 23.9 ng/ml).

15. On 11 December 2024, the CAS Court Office informed the Parties that, in view of the Respondent's silence, the Appellant's request for the suspension of the time limit to file her Appeal Brief was granted and, accordingly, such

time limit was suspended as from 27 November 2024 until further notice.

16. On 18 December 2024, the CAS Court Office informed the Parties that, in view of the Respondent's silence on the Appellant's request to appoint a Sole Arbitrator, pursuant to Article R50 of the CAS Code it was for the President of the CAS Appeals Arbitration Division, or her Deputy, to decide the issue.

17. On 8 January 2025, the CAS Court Office informed the Parties that the Appellant's request for legal aid had been granted and, accordingly, the Appellant's deadline to file her Appeal Brief was lifted with immediate effect.

18. On 16 January 2025, the CAS Court Office informed the Parties that, in view of the Appellant's request, the deadline to file her Appeal Brief was extended by five days in accordance with Article R32 of the CAS Code.

19. On 17 January 2025, pursuant to Article R54 of the CAS Code, the CAS Court Office, on behalf of the President of CAS Appeals Arbitration Division, informed the Parties about the constitution of the Panel in this procedure as follows:

    Sole Arbitrator: Prof. Stefano Bastianon, Professor in Bergamo, Italy, and Attorney-at-Law in Busto Arsizio, Italy.

20. On 23 January 2025, the CAS Court Office informed the Parties that, in view of the Appellant's request, the deadline to file her Appeal Brief was extended by a further five days.

21. On 28 January 2025, the Appellant filed her Appeal Brief.

22. On 25 February 2025, the Respondent filed its Answer.

23. On 5 March 2025, the Appellant requested a hearing to be held, whereas it did not request a Case Management Conference ("CMC").

24. On the same date, the Respondent informed the CAS Court Office that it did not consider either a hearing or a CMC necessary.

25. On 12 March 2025, the CAS Court Office, pursuant to Article R57 of the CAS Code, informed the Parties that the Sole Arbitrator had decided to hold a hearing by videoconference and invited the Parties to confirm their availability on 19 or 28 May 2025. Separately, on behalf of the Sole Arbitrator and pursuant to Article R29 of the CAS Code, the CAS Court Office invited the Appellant to provide the CAS Court Office with a translation into English of the exhibits 2.1, 2.2 and 2.3 submitted with her Statement of Appeal and exhibits 3, 4, 5, 6, 7, 8, 9, 10, 14, 15 and 18 submitted with her Appeal Brief on or before 26 March 2025.

26. On 17 March 2025, the Appellant informed the CAS Court Office that she was available for a hearing on 28 May 2025 and that she *"will provide all translations in due time"*.

27. On 25 March 2025, the Appellant informed the CAS Court Office as follows:

    "In reference to the CAS letter dated 12 March 2025, please find attached the English

translation of Exhibit No. 10 (Expert Opinion). With regard to all other documents indicated by the Sole Arbitrator, we have already kindly requested that the Sole Arbitrator order POLADA to submit complete case file in English to CAS (as case file should be translated into English and submitted by POLADA to WADA - certainly some of the attachments such as the charge, decision and reasoning). Therefore, we respectfully request that the Sole Arbitrator order POLADA to provide information as to whether the case file has been translated into English and, if so, to submit it as part of the case file to CAS and, if not, whether any of the documents in the case file have been translated into English and, if so, to submit them as part of the case file to CAS. The above request is motivated by the Athlete's lack of financial resources to pay for translation of all documents. Notwithstanding the foregoing, in the event that the above request is deemed inadmissible or POLADA does not have English translations of the documents, I respectfully request an extension of time for the Athlete to provide translations until 18 April 2025".

28. On 31 March 2025, the CAS Court Office, on behalf of the Sole Arbitrator, informed the Parties that, in view of the Appellant's availability and of the Respondent's silence on the proposed dates, a hearing will be held by video-conference on 28 May 2025.

29. On 3 April 2025, the CAS Court Office, on behalf of the Sole Arbitrator, invited the Parties to sign and return a copy of the Order of Procedure to the CAS Court Office, by 10 April 2025.

30. On 9 April 2025, the Respondent signed the Order of Procedure.

31. On 10 April 2025, the Appellant signed the Order of Procedure.

32. On 10 April 2025, the CAS Court Office, on behalf of the Sole Arbitrator, pursuant to Article R29 of the CAS Code, asked the Respondent if it could provide the English translation of the requested documents indicated in the CAS Court Office letter of 12 March 2025, by 17 April 2025.

33. On 25 April 2025, since the Respondent had not provided the requested English translations, the CAS Court Office invited the Appellant to provide such English translations on or before 2 May 2025.

34. On the same day, upon the Appellant's request for an extension until 7 May 2025 of the deadline to provide the CAS Court Office with the requested English translations due to national holidays in Poland on 1 and 3 May 2025, the CAS Court Office granted the requested extension.

35. On 7 May 2025, the Appellant provided the CAS Court Office with the requested English translations.

36. On 28 May 2025, a hearing was held by videoconference (via Cisco Webex).

37. In addition to the Sole Arbitrator and Ms Andrea Sherpa-Zimmermann (CAS Counsel), the following persons attended the hearing:

- <u>For the Appellant:</u>

    - Ms Natalia Rok (athlete)
    - Mr Lukasz Klimczyk (counsel)

- Mr Andrzej Kwásnica (expert witness)
- Mr Krisztof Rok (witness)
- Ms Blanka Kuźniak (witness)
- Mr Maciej Reda (interpreter)

- For the Respondent:

- Mr Lukasz Krych (counsel)

38. At the outset of the hearing, the Parties confirmed that they had no objection to the appointment of the Sole Arbitrator.

39. During the hearing, the Parties were given a full opportunity to present their case, submit their arguments and submissions, and answer the questions posed by the Sole Arbitrator. The Parties and the Sole Arbitrator had the opportunity to examine and cross-examine the witnesses and the expert, who were informed by the Sole Arbitrator to tell the truth subject to sanction of perjury under Swiss law.

40. After the Parties' final arguments, the Parties' counsels confirmed that they were satisfied with the hearing and that their right to be heard had been fully respected.

41. On 21 August 2025, the Appellant's father filed an unsolicited email to the CAS Court Office together with a Toxicological Opinion prepared by Dr Milena Majchrzak-Stalik.

42. On 4 September 2025, the Respondent objected to the admissibility of the Appellant's unsolicited submission dated 21 August 2025.

43. On 10 September 2025, the CAS Court Office informed the Parties that the Sole Arbitrator decided the Appellant's unsolicited submission of 21 August 2025 was inadmissible, and that the grounds of such decision would be given in the arbitral award.

IV. SUBMISSION OF THE PARTIES

A. The Appellant

44. The Appellant requested the following reliefs:

"1) the Appeal of the Appellant is admissible;

2) that the challenged decision is set aside (annulled) and Sole Arbitrator rules on merits of the case by finding that:

a) the sanction imposed on the Athlete was excessive;

b) the 4 (four) year period of ineligibility for a first violation is rescinded;

c) there are grounds for reduction of period of ineligibility imposed on the Athlete to 3-month period, on the basis that the Athlete established that prohibited substance entered her specimen in out-of-competition period and in a context unrelated to sport, which justifies the application of the 'Substance of Abuse' clause provided in the Article 10.2.4.1 of POLADA ADR;

- or alternatively –

d) there are grounds for reduction of period of ineligibility imposed on the Athlete to 2-years period, on the basis that the Athlete established that prohibited substance entered her specimen

in a context unrelated to sport, which justifies the application of the 'Substance of Abuse' mechanism provided in the Article 10.2.4.2 of the POLADA ADR;

e) credit period of provisional suspension imposed on Athlete (starting from 2 January 2024) to the final penalty imposed by the Sole Arbitrator;

3) that the Respondent shall bear all the costs of the arbitral proceedings (if any) and contribute an amount to the legal costs and other expenses of the Athlete incurred in connection with the present proceedings;

4) that the Respondent shall bear the additional costs of the proceedings which occur due to the proceedings before the Disciplinary Panel;

5) any other prayers for relief that the Sole Arbitrator deems fit in the facts, and circumstances of the present case".

45. In support of her position, the Appellant relied on the following main arguments:

(a) The Athlete has never intentionally used any prohibited substance, including the one detected in her body.

(b) During her sports career the Athlete has always been diligent and has taken care to avoid any possible risk of violation of anti-doping rules, as shown by the numerous anti-doping controls which have never revealed the presence of any prohibited substance.

(c) According to Annex 1 of POLADA ADR, the terms "In-Competition" and "Out-of-Competition" are defined as follows:

"In-Competition: The period commencing at 11:59 p.m. on the day before a Competition in which the Athlete is scheduled to participate through the end of such Competition and the Sample collection process related to such Competition. Provided, however, WADA may approve, for a particular sport, an alternative definition if an International Federation provides a compelling justification that a different definition is necessary for its sport; upon such approval by WADA, the alternative definition shall be followed by all Major Event Organizations for that particular sport.

Out-of-Competition: Any period which is not In-Competition".

(d) The competition in which the Athlete participated and during which the anti-doping control was conducted was scheduled on 10 December 2024; accordingly, the "Out-of-Competition" period is the period prior to 23.59 on 9 December 2024.

(e) From the beginning of this proceedings, the Athlete has argued that the possible source of the prohibited substance in her body could be a drink she had at the HEX club in Toruń on the night of 8-9 December 2024.

(f) Such argument is supported by Dr Andrzej Kwaśnica's opinion which states that: *"(i) Cocaine in concentrations above 10 ng(mL could be detected in urine in more than 50 hours, while Benzoyl[ec]gonine in concentrations above 20 ng/mL could be detected in urine in more than 100 hours; and (ii) taking into account the pharmacokinetic parameters of Cocaine and Benzoyl[ec]gonine and the available experimental data, it can be concluded that in the case in question the ingestion occurred at least tens of hours prior to the collection of the urine sample for anti-doping control (i.e. in 'out-of-competition' period), and therefore it can be ruled out that the Athlete used Cocaine 'in-competition' period"*.

(g) It is undisputed that the substance was used during a visit to a club that has no connection with the sport practiced by the Appellant.

(h) The Appellant went to the club alone approximately one and a half day before her next scheduled fight.

(i) Cocaine is a typical Substance of Abuse used for recreational, not sporting, purposes, prohibited only in-competition period and therefore its use out-of-competition period *"is not criminalized under the anti-doping rules"*.

(j) The principle of proportionality plays a key role in determining the severity of punishment in cases involving ADRVs and the introduction of mechanisms allowing for the reduction of penalties based on the criterion of fault into the provision of the WADC and POLADA ADR *"does not eliminate the obligation on the part of adjudicating panels to ensure that the penalty imposed is commensurate with the violation and takes into account all the circumstances of the case"*.

(k) In assessing the proportionality of the sanction, it should be considered that (i) *"information about the Athlete's ADRV made its way to the public, so that even before this case was finally heard, the Athlete had been regarded by the public as someone with a 'doping problem'. Such a situation (…) constitutes a significant element of punishment in the form of a negative reputation in the media"*; and (ii) *"the Athlete remains suspended as of 2 January 2024, and thus for a period of time more than 12 months (which is four times the length of her sanction compared to other athletes who have used exactly the same Substance of Abuse out-of-competition and for recreational purposes"*.

B. The Respondent

46. The Respondent requested the following reliefs:

- *"the Appeal Brief is dismissed in its entirety.*

- *[T]he decision dated 10 October 2024 rendered by the Disciplinary Panel of the first instance is upheld.*

- *[T]he entire arbitration costs shall be borne solely by the Athlete.*

- *POLADA is granted a significant contribution to its legal and other costs".*

47. In support of its position, the Respondent relied on the main following arguments:

(a) In her Appeal Brief the Athlete based her defence on the hypothetical scenario that an unknown man spiked her alcohol drink in a club.

(b) However, during the proceedings before the POLADA Disciplinary Panel the Athlete excluded the possibility of drink spiking and concluded that sabotage during the competition was the only explanation. In particular, during the hearing before the POLADA Disciplinary Panel the Athlete argued that (i) she drank only one sip of the drink and therefore the drink could not be the source of the prohibited substance; (ii) she did not leave her drink without supervision; and (iii) the man from the club gave no details on how the drink could have been "strengthened".

(c) The Athlete has never stated that she knowingly took cocaine, including for recreational use. Moreover, there is no evidence of the time and amount of the substance allegedly used.

(d) The Athlete has not presented any evidence to support her explanation, and the witnesses listed in the Appeal Brief are not relevant, since they were not present at the club and their knowledge is based solely on what the athlete told them.

(e) The fact that the ADRV concerns a substance of abuse does not change the standard of proof (balance of probability).

(f) The expert's opinion filed by the Athlete is not relevant, given that it describes and evaluates a hypothetical situation not supported by clear and established facts.

(g) Factors such as stigma to the Athlete's name, stress and mental health treatment are irrelevant and do not warrant an additional reduction of sanction based on proportionality.

V. JURISDICTION OF THE CAS

48. Article R47.1 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 it prior to the appeal, in accordance with the statutes or regulations of that body".

49. Article 13.2 of the POLADA ADR

provides as follows:

"A decision that an anti-doping rule violation was committed, a decision imposing Consequences or not imposing Consequences for an anti-doping rule violation (…) may be appealed exclusively as provided in this Article 13.2".

50. Article 13.2.1 of the POLADA ADR provides as follows:

"In cases arising from participation in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS".

51. Article 13.2.3.1 of the POLADA ADR provides as follows:

"In cases under Article 13.2.1, the following parties shall have the right to appeal to the CAS:

(a) the Athlete or other Person who is the subject of the decision being appealed;

(…)".

52. The Panel notes that it is not disputed by the Parties that (i) the Athlete is an International-Level Athlete; and (ii) the Athlete is a party with a right to appeal to CAS.

53. The Panel also notes that the jurisdiction of the CAS is not contested by the Parties and is confirmed by the signature of the Order of Procedure.

54. It follows that CAS has jurisdiction to adjudicate and decide on the present appeals.

VI. ADMISSIBILITY OF THE APPEAL

55. Article 13.6.1 of POLADA ADR provides that *"the time to file an appeal to CAS shall be twenty-one (21) days from the date of receipt of the decision by the appealing party".*

56. The Appealed Decision was taken on 10 October 2024 and notified to the Appellant, with grounds, on 6 November 2024. Her Statement of Appeal was filed on 27 November 2024 and therefore within the twenty-one-day deadline set out in Article 13.6.1 of POLADA ADR.

57. In the absence of any objection to the admissibility of this Appeal, the Sole Arbitrator confirms that the Appeal is admissible.

VII. APPLICABLE LAW

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

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

59. In the present case, the *"applicable regulations"* for the purposes of Article R58 of the CAS Code are those of POLADA ADR because the appeal is directed against a decision issued by POLADA in application thereof. Moreover, in view of the fact that POLADA has its seat in Warszawa (Poland), the Sole Arbitrator holds that, in principle, Polish law shall apply on a subsidiary basis.

VIII. RELEVANT POLADA ADR

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

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

61. Article 10.2 of POLADA ADR on Ineligibility for Presence, Use or Attempted Use or Possession of a Prohibited Substance or Prohibited Method reads as follows:

> *"The period of ineligibility for a violation of Article 2.1, 2.2 or 2.6 shall be as follows, subject to potential elimination, reduction or suspension pursuant to Article 10.5, 10.6 or 10.7:*
>
> *10.2.1 The period of ineligibility, subject to Article 10.2.4, shall be four (4) years where:*
>
> *10.2.1.1 The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.*
>
> *10.2.1.2 The anti-doping rule violation involves a Specified Substance or a Specified Method and POLADA can establish that the anti-doping rule violation was intentional.*
>
> *10.2.2 If Article 10.2.1 does not apply, subject to Article 10.2.4.1, the period of ineligibility shall be two (2) years.*
>
> *10.2.3 As used in Article 10.2, the term "intentional" is meant to identify those Athletes or other Persons who engage in conduct which they knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not "intentional" if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered "intentional" if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance*
>
> *10.2.4 Notwithstanding any other provision in Article 10.2, where the anti-doping rule violation involves a Substance of Abuse:*
>
> *10.2.4.1 If the Athlete can establish that any ingestion or Use occurred Out-of-Competition and was unrelated to sport performance, then the period of Ineligibility shall be three (3) months Ineligibility.*
>
> *In addition, the period of Ineligibility calculated under this Article 10.2.4.1 may be reduced to one (1) month if the Athlete or other Person satisfactorily completes a Substance of Abuse treatment program approved by POLADA. The period of Ineligibility established in this Article 10.2.4.1 is not*

subject to any reduction based on any provision in Article 10.6.

10.2.4.2 If the ingestion, Use or Possession occurred In-Competition, and the Athlete can establish that the context of the ingestion, Use or Possession was unrelated to sport performance, then the ingestion, Use or Possession shall not be considered intentional for purposes of Article 10.2.1 and shall not provide a basis for a finding of Aggravating Circumstances under Article 10".

62. Article 4.2.3 of POLADA ADR concerns substances of abuse and reads as follows:

"For purposes of applying Article 10 Substances of Abuse shall include those Prohibited Substances which are specifically identified as Substances of Abuse on the Prohibited List because they are frequently abused in society outside of the context of sport".

63. Annex 1 of POLADA ADR defines the term In-Competition as follows:

"In-Competition: The period commencing at 11:59 p.m. on the day before a Competition in which the Athlete is scheduled to participate through the end of such Competition and the Sample collection process related to such Competition. Provided, however, WADA may approve, for a particular sport, an alternative definition if an International Federation provides a compelling justification that a different definition is necessary for its sport; upon such approval by WADA, the alternative definition shall be followed by all Major Event Organizations for that particular sport".

IX. PRELIMINARY ISSUES

64. The only preliminary issue to be addressed concerns the Appellant's unsolicited submission of 21 August 2025.

65. The Sole Arbitrator recalls that, pursuant to Article R56 of the CAS Code, unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties are not authorized to supplement or amend their requests or their arguments, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer.

66. In the present case, the Appellant submitted, by way of an unsolicited letter dated 21 August 2025, a new toxicological opinion authored by Dr Milena Majchrzak-Stalik and filed by the father of the Athlete.

67. The Sole Arbitrator notes that there is no agreement between the parties to allow such a late submission and, to the contrary, that the Respondent has formally objected to the admission of this new evidence by letter dated 4 September 2025. Nor does the Sole Arbitrator consider that any exceptional circumstances exist to justify admitting this additional evidence after the closure of the evidentiary phase. In particular: (a) the submission was introduced by the father of the Athlete, who is not a party to these proceedings; (b) the Appellant has not put forward any exceptional circumstance that might justify the late filing; and (c) the fact, admitted by the Athlete's father, that the toxicological opinion was only prepared after the

hearing does not amount to a valid justification, since the Appellant could have sought and produced such an opinion before the conclusion of the evidentiary measures.

68. Accordingly, the Sole Arbitrator rules that the Appellant's unsolicited submission of 21 August 2025 is inadmissible and shall not form part of the case file in these proceedings.

X. MERITS

69. The Sole Arbitrator notes that the Appellant does not dispute that she has committed an ADRV pursuant to Articles 2.1 and 2.2 of the POLADA ADR.

70. By contrast, the Parties disagree on what sanction shall be imposed on the Appellant.

71. According to the Appellant, there are grounds for reduction of the period of ineligibility imposed on the Athlete to 3-month period or, alternatively, to 2-year period pursuant to Article 10.2.4 of the POLADA ADR. Conversely, the Respondent requests to uphold the Appealed Decision and the 4-year period of ineligibility.

72. In the light of the above, the Sole Arbitrator will address the following issues:

A. Has the Athlete established the prerequisites for the application of Article 10.2.4 of the POLADA ADR ("The Substance of Abuse Clause")?

B. Should the answer be negative, what is the appropriate sanction ("The Appropriate Sanction")?

A. The Substance of Abuse Clause

73. The Appellant's argument is twofold. On one hand, she argues that, according to Dr. Andrzej Kwaśnica's report *"Cocaine in concentrations above 10 ng/mL could be detected in urine more than 50 hours, while Benzoylgonine in concentrations above 20 ng/mL could be detected in urine in more than 100 hours"*. Accordingly, it can be concluded that in the case at hand *"the ingestion occurred at least tens of hours prior to the collection of the urine sample for anti-doping control (i.e. in out-of-competition period), and therefore it can be ruled out that the Athlete used Cocaine in-competition period"*. On the other hand, Ms Rok argues that *"the substance was used during a visit to a club that had no connection with the sport she practiced"* and therefore in a context unrelated to sports performance.

74. By way of introduction, the Sole Arbitrator notes that WADA's Guidance Notice for Anti-Doping Organizations "Substances of Abuse under the 2021 World Anti-Doping Code" considers the presence of cocaine parent compound at an estimated urinary concentration above (>) 10 ng/mL likely to correspond to an In-Competition use of cocaine and that *"Cocaine in the absence of reported BZE (i.e. below MRL of 50 ng/mL) could indicate very recent use"*.

75. In the case at hand, it is not disputed by the Parties that the estimated concentration of the prohibited substance found in the Athlete's A sample was Cocaine 24.2 ng/mL and Benzoylecgonine 23.9 ng/mL.

76. By contrast, the Athlete relies on scientific studies according to which (i) *"the concentration of COC over 1,000*

ng/mL suggests that the athlete's use of COC must have been recent"; and (ii) *"concentrations of COC lower than 100 ng/mL are most likely indicative of less recent COC use"*; and (iii) *"values above 100 ng/mL are indicative of recent use"*.

77. The Sole Arbitrator acknowledges that WADA's Guidance Notice is not mandatory but notes that the levels of concentration of Cocaine in the Athlete's sample more than double the levels identified by WADA as being most likely to correspond to In-Competition Use of Cocaine.

78. Moreover, despite the striking difference between the levels indicated by WADA in its Notice Guidance and those on which the Athlete relies, Dr Andrzej Kwaśnica did not argue anything in his report.

79. The Sole Arbitrator also notes that at the hearing Dr Andrzej Kwaśnica admitted that (i) he could say nothing on how the ingestion of cocaine occurred; and (ii) his opinion is based only on the results of the Warsaw laboratory. Therefore, although it cannot be argued that his opinion is based on a hypothetical scenario, nevertheless he admitted that *"when it comes to circumstances I have no knowledge, we are, to a certain extent, in a sphere of speculation"*.

80. In light of the above, the Sole Arbitrator doubts that the Athlete has established, on balance of probabilities, that the use or ingestion of Cocaine occurred out-of-competition.

81. However, even assuming (*quod non*) that the ingestion or use of Cocaine occurred out-of competition (i.e. prior to 23.59 on 9 December 2023), to benefit from the reduction provided for by Article 10.2.4.1 of the POLADA ADR the Athlete shall also establish that the ingestion or use was unrelated to sport performance.

82. In this respect, the Sole Arbitrator notes that in the case at hand there is no evidence at all supporting the Athletes' argument. In particular, there is no evidence that (a) on the night of 8 – 9 December 2023 the Athlete went to a party at the HEX club in Toruń; (b) she spent some time with a man she met there and had a drink with him; and (c) the man spiked the drink with Cocaine.

83. By contrast, this scenario is based only on the Athlete's testimony.

84. In this respect, the Sole Arbitrator wishes to acknowledge the dignity and grace displayed by the Appellant during the hearing. However, protestations of innocence, as has been noted by many CAS panel, are the common currency of the guilty and innocent, not just in anti-doping cases but also in other areas of society where wrongdoing is alleged against an individual: *"Even in such cases [where intent can be demonstrated without establishing the origin], it is clear that the athlete cannot rely on simple protestations of innocence or mere speculation as to what must have happened but must instead adduce concrete and persuasive evidence establishing, on a balance of probabilities, a lack of intent"* (see for example, CAS 2017/A/5369; CAS 2016/A/4919; CAS 2016/A/4676; CAS 2017/A/5335).

85. If arbitral panels were to decide the question of intention based on their subjective appreciation of an athlete's, and an athlete's entourage's, simple declarations of non-culpability alone –

as opposed to some additional reference to some form of concrete and specific corroborating evidence – the proverbial floodgates would open for tribunals around the world to render inconsistent decisions based on the lowest form of evidence. This would surely risk undermining the core principles of the WADA Code and the fight against doping, in particular harmonization of sanctions, in a manner that would be unfair to all athletes' ability to compete on a level playing field.

86. Similarly, the same principle applies to a *"lack of a demonstrable sporting incentive to dope, diligent attempts to discover the origin of the prohibited substance or the athlete's clean record"* by themselves, which bases have also been consistently rejected as justifications for a plea of lack of intention (See CAS 2017/O/5218, para. 166; CAS 2018/A/5584, para. 139; CAS 2019/A/6213, para. 65).

87. Furthermore, the Sole Arbitrator notes that the Athlete has changed her explanation for the ADRV several times. In particular, on 4 January 2024 the Athlete argued that the presence of Cocaine in her urine sample was due to a spiked drink offered to her by an unknown man met at a party in a club. On 21 March 2024, the Athlete expressly excluded this explanation and argued that during the competition *"someone came into the changing room and swapped those bottles that were in my bag"*. Lastly, in her Appeal Brief the Athlete argued that, based on information received from POLADA concerning the estimated concentration of the prohibited substance in her A sample, the only possible explanation for the ADRV is the spiked drink at the HEX club.

88. With all due respect, the Sole Arbitrator notes that, even before receiving the information about the concentration of the prohibited substance, the Athlete had changed her explanation before the POLADA Disciplinary Panel. Moreover, the scenario put forward by the Athlete in the present proceedings appear more like an *ex-post* decision aimed at aligning the alleged facts to the scientific findings of Dr Andrzej Kwaśnica, rather than a genuine and transparent explanation of what actually occurred.

89. Be that as it may, the Sole Arbitrator notes that the Athlete's explanation to justify her repeated changes in defensive strategy is openly contradicted by her father's written statement according to which *"the second possibility was potential sabotage at the competition. It seemed to me that since the detected level was so low, someone might have slipped something into her drink before the match"*. In other words, the Athlete's father argues that sabotage could be a reasonable explanation for the ADRV because of the low level of concentration of Cocaine in the Athlete's A sample.

90. Furthermore, the Sole Arbitrator considers Ms Blanka Kuźniak's testimony irrelevant as the witness (i) was not present at the HEX club; (ii) has no direct knowledge of the facts concerning the alleged spiked drink; and (iii) her evidence pertains only to the honest and sincere character of the Athlete.

91. In the absence of any concrete evidence regarding how, where and in

what quantities the use or ingestion of the prohibited substance occurred, it is not possible to establish that such use or ingestion is unrelated to sport performance under Article 10.2.4.1 of the POLADA ADR.

92. For the same reasons, the Athlete cannot rely on Article 10.2.4.2 of the POLADA ADR which also requires that the use or ingestion be unrelated to sport performance.

93. In light of the above, the Sole Arbitrator concludes that the Athlete is not entitled to rely on Article 10.2.4 of the POLADA ADR and to benefit from the reductions provided for by that provision.

B. The Appropriate Sanction

94. Article 10.2 of the POLADA ADR governs the period of ineligibility for the presence or use of a prohibited substance and provides for a presumption on intentional use for non-specified substances (such as Cocaine) as well as a 4-year base sanction if the athlete cannot rebut the presumption on intentional use.

95. By way of introduction the Sole Arbitrator notes that, as per the comment to the equivalent provision in the WADC, *"[w]hile it is theoretically possible for an Athlete or other Person to establish that the anti-doping rule violation was not intentional without showing how the Prohibited Substance entered one's system, it is highly unlikely that in a doping case under Article 2.1 an Athlete will be successful in proving that the Athlete acted unintentionally without establishing the source of the Prohibited Substance"*.

96. In this context, therefore, it is the Sole Arbitrator's opinion that, in order to disprove intent, an athlete may not merely speculate as to the possible existence of a number of conceivable explanations for the AAF (such as sabotage, manipulation, contamination, pollution, accidental use, etc.) and then further speculate as to which appears the most likely of those possibilities to conclude that such possibility excludes intent. There is in fact a wealth of CAS jurisprudence stating that a protestation of innocence, the lack of sporting incentive to dope, or mere speculation by an athlete as to what may have happened does not satisfy the required standard of proof (balance of probability) and that the mere allegation of a possible occurrence of a fact cannot amount to a demonstration that that fact did actually occur (CAS 2010/A/2268; CAS 2014/A/3820): unverified hypotheses are not sufficient (CAS 99/A/234-235). Instead, the CAS has been clear that an athlete has a stringent requirement to offer persuasive evidence that the explanation he offers for an AAF is more likely than not to be correct, by providing specific, objective and persuasive evidence of his submissions. In short, the Sole Arbitrator cannot base his decision on some speculative guess uncorroborated in any manner (CAS 2017/A/5016 & 2017/A/5036).

97. As already observed (see para. 79 above), the Sole Arbitrator notes that the Athlete's contentions regarding the use or ingestion of the Prohibited Substance are devoid of any corroborating evidence, relying exclusively on her own testimony.

98. In her Appeal Brief the Athlete also argued that any sanction shall be just and proportionate.

99. The Sole Arbitrator is of the view that there is no basis for reducing the sanction further by applying the principle of proportionality. The Sole Arbitrator's basis for this position is that the WADC, from which the POLADA ADR is derived and on which it is based, has been found repeatedly to be proportional in its approach to sanctions (CAS 2017/A/5015 & CAS 2017/A/5110, CAS 2016/A/4643).

100. In light of the above, the Sole Arbitrator concludes that the Athlete shall be sanctioned with a 4-year period of ineligibility.

101. That said, the Sole Arbitrator must also deal with the following issues:

(i) the starting date (*dies a quo*) of said ineligibility period;

(ii) the disqualification of the Athlete's results.

102. In respect of the starting date of the 4-year ineligibility period, Article 10.13 of the POLADA ADR states in its pertinent part as follows: *"(…) the period of ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed"*.

103. Article 10.13.2.1 of the POLADA ADR states in the pertinent part as follows: *"(…) If a period of ineligibility is served pursuant to a decision that is subsequently appealed, then the Athlete or other Person shall receive a credit for such period of Ineligibility served against any period of Ineligibility which may ultimately be imposed on appeal"*.

104. The Sole Arbitrator notes that Article 10.13 of the POLADA ADR raises a question concerning the identification of the "hearing decision" the date of which is the starting date of the ineligibility period: more particularly, the question is whether such "hearing decision" is the one adopted by the Disciplinary Panel (i.e. the Appealed Decision) or the present CAS decision.

105. In coming to its conclusion, the Sole Arbitrator relies on Article R57 of the CAS Code. As stated in CAS 2011/A/2515, *"under this provision, in fact, the CAS Panel has the power to issue a new decision that replaces the decision challenged: such power was indeed declared by the Swiss Federal Tribunal (in a judgment of 3 January 2011, 4A_386/2010, at § 5.3.4) to be consistent with the mission of arbitral jurisdiction exercised by the CAS. As a result, in the event the CAS award imposes a sanction to an athlete that had not been found responsible on an anti-doping rule violation, the ineligibility would be imposed only by CAS: therefore (…), the date of the CAS award would be the starting moment of the ineligibility (…). Conversely, the date of the decision of the disciplinary body is the starting date of the ineligibility in the event the CAS decision does not replace, but entirely confirms, the sanction imposed by the disciplinary body: in such event, ineligibility finds its foundation only in, and is therefore imposed only by, the lower-level decision"* (para 82).

106. In the case at hand, the Athlete was provisionally suspended on 2 January 2024. It follows therefore that the Athlete should receive credit for the

period of ineligibility already served. In this regard, the Sole Arbitrator determines that the Athlete's 4-year period of ineligibility shall commence as from the date of the provisional suspension (i.e. 2 January 2024), thus giving her full credit for the time already served in accordance with Article 10.13.2.1 of the POLADA ADR, as correctly held in the Appealed Decision. Consequently, the period of ineligibility starts as from 2 January 2024.

107. At the hearing, the Athlete also invoked the principle of fairness, arguing that a 4-year period of ineligibility would prevent her from participating not only in the Paris 2024 Olympic Games, which she has already missed, but also in the 2028 Olympic Games.

108. The Sole Arbitrator notes that whatever effect a 4-year period of ineligibility would have on the Athlete's ability to qualify for the Olympic Games, or any other competition should in the ordinary course not have any bearing on when the ineligibility period begins or how long lasts.

109. Notwithstanding this, having established that the 4-year period of ineligibility will begin on 2 January 2024, the Athlete will be able to participate in the qualifying events for the next Olympic Games.

110. In respect of the disqualification of the Athlete's results, Article 10.10 of the POLADA ADR reads as follows: *"In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Athlete obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other antidoping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes".*

111. As regard the disqualification of the Athlete's results, the Appealed Decision disqualified the results obtained by the Athlete (i) in the competition during which the ADRV occurred, along with the forfeiture of all points, medals and prizes; and (ii) in competitions held between the date of sample collection and the starting date of the provisional suspension, along with the forfeiture of all points, medals and prizes.

112. The Sole Arbitrator notes that the Athlete has filed no submission concerning the disqualification of results.

113. Failing any submission as to any element of fairness that would require otherwise under Article 10.10 of the POLADA ADR, the Sole Arbitrator confirms the disqualification of the Athlete's results in the competition during which the ADRV occurred as well as in competitions held between the date of sample collection and the starting date of the provisional suspension, along with the forfeiture of all points, medals and prizes.

114. In conclusion, the Sole Arbitrator dismisses the appeal filed by the Athlete in its entirety and confirms the Appealed Decision.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Natalia Rok on 27 November 2024 against the decision rendered by the POLADA Disciplinary Panel on 10 October 2024, with reasons notified on 6 November 2024, is dismissed.

2. The decision issued by the POLADA Disciplinary Panel on 10 October 2024, with reasons notified on 6 November 2024, is confirmed.

3. (…).

4. (…).

5. All other motions or prayers for relief are dismissed.

CAS 2024/A/11078
Alvaro Adriano Teixeira Pacheco v. Vasco da Gama Sociedade Anônima Do Futebol (SADF) &
CAS 2024/A/11079
José Miguel Carvalho Teixeira v. Vasco da Gama SADF &
CAS 2024/A/11081
Pedro Valdemar Vasconcelos Pinto da Cunha Teixeira v. Vasco da Gama SADF
award of 4 November 2025

Football; Termination of employment contracts without just cause by a club; Admissibility of statements of witnesses that possess common interests with parties to the arbitration; Definition of "group" contracts/"collective" contracts and consequences of their being prohibited; Identification of a "group" or "collective" contract; Punitive/dissuasive character of article 337c para. 3 of the Swiss Code of Obligations; Distinction under Swiss law between liquidated damages clause and penalty clause; Criteria for the determination of the appropriate rate of reduction of a liquidated damages clause; Regime of a "buy-out" clause referring to the general statutory rules applicable to early termination; Inadmissibility of new claims presented at appeal level

Panel
Mr Giulio Palermo (Italy), Sole Arbitrator

1. **A witness' employment relationship with a party is no cause of automatic inadmissibility. Rather it is the CAS panels' duty to properly assess the credibility and authenticity of a witness' testimony, considering all his/her personal circumstances and contrasting his/her testimony with the rest of the evidence at stake. Moreover, Article 4(2) of the International Bar Association's Rules on the Taking of Evidence allows any person to present evidence as a witness, including a party to the arbitration or a party's officer, employee, or other representative. This means that a witness can have a direct interest in the outcome of the case; said witness' testimony cannot be considered inadmissible nor a violation of due process, and its weight will be a matter of appreciation by the tribunal.**

2. **From the FIFA Commentary to the Regulations on the Status and Transfer of Players (RSTP), it can be concluded that a *"group"* or *"collective"* contract is a *"single contract"* signed between a club (or association) and a *"foreign head coach"* yet covering the *"payment for the whole coaching team"*. Although FIFA decided to *"prohibit"* so-called *"group"* or *"collective"* contracts, it did not define the consequences of a contract breaching this prohibition. To resolve this ambiguity, interpretation in line with the broader *"regulatory context"* and the *"intentions of the association"* is necessary. In this regard, the RSTP Commentary states that the purpose of Articles 3 to 8 of Annex 2 RSTP is to protect *"contractual stability"* and to ensure that coaches are not left *"at the mercy"* of clubs. The solution which appears most consistent with this purpose is that provided by Article 20(1) of the Swiss Code of Obligations (CO), according to which, *"where the defect pertains only to certain terms of a contract, those terms alone are void unless***

there is cause to assume that the contract would not have been concluded without them". Similarly, the most likely consequence intended by the drafters of the RSTP is to invalidate not the entire contract, but the particular provision thereof rendering its nature *"collective"*, replacing it with the RSTP's by-default regime. Any other solution would leave coaches unprotected and harm contractual stability.

3. According to Article 2.1 of Annex 2 of the FIFA RSTP *"[a] coach must have a written contract with a club or an association, executed on an individual basis"*. The fact that an employment contract 2 and an employment contract 3 are automatically terminated in case an employment contract 1 itself is terminated does not modify that the employment contracts do not form a *"single contract"*, nor does the fact that to some extent, coordinated negotiations for all contracts took place.

4. Article 337c para. 3 of the CO provides for an *"additional indemnity"* of up to six months' worth of salary. This provision has a punitive/dissuasive character and is akin to a *"contractual penalty"*, a notion further regulated in Articles 160 *et seq.* of the CO. Article 337c para. 3 CO is *"relatively mandatory"*, in the sense that more favourable terms for the employee (but not the employer) can be agreed.

5. While the terms *"liquidated damages"* and *"penalty clause"* are often used interchangeably, a distinction exists: *"[t]he purpose of a liquidated damages clause is to compensate one party for an anticipated damage, whereas a penalty clause goes beyond that, an additional penalty is included to encourage performance"*. In employment contracts, liquidated damages clauses facilitate the calculation of the *"damages"/"indemnity"*. The creditor must still prove the existence of harm to possess an entitlement to liquidated damages, but is not required to establish their quantum. The key consequence of this distinction is that penalties may be reduced under the clear application of Article 163 para. 3 CO. By contrast, a reduction in liquidated damages is permissible only if the actual loss is *"significantly lower"* than the agreed amount.

6. Important elements when determining the appropriate rate of reduction of a liquidated damages clause include the creditor's interest in performance, the gravity of the violation, the gravity of fault and the parties' relative economic situation. No mitigation can be applied on this amount under Article 337c para. 2 CO or under Article 6.2 of Annex 2 to the RSTP, which regulates the consequences of unilateral termination without cause only where the contract itself does not provide otherwise.

7. If a termination clause constitutes a *"buy-out"* clause referring to the general statutory rules applicable to early termination, it, therefore, foresees a calculation based on Article 337c para. 1 CO, mitigation

based on Article 337c para. 2 CO, and a possible discretionary penalty based on Article 337c para. 3 CO.

8. In reviewing a case in full, a CAS panel cannot go beyond the scope of the previous litigation and is limited to the issues arising from the challenged decision. Moreover, new claims advanced in appeal, hitherto not claimed in the previous litigation, are in principle inadmissible, barring any *"legitimate reasons"* to the contrary.

I. THE PARTIES

1. Mr Alvaro Adriano Teixeira Pacheco (the "1st Appellant") is a Portuguese national and the former head coach of the Brazilian football club Vasco da Gama Sociedade Anônima do Futebol (the "Respondent").

2. Mr José Miguel Carvalho Teixeira (the "2nd Appellant") is a Portuguese national and a former assistant coach for the Respondent.

3. Mr Pedro Valdemar Vasconcelos Pinto da Cunha Teixeira (the "3rd Appellant") is a Portuguese national and a former assistant coach for the Respondent.

4. The 1st, 2nd and 3rd Appellant (the "Appellants") are represented in the present proceedings by Mr Pedro Macieirinha (the "Appellants' Counsel").

5. The Respondent is a Brazilian football club affiliated with the Confederação Brasileira de Futebol. The Respondent is represented by Mrs Bianca Moraes Reis, Mr Nicolas Yan Fraga, Mr Rhyan Matheus Santos Ribeiro and Mr Jean Eduardo Batista Nicolau (the "Respondent's Counsel").

6. The Appellants and the Respondent are jointly referred to as the "Parties", with each of them being referred to individually as a "Party".

II. FACTUAL BACKGROUND

7. This section provides a summary of the main relevant facts and arguments based on the Parties' written submissions, oral pleadings, and evidence. While the Sole Arbitrator has considered all facts, legal arguments and evidence submitted by the Parties, he refers in the present Award only to what he considers necessary to explain his reasoning.

8. Exhibits filed by the Appellants will be referenced below with the indication "A1", "A2" and "A3" for the 1st, 2nd and 3rd Appellant respectively. Exhibits filed by the Respondent will be referenced with the indication "R".

9. This dispute concerns termination fees allegedly owed to the Appellants by the Respondent, following the latter's termination of the employment relationship between the Parties on 21 June 2024, without just cause.

10. In particular, the Appellants request the annulment of prior decisions rendered by the Players' Status Chamber ("PSC") of the FIFA Football Tribunal which had denied such fees, and the *de novo* adjudication of the underlying dispute by the CAS.

11. The Parties' contractual relationship began on 16 May 2024, when the 1st Appellant entered into a Pre-Employment Contract with the

Respondent (the "Pre-Employment Contract") (Exhibits A1-1, A2-1, A2-3).

12. Article 1.2 of the Pre-Employment Contract stipulated *"remuneration"*, due not only to the 1st Appellant himself, but also to *"his staff"*; this remuneration amounted to EUR 850,000 net until 31 December 2024, and an additional amount of EUR 1,400,000 in case of extension of the Parties' contractual relationship (which eventually never occurred).

13. On 20 May 2024, each of the three Appellants signed with the Respondent an *"Individual Employment Contract"* (Exhibit A1-2 for the 1st Appellant, Exhibit A2-2A for the 2nd Appellant, and Exhibit A1-12A for the 3rd Appellant; these contracts shall be referred to as "Employment Contract 1", "Employment Contract 2" and "Employment Contract 3" respectively – collectively as the "Employment Contracts").

14. Pursuant to Article 1.5 of all three Employment Contracts, the Appellants' period of employment would begin on 20 May 2024 and end on 31 December 2024.

15. For the 1st Appellant, pursuant to Articles 2.2 and 2.3 of Employment Contract 1, the remuneration would consist in a *"gross monthly salary of R$ 443,695.00 (four hundred and forty-three thousand, six hundred and ninety-five reais)"*, an additional *"gross and monthly amount of R$ 49,299.00 (fortynine thousand, two hundred and ninety-nine reais)"*, and a *"salary advance"* of *"EUR 50,000.00 (fifty thousand euros) net/net"*.

16. For the 2nd Appellant, pursuant to Article 2.2 of Employment Contract 2, the remuneration would consist in a *"gross monthly salary of R$ 48,739.00 (forty-eight thousand seven hundred and thirty-nine reais), as well as gross monthly remuneration increases of R$ 5,415.00 (five thousand four hundred and fifteen reais)"*.

17. For the 3rd Appellant, pursuant to Article 2.2 of Employment Contract 3, the remuneration would consist in a *"gross monthly salary of R$ 80,578.00 (eighty thousand, five hundred and seventy-eight reais) per month, as well as a gross and monthly salary increases of R$ 8,953.00 (eight thousand, nine hundred and fifty-three reais) per month"*.

18. On 21 June 2024, the Respondent informed the Appellants and additional members of the coaching staff that it had decided to *"proceed with the early termination, without just cause and with immediate effect, of the respective employment contracts entered into with each of"* them (Exhibits A1-15; A2-15; A3-15).

19. On 24 June 2024, the Respondent sent to the Appellants *"documents to adjust payment for the termination of coach Alvaro Pacheco and his staff"* (Exhibits A1-16; A2-16; A3-16).

20. On 25 June 2024, the Appellants sent their suggestions on the Respondent's documents, with the Respondent sending its own counter-suggestions to the Appellants on the same day (Exhibits A1-16; A2-16; A3-16).

21. On 12 July 2024, the Appellants requested that the following sums be paid to them (Exhibits A1-17; A2-17; A3-17):

(i) To the 1st Appellant: *"i. Salary difference between the amount owed and the amount actually paid, for the days worked in May 2024: Eur.: 1,408.47 net; (…) ii. Wage difference between the amount owed and the amount actually paid for the days worked in June 2024: Eur.: 20,868.39 net; (…) iii. Housing allowance for the month of June 2024: Eur.: 20,000.00; (…) iv. Compensation for unlawful dismissal without just cause: Eur.: 765,438.92 net; (…) which, all in all. amounts to a total of Eur.: 787,715.78 (SEVEN HUNDRED AND EIGHTY-SEVEN THOUSAND. SEVEN HUNDRED AND FIFTEEN EUROS AND NINETY-TWO CENTS) net to date, plus the amount of R$.: 20.000.00 (TWENTY THOUSAND BRAZILIAN REAIS)".*

(ii) To the 2nd Appellant: *"i. Salary difference between the amount owed and the amount actually paid, in relation to the days worked in June 2024: Eur.: 2,565.61 net; (…) ii. Difference between the amount of housing allowance owed and the amount of housing allowance actually paid, for the month of June 2024: Eur.: 2,544.62; (…) which, all in all, to date, amounts to a total of Eur.: 2,565.61 (TWO THOUSAND, FIFTY FIVE EUROS AND SIXTY ONE CENTS) net, plus the amount of Eur.: 2. 544.62 (TWO THOUSAND, FIFTY-FOUR BRAZILIAN REAIS AND SIXTY-TWO CENTS), as well as the entire amount withheld by Vasco da Gama SAF from the worker as FGTS, relating to the months of May and June 2024, and not delivered to the Ministry of Labour and Employment".*

(iii) To the 3rd Appellant: *"i. Salary difference between the amount owed and the amount actually paid, for the days worked in June 2024: Eur.: 3,866.47 net; (…) ii. Difference between the amount of housing allowance owed and the amount of housing allowance actually paid, for the month of June 2024: Eur.: 4,602.71; (…) which, all in all, to date, amounts to the total sum of Eur.: 3,866.47 (THREE THOUSAND. EIGHT HUNDRED AND SIXTY SIX EUROS AND QUARTEEN AND SEVEN CENTS) net, plus the sum of R$.: 4,602.71 (FOUR THOUSAND. SIX HUNDRED AND TWO BRAZILIAN REAIS AND SEVENTY ONE CENTS)".*

22. On 15 July 2025, the 1st Appellant signed an employment contract with the Saudi Arabian club Al-Orobah, valid from 15 July 2024 to 14 June 2025, and entitling him to a monthly salary of USD 76,373.64 as well as a sign-on fee of USD 300,000 (1st Appellant's Appeal Brief, para. 164, not contested by the Respondent).

23. On the same day, the 2nd Appellant signed a contract with the same club for the same period, entitling him to a monthly salary of USD 10,909.10 (2nd Appellant's Appeal Brief, para. 163, not contested by the Respondent).

24. Also on the same day, the 3rd Appellant signed a contract with the same club for the same period, entitling him to a monthly salary of USD 10,909.10 (3rd Appellant's Appeal Brief, para. 163, not contested by the Respondent).

25. On 16 July 2024, the Respondent disputed the calculations presented in para. 21 above as *"incompatible with the contractual provisions and the payments made by"* it (Exhibits A1-17; A2-17; A3-17).

26. Moreover, the Respondent argued that there was *"no need to speak of any wrongdoing on the part of Vasco in relation to the sums arising from the dismissal of the coaches, since the 'Remuneration due' pro rata die basis was paid in full to all the coaches, in BRL, in accordance with the contractual provisions"*.

27. Further, the Respondent counter-proposed the following calculations:

    (i) For the 1st Appellant: *"2024 Remuneration € 584.000,00 (…) Remuneration Paid € 24.171,31 (…) Remuneration Due € 80.106,19 (…) FGTS due R$ 120.967,15 (…) Balance to Pay CC € 35.535,70 (…) Balance to Pay TRCT R$ 210.726,71 (…) TRCT complem.: penalty R$ 4.349.103,98"*.

    (ii) For the 2nd Appellant: *"2024 Remuneration € 63.000,00 2024 (…) Remuneration Paid € 2.691,96 (…) Remuneration Due € 8.641,59 (…) FGTS due R$ 13.308,57 (…) Balance to Pay CC € 3.705,36 (…) Balance to Pay TRCT R$ 21.972,76"*.

    (iii) For the 3rd Appellant: *"2024 Remuneration € 105.000,00 (…) Remuneration Paid € 4.423,51 (…) Remuneration Due € 14.402,65 (…) FGTS due R$ 21.985,33 (…) Balance to Pay CC € 6.271,67 (…) Balance to Pay TRCT R$ 37.190,99"*.

28. Finally, the Respondent attached draft settlement agreements for the 1st and 3rd Appellant (to be replicated for the other members of the staff); these agreements concerned the payment of a *"global monetary penalty for early termination of the employment contract operated by the club without just cause"* (Articles 1.6 and 1.1 respectively).

29. On the same day, the Respondent suggested that all remaining payments be made on the 30th of each month (Exhibits A1-17; A2-17; A3-17).

30. On 17 July 2024, the Appellants accepted the wording of the settlement agreements while adding *"non-substantive"* changes (Exhibits A1-17; A2-17; A3-17).

31. Notwithstanding these communications, no settlement agreements were subsequently signed.

32. On 29 July 2024, the Appellants sent to the Respondent default letters requesting the payment of a *"net amount of 729.111,11 €, plus interest at 5% rate since the overdue date until effective payment"* to the 1st Appellant, a *"net amount of R$ 324.924,00, plus interest at 5% rate since the overdue date until effective payment"* to the 2nd Appellant, and a *"net amount of R$ 537.186,00, plus interest at 5% rate since the overdue date until effective payment"* to the 3rd Appellant (Exhibits A1-18; A2-18; A3-18).

33. In the default letters, the Appellants characterized these amounts as *"compensation for the unilateral termination of the contract without just cause"* and as *"liquidated damages"* (Exhibits A1-18; A2-18; A3-18).

34. In support of their request that these amounts be paid, the Appellants cited Article 17(1) of FIFA's Regulations on the Status and Transfer of Players

("RSTP"), Articles 6.1, 6.2 (first part), 7 and 8 of Annex 2 to the RSTP, as well as Articles 8.2 of Employment Contract 1, 8.1 of Employment Contract 2 and 8.2 of Employment Contract 3 (Exhibits A1-18; A2-18; A3-18).

35. To date, it is undisputed that the Respondent paid the Appellants' outstanding salaries as of 21 June 2024 in full (1st Appellant's Appeals Brief, para. 153; 2nd Appellant's Appeal Brief, para. 153; 3rd Appellant's Appeal Brief, para. 153).

36. For the sake of full clarity, the 1st Appellant in this case argues that the *"salary advance"* foreseen in Article 2.3 of Employment Contract 1 was not paid (1st Appellant's Appeal brief, para. 172), while acknowledging that the salary itself was indeed paid.

III. PROCEEDINGS BEFORE THE PSC

37. On 12 August 2024, the 1st Appellant seized the PSC, with the 2nd and 3rd Appellant also seizing the PSC on 19 August 2024, requesting the relief presented in para. 32 above.

38. On 29 October 2024, the PSC issued its decision in the case of the 1st Appellant ("PSC Decision 1") (with the 1st Appellant being notified of the grounds on 29 November 2024), holding that:

    (i) The *"Termination Clause* [N.B.: Article 1 of Employment Contract 1]*, read together with the Pre-Contract Annex clauses 1.2 and 1.13, appeared to award compensation to the Claimant based not only on the Claimant's remuneration but on the remuneration of the other members of the coaching staff"* (PSC Decision 1, para. 35);

    (ii) The *"Termination Clause in conjunction with the Pre-Contract Annex clauses 1.2 and 1.13, if upheld, would result in (i) all termination compensation being entirely payable to the Claimant, with no remuneration awarded to any of the other members of his coaching staff or, alternatively, (ii) with the remaining coaching staff being awarded their portion of the compensation and the Claimant receiving "duplicate" amounts, thus being unjustly enriched from a payment that derived from his staff's compensation package"* (PSC Decision 1, para. 38);

    (iii) According to Article 2(1) of Annex 2 to the RSTP, a coach's contract must be *"executed on an individual basis"*, whereas according to FIFA's commentary on this provision, *"group contracts"* are *"outlawed"* (PSC Decision 1, para. 39); accordingly, this provision prohibits parties from benefitting *"from the compensation from a breach of contract that was calculated and based on compensation to the other individuals"* (PSC Decision 1, para. 31);

    (iv) The *"combined effect of the Termination Clause and the Pre-Contract Annex* [is] *unenforceable on account of being in violation of the Regulations",* such that *"the consequences of the termination at hand shall be analysed within the parameters of art. 6 Annexe 2 of said Regulations"* (PSC Decision, para. 31);

    (v) According to *"art. 6 par. 2(b) Annexe 2 of the Regulations, (…) remuneration under a new employment contract shall be taken into account in the calculation of the amount of*

compensation" (PSC Decision 1, para. 46);

(vi) Given his new contract with Al-Orobah, *"the Coach mitigated his damages in the total amount of USD 720,000.02, that is, USD 76,363.64 times 5.5 months, plus USD 300,000. The Chamber determined that this compensation converted to approximately EUR 661,392 at the time of signing the new contract"* (PSC Decision 1, para. 47); and

(vii) The *"coach has fully mitigated the damages (i.e., EUR 524,097.48 minus EUR 661,392, thus no compensation is to be awarded)"* (PSC Decision 1, para. 49).

39. On the same day (*i.e.*, on 29 October 2024, with the 2nd Appellant being notified of the grounds on 30 November 2024), the PSC issued its decision in the case of the 2nd Appellant ("PSC Decision 2"), holding that:

(i) At *"the time of termination* [of Employment Contract 2]*,* [the 1st Appellant] *was still employed by the Club"*, such that the termination of all Employment Contracts happened at the same time (PSC Decision 2, para. 37);

(ii) The considerations under para. 38(i)-(v) apply equally to the 2nd Appellant (PSC Decision 2, paras. 39-53);

(iii) Given his new contract with Al-Orobah, *"the Coach mitigated his damages in the total amount of USD 60,000.05 net, that is, USD 10,909.10 net times 5.5 months. The Chamber determined that this compensation converted to approximately EUR 55,116 net at the time of signing the new contract"* (PSC Decision 2, para. 54); and

(iv) The *"Respondent must pay the amount of EUR 4,660.58 net to the Coach (i.e. EUR 59,776.58 net minus EUR 55,116 net), which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter"* (PSC Decision 2, para. 56).

40. Finally, and also on the same day (*i.e.*, on 29 October 2024, with the 3rd Appellant being notified of the grounds on 30 November 2024), the PSC issued its decision in the case of the 3rd Appellant ("PSC Decision 3"), holding that:

(i) The considerations under para. 39(i)-(ii) apply equally to the case of the 3rd Appellant (PSC Decision 3, paras. 36-53);

(ii) Given his new contract with Al-Orobah, *"the Coach mitigated his damages in the total amount of USD 101,999.98 net, that is, USD 18,545,45 net times 5.5 months. The Chamber determined that this compensation converted to approximately EUR 93,697.18 net at the time of signing the new contract"* (PSC Decision 3, para. 54); and

(iii) The *"Respondent must pay the amount of EUR 2,132.50 net to the Coach (i.e. EUR 95,829.68 net minus EUR 93,697.18 net), which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter"* (PSC Decision 3, para. 56).

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

41. On 17 December 2024, the Appellants, along with two other members of their staff, filed their respective Statements of Appeal to the CAS, of which the CAS Court Office acknowledged receipt, and which it forwarded to FIFA and the Respondent, on 23 December 2024.

42. On 30 December 2024, the Respondent expressed its agreement on certain issues raised in the Statements of Appeal.

43. On 31 December 2024, the CAS Court Office informed the Parties that, given the Respondent's agreement as expressed in its letter of the previous day, the dispute had been submitted to a Sole Arbitrator who would be nominated in accordance with Article R54 of the CAS Code of Sports-related Arbitration (2023 edition) ("CAS Code"). Moreover, all appeals would be submitted to the same arbitrator pursuant to Article R50 of the CAS Code.

44. On 6 January 2025, FIFA renounced its right to request a possible intervention in the matter at hand and submitted a clean copy of all appealed decisions, of which the CAS Court Office acknowledged receipt on 7 January 2025.

45. On 9 January 2025, the Appellants filed their respective Appeal Briefs, of which the CAS Court Office acknowledged receipt on 10 January 2025.

46. On 5 March 2025, the CAS Court Office informed the Parties that two of the appeals had been withdrawn. On the same day, the CAS Court Office confirmed that the remaining appellants had paid their shares of the advance on costs and shared the Appeal Briefs with the Respondent, inviting it to file Answers to the Appeal Briefs within 20 days.

47. On 19 March 2025, the CAS Court Office invited the Appellants to pay an additional advance on costs by 2 April 2025.

48. On 20 March 2025, the Respondent requested that the time limit to file its Answer be fixed once the additional advance of costs has been paid by the Appellant pursuant to Article R55 of the CAS Code.

49. On 21 March 2025, the CAS Court Office acknowledged receipt of the Respondent's letter of the previous day and stated that it would set a new deadline for the Answers to the Appeal Briefs.

50. On 28 March 2025, the CAS Court Office set a new deadline of 20 days for the filing of the Answers to the Appeal Briefs, beginning on the same day.

51. On 16 April 2025, the Respondent filed its Answers to the Appeal Briefs, of which the CAS acknowledged receipt on 17 April 2025, while also inviting the Parties to state whether they wished for a hearing and a case management conference to take place by 24 April 2025, and informing them of the appointment of Mr Giulio Palermo as Sole Arbitrator.

52. On 23 April 2025, the Appellants informed the CAS that they would be requesting an in-person hearing in Lausanne. The Respondent stated that it saw no need for a hearing, while no party

requested a case management conference.

53. On 24 April 2025, the Respondent informed the CAS that, if a hearing were ordered, it should take place online or in Rio de Janeiro.

54. On 25 April 2025, the Sole Arbitrator noted that the Respondent had raised in its Answers to the Appeal Briefs an objection to the admissibility of the Appellants' witnesses. The Sole Arbitrator rejected the objection and reserved the grounds of rejection for the Award.

55. The Sole Arbitrator also informed the Parties that an online hearing would be held on the matter, while inviting them to justify their respective preferences regarding an in-person or online hearing, and indicate on which dates they would not be available to attend this hearing.

56. On 6 May 2025, the CAS Court Office informed the Parties that the hearing would take place on 24 June 2025 at 13:00 CEST by video-conference.

57. On 15 May 2025, the CAS Court Office issued an Order of Procedure for the Parties' signature.

58. Between 19 and 20 May 2025, the Parties signed the Order of Procedure, while the Appellants communicated to the CAS the list of persons attending the hearing on their behalf and requiring interpretation.

59. On 5 June 2025, further to the Parties' agreement, the CAS Court Office confirmed that the hearing would take place on 24 June 2025 at 14:00 CEST.

60. On 17 June 2025, the Respondent filed certain documents and explanations concerning its *"reorganization bankruptcy proceedings in Brazil"*, on which the Appellants were invited to comment by the CAS Court Office by 20 June 2025, and to which they replied on 19 June 2025.

61. On 20 June 2025, the Appellants nominated as their interpreted Mr Joaquim Pizarro, a nomination to which the Respondent objected on 23 June 2025 due to the interpreter's affiliation with the Appellants.

62. On 24 June 2025, the CAS Court Office invited the Appellants to comment on the objection by 13:00 CEST on the same day, which they did. On the same day, the Appellants requested a one-hour delay to the hearing starting time, which was granted, and nominated Mr Tomas Teixeira as interpreter. The hearing then took place at the scheduled time; at the end of it, the Parties confirmed they had no objection to how it had been conducted.

63. On 25 June 2025, the CAS Court Office informed the Parties that, for purposes of procedural efficiency, unless the Parties objected by 27 June 2025, the Sole Arbitrator would decide the abovementioned procedures in a single arbitral award. In the same letter, the CAS Court Office requested that the Respondent share a CAS Award mentioned during the Hearing, which it did the following day, and to which the Appellants responded on 30 June 2025.

V. JURISDICTION

64. Article R47 of the CAS Code provides that *"[a]n appeal against the decision of a*

federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide".

65. Similarly, pursuant to Article 50(1) of the FIFA Statutes 2024, *"[a]ppeals against final decisions passed by FIFA and its bodies shall be lodged with CAS within 21 days of receipt of the decision in question".*

66. Further, pursuant to Article R57 of the CAS Code, *"[t]he* [CAS] *Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance".*

67. Finally, Article 186(2) of the Swiss Private International Law Act, which constitutes the *lex arbitri* of the present proceedings pursuant to Article R28 of the CAS Code and the fact that the Parties never had a domicile or residence in Switzerland, provides that *"[a]ny objection to* [the Sole Arbitrator's] *jurisdiction must be raised prior to any defense on the merits".*

68. In the present proceedings, the Sole Arbitrator is requested to revisit a decision issued by the DRC. The dispute therefore involves an appeal against the decision of a federation in the sense of Article R47 of the CAS Code and Article 50(1) of the FIFA Statutes, while falling within the Sole Arbitrator's scope of review in the sense of Article R57 of the CAS Code.

69. Moreover, the Respondent has not contested the jurisdiction of the CAS, and has even confirmed it by signing the Order of Procedure. Accordingly, the Sole Arbitrator has jurisdiction to review the merits and, if need be, set aside, PSC Decision 1, PSC Decision 2 and PSC Decision 3 (the "Decisions").

VI. ADMISSIBILITY

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

"[i]n the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against".

71. Pursuant to Article 50(1) of the FIFA Statutes, *"[a]ppeals against final decisions passed by FIFA and its bodies shall be lodged with CAS within 21 days of receipt of the decision in question".*

72. The grounds of the Decisions were notified to the Appellants on 29 November 2024 (for Decision 1) and 30 November 2024 (for Decisions 2 and 3). The Appellants filed their respective Statements of Appeal to CAS on 17 December 2024. The Appellants therefore filed their Statements of Appeal within the deadlines provided by the FIFA Statutes and the CAS Code.

73. Further, Article R51(1) of the CAS Code provided as follows, in relevant part:

"[w]ithin ten days following the expiry of the time limit for the appeal, the Appellant shall file with the CAS Court Office a brief stating the facts and legal arguments giving rise to the appeal, together with all exhibits and specification of other evidence upon which it intends to rely".

The Appellants filed their respective Appeal Briefs on 9 January 2025.

74. It follows from the above that the appeals filed by all three Appellants are admissible.

VII. LAW APPLICABLE TO THE MERITS

75. Article R58 of the CAS Code provides that:

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

76. Further, Article 49(2) of the FIFA Statutes states that, in CAS appeal proceedings targeting decisions issued by FIFA's organs, *"CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".*

77. Since the present is indeed a CAS appeal case targeting decisions of a FIFA body (namely the PSC), the Sole Arbitrator, in line with CAS jurisprudence (see, *ex multis*: CAS 2014/A/3577, Award of 8 May 2015, para. 89; CAS 2014/A/3582, Award of 8 May 2015, para. 134; CAS 2014/A/3547, Award of 5 March 2015, para. 103), shall apply the FIFA regulations at stake (namely the RSTP) and additionally Swiss law.

78. The scope of application of Swiss law also includes the interpretation and application of the Pre-Employment Contract and the Employment Contracts; the Sole Arbitrator notes that the Parties have made extensive references to Swiss law in this regard (see, *e.g.*, 1st Appellant's Appeal Brief, para. 228; 2nd Appellant's Appeal Brief, para. 224; 3rd Appellant's Appeal Brief, para. 225; Answer to the 1st Appellant's Appeal Brief, para. 56; Answer to the 2nd Appellant's Appeal Brief, para. 51; Answer to the 3rd Appellant's Appeal Brief, para. 51), and that they expressly agreed to the application of Swiss law during the hearing.

VIII. MERITS

79. The Sole Arbitrator has carefully examined and considered all written and oral submissions made by the Parties, even if certain arguments and allegations have not been expressly recited or referred to in this Award. Below is a summary of the Parties' main positions, for the sake of good order and ease of reference, followed by the Sole Arbitrator's decision.

A. The Appellants' position

1. The 1st Appellant's position

80. *First*, the 1st Appellant argues that the Respondent is in debt to it in the net amount of EUR 729,11.11 plus 5% interest from the overdue dates until effective payment (1st Appellant's Appeal Brief, para. 169), and in the additional amount of EUR 50,000 (likewise, plus 5% interest from the overdue date until effective payment) which the 1st Appellant characterizes as a *"salary advance"* payable under Article 2.3 of Employment Contract 1 and Article 1.5 of the Pre-Employment Contract (1st Appellant's Appeal Brief, para. 172).

81. *Second*, the 1st Appellant argues that the PSC Decision 1 is *"not based on the written file"* as required by Article 14 of the

Football Tribunal Procedural Rules, because the notion that Article 8.2 of Employment Contract 1 and Articles 1.2 and 1.3 of the Pre-Employment Contract constitute *"Group Clauses"*, on which the PSC based its decision, is something the 1st Appellant was not given the opportunity to comment on during the PSC proceedings and which did not result from the instruction of evidence (1st Appellant's Appeal Brief, paras. 186 and 191).

82. The Respondent cites in this regard CAS 2015/A/4176, according to which FIFA cannot act *"ex-officio to condemn a person that has never been called as a party"*, and CAS 2005/A/927, according to which *"the DRC's function and duties* [do] *not modify the weight of evidence required of the claimant to succeed on the merits"* (1st Appellant's Appeal Brief, para. 193).

83. *Third*, the 1st Appellant argues that the present dispute does not involve *"Group Contracts"* (1st Appellant's Appeal Brief, para. 201), and that the PSC misinterpreted and misapplied this notion (1st Appellant's Appeal Brief, para. 194).

84. According to the 1st Appellant, Article 2.1 of Annex 2 to the RSTP requires coach contracts to be *"executed on an individual basis"*, which means that situations where the coach *"signs a single contract with the club which covers the payment for the whole coaching team, who effectively act as the coach's sub-contractors"*, have been *"outlawed"* by FIFA to protect the RSTP from being *"circumvented"*, *i.e.*, to ensure that the coaching team is *"subject to FIFA jurisdiction"* (1st Appellant's Appeal Brief, paras. 195-200).

85. Here, the Employment Contracts were executed on an individual basis, *i.e.*, all members of the coaching staff were *"engaged individually"* and with individual remuneration, not through a single contract (1st Appellant's Appeal Brief, paras. 204-209).

86. Further, the Pre-Employment Contract refers in its Article 1.4 to visa working conditions for the members of the coaching team, demonstrating that they were not meant to be *"sub-contractors"* of the 1st Appellant (1st Appellant's Appeal Brief, paras. 215 and 216). While the Pre-Employment Contract mentions these members, this was only in order to ensure that the 1st Appellant could enjoy a *"reasonable coaching activity"* with the staff of his choice, although this could not be guaranteed since it was not certain that they would be able to terminate their contracts with their previous team (1st Appellant's Appeal Brief, paras. 211-214).

87. Moreover, Article 1.7 sets out different payment conditions for the 1st Appellant and members of the staff and provides that payment will be made by the Respondent, not the 1st Appellant, who in any case neither concluded nor signed the Pre-Employment Contract (1st Appellant's Appeal Brief, paras. 218 and 224).

88. In addition, while Article 10 of Employment Contract 1 mentions the Pre-Employment Contract as an integral part thereof, this is only *"referred to its quality of document produced in the course of negotiations as an act prior to the conclusion of* [Employment Contract 1]*"*, while the *"termination of the Pre-Employment Contract was made dependent on the conclusion and signature of* [Employment Contract 1]*"* (1st

Appellant's Appeal Brief, paras. 225 and 226).

89. Lastly, the PSC erred in its interpretation of Article 2.1 of Annex 2 to the RSTP, when characterizing Articles 8.1 and 8.2 of Employment Contract 1 as group clauses; an interpretation in line with the Parties' common and subjective will or the principle of mutual trust under Article 18 of the Swiss Code of Obligations ("CO") would suggest the contrary, since the 1st Appellant and members of his staff have individual contracts, rights and duties, remuneration (which is payable to them directly by the Respondent) and termination clauses, while the 1st Appellant never received remuneration for the entire staff to then distribute it further (1st Appellant's Appeal Brief, paras. 229-238).

90. *Fourth*, referencing CAS 2008/A/1589 and Articles 1 and 2(1) of the CO, the 1st Appellant draws a distinction between contracts and pre-contracts, with the latter lacking the *"essential elements of the contract"* (1st Appellant's Appeal Brief, para. 262) and not reflecting the final agreement (1st Appellant's Appeal Brief, para. 267).

91. Here, the Parties' *"true and common intention"* through the Pre-Employment Contract was to *"reserve the finalization of the employment contract to a later stage"* and not to *"reflect the final agreement"* (1st Appellant's Appeal Brief, paras. 270 and 271). They agreed on some *"important elements"* but not the *"essential elements"* of Employment Contract 1, with Articles 1.1, 1.2, 1.5, 1.6, 1.7, 1.13 and 2 of the latter eventually changing in Employment Contract 1 (1st Appellant's Appeal Brief, paras. 272-276).

92. *Fifth*, the 1st Appellant argues that the Respondent is breaching the principle of *pacta sunt servanda* and Employment Contract 1 by not applying Article 6 of Annex 2 to the RSTP (1st Appellant's Appeal Brief, paras. 310-314).

93. The 1st Appellant argues in that regard that the present situation is governed by Article 6 of Annex 2 to the RSTP, and that according to FIFA' commentary on the RSTP, Articles 3 to 8 of Annex 2 to the RSTP reflect the same principles as those applicable to contracts involving players, including the principles of Article 17 of the RSTP (1st Appellant's Appeal Brief, paras. 314-318).

94. Article 17 of the RSTP, in turn, allows parties to include a clause in their contracts which establishes in advance an amount due *"from the party at fault in the event of a breach of contract"*; this is a *"liquidated damages"* clause, which is defined as a clause determining a *"set amount of compensation, payable in the event of a unilateral, premature termination without just cause"* according to FIFA's commentary on the RSTP (1st Appellant's Appeal Brief, paras. 322-327).

95. Such a clause, according to CAS 2017/A/5242, does not need to establish *"reciprocal"* penalties to be valid (1st Appellant's Appeal Brief, para. 328). Further, according to CAS 2016/A/4826, such a clause takes *"precedence over the application of the other criteria set forth in* [Article 17 of the RSTP]*"* whereas according to CAS 2016/A/4550 it is subject to Article 160 of the CO (1st Appellant's Appeal Brief, paras. 330 and 331).

96. Article 8.2 of Employment Contract 1 is a liquidated damages clause; being such a clause, it is subject to Article 6.2, first part, of Annex 2 to the RSTP, and not to this provision's second part (1st Appellant's Appeal Brief, paras. 333 and 334). The criteria stipulated in the second part were *"clearly rejected"* by the Parties in Article 8.5 of Employment Contract 1 (1st Appellant's Appeal Brief, para. 335).

97. *Sixth*, the 1st Appellant argues that the termination fee established in Article 8.2 of Employment Contract 1 was based on the *"simple monthly retribution"* agreed in Article 2.4, the *"retribution"* waived by the 1st Appellant when he left his previous club and the house allowance foreseen in Article 2.9, with the fact that it corresponds to the total of the 1st Appellant's *"retribution"* and that of the staff being constituting a simple coincidence (1st Appellant's Appeal Brief, paras. 337 and 338).

98. *Seventh,* the 1st Appellant argues that damages under liquidated damage clauses are subject to a proportionality requirement under Article 163 of the CO (1st Appellant's Appeal Brief, paras. 339-341), and can be pronounced as *"non-applicable"* or *"invalid"* by FIFA if they are disproportionate, in which case the calculation of the damages owed to a party after premature termination without cause are governed by Article 17 of the RSTP (1st Appellant's Appeal Brief, paras. 342 and 343).

99. However, according to CAS 2015/A/3999, liquidated damages clauses should not be deemed *"excessive"* simply because they exceed the actual damage suffered by the injured party (1st Appellant's Appeal Brief, para. 347). Here, the damages foreseen in Article 8.2 of Employment Contract 1 are proportionate and not subject to any *"mitigation"* (1st Appellant's Appeal Brief, paras. 348-351).

100. *Eighth*, the 1st Appellant argues that, assuming Article 8.2 of Employment Contract 1 is not a liquidated damages clause, it is then a buy-out clause, defined in CAS 2013/A/3411 as a clause granting a right for parties to a contract to agree that one of them may terminate the contract by notifying the other party and paying a stipulated amount (1st Appellant's Appeal Brief, para. 356). The difference between liquidated damage clauses and buy-out clauses is that the latter cannot trigger sporting sanctions, while the former can (1st Appellant's Appeal Brief, para. 355).

101. The 1st Appellant further cites CAS 2019/A/6337, CAS 2016/A/4576, CAS 2016/A/4550, CAS 2010/A/2098, CAS 2019/A/6525 and CAS/A/7128, as well as a DRC Decision of 8 November 2022, to suggest that a party that chooses to terminate the contract early by paying an agreed some does not need a just cause to terminate the contract (1st Appellant's Appeal Brief, para. 363).

102. *Ninth*, the 1st Appellant argues that its contract with Al-Orobah is *"not relevant to settle the present matter"* and would only be relevant under the second part of Article 6.2 of Annex 2 to the RSTP, which in turn governs situations where there is no compensation clause stipulated in the contract (1st Appellant's Appeal Brief, paras. 368-370).

103. *Finally,* the 1st Appellant argues that Articles 1, 2.a and 7 of Annex 2 to the RSTP, as well as Articles 322d and 341.1

of the CO require clubs to comply with their financial obligations toward coaches, and that the Respondent fell short of these obligations by failing to pay a salary advance of EUR 50,000 within 12 business days from the signature of Employment Contract 1, as required by the latter's Article 2.3 and Article 1.5 of the Pre-Employment Contract (1st Appellant's Appeal Brief, paras. 374-382).

104. The 1st Appellant adds in this regard that the reason why the PSC did not discuss the salary advance is the fact that it did not accept to have a second round of submissions and did not consider the 1st Appellant's response when the latter provided the employment contract with the new club (1st Appellant's Appeal Brief, paras. 384 and 385).

105. In light of the above, the 1st Appellant presents the following request for relief (1st Appellant's Appeal Brief, pp. 124, 125):

"The Appellant hereby respectfully requests the Court of Arbitration for Sports to:

a) Set aside the Appealed Decision in full.

b) Acknowledge that the Respondent Club, on 21 June 2024, terminated the employment contract signed with the Appellant Head Coach, unilaterally, before its expiry date, without just cause and with immediate effects.

c) Acknowledge that the Club activated Clause 8 of the employment contract, namely Clause 8.2, which gave the right to terminate the contract unilaterally and without just cause, before its expiry date, so any employment agreements signed by the Coach after the contract termination are not relevant in the settlement of the present dispute, that is: no mitigation shall be made in the present case.

d) Acknowledge that the case at hand is not a collective contract and the Appellant didn't seek relief before the Football Tribunal nor before CAS on behalf of the other individuals, nor the breach of contract was calculated and based on compensation to the other individuals.

e) Acknowledge that there is no combined effect of the Termination Clause and the Pre-Contract, nor any violation of the Regulations, so the consequences of termination at hand shall not be analysed within the parameters of art. 6 Annexe 2 of said Regulations.

f) Condemn the Respondent Club to pay to the Appellant Coach the compensation net amount of 729.111,11 €, plus interest at 5% rate since 21 June 2024 until effective payment.

g) Condemn the Respondent Club to pay to the Appellant Coach the net amount of 50.000,00 €, regarding the salary advance that should have been paid in the 12 business days after the signature of the Employment Contract, pursuant Clause 2.3. of the Employment Contract, plus interest at 5% rate since the overdue date until effective payment.

h) Impose to the Respondent Club sporting sanctions.

Also,

i) To condemn the Respondent Club to pay an amount of CHF 10'000 regarding the expenses with the legal advice and composition of the appeal, towards the Lawyer from the Appellant.

j) To condemn the Respondent Club to pay the entire costs of the proceeding.

k) Consolidate to the same Panel, pursuant Article RS0. Para. 2 of the "Code", the cases of the Appeals to CAS against the FIFA's PAS decisions on the cases:

REF.FPSD-15624, regarding an employment-related dispute concerning the coach Ricardo Manuel Goncalves Ferreira (Exhibit 39) - Re: CAS 2024/A/11077 Ricardo Miguel Goncalves Ferreira v. Vasco da Gama Sociedade Anonima Do Futebol;

REF.FPSD-15625, regarding an employment-related dispute concerning the coach Leandro de Sousa Mendes (Exhibit 40) - Re: CAS 2024/A/11080 Leandro De Sousa Mendes v. Vasco da Gama Sociedade Anonima Do Futebol;

REF-FPSD-15626, regarding an employment-related dispute concerning the coach Pedro Valdemar Vasconcelos Pinto da Cunha Teixeira (Exhibit 41) - Re: CAS 2024/A/11081 Pedro Valdemar Vasconcelos Pinto da Cunha Teixeira v. Vasco da Gama Sociedade Anonima Do Futebol

REF-FPSD-15627, regarding an employment-related dispute concerning the coach Jose Miguel Carvalho Teixeira (Exhibit 42) - -Re: CAS 2024/A/11079 Jose Miguel Carvalho Teixeira v. Vasco da Gama Sociedade Anonima Do Futebol".

2. The 2nd Appellant's position

106. The 2nd Appellant argues that the Respondent is in debt to it in the net amount of R$ 324,924 plus 5% interest from the overdue dates until effective payment (2nd Appellant's Appeal Brief, para. 168), and reproduces the arguments made by the 1st Appellant under paras. 81-102 above. The 2nd Appellant then presents the following request for relief (2nd Appellant's Appeal Brief, pp. 124, 125):

"The Appellant hereby respectfully requests the Court of Arbitration for Sports to:

a) Set aside the Appealed Decision in full.

b) Acknowledge that the Respondent Club, on 21 June 2024, terminated the employment contract signed with the Appellant Assistant Coach, unilaterally, before its expiry date, without just cause with immediate effect.

c) Acknowledge that the Club activated Clause 8 of the employment contract, namely Clause 8.1, which gave the right to terminate the contract unilaterally and without just cause, before its expiry date, so any employment agreements signed by the Coach after the contract termination are not relevant in the settlement of the present dispute, that is: no mitigation shall be made in the present case.

d) Acknowledge that the case at hand is not a collective contract and the Appellant didn't seek relief before the Football Tribunal nor before CAS on behalf of the other individuals, nor the breach of contract was calculated and based on compensation to the other individuals.

e) Acknowledge that there is no combined effect of the Termination Clause and the Pre-Contract, nor any violation of the Regulations, so the consequences of termination at hand shall not be

analysed within the parameters of art. 6 Annexe 2 of said Regulations.

f) Condemn the Respondent Club to pay to the Appellant Coach the compensation gross amount of R$ 324.924,00, plus interest at 5% rate since 21 June 2024 until effective payment.

g) Impose to the Respondent Club sporting sanctions.

Also,

h) To condemn the Respondent Club to pay an amount of CHF 10'000 regarding the expenses with the legal advice and composition of the appeal, towards the Lawyer from the Appellant.

i) To condemn the Respondent Club to pay the entire costs of the proceeding.

j) Consolidate to the same Panel, pursuant Article R50. Para. 2 of the "Code", the cases of the Appeals to CAS against the FIFA's PAS decisions on the cases:

REF.FPSD-15624, regarding an employment-related dispute concerning the coach Ricardo Manuel Gon9alves Ferreira (Exhibit 39) - Re: CAS 2024/A/11077 Ricardo Miguel Goncalves Ferreira v. Vasco da Gama Sociedade An6nima Do Futebol;

REF.FPSD-15559, regarding an employment-related dispute concerning the coach Alvaro Adriano Teixeira Pacheco (Exhibit 40) - Re: CAS 2024/A/11078 Alvaro Adriano Teixeira Pacheco v. Vasco da Gama Sociedade An6nima Do Futebol;

REF-FPSD-15626, regarding an employment-related dispute concerning the coach Pedro Valdemar Vasconcelos Pinto da Cunha Teixeira (Exhibit 41) - Re: CAS 2024/A/11081 Pedro Valdemar Vasconcelos Pinto da Cunha Teixeira v. Vasco da Gama Sociedade Anonima Do Futebol;

REF-FPSD-15625, regarding an employment-related dispute concerning the coach Leandro de Sousa Mendes (Exhibit 42) - Re: CAS 2024/A/11080 Leandro De Sousa Mendes v. Vasco da Gama Sociedade Anonima Do Futebol".

3. The 3rd Appellant's position

107. The 3rd Appellant argues that the Respondent is in debt to it in the net amount of R$ 537,186 plus 5% interest from the overdue dates until effective payment (3rd Appellant's Appeal Brief, para. 168), and reproduces the arguments made by the 1st Appellant under paras. 81-102 above. The 3rd Appellant then presents the following request for relief (3rd Appellant's Appeal Brief, pp. 126, 127):

"The Appellant hereby respectfully requests the Court of Arbitration for Sports to:

a) Set aside the Appealed Decision in full.

b) Acknowledge that the Respondent Club, on 21 June 2024, terminated the employment contract signed with the Appellant Assistant Coach, unilaterally, before its expiry date, without just cause and with immediate effects.

c) Acknowledge that the Club activated Clause 8 of the employment contract, namely Clause 8.1, which gave the right to terminate the contract unilaterally and

without just cause, before its expiry date, so any employment agreements signed by the Coach after the contract termination are not relevant in the settlement of the present dispute, that is: no mitigation shall be made in the present case.

d) Acknowledge that the case at hand is not a collective contract and the Appellant didn't seek relief before the Football Tribunal nor before CAS on behalf of the other individuals, nor the breach of contract was calculated and based on compensation to the other individuals.

e) Acknowledge that there is no combined effect of the Termination Clause and the Pre-Contract, nor any violation of the Regulations, so the consequences of termination at hand shall not be analysed within the parameters of art. 6 Annexe 2 of said Regulations.

f) Condemn the Respondent Club to pay to the Appellant Coach the compensation gross amount of R$ 537.186,00, plus interest at 5% rate since 21 June 2024 until effective payment.

g) Impose to the Respondent Club sporting sanctions.

Also,

h) To condemn the Respondent Club to pay an amount of CHF 10'000 regarding the expenses with the legal advice and composition of the appeal, towards the Lawyer from the Appellant.

i) To condemn the Respondent Club to pay the entire costs of the proceeding.

j) Refer to the same Panel, pursuant Article R50. Para. 2 of the "Code", the cases of the Appeals to CAS against the FIFA's PAS decisions on the cases:

REF.FPSD-15624, regarding an employment-related dispute concerning the coach Ricardo Manuel Gonçalves Ferreira (Exhibit 39) - Re: CAS 2024/A/11077 Ricardo Miguel Gonçalves Ferreira v. Vasco da Gama Sociedade Anônima Do Futebol;

REF.FPSD-15559, regarding an employment-related dispute concerning the coach Álvaro Adriano Teixeira Pacheco (Exhibit 40) - Re: CAS 2024/A/11078 Alvaro Adriano Teixeira Pacheco v. Vasco da Gama Sociedade Anônima Do Futebol;

REF-FPSD-15627, regarding an employment-related dispute concerning the coach José Miguel Carvalho Teixeira (Exhibit 41) - Re: CAS 2024/A/11079 José Miguel Carvalho Teixeira v. Vasco da Gama Sociedade Anônima Do Futebol;

REF-FPSD-15625, regarding an employment-related dispute concerning the coach Leandro de Sousa Mendes (Exhibit 42) - Re: CAS 2024/A/11080 Leandro De Sousa Mendes v. Vasco da Gama Sociedade Anônima Do Futebol".

B. The Respondent's position

1. On the 1st Appellant's claims

108. *First*, the Respondent argues that the 1st Appellant contradicts itself when claiming EUR 50,000 as a salary advance, since the 1st Appellant asserted during the present proceedings and before the PSC that he is not entitled to *"outstanding payables"*, having been *"paid in full"*

(Respondent's Answer to the 1st Appellant's Appeal Brief, para. 16).

109. This, according to the Respondent, violates the principles of *non venire contra factum proprium* (Respondent's Answer to the 1st Appellant's Appeal Brief, para. 19) and *nemo auditur propriam turpitudinem allegans* (Respondent's Answer to the 1st Appellant's Appeal Brief, para. 72 and fn 11, citing DRC, decision passed on 28/01/2016; DRC, decision passed on 26/05/2016; DRC, decision passed on 09/04/2020; CAS 2015/A/4195; CAS 2011/A/2375; CAS 2015/A/4097; TAS 2011/A/2366; CAS 2010/A/2168).

110. *Second,* the Respondent argues that *"the scope of the de novo review does not allow the Arbitral Tribunal to consider this request"* since it was not previously submitted to the PSC (Respondent's Answer to the 1st Appellant's Appeal Brief, para. 21).

111. *Third,* the Respondent argues *ad argumentandum* that the salary advance has already been accounted for when the Parties settled the Appellants' salary entitlements (Respondent's Answer to the 1st Appellant's Appeal Brief, para. 22).

112. *Fourth,* the Respondent points to the three different characterizations the 1st Appellant ascribes to Article 8.2 of Employment Contract 1, namely *"compensation"* clause, *"liquidated damages"* clause and *"buy-out"* clause, stating that the 1st Appellant's difficulties in characterizing the provision are *"evident"* (Respondent's Answer to the 1st Appellant's Appeal Brief, para. 26).

113. *Fifth,* the Respondent argues that the PSC Decision 1 should not be declared *"null and void"* on the alleged ground that it was not based on the *"written file"* as required by Article 41 of the FIFA Football Tribunal Procedural Rules (the "Procedural Rules"), because there was one round of written submissions, whereas a second round of submissions can take place only if the FIFA general secretariat deems it necessary, according to Article 22 of the Procedural Rules (Respondent's Answer to the 1st Appellant's Appeal Brief, para. 34).

114. *Sixth,* the Respondent argues that Article 17 of the RSTP does not apply to disputes involving coaches which are governed by Annex 2 to the RSTP, according to CAS 2017/A/5125 and CAS 2017/A/5164 (Respondent's Answer to the 1st Appellant's Appeal Brief, para. 43 and fn 4).

115. *Seventh,* the Respondent argues that even if Article 8.2 of Employment Contract 1 is a liquidated damages clause, it lacks proportionality since the amount it provides for (EUR 850,000) is higher than the remuneration itself (EUR 525,097.48) (Respondent's Answer to the 1st Appellant's Appeal Brief, para. 48).

116. *Eighth,* the Respondent argues that the remuneration of EUR 850,000 foreseen in Article 8.2 of Employment Contract 1 is equal to the annual remuneration due to all three Appellants and the rest of the staff and not just to the 1st Appellant, citing to that effect Article 1.2.a of the Pre-Employment Contract (Respondent's Answer to the 1st Appellant's Appeal Brief, para. 51).

117. In other words, in the event of a unilateral termination without just cause by the Respondent, the Parties chose to compensate the 1st Appellant with the

amounts that would have been due to all members of the staff (Respondent's Answer to the 1st Appellant's Appeal Brief, para. 53).

118. *Ninth*, the Respondent argues that if Article 8.2 of Employment Contract 1 is valid, or if compensation should otherwise be calculated according to Article 6 of Annex 2 to the RSTP, the compensation due to the 1st Appellant would be subject to mitigation (Respondent's Answer to the 1st Appellant's Appeal Brief, para. 56).

119. The Respondent cites in this regard Article 6.2.b of Annex 2 to the RSTP to suggest that *"the value of the new contract for the period corresponding the time remaining on the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated early"* (Respondent's Answer to the 1st Appellant's Appeal Brief, para. 58).

120. The Respondent also cites Article 337c of the CO, to suggest that the *"damages are reduced by any amounts that the employee saved as a result of the termination of the employment relationship or that he earned by performing other work"* (Respondent's Answer to the 1st Appellant's Appeal Brief, para. 60).

121. Moreover, the Respondent states that the principle of mitigation found in Swiss law and the RSTP has been upheld by FIFA (citing PSC, Coach Arnau Navarro Cabre, Spain / Club Qingdao Huanghai FC, China PR (item 25), and PSC (Single Judge), Coach A v. Club B (item 80)) and the CAS (citing CAS 2015/A/4346) (Respondent's Answer to the 1st Appellant's Appeal Brief, paras. 61-63).

122. The Respondent concludes that, accordingly, the value of the contract the 1st Appellant signed with Al-Orobah should be deducted from any compensation owed to the 1st Appellant due to the termination (Respondent's Answer to the 1st Appellant's Appeal Brief, para. 69).

123. Finally, the Respondent objects to the appearance of Leandro de Sousa Mendes and Ricardo Miguel Gonçalves Ferreira as witnesses in the present proceedings, stating that, *"[g]iven their direct interest in the outcome of this case* [N.B.: referring to the fact that they were members of the coaching team and had previously started CAS proceedings against the Respondent]*, their testimony raises serious concerns regarding impartiality and credibility. In this sense, accepting them as witnesses would amount to a due process violation"* (Respondent's Answer to the 1st Appellant's Appeal Brief, para. 76).

124. The Respondent therefore *"requests that the Panel reject the Appellant's application to hear the assistant coaches Leandro de Sousa Mendes and Ricardo Miguel Gonçalves Ferreira as witness, ensuring procedural fairness and the integrity of the arbitration"* (Respondent's Answer to the 1st Appellant's Appeal Brief, para. 77).

125. In light of the above, the Respondent presents the following request for relief (Respondent's Answer to the 1st Appellant's Appeal Brief, paras. 83 and 84):

"Considering the foregoing, the Respondent respectfully requests that the Sole Arbitrator:

(a) Reject the application to hear assistant coaches Leandro Sousa Mendes and Ricardo Miguel Gonçalves Ferreira as

witness. Furthermore, the Respondent respectfully requests the Sole Arbitrator to render an award as follows:

(b) Enforcing TAS jurisdiction to rule on the matter.

(c) Dismissing the Appeal in its entirety.

(d) Confirming the validity and the terms of the decision of the Player Status' Chamber of the FIFA Football Tribunal passed on 29/10/2024.

Subsidiarily, if the Panel diverges from the PSC Decision and considers clause 8.2 of the Employment Agreement to be valid:

(d.i) Deducting the remuneration for 2024 stipulated in the Head Coach's new employment contract (€525,097.48, as stated in the PSC Decision, §45 – Appellant's Exhibit 0) from his request for compensation (EUR 729,111.11 plus interests).

(e) Ordering the Appellant to bear all costs of the arbitration, including but not limited to CAS administrative costs, arbitrators' fees, and all other procedural costs.

(f) Ordering the Appellant to pay the Respondent a contribution towards its legal fees and other expenses incurred in connection with this arbitration, in an amount not less than CHF 20.000 (twenty thousand Swiss Francs) or any other amount deemed appropriate".

2. On the 2nd Appellant's claims

126. With respect to the 2nd Appellant, the Respondent presents the same counterarguments as those presented by the 1st Appellant under paras. 112-124 above, and submits the following request for relief (Respondent's Answer to the 2nd Appellant's Appeal Brief, paras. 74 and 75):

"Considering the foregoing, the Respondent respectfully requests that the Sole Arbitrator:

(a) Reject the application to hear Head Coach Álvaro Pacheco and Assistant Coach Ricardo Miguel Gonçalves Ferreira as witness (…). Furthermore, the Respondent respectfully requests the Sole Arbitrator to render an award as follows:

(b) Enforcing TAS jurisdiction to rule on the matter.

(c) Dismissing the Appeal in its entirety.

(d) Confirming the validity and the terms of the decision of the Player Status' Chamber of the FIFA Football Tribunal passed on 29/10/2024, including the mitigated compensation.

(e) Ordering the Appellant to bear all costs of the arbitration, including but not limited to CAS administrative costs, arbitrators' fees, and all other procedural costs.

(f) Ordering the Appellant to pay the Respondent a contribution towards its legal fees and other expenses incurred in connection with this arbitration, in an amount not less than CHF 20.000 (twenty thousand Swiss Francs) or any other amount deemed appropriate by the Panel".

3. On the 3rd Appellant's claims

127. With respect to the 3rd Appellant, the Respondent presents the same

counterarguments as those presented by the 1st Appellant under paras. 112-124 above, and submits the following request for relief (Respondent's Answer to the 3rd Appellant's Appeal Brief, paras. 74 and 75):

"Considering the foregoing, the Respondent respectfully requests that the Sole Arbitrator:

(a) Reject the application to hear Head Coach Álvaro Pacheco and Assistant Coach Ricardo Miguel Gonçalves Ferreira as witness (…). Furthermore, the Respondent respectfully requests the Panel to render an award as follows:

(b) Enforcing TAS jurisdiction to rule on the matter.

(c) Dismissing the Appeal in its entirety.

(d) Confirming the validity and the terms of the decision of the Player Status' Chamber of the FIFA Football Tribunal passed on 29/10/2024, including the mitigated compensation.

(e) Ordering the Appellant to bear all costs of the arbitration, including but not limited to CAS administrative costs, arbitrators' fees, and all other procedural costs".

C. The Sole Arbitrator's decision

1. Preliminary issue 1: the appeals can be decided in a single award

128. In their respective Appeal Briefs, the Appellants requested the CAS to refer all three appeals to the same panel, pursuant Article R50.2 of the CAS Code, which reads as follows:

"When two or more cases clearly involve the same issues, the President of the Appeals Arbitration Division may invite the parties to agree to refer these cases to the same Panel; failing any agreement between the parties, the President of the Division shall decide".

129. As already discussed, pursuant to this provision, further to the Parties' consent, the CAS confirmed that all appeals would be submitted to the same panel on 31 December 2024.

130. In light of this, on 25 June 2025, the Sole Arbitrator invited the Parties to state whether they had any objection to the issuance of one single award for all three appeals, by 27 June 2025.

131. Since the Parties communicated no objections by that deadline, the Sole Arbitrator is empowered to decide the three appeals in one award, and has proceeded to do so in the interest of procedural efficiency.

2. Preliminary issue 2: the bankruptcy proceedings have no effect on the present case

132. As discussed in para. 60 above, on 17 June 2025, the Respondent informed the Appellants, while copying the CAS, that it was under *"reorganization bankruptcy proceedings"*.

133. Attaching documents from the Rio de Janeiro State Court, the Respondent argued that it is *"protected from any and all sanctions, whether judicial or extrajudicial"*, for ninety days, starting from 8 May 2025.

134. The Respondent further argued that, under Brazilian bankruptcy law, it is *"barred from paying any debts incurred before the current reorganization bankruptcy*

proceedings, including potential and unexpected debts arising from these procedures".

135. In their response of 19 June 2025, the Appellants argued that domestic bankruptcy proceedings do not affect the Sole Arbitrator's competence to decide the present case, citing CAS 2012/A/2750, CAS 2013/A/3425 and CAS 2017/A/5360.

136. The Appellants also argued that the present case concerns *"substantive"* entitlements and *"pre-insolvency"* debts; at most, the bankruptcy proceedings would influence the enforceability of such debts but could not affect their existence.

137. Finally, the Respondent noted that enforcement of this award through FIFA could be *"closed"* under Article 59 of the 2025 FIFA Disciplinary Code ("FDC"); this, however, would be up to FIFA to decide at the stage of enforcement and cannot affect the present proceedings.

138. The Sole Arbitrator sees no need for action in this regard. The Appellants do not request the suspension of the present proceedings, a finding of lack of jurisdiction/ admissibility, or a pronouncement that the debt is invalid.

139. Rather, the Appellants explain that their communication is filed in order to satisfy point 2 of FIFA Circular no. 1934, in *"good faith and with due diligence"*. Point 2 constitutes a mere explanatory remark, stating that the FDC now codifies certain obligations to *"notify creditors of such proceedings and to inform them of their rights and legal remedies under domestic law"*.

140. The Appellants also refer to Article 5.a of the FDC – likely intending to refer to Article 21.5.a. The latter, which forms part of the FDC's section on failure to respect decisions, states that:

"Debtors must notify creditors in a timely and reasonable manner about the initiation of domestic insolvency or bankruptcy proceedings, and no later than 15 days after becoming aware of the initiation of such proceedings. They must also outline the creditors' rights in the proceedings and the methods available to the creditors for registering a claim".

141. With their communication, the Appellants therefore seek to comply with the above-presented 15-day notification deadline; this notification is of no direct relevance to the present proceedings, and solely concerns enforcement before FIFA.

142. In sum, the domestic bankruptcy proceedings have no impact on the present proceedings; whether they can have an impact at the stage of enforcement before FIFA or any other bodies is a matter for such bodies to decide.

3. Preliminary issue 3: the Respondent's arguments concerning "group" contracts can be examined

143. As seen in paras. 81 and 82 above, the Appellants argue that they were not afforded the opportunity to comment on the Respondent's *"group"* contract arguments (discussed in further detail in the next section) during the PSC proceedings. The presumed purpose of this argument would be to preclude any finding on such arguments, although the Appellants are vague in their request.

144. Article R57 of the CAS Code, in relevant part, reads as follows:

> *"[t]he Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance".*

145. The principle that the *de novo* nature of CAS review can cure the procedural deficiencies of proceedings before a sports federation, thereby permitting new arguments, is well-established in CAS jurisprudence. A comprehensive explanation of this principle is found in CAS 2016/A/4648, para. 74, where the panel reasoned as follows:

> *"Under this CAS Panel's scope of review pursuant to Article R57 of the CAS Code, the Panel has the full power to admit new prayers for relief and new evidence and to hear new arguments. A so-called "de novo" hearing is "a completely fresh hearing of the dispute between the Parties, 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 in the first instance, whether in the sporting body or by the ordinary division, CAS Panel, would be cured by the arbitration proceedings before the appeal panel, and the appeal panel is therefore not required to consider any such allegations""* (CAS 2016/A/4648, para. 74).

146. Another CAS panel has reasoned as follows:

> *"The full power of review has a dual meaning: (i) CAS admits new prayers for relief and new evidence and hears new legal arguments; and (ii) the full power of review means that procedural flaws, which occurred during the proceedings of the previous instances, can be cured by the CAS Panel"* (CAS 2020/A/6988, para. 129).

147. Moreover, according to the Swiss Federal Tribunal ("SFT"), a rejection of claims based on the right to be heard when the final-instance body possesses *de novo* review powers is *"inspired by considerations of speed and economy of procedure"* (SFT 124 II 132, c. 2.d).

148. The Sole Arbitrator, accordingly, does not see the purpose of the Appellants' argument with respect to their procedural rights: under Article R51 of the CAS Code, in the present proceedings, the Appellants have enjoyed a full right to file all *"facts and legal arguments giving rise to the appeal, together with all exhibits and specification of other evidence upon which* [they intend] *to rely"*. The Appellants did file such arguments and exhibits, in response to the arguments raised in the Challenged Decisions.

149. Had the question of *"group"* contracts been entirely absent from the Challenged Decisions, the Sole Arbitrator, like the Sole Arbitrator in CAS 2016/A/4387 (para. 152), would have been ready to consider the situation as *"exceptional"*, granting the Parties a right to *"supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence"* under Article R56.1 of the CAS Code. However, the Appellants never requested such an action.

150. Accordingly, the Sole Arbitrator finds that the alleged absence of any discussion on *"group"* contracts during the PSC proceedings has no impact on the present proceedings. The Respondent's arguments in this regard must be heard.

4. Preliminary issue 4: all witnesses were admissibly heard and there is no reason to discredit their testimonies

151. As discussed in para. 54 above, the Respondent objected to the examination of several witnesses put forward by the Appellants; these are Messrs Leandro de Sousa Mendes and Ricardo Miguel Gonçalves Ferreira in CAS 2024/A/11078; Messrs Álvaro Pacheco and Ricardo Miguel Gonçalves Ferreira in CAS 2024/A/11079; Messrs Álvaro Pacheco and Ricardo Miguel Gonçalves Ferreira in CAS 2024/A/11081.

152. The Respondent's grounds for challenging the admissibility of these witnesses were that they all worked closely together and/ or had initiated proceedings before the CAS and the PSC collectively, thus possessing common interests (see, *e.g.*, Answer to the 1st Appellant's Appeal Brief, paras. 74-77).

153. In this regard, as held in CAS 2017/A/4947, a witness' employment relationship with a party is no cause of automatic inadmissibility; rather *"it is the Sole Arbitrator's duty to properly assess the credibility and authenticity of the witness' testimony, considering all his/her personal circumstances and contrasting his/her testimony with the rest of the evidence at stake"* (para. 84).

154. Moreover, the Sole Arbitrator recalls that the International Bar Association's Rules on the Taking of Evidence ("IBA Rules") are perceived to codify the state of Swiss law regarding evidence, and are considered to operate as a handbook where the applicable arbitration rules do not diverge from them (RIGOZZI/QUINN, *Evidentiary Issues Before CAS* (2012), p. 5, referring to BERGER/KELLERHALS, *International and Domestic Arbitration in Switzerland* (2*nd* ed.), para. 1200).

155. Article 4(2) of the IBA Rules explicitly allows any person to present evidence as a witness, including a party to the arbitration or a party's officer, employee, or other representative.

156. This means that a witness can have a direct interest in the outcome of the case; said witness' testimony cannot be considered inadmissible nor a violation of due process, and its weight will be a matter of appreciation by the tribunal. In this case, accordingly, all oral testimonies were admissible.

157. With respect to the credibility of the witnesses, the Respondent has presented no concrete arguments other than assumptions based on their employment-related and procedural relationship. The Sole Arbitrator, therefore, sees no reason to discredit statements made by such witnesses.

5. The Employment Contracts were "executed on an individual basis" under Article 2(1) of Annex 2 to the RSTP

158. As already discussed, the PSC found that the Employment Contracts constituted *"group"* contracts, and declared the financial arrangements provided thereunder in case of unilateral unlawful termination unenforceable, replacing them with the by-default regime of the RSTP.

159. The Appellants reject this finding, whereas the Respondent ask that it be confirmed. For the reasons presented in

the immediately preceding section, this finding can and shall be revisited by the Sole Arbitrator notwithstanding the absence of a dedicated round of submission on it before the PSC.

160. The permissibility of what the Parties and the PSC have referred to as *"group"* or *"collective"* contracts is determined under Article 2.1 of Annex 2 to the RSTP, which reads as follows:

"A coach must have a written contract with a club or an association, executed on an individual basis".

161. Legal sources elucidating this provision are scarce. The most instructive understanding can be found in FIFA's Commentary to the RSTP, which confirms that the requirement of execution *"on an individual basis"* implies a prohibition of so-called *"group contracts"*, and proceeds to define such contracts as follows (p. 558):

"It is not uncommon for the PSC to decide on matters whereby a foreign head coach is accompanied by their chosen coaching team of six or seven staff members covering both football-specific and non-football-specific roles. To try and avoid those individuals not employed in football-specific roles not being subject to FIFA jurisdiction, the foreign head coach signs a single contract with the club which covers the payment for the whole coaching team, who effectively act as the coach's sub-contractors (i.e. the foreign head coach receives the salary for the whole coaching team from the club, and then pays his coaching team directly). Such mechanisms have been outlawed since 1 January 2021 to protect the Regulations from being circumvented".

162. From the above, it can be concluded that a *"group"* or *"collective"* contract is a *"single contract"* signed between the club (or association) and the *"foreign head coach"*, yet covering the *"payment for the whole coaching team"*; ultimately, of course, the true nature of a contract should be examined on a case-by-case basis.

163. It can also be deduced from the above that *"group"* or *"collective"* contracts prompt the following concerns:

(i) They complicate FIFA's *"jurisdiction"* by establishing the head coach as the only 'on-paper' creditor with a right to seize FIFA or the CAS. The members of the staff cannot represent themselves as they sit fit, and will often need to rely, in pure good faith, on the head coach's willingness to distribute the proceeds of the award or decision.

(ii) They contribute to the overall lack of *"legal certainty"* in coach contracts, a problem alluded to in the preface to Annex 2 (RSTP Commentary, p. 548); plainly, they constitute non-transparent practices capable of prompting regulatory concerns.

(iii) They enable claims by *"individuals not employed in football-specific roles"*, who would otherwise not be covered by Annex 2 to the RSTP (see RSTP Commentary, p. 14), to be indirectly determined by FIFA.

164. To *"outlaw"* such *"practices"*, FIFA decided, by virtue of Article 2.1 of Annex 2 to the RSTP, to *"prohibit"* so-called *"group"* or *"collective"* contracts (RSTP Commentary, p. 558). FIFA did not, however, expressly define the consequences of a contract breaching this prohibition.

165. To resolve this ambiguity, interpretation in line with the broader *"regulatory context"* and the *"intentions of the association"* (CAS 2010/A/2071, para. 20) is necessary. In this regard, the RSTP Commentary states that the purpose of Articles 3 to 8 of Annex 2 is to protect *"contractual stability"* and ensure that coaches are not left *"at the mercy"* of clubs (p. 566).

166. The solution which appears most consistent with this purpose is that provided by Article 20(1) of the CO, according to which, *"where the defect pertains only to certain terms of a contract, those terms alone are void unless there is cause to assume that the contract would not have been concluded without them"*.

167. Similarly, the most likely consequence intended by the drafters of Annex 2 to the RSTP is to invalidate not the entire contract, but the particular provision thereof rendering its nature *"collective"*, replacing it with the RSTP's by-default regime. Any other solution would leave coaches unprotected and harm contractual stability.

168. Against this interpretative background, the Sole Arbitrator does not agree with the PSC that the Employment Contracts failed the *"individual basis"* requirement of Article 2.1 of Annex 2 to the RSTP. To begin with, self-evidently, they do not form a *"single contract"*: they are individually signed and contain individual terms and reference numbers.

169. Moreover, Employment Contract 1 does not cover the *"payment for the whole coaching team"*. Each contract sets its own terms for salaries and termination fees, and there is no evidence of an 'unseen' internal agreement to redistribute the CHF 850,000 referenced in Employment Contract 1 among the whole coaching team.

170. The fact that Employment Contract 2 and Employment Contract 3 are automatically terminated in case Employment Contract 1 itself is terminated does not modify this conclusion. This is acknowledged by FIFA itself when providing the following example, in its Commentary to the RSTP, of what does not constitute a prohibited *"group"* contract (p. 558):

"Despite being concluded on an individual basis, the contracts signed with the assistant coaches expressly established that they would be automatically terminated if the relationship with the head coach was ended, for whatever reason. In this specific constellation and in strict observation of the contractual freedom of the parties concerned, the PSC confirmed that, by prematurely terminating the contract with the head coach, the other three assistant coaches had also been automatically dismissed by the club (for the same reason and without just cause)".

171. This example serves to confirm that a contract with an automatic termination clause can still be deemed executed on an *"individual basis"*, in line with the parties' *"contractual freedom"*, and its termination provisions should still be honoured.

172. As a case in point, in the cases referred to by FIFA in the above-cited passage (specifically, fn 892 thereof), the termination clause was not deemed null and void (PSC decision of 28 February 2023, Rebelo Fernandes; PSC decision of 31 March 2023, Braz Marques; PSC decision of 31 March 2023, Salazar; PSC decision of 9 May 2023, Morais).

173. A consideration of the object and purpose behind Article 2 of Annex 2 to the RSTP would confirm the conclusions reached above, as follows:

(i) Here, the members of the staff not only enjoy individual compensation, but also a fully autonomous right to claim such compensation before FIFA: they have concluded contracts with an RSTP clause, which affords FIFA *"jurisdiction"* over their claims;

(ii) *"[L]egal certainty"* is not at risk *in casu*. The arrangements appear transparent and no regulatory concerns under them, such as tax and compliance issues, have been reported by the Parties; and

(iii) All Employment Contracts pertain to individuals *"employed in football-specific roles"* (a head coach and two assistant coaches); they do not subject to FIFA's jurisdiction persons the RSTP was not intended to cover.

174. While these considerations suffice to reverse the PSC's findings, the Sole Arbitrator recalls that the Parties presented extensive views on whether the Employment Contracts were negotiated collectively or individually. To be sure, this is not crucial; what matters is how they were meant to be *"executed"*, as clearly stated in Article 2.1 of Annex 2 to the RSTP.

175. In any event, for completeness, the Sole Arbitrator finds that the Employment Contracts were indeed negotiated individually: at the hearing, the Appellants affirmed that, while they were represented by the same agent during negotiations and were approached by the head coach to join the Respondent, they communicated their own compensation terms to their (common) agent, who then negotiated the contracts based on these terms.

176. In other words, while coordinated negotiations for all contracts took place, there is no evidence that the coach dictated the staff's financial terms, let alone that the negotiations ever resulted in the head coach concluding a collective contract on their behalf.

177. From the Pre-Employment Contract, it is of course apparent that, when substantive negotiations with the Respondent began, the head coach was aware of his staff's basic financial demands (since, again, they all had the same agent), and sought to ensure these numbers would be honoured.

178. Had he not done so, there would have been no guarantee of his staff eventually joining him, the financial terms of their engagement being uncertain. The coach's course of action is logical and fully in line with the RSTP's spirit and text.

179. The situation might have been different (i) had <u>only one</u> contract been signed after the Pre-Employment Contract, namely one between 1st Appellant and the Respondent, rendering the 2nd and 3rd Appellants fully dependent on the 1st Appellant, or (ii) had the contracts signed by the 2nd and 3rd Appellants contained no financial arrangements of their own. However, to reiterate, this is not the case here.

180. On a concluding note, the Sole Arbitrator is mindful of the

repercussions of characterizing coordinated negotiations as constitutive of a *"group"* contract; this would dissuade coaches from forming stable coaching teams, which cannot be the intention behind Article 2.1 of Annex 2 to the RSTP.

181. The Sole Arbitrator, therefore, finds that the Employment Contracts were *"executed on an individual basis"*, reverses the PSC's finding in all three Decisions that amounts due to the Appellants following the termination of their Employment Contracts cannot be calculated based on the terms of the Employment Contracts themselves, and finds that these amounts should be calculated pursuant to Article 8.2 of Employment Contract 1, Article 8.1 of Employment Contract 2 and Article 8.1 of Employment Contract 3 respectively.

6. The requested amounts are subject to reduction and/or mitigation

a) Swiss law governs the characterization of the Employment Contracts and the consequences of such characterization in this dispute

182. The Parties have advanced multiple legal characterizations of Article 8.2 of Employment Contract 1, Article 8.1 of Employment Contract 2 and Article 8.1 of Employment Contract 3, using terms such as *"penalties"*, *"indemnity"*, *"liquidated damages"*, *"compensation"* and *"buyout"*.

183. As a consequence of their diverging characterizations, the Parties have also advanced varied arguments on the extent to which the amounts due to the Appellants under the above-mentioned provisions are subject to *"mitigation"* or *"reduction"*.

184. Given the uncertainty surrounding the matter both in the current dispute and in CAS jurisprudence more broadly, the Sole Arbitrator finds it useful to briefly review the state of Swiss law.

185. For clarity, Swiss law applies since Article 6 of Annex 2 to the RSTP has been displaced through party agreement; indeed, this provision only governs the consequences of termination when the parties do not provide *"otherwise"* in their contracts.

186. While the provision does not explain the term *"otherwise"*, an analogy can be drawn with the compensation regime of Article 17 of the RSTP, which applies *"[i]f the parties have not incorporated any specific provision regarding the compensation due in the event of the premature termination of the contract"* (RSTP Commentary, p. 178).

187. Here, the Parties have included specific compensation mechanisms in their contractual arrangements, as will be seen further below. Moreover, during the hearing, the Parties expressly confirmed that these mechanisms shall be subject to Swiss law.

188. As an additional clarification, the Sole Arbitrator shall rely, in particular, on Swiss employment law. In this regard, it is of course noted by FIFA in its RSTP Commentary that *"given the transient nature of their appointment, it is quite common that coaches do not execute employment contracts per se – some are characterised as mandates, freelance agreements or other types of contracts, whereas in other cases a coach may manage their business affairs through a private company"* (para. 559).

189. It should, in other words, not be lightly assumed that a coach's contract

constitutes an employment agreement, whether under Swiss law or the *lex contractum*. This must be determined on a case-by-case basis, based on the contract's express terms, object and purpose.

190. In the present case, however, the term *"employment relationship"* repeatedly features throughout the relevant contracts, the term *"Employment"* appears in their title, and the contracts contain references to worker safety rules (such as the *"rules on Occupational Safety and Medicine"*).

191. Moreover, during the hearing, the Respondent confirmed that it must comply with local *"labour"* laws when executing the Employment Contracts, something the Appellants have not contested.

192. In this light, to determine the precise nature of the Employments Contracts and the extent to which the termination fees under them are subject to mitigation or reduction, Swiss employment law shall be consulted, especially given the RSTP's limited guidance on the matter.

193. Several interpretative possibilities exist under Swiss employment law for a clause governing the requirements and consequences of unilateral termination by the employer.

194. *First*, such a clause may simply reflect the general rule of Article 337c.1 of the CO, which reads as follows:

> *"[w]here the employer dismisses the employee with immediate effect without good cause, the employee is entitled to damages in the amount he would have earned had the employment relationship ended after the required notice period or on expiry of its agreed duration".*

195. This provision establishes *"damages"* (also translated as *"indemnities"*) for immediate termination without good cause; these *"damages"/"indemnities"*, according to the SFT, fall within the category of *"dommages et intérêts"*, the purpose of which is to *"place the employee in the same position as if the contract had remained in force until the next contractual term"* (DONATIELLO G., Art. 337c CO (2021), para. 2).

196. They thus include *"not only the salary, but also the reimbursement for all other benefits arising from the employment contract (e.g., bonuses, severance pay, equal treatment in severance entitlements, and payment in lieu of unused vacation)"* (TERCIER/BIERI/CARRON, *Les contrats spéciaux* (5th ed.), para. 3117).

197. These general damages under Article 337c.1 of the CO are subject to a *"reduction"* (most commonly referred to as *"mitigation"*) under Article 337c.2, as repeatedly affirmed in CAS case law (see CAS 2022/A/8963, para. 121, for a recent example); in particular, as stated in Article 337c.2, they *"are reduced by any amounts that the employee saved as a result of the termination of the employment relationship or that he earned by performing other work or would have earned had he not intentionally foregone such work".*

198. *Second*, Article 337c.3 of the CO provides for an *"additional indemnity"* of up to six months' worth of salary. This provision has a punitive/dissuasive character and is akin to a *"contractual penalty"* (DONATIELLO G., Art. 337c CO (2021), para. 15), a notion further regulated in Articles 160 *et seq.* of the CO.

199. Article 337c.3 is *"relatively mandatory"*, in the sense that more favourable terms for the employee (but not the employer) can be agreed (SFT 4A_608/2010, c. 2.1). In practice, parties in sports contracts often conclude contractual penalties higher than what is prescribed under Article 337c.3.

200. However, CAS panels have routinely subjected such penalties to reduction under Article 163.3 of the CO (see CAS 2022/A/8754, paras. 131 and 132, for a recent example), which reads as follows:

"At its discretion, the court may reduce penalties that it considers excessive".

201. *Third*, Swiss law recognizes the notion of liquidated damages clauses (*"indemnisation forfaitaire"*). While the terms *"liquidated damages"* and *"penalty clause"* are often used interchangeably (as noted in CAS 2013/A/3411, para. 94), a distinction among them exists in contractual practice: as stated in CAS 2017/A/5493, *"[t]he purpose of a liquidated damages clause is to compensate one party for an anticipated damage, whereas a penalty clause goes beyond that, an additional penalty is included to encourage performance of the contractual obligation"* (para. 78).

202. Prominent Swiss commentators confirm this distinction as a matter of Swiss law, as follows:

"The parties may fix the amount of the loss, respectively the damages in the contract as a lump sum (liquidated damages; pauschaler Schadenersatz, indemnisation forfaitaire, risarcimento forfettario). Liquidated damages are to be distinguished from the penalty clause (Konventionalstrafe; clause pénale, peine conventionnelle; pena convenzionale), which allows for the award of a predetermined amount even in the absence of loss" (MÜLLER/PEARSON-WENGER, *Swiss Contract Law in International Commercial Arbitration* (2023), para. 451).

203. Others, similarly, phrase it as follows:

"The contractual penalty must be distinguished from the contractual determination of damages (Schadenpauschalierung). The parties agree on the amount of the damage. This amount can be calculated in an absolute way (the creditor cannot prove additional damage; the debtor cannot invoke actual lower damage to reduce the compensation) or in a relative way (the parties remain free to prove damage that is higher or lower than the agreed compensation). Whereas the penalty clause is a means of exerting pressure on the debtor and primarily serves the creditor's interest in the performance of the main obligation (…), the lump-sum compensation agreement serves the interests of both parties: the creditor does not need to prove the extent of their damage, and the debtor knows in advance the price to pay in the event of improper performance of the main obligation" (MOOSER M., Art. 160 CO (2021), para. 4).

204. In essence, as applied to employment contracts, a liquidated damages clause merely facilitates the calculation of the *"damages"/"indemnity"* foreseen in Article 337c.1 of the CO. The creditor must still prove the existence of harm to possess an entitlement to liquidated damages, but is not required to establish their quantum.

205. In practice, distinguishing between a liquidated damages and penalty clause may present challenges; where Swiss law applies, the clause must be construed in accordance with the ordinary interpretative rules of Article 18 of the CO, with the law establishing no

presumption in favour of either notion (MOOSER M., Art. 160 CO (2021), para. 4).

206. In employment contracts, the key consequence of this distinction is that penalties may be reduced under the clear application of Article 163(3) CO. By contrast, according to the SFT, a reduction in liquidated damages (by applying this provision analogously) is permissible only if the actual loss is *"significantly lower"* than the agreed amount (SFT 4A_601/2015, c. 2.3.3), *i.e.*, the salary and other benefits.

207. Some authors, most notably COUCHEPIN G. (*La forfaitisation du dommage*, 2009, p. 16), further argue that such a reduction is possible only when the quantification of the relevant amount is reflected in the contract in an *"absolute"* manner (*i.e.*, the amount is clearly pre-determined and does not require extensive factual assessment).

208. *Fourth*, Swiss law recognizes the notion of *"dédit consensuel"* under Article 160.3 of the CO, which reads as follows:

> *"[t]he foregoing* [*i.e.*, Article 160.2] *does not apply if the debtor can prove that he has the right to withdraw from the contract by paying the penalty".*

209. This notion affords parties the freedom to agree that either of them may liberate itself from a contract by paying a pre-agreed monetary sum, without committing a contractual breach.

210. A 'liberation' of this kind only becomes effective once the sum is paid in full (NAFISSI S., *La tierce propriété des droits économiques dans le football professionnel* (2021), para. 403), while reduction of the relevant sum is not possible under Article 163.3 of the CO, but only under the stricter requirements of the general principle of good faith (NAFISSI S., *Contractual aspects of the buyout clause* (2017), p. 27)

211. *Finally*, contractual practice recognizes so-called *"buy-out"* clauses. As discussed in FIFA's RSTP Commentary:

> *"'[B]uy-out' clauses grant a right to the player to terminate the contractual relationship prematurely in return for payment of a predetermined sum that is stipulated in the contract. In this case, parties are not setting an amount of compensation to be paid to compensate for a breach, but rather are agreeing in advance upon the conditions of a "mutual termination", i.e. consent is given in advance to terminate the contract in the future in return for a specified payment. The key practical difference between a liquidated damages clause and a buy-out clause is that in the case of the former, there may still be a breach of contract (thus possibly triggering sporting sanctions), whereas in the case of the latter, there is a pre-agreed mutual contract termination which cannot trigger sporting sanctions"* (p. 176).

212. FIFA's RSTP Commentary notes that *"buy-out"* are *"distinct"* from other concepts, such as *"liquidated damages"* (pp. 173-177). However, in commercial practice, a clause will often display mixed characteristics, liberating a party from sporting sanctions on the one hand while also employing compensatory or dissuasive language on the other.

213. Moreover, under Swiss law, *"buy-out"* clauses do not form a distinct legal category, and it will always be necessary to determine, on a case-by-case basis, whether such a clause reflects a penalty, liquidated damages or a form of *"dédit*

consensuel". This determination must be made pursuant to Article 18 of the CO.

b) <u>The 1st Appellant's requested amount is subject to reduction</u>

214. Turning to the present case, and beginning with the clauses governing unilateral termination in the case of the 1st Appellant (Articles 8.1 and 8.2 of Employment Contract 1), the relevant text reads as follows:

> *"8.1. The Parties, based on free stipulation and hypersufficiency, mutually establish that even though the contract is for a fixed period, either Party will have a reciprocal right to terminate it early, immediately and without just cause, applying the principles that govern the termination of contracts for an indefinite period (with the exception of the value of the fine/compensation due which is agreed upon), through simple notification to the other, and the PARTY that gives rise to termination must pay the other, by way of compensation for the early termination of this contract, the compensation provided for in Clauses 8.2. or 8.3, depending on whether the termination takes place during the 2024 season or during the 2025 season, respectively.*
>
> *8.2. In the event that this instrument is terminated unilaterally and without just cause by either PARTY, in the 2024 season, the PARTY that gives rise to the termination must pay the other, as compensation, the days due until the end of the contract (i.e. 31.12.2024), the value of EUR 850,000.00 (eight hundred and fifty thousand euros) liquids/net, a value that already includes the indemnified prior notice.*
>
> *Sole paragraph: By way of example and for the avoidance of doubt, in the event that the contract is terminated on the initiative of VASCO, on 05/30/2024, and considering that between 05/30/2024 and 12/31/2024 there are 216 days, then VASCO will pay the above fine to the COACH, with the guarantees provided for in Clause 2.5. above, in the proportion of 216/226 (two hundred and sixteenths of two hundred and twenty-sixths) days, as there would still be 216 (two hundred and sixteenth) days of work until the end of the Employment Contract on 12/31/2024".*

215. The reference to *"free stipulation and hypersufficiency"*, as well as to the Parties' *"reciprocal right to terminate* [Employment Contract 1] *early"*, renders it clear that termination forms part of the Parties' contractual freedom and does not constitute a breach of contract.

216. These provisions, therefore, feature the most typical characteristic of a *"buy-out"* clause: the express right of premature unilateral termination without cause. As such, no sporting sanctions can be imposed on account of the Respondent's premature termination of Employment Contract 1.

217. Whether sporting sanctions could be imposed due to the non-payment of the amount foreseen in the above-stated provisions is a separate question, which the Sole Arbitrator shall not assess; the 1st Appellant does not advance such a specific request, instead formulating but a generic request for *"sporting sanctions"*, while furnishing no explanation of the requested type of sanction and its duration, the precise triggering event and its legal basis in the RSTP.

218. In any event, according to the prevailing view in CAS case law, *"third parties have no legally protected interest in order to request that a sporting sanction be pronounced by FIFA"*, while such sanctions are *"solely within FIFA's prerogative (…) from the perspective that sports governing bodies shall be given a certain reasonable degree of deference, in order to determine if and what sanctions are warranted in a concrete case upon a party"* (CAS 2019/A/6533, paras. 149 and 150).

219. The fact that Articles 8.1 and 8.2 of Employment Contract 1 display *"buy-out"* characteristics does not, however, exhaust the discussion, since again, *"buy-out"* does not represent a distinct legal notion under Swiss law; to determine the possibility of reduction or mitigation, it is still necessary to properly characterize these clauses under Swiss law.

220. In this regard, the scenario of a simple damages/indemnity clause pursuant to Article 337c.1 of the CO can be discarded outright; the clauses in question do not simply restate this provision's general compensation obligation, but rather provide a fixed (though pro-rated) number.

221. Moreover, the clauses do not squarely fit within the traditional understanding of a *"dédit consensuel"*. While indeed establishing a clear contractual right to termination, they do not foresee payment as a precondition thereof. Termination is triggered by a *"simple notification"*, and the *"compensation"* or *"fine"* established in the clauses shall be paid merely *"in the event"* of termination (*i.e.*, *ex post*).

222. Finally, while the term *"fine"* features in the clauses, so does the term *"compensation"*. There are, accordingly, no compelling textual grounds suggesting a penalty arrangement under Articles 337c.3 and 160 of the CO. Construing the clauses as such an arrangement would also appear incompatible with their overall flexibility; to reiterate, they set out a highly permissive regime for unilateral immediate termination without just cause.

223. In the same vein, the clauses reference an *"indemnified prior notice"*, which evidences the Parties' intent to indemnify each other for the consequences of lack of notice more than dissuade termination.

224. It is equally notable in this regard that the Pre-Employment Contract adheres to the fact that, at the time of its conclusion, the 1st Appellant was under contract with a different club (see, *e.g.*, Article 1.1 thereof); this suggests that one of the 1st Appellant's key concerns when signing with the Respondent was loss of opportunity with his previous club, pointing in turn to a compensatory rather than dissuasive intent behind the termination arrangements of Employment Contract 1.

225. In light of the above, Articles 8.1 and 8.2 of Employment Contract 1 constitute a liquidated damages arrangement under Swiss law; accordingly, the 1st Appellant must provide proof of actual harm to recover the amounts foreseen in them.

226. The 1st Appellant has successfully done so, in the Sole Arbitrator's view. It is indeed undisputed that the 1st Appellant was under contract with Vitória Sport Clube/Vitória de Guimarães (see, *e.g.*, the *"SALARY COMPOSITION"* table featuring on p. 52 of the 1st Appellant's

Appeal Brief); therefore, the 1st Appellant lost salaries by terminating his previous contract and signing with the Respondent, only for the Respondent to dismiss him within a month following his starting day.

227. Moreover, the Respondent's unilateral termination was immediate, resulting in an employment gap until the effective date of his new contract with Al-Orobah (21 June to 15 July 2025); it is therefore clear that the 1st Appellant was prejudiced by the Respondent's conduct.

228. The 1st Appellant's liquidated damages for this prejudice must nonetheless be reduced pursuant to Article 163.3 of the CO, being substantially higher than the salaries the 1st Appellant would have earned had Employment Contract 1 run its full course.

229. Specifically, pursuant to Article 2.5 of Employment Contract 1, the 1st Appellant's total remuneration (including benefits) for the period from 20 May to 31 December 2024 amounted to EUR 584,000. By contrast, liquidated damages for the same period are to be calculated on a pro-rated basis from EUR 850,000.

230. Accordingly, if the Respondent had unilaterally terminated the contract on the very first day of its term, the 1st Appellant would, in theory, have been entitled to no less than EUR 850,000; this amount is 45.55% higher than his (non-earned) entire salary with benefits, which does not stand to reason. Importantly, the 1st Appellant does not present evidence that the opportunity cost of leaving Vitoria for the Respondent matched this extremely high amount.

231. Relatedly, although the requirement that the damages be liquidated in *"absolute"* terms is contested, the Sole Arbitrator notes, for completeness that Employment Contract 1 clearly sets the amount of the damages based on a pre-defined reference figure, affording no calculative discretion to its reader.

232. Concerning the appropriate level of reduction, no concrete guidelines have emerged to date from CAS or Swiss case law. The matter is thus left to the discretion of the Sole Arbitrator, who must nonetheless ensure that the final amounts would not be inferior to the actual damage recoverable under the law (MOOSER M., Art. 163 CO (2021), para. 9), *i.e.*, the lost salaries and benefits of Article 2.5 of Employment Contract 1.

233. The Sole Arbitrator notes that, in general terms, CAS panels have accepted penalties corresponding to 10-25% of the contractual price (see, *e.g.*, CAS 2010/A/2317 para. 38; CAS 2017/A/5233, para. 65), in addition to remaining lost wages and other benefits.

234. Moreover, important elements when determining the appropriate rate of reduction, according to the SFT, include the creditor's interest in performance (SFT 4C.5/2003, c. 2.3.1), the gravity of the violation, the gravity of fault and the parties' relative economic situation (SFT 91 II 372, c. 11).

235. Here, the Respondent possessed a clear contractual right to terminate Employment Contract 1 in the manner that it did (which precludes any violation and fault), whereas the 1st Appellant provided limited information about its concrete interest in ordinary

performance, other than the obvious entitlement to salaries and benefits of Article 2.5 of Employment Contract 1.

236. In particular, the 1st Appellant did not provide sufficient information about the prejudice caused by his loss of opportunity under the previous contract with Vitória Sport Clube/Vitória de Guimarães, or by his idle time until the Al-Orobah contract. The only relevant economic element on record is that the 1st Appellant was in a subordinate relationship with the Respondent, as an employee.

237. Thus, the Sole Arbitrator finds it appropriate to reduce the liquidated damages owed to the 1st Appellant to the amounts which would have been due under Article 2.5 of Employment Contract 1 in case of natural expiry, plus 10%. A percentage higher than this typical rate could give rise to excessiveness within the meaning of Article 163.3 of the CO.

238. To be sure, the former part of the damages (salaries which would have been due) cannot be contractually waived, even if Article 8.5 of Employment Contract 1 suggests that *"remuneration to which* [the 1st Appellant] *would be entitled until the end of the contract"* shall not be claimed. Article 337c.1 of the CO is *"relatively mandatory"*, in favour of the employee (DONATIELLO G., Art. 337c CO (2021), para. 22).

239. Given the above, the reference figure of EUR 850,000, based on which the *per diem* liquidated damages are calculated, shall be replaced with that of EUR 642,400 (EUR 584,000 + 10%). Divided by 226 (*i.e.*, the total duration of Employment Contract 1), this means EUR 2,840.70 per day.

240. The remaining duration of Employment Contract 1 at the time of termination was 194 days; accordingly, the Respondent owes and must pay to the 1st Appellant EUR 551,095.80 (EUR 2,840.70 x 194).

241. As a final matter, it must be clarified that no mitigation can be applied on this amount under Article 337c.2 of the CO. As noted in CAS 2019/A/6533, *"the obligation to mitigate the loss in case of unilateral termination of an employment relationship without cause is (…) not a mandatory rule and parties are entitled to derogate"* (para. 130).

242. In that case, facing a clause which entitled the player to the remaining salaries in case of unilateral termination (characterized as a *"liquidated damages"* clause at para. 125 of the award), the Sole Arbitrator ruled that the player was *"not required to mitigate his damages"* since these had been *"expressly decided in advance"* (paras. 132 and 133).

243. The case is similar here, the only difference being that the clause in question essentially adds an uptick of 45.55% to the remaining salaries (a percentage which the Sole Arbitrator has, in any event, reduced to 10% by virtue of Article 163.3 of the CO, as seen above).

244. Similarly, no mitigation can be applied under Article 6.2 of Annex 2 to the RSTP, which regulates the consequences of unilateral termination without cause only where the contract itself does not provide *"otherwise"*; here, Employment Contract 1 does provide *"otherwise"*, seeing as it fixes the damages through an

"absolute" liquidated damages clause with clear pro-rated numbers.

245. With respect to interest, the 1st Appellant claims 5% from 21 June 2024 until effective payment. The 1st Appellant does not clarify whether interest should be simple or compounded, and whether it should run annually or on a quarterly basis.

246. Under Swiss law, interest is governed by Article 104(1) of the CO, which provides that *"[a] debtor in default on payment of a pecuniary debt must pay default interest of 5% per annum even where a lower rate of interest was stipulated by contract"*.

247. The Parties have not agreed on an applicable interest rate in their contract, such that the statutory simple rate of 5% *per annum* established in Article 104(1) of the CO shall apply. According to the same provision, interest starts to run on the day the debtor is in default.

248. The 1st Appellant formally requested payment by virtue of a warning letter of 29 July 2024 (A1-18, p. 22), setting a payment deadline of 10 days; therefore, the Respondent went into payment default on 9 August 2024. Interest under Article 104(1) of the CO shall run as of that date, until full payment.

c) <u>The amounts requested by the 2nd and 3rd Appellant are subject to mitigation</u>

249. The Sole Arbitrator now turns to Employment Contracts 2 and 3. With respect to situations where the contract is terminated by the Respondent immediately and without cause at a time when the 1st Appellant himself is <u>no longer</u> employed by the Respondent, the following applies:

"The Parties, based on free stipulation and hypersufficiency, mutually establish that although the contract is for a fixed term, either Party shall have the reciprocal right to terminate it early, immediately and without just cause, applying the principles governing the termination of contracts for an indefinite term, by simply notifying the other Party, in which case no fine or indemnity shall be due from Party to Party" (Employment Contract 2, Article 8.1 in relevant part).

"The Parties, based on free stipulation and hypersufficiency, mutually establish that even though the contract is for a fixed period, either Party will have a reciprocal right to terminate it early, immediately and without just cause, applying the principles that govern the termination of contracts for an indefinite period, upon simple notification to the other party, in which case no fine or compensation will be due from Party to Party" (Employment Contract 3, Article 8.1 in relevant part).

250. A different arrangement is foreseen in case the 1st Appellant <u>remains</u> employed by the Respondent at the time of the 2nd or 3rd Appellant's dismissal, with the *"Sole paragraph"* of both Articles setting a liquidated amount. This arrangement is irrelevant here.

251. The provisions presented above constitute *"buy-out"* clauses, establishing clear termination rights similar to those applicable to the 1st Appellant; however, they differ from Article 8.1 of Employment Contract 1 in that they do not liquidate the amounts due, instead referring to the general statutory rules applicable to early termination.

252. They, therefore, foresee a calculation based on Article 337c.1 of the CO, mitigation based on Article 337c.2, and a

possible discretionary penalty based on Article 337c.3.

253. In this regard, the 2nd Appellant was entitled to EUR 63,000 in salary and benefits under Article 2.4.a of Employment Contract 2, and EUR 6,636.64 in housing allowances under Article 2.8 (as converted into EUR in Exhibit A2-3). For the remainder of the contract at the time of termination, this meant EUR 59,776.58.

254. However, as noted by the PSC:

> *"[T]he Coach found employment with Saudi Arabian Club Al-Orobah. In accordance with the pertinent employment contract, the coach was entitled to approximately USD 10,909.10 net per month. Therefore, the Chamber concluded that the Coach mitigated his damages in the total amount of USD 60,000.05 net, that is, USD 10,909.10 net times 5.5 months. The Chamber determined that this compensation converted to approximately EUR 55,116 net at the time of signing the new contract"* (PSC Decision 2, para. 54).

255. Therefore, after mitigation, the amount due to the 2nd Appellant is EUR 4,660.58, as also held by the PSC (PSC Decision 2, para. 56). The Sole Arbitrator sees no reason to apply a discretionary penalty on top of this amount against the Respondent, no circumstances justifying such a penalty under Article 337c.3 of the CO having been raised by the 2nd Appellant. PSC Decision 2 is partially upheld.

256. In turn, the 3rd Appellant was entitled to EUR 105,000 in salary and benefits under Article 2.4.a of Employment Contract 3, and EUR 6,636.64 in housing allowances under Article 2.8 (as converted into EUR in Exhibit A3-4). For the remainder of the contract at the time of termination, this meant EUR 95,829.68.

257. However, as noted by the PSC:

> *"[T]he Coach found employment with Saudi Arabian Club Al-Orobah. In accordance with the pertinent employment contract, the coach was entitled to approximately USD 18,545,45 net per month. Therefore, the Chamber concluded that the Coach mitigated his damages in the total amount of USD 101,999.98 net, that is, USD 18,545,45 net times 5.5 months. The Chamber determined that this compensation converted to approximately EUR 93,697.18 net at the time of signing the new contract".*

258. Therefore, after mitigation, the amount due to the 3rd Appellant is EUR 2,132.50, as also held by the PSC (PSC Decision 3, para. 56). The Sole Arbitrator sees no reason to apply a discretionary penalty on top of this amount against the Respondent, no circumstances justifying such a penalty under Article 337c.3 of the CO having been raised by the 3rd Appellant. PSC Decision 3 is partially upheld.

259. Lastly, no sporting sanctions can be imposed for the Respondent's termination of Employment Contracts 2 and 3, which contain buy-out clauses, as no substantiation is offered (and, in any case, no legal interest is established) for sanctions due to the non-payment of the (mitigated) amounts.

260. With respect to interest, since the warning letters by the 2nd and 3rd Appellants were also sent on 29 July 2024 with a 10-day deadline (Exhibit A2-18, p. 22; Exhibit A3-18, p. 29), as in the case of the 1st Appellant, simple interest is due as of 9 August 2024 at 5%

annually, until full payment. Therefore, the relevant appealed decisions are amended in this regard.

7. The 1st Appellant's claim for the advance payment requires no decision; in any event, any decision on it would exceed the scope of Decision 1

261. As discussed in paras. 103 and 104 above, the 1st Appellant requests an amount of EUR 50,000 as an allegedly unpaid advance salary; this claim was not raised before the PSC, and the question before the Sole Arbitrator presently is whether it can still be pursued before CAS.

262. During the hearing, the 1st Appellant justified its failure to request this amount before the PSC on the ground that it constitutes merely an alternative claim, which it advances in case mitigation of the amounts due under is not ordered and the *"group"* contract argument is rejected.

263. In its Appeal Brief, the 1st Appellant stated in this regard that it would have raised the issue had the PSC ordered a second round of submissions, in which it would have the opportunity to reply to the Respondent's arguments regarding *"group"* contracts and mitigation (1st Appellant's Appeal Brief, para. 384).

264. The 1st Appellant's position is contradictory; if the advance should only be paid in the event that the *"group"* contracts argument is accepted, then it is not clear why the 1st Appellant is requesting this amount on top of the amount of the full amount of EUR 729,111.11 in his prayer for relief. The 1st Appellant's oral request contradicts that of its written submissions.

265. Leaving this contradiction aside, if the 1st Appellant's oral position is to be followed, the Sole Arbitrator has not accepted the arguments concerning *"group"* contracts and therefore there has been no mitigation (the claim indeed has been reduced, which, again, is a different concept than mitigation). As such, if the Sole Arbitrator is meant to understand the claim as valid only in event of mitigation (because of the *"group"* contract scenario), no decision is needed, since the 1st Appellant does not claim the relevant amount in this case.

266. If the 1st Appellant's written position is to be followed instead, the claim would exceed the scope of Decision 1; the 1st Appellant does not convincingly explain why, allegedly, it could not have raised this claim before the PSC without a second round of submissions. The 1st Appellant filed a lengthy submission making no reference whatsoever to an *"advance"* payment and an extra sum of EUR 50,000, and requesting only EUR 729,111.11.

267. The only explanation on record relates, again, to the alleged alternative nature of the advance payment; but this, even if true, would not have precluded the 1st Appellant from still formulating a complete prayer for relief in its first submission before the PSC, including the amount of EUR 50,000 (cumulatively, alternatively, or in any other fashion), as the 1st Appellant indeed did in these proceedings before CAS.

268. In light of the above, even accepting the 1st Appellant's written position over his

oral one, the claim should be dismissed; this is because, *"in reviewing a case in full, a Panel cannot go beyond the scope of the previous litigation and is limited to the issues arising from the challenged decision"* (CAS 2012/A/2875, para. 53).

269. Moreover, *"[n]ew claims advanced in appeal, hitherto not claimed in the previous litigation, are in principle inadmissible"*, barring any *"legitimate reasons"* to the contrary (CAS 2021/A/8453, paras 133, 138).

270. Here, since the 1st Appellant opted not to present a claim for the alleged advance payment before the PSC (as a result of which the PSC did not produce a ruling in this sense), said claim does not arise from the challenged decision.

271. Crucially, no legitimate reasons are presented for the 1st Appellant's omission; therefore, no ruling on this claim can be made in the present proceedings, as it would exceed the scope of the previous litigation. The claim is hereby dismissed as inadmissible.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Alvaro Adriano Teixeira Pacheco on 17 December 2024 in procedure CAS 2024/A/11078 Alvaro Adriano Teixeira Pacheco v. Vasco da Gama Sociedade Anônima Do Futebol is partially upheld;

2. The FIFA Players' Status Chamber's Decision Nr. FPSD-15559 of 29 October 2024 is partially set aside;

3. The FIFA Players' Status Chamber's Decision Nr. FPSD-15559 of 29 October 2024 is amended as follows: *"3. Vasco da Gama Sociedade Anônima do Futebol owes and shall pay to Alvaro Adriano Teixeira Pacheco the amount of EUR 551,095.80 with 5% simple annual interest from 9 August 2024 until the date of full payment"*;

4. (…);

5. (…);

6. The appeal filed by José Miguel Carvalho Teixeira on 17 December 2024 in procedure CAS 2024/A/11079 José Miguel Carvalho Teixeira v. Vasco da Gama Sociedade Anônima Do Futebol is partially upheld;

7. The FIFA Players' Status Chamber's Decision Nr. FPSD-15627 of 29 October 2024 is partially set aside;

8. The FIFA Players' Status Chamber's Decision Nr. FPSD-15627 of 29 October 2024 is amended as follows: *"3. Vasco da Gama Sociedade Anônima do Futebol shall pay to José Miguel Carvalho Teixeira 5% simple annual interest on the principal amounts, from 9 August 2024 until full payment"*;

9. (…);

10. (…);

11. The appeal filed by Pedro Valdemar Vasconcelos Pinto da Cunha Teixeira on 17 December 2024 in procedure CAS 2024/A/11081 Pedro Valdemar Vasconcelos Pinto da Cunha Teixeira v. Vasco da Gama Sociedade Anônima do Futebol is partially upheld;

12. The FIFA Players' Status Chamber's Decision Nr. FPSD-15626 of 29 October 2024 is partially upheld;

13. The FIFA Players' Status Chamber's Decision Nr. FPSD-15626 of 29 October 2024 is amended as follows: *"3. Vasco da Gama Sociedade Anônima do Futebol shall pay to Pedro Valdemar Vasconcelos Pinto da Cunha Teixeira 5% simple annual interest on the principal amounts, from 9 August 2024 until full payment"*;

14. (…);

15. (…);

16. All other motions or prayers for relief are dismissed.

CAS 2024/A/11103
Al Gharafa S.C. v. Football Club FCSB
award of 28 August 2025

Football; Transfer – outstanding transfer fee; Obligation to act with due diligence when complying with financial obligations; Adequate level of due diligence when performing the payment of the transfer fee; Assessment of the excessiveness of a penalty amount

Panel
Mr Espen Auberg (Norway), President
Prof. Petros Mavroidis (Greece)
Prof. Ilias Bantekas (Greece)

1. **In accordance with Article 99 of the Swiss Code of Obligations (SCO), parties to a contract are obliged to act with due diligence when complying with their financial obligations.**

2. **Attempts of fraud in relation to international transfers of football players appear to occur rather frequently, and FIFA encourages clubs to pay attention to possible fraud attempts and to double check financial information before performing any payment. In general, clubs' obligation to use the FIFA Transfer Matching System in accordance with FIFA Regulations on the Status and Transfer of Players Annexe 3 may contribute to decrease the chances of fraud attempts being successful.**

3. **Article 163 paragraph 3 of the SCO provides that CAS panels may reduce penalties which are found to be excessive. This is limited to exceptional cases where an agreement constitutes a massive imbalance. For instance, a penalty that constituted 10 percent of the principal dept, as well as one that constituted 33 percent of the greed transfer fee, have been considered as not excessive.**

I. PARTIES

1. Al Gharafa Sports Club (the "Appellant" or "Al Gharafa") is a professional football club registered with the Qatar Football Association ("QFA"), which in turn is affiliated with the Asian Football Confederation ("AFC"), and the Fédération Internationale de Football Association ("FIFA").

2. SC Fotbal Club FCSB SA (the "Respondent" or "FCSB") is a professional football club, registered with the Romanian Football Federation ("FRF"), which in turn is affiliated with Union des Associations Européennes de Football ("UEFA"), and FIFA.

3. The Appellant and the Respondent are hereinafter jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties, and the evidence examined in the course of the proceedings. This background information is given for the sole purpose of providing a summary of the dispute. Additional facts may be set out, where relevant, in connection with the legal analysis. While the Panel has considered carefully all the facts and evidence

submitted by the Parties in the present proceedings, this Award refers only to the facts and evidence considered necessary.

A. Background Facts

5. On 22 June 2024, Al Gharafa sent an email to FCSB's President, Mr Valeriu Argăseală, to the mail addresses Valeriu@fcsb.ro and office@fcsb.ro. The email contained a letter where Al Gharafa offered to pay EUR 5,000,000 by 31 July 2024 for the transfer of the player F. (the "Player") from FCSB to Al Gharafa.

6. On the same day 22 June 2024, Mr Argăseală replied to Al Gharafa, allegedly from the same email address, informing that the Player had a termination clause of EUR 5,000,000. In the same email FCSB provided its bank details to Al Gharafa, which included information about its bank account with the Romanian bank Transilvania. Still on the same day, 12 minutes after the email had been sent from Mr Argăseală's email address, Al Gharafa received an email from the email address info.koelnstadtwald@leonardo-hotels.com with the same content and enclosure as the email sent from Mr Argăseală's email address.

7. On 24 June 2024, Al Gharafa sent an email to FCSB's email addresses Valeriu@fcsb.ro and office@fcsb.ro reiterating the proposal to pay the amount of EUR 5,000,000 for the transfer of the Player.

8. On 27 June 2024, following discussions between the Parties regarding when the transfer fee was to be paid, Al Gharafa sent an email with an enclosed letter to FCSB's email address Valeriu@fcsb.ro with a proposal to include a penalty clause of EUR 1,000,000 in case the transfer fee was not paid by 31 July 2024. The letter states, *inter alia*, as follows:

"In this respect, following also today's communications over the phone with the esteemed FCSB President, and in addition to the terms proposed as per our 24 June 2024 letter, we hereby suggest the application of a contractual penalty of EUR 1,000,000 in case the payment of the Release Clause is not made to FCSB by Al Gharafa FC by 31 July 2024".

9. On 28 June 2024, Mr Argăseală, sent an email, allegedly from his email address Valeriu@fcsb.ro, to Al Gharafa, stating that the proposal regarding the transfer of the Player was accepted.

10. On 30 June 2024, Al Gharafa sent an email to FCSB's email address Valeriu@fcsb.ro with the first draft of a transfer agreement, regulating the terms for the transfer of the Player.

11. On 1 July 2024, Mr Argăseală replied to Al Gharafa, allegedly from his email address Valeriu@fcsb.ro, to Al Gharafa with amendments to the draft for the transfer agreement.

12. On 2 July 2024, Al Gharafa sent an email to FCSB's email address Valeriu@fcsb.ro, enclosing a signed version of the transfer agreement.

13. On 3 July 2024, Ms Simona Niculescu-Mizil, Assistant Manager of FCSB, sent an email, allegedly from the email address simona@fcsb.ro, to Al Gharafa, copying the email addresses valeriu@fcsb.ro and office@fcsb.ro,

with a signed version of the transfer agreement (the "Transfer Agreement").

14. The Transfer Agreement stated, *inter alia*, as follows:

"3.1. In consideration for the transfer of the Player, AI Gharafa herein undertakes to pay to FCSB a transfer fee of EUR 5,263,500/- (Five Million Two Hundred and Sixty-Three Thousand Five Hundred Euros) (the "Total Transfer Fee").

3.2. The Parties herein agree that the payment of the Total Transfer Fee is inclusive of any amount whatsoever due as solidarity contribution for those clubs, which trained and educated the Player (cf. Art. 21 of the FIFA RSTP). As such, AI Gharafa shall be entitled to retain - and therefore deduct from the Total Transfer Fee under clause 3.1 thereto - an amount equal to 5% of the Total Transfer Fee for solidarity contribution purposes and undertakes to pay all clubs that trained and educated the Player In accordance with the FIFA RSTP.

3.3 After 5% of the Total Transfer Fee has been deducted for solidarity contribution payments under the RFA RSTP, the total net amount to be paid by AI Gharafa to FCSB shall be EUR 5,000,000 (Five Million Euros) net to be paid by no later than 31 July 2024 (the "Net Transfer Fee").

3.4. Any payment(s) related to this Agreement shall be made by AI Gharafa, upon issuance of a valid invoice, to FCSB's bank account below:

Beneficiary: S.C. FOTBAL CLUB FCSB SA

Bank: Banca TRANSILVANIA

Bank Branch/Address: Bucuresti, Unirii

Bank account: […]

IBAN: […]

Swift: […]

[…]

3.5. If Al Gharafa fails to make the payment of the Net Transfer Fee due to FCSB under this Agreement by the due date established herein under clause 3.3., a penalty of EUR 1,000,000/- (One Million Euros) shall be due and payable by Al Gharafa to FCSB.

4. NOTICES

4.1. Notices between the parties relating to this Agreement must be in writing and must be delivered personally or sent by prepaid first-class post, prepaid air mail post or first- class courier to the addresses indicated on the preamble of this Agreement or to the e- mail addresses below, unless alternative mailing details have been informed by a party to the other for the purposes of this clause:

ALGHARAFA:

E-mail: algharafafcc@qsl.com.qa

FCSB:

E-mail: office@fcsb.ro: valeriu@fcsb.ro

5. AMENDMENT

5.1. No modification, amendment or waiver of the provision of this Agreement shall be effective unless made in writing and signed by the Parties hereto.

]…]

10 MISCELLANEOUS

10.1. This Agreement shall come into effect upon signature of the Parties.

10.2. The Parties warrant that they each have the full power and capacity to enter into (and to exercise its rights and perform its obligations under) this Agreement and that no judicial or administrative decision prevents them from being able to do so.

10.3. The Parties agree that the electronic version or the digitally signed version of this Agreement shall be as valid as the original. The parties also agree that the copy delivered through email shall be as valid as the original.

11. APPLICABLE LAW AND JURISDICTION

11.1. This Agreement shall be governed by and construed in accordance with FIFA's laws and regulations and Swiss Law on a subsidiary basis.

11.2. Any disputes or controversies arising out of or in connection with this Agreement shall be settled by FIFA's competent bodies, currently the FIFA Football Tribunal. Any decision made by FIFA shall be submitted exclusively by way of appeal to the Court of Arbitration for Sport in Lausanne, Switzerland, which will resolve the dispute definitively in accordance with the Code of sports-related arbitration. The language to be used in any arbitral proceedings shall be English".

15. In the following, paragraph 3.5 of the Transfer Agreement, will be referred to as "the Penalty Clause".

16. Still on 3 July 2024, Al Gharafa received an email from the email address simona@fscb-ro.com, with a signed copy of the Transfer Agreement. In this email, the following email addresses were copied: office@fscb-ro.com and valeriu@fscb-ro.com. For the sake of clarity, the Panel notes that email addresses ending with "fscb-ro.com" are not legitimate email address of FCSB.

17. Also on 3 July 2024, Al Gharafa received an email from valeriu@fcsb.ro, with a signed copy of the Transfer Agreement. In this email, the following email addresses were copied: office@fscb-ro.com and simona@fscb-ro.com.

18. On 9 July 2024, Al Gharafa sent an email to FCSB, to the email address valeriu@fcsb.ro, with copies to the email addresses simona@fscb-ro.com and office@fscb-ro.com, informing FCSB that the Player had successfully passed the medical test, and requested the initiation of the International Transfer Certificate (ITC).

19. On 10 July 2024, Al Gharafa sent an email, with identical content as the email sent on 9 July 2024, to the email address Valeriu@fcsb.ro with copies to the email addresses office@fcsb.ro and sorin.pitu@fcsb.ro.

20. On 11 July 2024, a transfer report was inserted in TMS by FCSB. In the TMS transfer report, the bank details of FCSB were those stated in clause 3.4 of the Transfer Agreement, i.e. of FCSB's legitimate bank account in Romania.

21. On the same date, Al Gharafa received an email, allegedly from the email address simona@fscb-ro.com, with copies to the email addresses office@fscb-ro.com and valeriu@fscb-ro.com. A copy of the TMS transfer report was enclosed. The email stated, *inter alia*, as follows:

"Pls confirm the exact date you will effect the payment

Payment can only be made upon issuance of a valid invoice (section 3.4)

we are likely updating the payment details.

Also pls do send to us a number we can reach your chairman or responsible person on whatsapp or telegram".

22. Also on the same date, Al Gharafa received an email, allegedly from the email address valeriu@fcsb.ro, with copies to the email addresses simona@fscb-ro.com and office@fscb-ro.com. In this email, the TMS report was enclosed.

23. On the same date, Al Gharafa sent an email from to email address valeriu@fcsb.ro, with copies to the email addresses simona@fscb-ro.com and office@fscb-ro.com. In this email, Al Gharafa stated that the instructions had been successfully synchronized on the TMS system.

24. On 14 July 2024, the international transfer certificate (ITC) for the Player was issued.

25. On 15 July 2024, an email was sent, allegedly from simona@fscb.ro, to the email address algharafafcc@qsl-qa.com, which is not the legitimate email address of Al Gharafa, with copy to valeriu@fcsb.ro, enclosing an invoice regarding the transfer of the Player.

26. Also on 15 July 2024, Al Gharafa received an email, allegedly from valeriu@fcsb.ro with simona@fscb-ro.com and office@fscb-ro.com in copy. The email stated, *inter alia*, as follows:

"Dear Sir,

Please find attach the invoice for the transfer of the player [F.].

Payment should be made with the bank details on the invoice (s3.4)

Also we updated the contract agreement.

Best regards,

President Valeriu Argăseală".

27. The enclosed invoice included the following bank details:

"All payments made to our below account:

BENEFICIARY: Fotbal Club FCSB SA Company Limited

BANK NAME: MSB BANK

BANK ADDRESS: MSB - Cao oc c van phong 3 Bees Tower, so 281 D. Nguyen Van Troi, Phuong 10, Phu Nhuan, Ho Chí Minh, Vietnam

SWIFT CODE: […]

USD ACCOUNT NO: […]

EURO ACCOUNT NO: […]

ACCOUNT NAME: Fotbal Club FCSB SA Company Limited

ADDRESS: 108 Tran Dình Xu, Phuong Nguyen Cu Trinh, Quan 1, Thanh pho Ho Chí Minh, Vietnam".

28. Further, clause 3.4. of the enclosed amended Transfer Agreement stated as follows:

"3.4. Any payment(s) related to this Agreement shall be made by AI Gharafa, upon issuance of a valid invoice, to FCSB's bank account below:

BENEFICIARY: Fotbal Club FCSB SA Company Limited

BANK NAME: MSB BANK

BANK ADDRESS: MSB - Cao ôc van phòng 3 Bees Tower, sô 281 D. Nguyên Vân Trôi,

Phu'àng 10, Phú Nhuân, Hô Chi Minh, Vietnam.

SWIFT CODE: […]

USD ACCOUNT NO: […]

ACCOUNT NAME: Fotbal Club FCSB SA Company Limited

ACCOUNT: 108 Trän Dinh Xu, Phuòmg Nguyên Cu1 Trinh, Quân 1, Thành phô Hô Chi Minh, Viêt Nam".

29. Also on 15 July 2024, Al Gharafa received another email, allegedly from valeriu@fcsb.ro with simona@fscb-ro.com and office@fscb-ro.com in copy, including another invoice with the same information as the invoice sent earlier the same day.

30. On 17 July 2024, Al Gharafa received an email, allegedly from valeriu@fcsb.ro with simona@fscb-ro.com and office@fscb-ro.com in copy, requesting confirmation of the payment. Similar emails were sent, allegedly from the same email address, on 28, 29 and 30 July 2024.

31. On 31 July 2024, Al Gharafa made a payment of EUR 5,000,000. This payment was made to the bank account in Vietnam provided in the emails allegedly sent from the email address valeriu@fcsb.ro on 15 July 2024. Following the payment, Al Gharafa sent an email to valeriu@fcsb.ro, with copies to the email addresses simona@fscb-ro.com and office@fscb-ro.com, eclosing a screenshot of the bank's approval of the payment. Subsequently, on the same day, Al Gharafa received an email, allegedly from valeriu@fcsb.ro with simona@fscb-ro.com and office@fscb-ro.com in copy, confirming that the screenshot of the payment approval had been received.

32. On the same day, in a Whatsapp conversation between Mr Argăseală and Mr Ettore Mazzilli, who represented Al Gharafa as a lawyer, Mr Mazzilli sent a message to Mr Argăseală with a screenshot of the bank's approval of the payment. Mr Argăseală replied to the message with "Thanks".

33. On 9 August 2024, Al Gharafa received an email from simona@fcsb.ro. The email stated, *inter alia*, as follows:

"Please find attach, the email sent to Al Gharafa with the invoice issued by our club, representing the Transfer of the player [F.]*, and the email received from Al Gharafa confirming that they received the invoice.*

The invoice that was sent to Mr Argaseala by you (see attached) , it is very clear that Al Gharafa made a false invoice to cover mistake (Al Gharada didn't respect the term of the payment), you can see very clear that our invoice is not the same with the invoice send by you, your invoice is visible modified, and this is a criminal offence".

34. Enclosed to the email sent on 9 August 2024 was a pdf file of email correspondence between simona@fscb-ro.com, valeriu@fcsb.ro and algharafafcc@qsl-qa.com, sent on 11 and 15 July 2024.

35. On 13 October 2024 Al Gharafa's bank issued a letter, where it confirmed that the payment of EUR 5,000,000 on 31 July 2024 had not been returned to Al Gharafa's account.

36. On 30 January 2025 the company HKA Global Limited, a global consultancy offering forensic services, issued a report (the "HKA Report"), which revealed, *inter alia,* that emails originating from the domain fsbc-ro.com did not come from the official

mail server of FCSB, but from a Google mail server.

B. Proceedings before the FIFA Players' Status Chamber

37. On 12 August 2024, FCSB filed a claim against Al Gharafa before the FIFA Player's Status Chamber of the FIFA Football Tribunal ("FIFA PSC").

38. Al Gharafa submitted its reply to FIFA PSC on 10 October 2024.

39. A decision of the single judge of FIFA PSC was rendered 5 November 2024 (the "Appealed Decision") and notified to the Parties on 10 December 2024.

40. A summary of the FIFA PSC's reasoning in the Appealed Decision is as follows:

- The FIFA PSC noted that the dispute concerned a claim of a club against another club for the payment of a transfer fee and a contractual penalty, arising from the Transfer Agreement, and that the Parties disputed whether the payment of the transfer fee was made to the correct bank account. In this context, FIFA PSC acknowledged that its task was to analyze whether Al Gharafa had complied with the Transfer Agreement.

- In this regard, FIFA PSC noted that on 22 June 2024, which was the first time that FCSB provided Al Gharafa with the bank details, the bank account referred to was the Romanian bank account.

- Further, FIFA PSC noted that the Romanian bank account was also included in clause 3.4. of the Transfer Agreement, and that the Romanian bank account was provided by FCSB in TMS.

- Consequently, FIFA PSC concluded that the Parties originally agreed that the payment was to be made to the Romanian bank account.

- FIFA PSC then analyzed whether amendments of the bank accounts were made correctly. In this regard, FIFA PSC pointed out that clause 4 of the Transfer Agreement established that the valid emails from FCSB were office@fcsb.ro and valeriu@fcsb.ro, and that clause 5.1. of the Transfer Agreement stipulated that no modification, amendment or waiver of the Transfer Agreement would be effective unless made in writing and signed by the Parties.

- With regards to Al Gharafa's position that the Transfer Agreement was amended on 15 July 2024, when FCSB's President allegedly sent an email with an amended agreement and an invoice, including the Vietnamese bank account, FIFA PSC noted that the amended Transfer Agreement sent on 5 July 2024 was exactly the same agreement signed by the parties dated 1 July 2024, but the bank details from the Vietnamese bank account seem to have been pasted over, and that the amended Transfer Agreement was still dated 1 July 2024. Against this background FIFA PSC held that there was no mutually signed

new agreement including new payment information, and that there was a deviation from the formal amendment process outlined in the Transfer Agreement.

- Consequently, FIFA PSC concluded that the alleged amendment of the bank information was made in breach of the terms established between the Parties and should not be taken into consideration.

- Further, FIFA PSC noted that Al Gharafa, as the debtor, bore the obligation of proving that it had complied with the due process in making the relevant payment to the correct bank account, and that such step was backed by adequate due diligence. In this context, FIFA PSC considered that the emails received by Al Gharafa contained inconsistencies, and that Al Gharafa did not verify the validity of the transaction, despite the new bank account provided being from Vietnam. Against this background, FIFA PSC considered that Al Gharafa's behavior was not diligent.

- FIFA PSC concluded that the failure of Al Gharafa to conduct adequate due diligence when making the payment to new bank coordinates that was based in a different jurisdiction than where the creditor was based, cannot act as a valid justification to not have to remit the amount for a second time, and that the payment made by Al Gharafa was not in accordance with the Transfer Agreement, nor with the information contained in TMS, which stipulated that FCSB's bank account was from Romania.

- Consequently, FIFA PSC decided that Al Gharafa should be ordered to pay EUR 5,000,000 net of the transfer fee.

- With regards to the Penalty Clause, FIFA PSC noted that as Al Gharafa failed to pay the amount to the correct bank account by the due date, the Penalty Clause had been triggered and that, based on the principle pacta sunt servanda, it should be granted to FCSB.

41. The operative part of the Appealed Decision reads as follows:

"1. The claim of the Claimant, SC Fotbal Club FCSB SA, is accepted.

2. The Respondent, Al Gharafa SC, must pay to the Claimant the following amounts:

- EUR 5,000,000 net as outstanding amount;

- EUR 1,000,000 as contractual penalty.

3. Full payment (including all applicable interest) shall be made to the bank account indicated in the enclosed Bank Account Registration Form.

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

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

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

5. The consequences shall only be enforced at the request of the Claimant in accordance with art. 24 par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.

6. The final costs of the proceedings in the amount of USD 25,000 are to be paid by the Respondent to FIFA. FIFA will reimburse to the Claimant the advance of costs paid at the start of the present proceedings (cf., note relating to the payment of the procedural costs below)".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

42. On 30 December 2024, Al Gharafa filed a Statement of Appeal with CAS, pursuant to Article R48 of the Code of Sports-related Arbitration (2023 edition) (the "CAS Code"), against the Appealed Decision. In the Statement of Appeal, Al Gharafa nominated Professor Ilias Bantekas, Professor of Law at Hamad bin Khalifa University (Qatar Foundation), residing in Doha, Qatar, as arbitrator.

43. On 9 January 2025, FCSB nominated as arbitrator Professor Petros Constantinos Mavroidis, Professor at Columbia Law School, New York City, residing in Commugny, Switzerland.

44. On 30 January 2025, after having received extensions further to Article R32 of the CAS Code, Al Gharafa filed an Appeal Brief in accordance with Article R51 of the CAS Code. In the Appeal Brief, Al Gharafa, *inter alia,* requested for the Panel to order FCSB to produce additional evidence in the form of email correspondence between FCSB and illegitimate email addresses referred to in the Appeal Brief.

45. On 3 February 2025, the CAS Court Office informed the Parties about the constitution of the Panel as follows:

President: Mr Espen Auberg, Attorney-at law, Oslo, Norway;

Arbitrators: Prof Ilias Bantekas, Professor of Law in Doha, Qatar;

Prof Petros Constantinos Mavroidis, Professor of Law, Commugny, Switzerland.

46. On 3 March 2025, FCSB filed its Answer pursuant to Article R55 of the CAS Code. In its Answer, FCSB, *inter alia,* addressed Al Gharafa's request for additional evidence, and stated that FCSB had no connection to the illegitimate domain names, and that the correspondences in FCBS' possession had already been filed by Al Gharafa before CAS.

47. On 13 March 2025, following consultation with the Parties, on behalf of the Panel, the CAS Court Office confirmed that a hearing would be held on 28 May 2025 at the CAS Court

Office in Lausanne, Switzerland, pursuant to Article R44.2 of the CAS Code.

48. On 20 March 2025 Al Gharafa was invited by the CAS Court Office to file its comments on FCSB's remarks on the evidentiary request.

49. On 25 March 2025 Al Gharafa filed its comments on FCSB's remarks on the evidentiary request, and reiterated its request for the Panel to order FCSB to make available the information in its possession, custody or control as specified in in the Appeal Brief.

50. On 28 March 2025 FCSB filed a letter to the CAS Court Office, where it stated that logs from the email server of FCSB was only kept for 30 days, and that FCSB did not possess any correspondence between its legitimate email addresses and the illegitimate email addresses referred to in the Appeal Brief.

51. On the same day, on 28 March 2025, the CAS Court Office informed the Parties that the Panel had decided to reject Al Gharafa's request for production of evidence, and that the reasons of this decision would be communicated in the final award.

52. On 31 March 2025, the CAS Court Office issued an Order of Procedure, which was duly signed and returned by FCSB on 1 April 2025 and by Al Gharafa on 7 April 2025.

53. On 26 May 2025, after consultation with the Parties, the CAS Court Office sent the Parties a tentative hearing schedule, proposed by the Panel.

54. On 28 May 2025, a hearing was held in the CAS Court Office in Lausanne, Switzerland. In addition to the Panel and CAS Counsel Mr Francisco Mateo Pavia, the following persons attended the hearing:

For Al Gharafa:

Mr George Vlavianos, Counsel;

Mr Krevania Pillay, Counsel;

Ms Lara Shehadah, Counsel;

Mr Daniel Engel, Counsel.

For FCSB:

Ms Madalina Diaconu, Counsel;

Mr Dan Idita, Counsel.

55. In the course of the hearing, the Panel heard expert testimony from Mr Darren Mullins, a partner at HKA. Mr Mullins was invited by the President of the Panel to tell the truth subject to the sanction of perjury and confirmed that he would tell the truth. The Parties and the Panel had full opportunity to pose their questions to Mr Mullins.

56. The Parties were given full opportunity to present their cases, submit their arguments in closing statements and to answer the questions posed by the Panel.

57. Before the hearing was concluded, the Parties expressly stated that they had no objection to the procedure adopted by the Panel and that their right to be heard had been respected.

IV. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

58. This section of the Award does not contain an exhaustive list of the Parties' contentions. Its aim is to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this Award, the Panel has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the Award or in the discussion of the claims below.

A. Al Gharafa's Submissions

59. Al Gharafa's submissions, in essence, may be summarized as follows:

Al Gharafa complied with its obligation to pay the transfer fee

- The change in banking details constitutes an amendment to the Transfer Agreement in accordance with its clause 5.

- Parties to a contract may contractually agree on a form for contracts that are not subject to any statutory formal requirement. A form can be stipulated not only for the conclusion of the contract itself, but also for all legal transactions that are carried out as part of the implementation and execution of the contract in question, such as amendments, additions or terminations. The contractual formal requirement can be waived at any time without any formal requirements. Amendments are also possible without requiring a specific form.

- In Article 5.1. of the Transfer Agreement, the Parties agreed that no modification, amendment or waiver of the provisions of the Agreement shall be effective unless made in writing and signed by the parties hereto. However, even qualified formal requirements can be waived informally by the Parties.

- The unilateral changes of the Transfer Agreement, with regards to the bank details, were made electronically by Mr Argăseală, the President of the FCSB, in the email he sent on 15 July 2024, where he enclosed an updated Transfer Agreement and invoice, with information about the Vietnamese bank account and issued a payment instruction. With this email, FCSB expressly declared its willingness to waive the modification requirements pursuant to Clause 5.1. of the Transfer Agreement.

- With regards to FCSB's request for payment in an alternative jurisdiction, such request is not uncommon in international transfer deals. Al Gharafa had no reason whatsoever to suspect that the bank account in Vietnam did not belong to FCSB.

- Al Gharafa has complied with Mr Argăseală's request for payment and as such accepted FCSB's request to waive the modification requirements.

- Mr Argăseală, as the highest-ranking official of FCSB, gave instructions and communications which were binding on FCSB. Throughout all the communications with FCSB, Al

Gharafa communicated exclusively with Mr Argăseală via his official email address.

- Mr Argăseală's email address is formally registered in the FIFA TMS and serves as the recognized point of communication for all official matters relating FCSB. For this reason, all communications and instructions from Mr Argăseală's email address could be relied upon by Al Gharafa. Consequently, any instructions, modifications, or amendments communicated from Mr Argăseală's email address must be treated as valid and authoritative. Mr Argăseală's instructions regarding the amended bank details are valid and enforceable under both the contract and Swiss law and are legally binding on FCSB.

- Clause 10.3 of the Transfer Agreement confirms that copies of the Transfer Agreement delivered through email are as valid as the original Transfer Agreement itself. Al Gharafa had no reason to question the legitimacy of the amended Transfer Agreement or the payment instruction provided by Mr Argăseală.

- When communicating with Al Gharafa on 31 July 2024 Mr Argăseală failed to exercise diligence regarding checking the accuracy of the information and reviewing the bank details displayed on the proof of payment prior to expressing confirmation of receipt and thanks. Had he done so, Al Gharafa would have been able to take the necessary steps to immediately halt the transfer of the funds.

- Article 2. paragraph 2 of the Swiss Civil Code ("SCC") stipulates that the manifest abuse of a right is not protected by law. FCSB's conduct constitutes and an abuse of rights and therefore does not deserve protection. Mr Argăseală himself disregarded the formal requirement by way of his emails sent on 15 July 2024, and he can no longer subsequently invoke this formal requirement.

- Clause 4.1 of the Transfer Agreement states that official communication between the Parties should be conducted using the designated email addresses, hereunder Mr Argăseală's email address, valeriu@fcsb.ro, as a legally recognized and binding method for delivering official notices and amendments in terms of the Transfer Agreement. Consequently, the email correspondence reflecting the amended bank details in the Transfer Agreement are legally valid and enforceable. Al Gharafa's reliance on these communications was plausible, justified, credible and compliant with Clause 4.1 of the Transfer Agreement.

- Clause 10.3 of the Transfer Agreement states that any electronic version or email copy of the agreement is considered

equally valid as the original signed document. The amended Transfer Agreement, which was sent from Mr Argăseala's official email address is therefore enforceable.

- Al Gharafa acted diligently and in good faith by following the explicit payment instructions issued by Mr Argăseală, being the authorized representative of FCSB, to ensure timely payment of the transfer fee in compliance with its contractual obligations.

- Al Gharafa never received an invoice reflecting the bank details in the original Transfer Agreement, as allegedly sent by Ms Niculescu-Mizil on 15 July 2024, as such information was only received after the payment had been proceeded, on 9 August 2024. The emails were clearly sent by Ms Niculescu-Mizil to an email address which differs from the correct email address.

- Mr Argăseală copied the unofficial and compromised email addresses into communications with Al Gharafa. Al Gharafa reasonably assumed that these addresses were legitimate, internal email addresses of the FCSB due to the sensitive nature of the documents transmitted therein, in particular the TMS instruction report and the Agreement.

- The HKA Report reveals, *inter alia*, that the emails containing the amended the bank account details and followed up with transfer confirmations were all sent from the legitimate email address of Mr Argăseală.

Subsidiarily the amount under the Penalty Clause should be reduced

- FCSB's claim for the contractual penalty of EUR 1,000,000 is unjustified, as no breach of the Transfer Agreement has occurred. Al Gharafa has acted in full compliance with its contractual obligations, and any claim to the contrary is baseless.

- If one were to assume that Al Gharafa breached the Transfer Agreement, FCSB would not be entitled to demand the contractual penalty of EUR 1,000,000.

- Where a penalty is promised for failure to comply with the stipulated time or place of performance, the creditor may claim the penalty in addition to performance provided he has not expressly waived such right or accepted performance without reservation. As Mr Argăseală unconditionally confirmed receipt of the proof of payment on 31 July 2024, he accepted performance without reservation. FCSB is therefore not entitled to demand the penalty in addition to the fulfilment of the contract.

- CAS must reduce excessively high contractual penalties at its discretion. The contractual penalty is excessive if there is an obvious disproportion between the amount and the creditor's interest in maintaining the entirety of his claim. The penalty

must also be reduced if it is higher than the presumed loss suffered by the creditor. The penalty amount of EUR 1,000,000 bears no relation to FCSB's interest in the fulfilment of the Transfer Agreement. Nor has it been established or proven in any way that FCSB has suffered damages in the amount of EUR 1,000,000 as a result of the breach of the Transfer Agreement.

- When considering the reduction of the penalty amount, it must be taken into account that no intentional failure by Al Gharafa to breach the main obligation has been established.

- In light of the above, FCSB's claim for the contractual penalty must be entirely dismissed. Alternatively, in the highly unlikely event that the penalty is considered, it must be significantly reduced to reflect the principles of equity and proportionality.

60. On this basis, Al Gharafa made the following request for relief:

"The Appellant requests that the appeal be allowed, that the Decision of the Players' Status Chamber be set aside in its entirety and all of FCSB's claims be dismissed or, alternatively, that the matter be heard de novo.

The Appellant further requests that the CAS order that the Respondent pays for the costs of the appeal arbitration proceedings and all costs with respect to the proceedings before the Single Judge, including AGSC's costs incurred in defending the claims, on the basis of legal costs reasonably incurred as between attorney and client, as determined pursuant to article R 64. 5 of the CAS Code. Such costs are to include the costs of any witness and expert testimony".

B. FCSB's Submissions

61. FCSB's submissions, in essence, may be summarized as follows:

Al Gharafa is responsible for paying the transfer fee

- Scams in football are not unusual, and FIFA warned against such scams in a Circular Letter as early as 2012. On the FIFA Legal Portal FIFA warns all interested parties of such scams and urge them to check suspicious information, especially related to financial issues, before making any payments. As such scamming happens often in international football, parties need to pay special attention to suspicious details such as sudden and inexplicable changes into bank account details.

- Pecuniary debts must be paid at the place where the creditor is resident at the time of performance. If the payment is to be made over an invoice with the details of the creditor's bank account, the place of performance is the bank that has the creditor's bank account. The transferring debtor thus bears the risk of loss until the transfer reaches the creditor bank. In the present case, the payment of the transfer fee was to be made by invoice, duly sent by FCSB, which contained the details of its Romanian bank account. Thus,

the place of performance is FCSB's beneficiary bank. Accordingly, Al Gharafa bears the risk of loss until the amount is credited to the account.

- Since FCSB's bank never received the transfer fee, Al-Gharafa is not discharged from its contractual obligation to pay the due transfer fee and the contractual penalty.

- The conclusion of a contract leads to principal and secondary obligations. A secondary obligation is the obligation of due diligence while performing the agreement. The obligation of due diligence forms part of the contract without a mutual expression of intent being required. While performing the Transfer Agreement, Al Gharafa had to act diligently, especially when receiving the email on 15 July 2024, containing the modified Transfer Agreement and an invoice.

- The modified Transfer Agreement was grossly altered, clumsily executed as it was just overwritten on the original agreement while keeping the initial date and signatures on every page. The amendment was not in accordance with clause 5.1 of the Transfer Agreement, which stipulated that no modification, amendment or waiver of the Transfer Agreement would be effective unless made in writing and signed by the Parties.

- The invoice sent on 15 July 2024, referring to the Vietnamese bank account, was clearly altered and was not signed by any party. This document should have triggered a verification enquiry from Al Gharafa, before paying EUR 5,000,000 in such strange change of circumstances.

- Al Gharafa failed to fulfil its principal and secondary contractual obligations, payment and due diligence, and must be obliged to cover FCSB's damage.

- Concerning Mr Argaseala's email address, valeriu@fcsb.ro, FCSB is not aware if this real address has been potentially hacked, "shadowed" and mixed into the chain of fake emails. However, Mr Argaseala has always insisted on sending and receiving signed and stamped correspondences and documents, in order to minimize the risk of third-party interference by unauthorized emails.

- FCSB was not aware of the fact that on 22 June 2024, Al-Gharafa allegedly received from the email address of Hotel Leornardo in Köln the same notice which Mr Argaseala had previously sent. This email address does not appear to have been used by any of the parties. FCSB is not aware of any previous hacking activity concerning this hotel. However, had Al Gharafa exercised diligence when it received such email, this apparent scam could have been easily avoided.

The Penalty Clause is enforceable

- An agreed penalty is due even when the creditor did not incur any damage following the non-fulfilment of the debtor's main obligation. The court may not intervene and diminish such penalty unless the amount of the penalty is such that it surpasses any reasonable degree, to the point of being incompatible with the law and equity.

- Clause 3.5. of the Transfer Agreement establishes that, in case of non-payment by the due date, Al Gharafa is obliged to pay FCSB a penalty of EUR 1,000,000. This penalty was proposed by Al Gharafa, and it fulfils the criteria of proportionality.

- As such the penalty is due in the present case.

62. On these grounds, FCSB made the following requests for relief:

"1. Dismiss the Appeal in its entirety.

2. As a consequence, oblige the Appellant to pay to the Respondent:

2.1 the net sum of EUR 5,000,000 as outstanding transfer fee, plus 5% interest since August 1st, 2024 until the effective date of payment, and

2.2 the net sum of EUR 1,000,000 as contractual penalty, plus 5% interest since August 1st, 2024 until the effective date of payment.

3. Oblige the Appellant to bear the costs of these arbitration proceedings.

4. Oblige the Appellant to cover the Appellant's legal fees and other expenses incurred in connection with these arbitration proceedings".

V. JURISDICTION

63. The Panel notes that the Appealed Decision was issued by the FIFA PSC. The jurisdiction of CAS derives from Article R47 of the CAS Code, which reads:

"An appeal against the decision of a federation, association or sports-related body may be filed with 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 it prior to the appeal, in accordance with the statutes or regulations of that body".

64. Furthermore, Article 50(1) of FIFA's Statutes (May 2024 Edition), determines as follows:

"Appeals against final decisions passed by FIFA and its bodies shall be lodged with CAS within 21 days of receipt of the decision in question".

65. The jurisdiction of CAS is not contested by FCSB and is further confirmed by the Order or Procedure duly signed by the Parties.

66. It follows that this CAS Panel has jurisdiction to adjudicate and decide on the present dispute.

VI. ADMISSIBILITY

67. 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 in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document".

68. The FIFA Statutes provide that appeals must be made within 21 days of receipt of the decision being appealed.

69. The Appealed Decision was communicated to the Parties on 10 December 2024.

70. Al Gharafa filed its Statement of Appeal on 30 December 2024 and, therefore, within 21 days from the communication of the Appealed Decision. Al Gharafa completed its appeal per the terms of Article R48 and R51 of the CAS Code and within the deadline set by the CAS Court Office for it to do so. The appeal complied with all of the requirements of Article R47 et seq. of the CAS Code, including the payment of the CAS Court Office fee.

71. It follows that the appeal is admissible.

VII. APPLICABLE LAW

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

"Law Applicable to the merits. The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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".

73. Article 11.1 of the Transfer Agreement states as follows:

"This Agreement shall be governed by and construed in accordance with FIFA's laws and regulations and Swiss Law on a subsidiary basis".

74. The Appealed Decision was issued by the FIFA PSC in accordance with Article 49, paragraph 2, of the FIFA Statutes, which provides as follows:

"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".

75. Applying these principles to the present matter, the dispute shall primarily be decided according to the applicable regulations, i.e. the various regulations of FIFA. Considering that the Transfer Agreement was concluded on 3 July 2024 and that the dispute was brought to FIFA on 12 August 2024, the June 2024 edition of FIFA RSTP shall apply on the basis of the transitional provision contained in Articles 26 and 29 of said FIFA Regulations. Swiss law shall be considered subsidiarily in case of lacuna in the various regulations of FIFA.

VIII. PRELIMINARY ISSUE – AL GHARAFA'S REQUEST FOR ADDITIONAL EVIDENCE

76. In the Appeal Brief, Al Gharafa requested the Panel to order FCSB to produce additional evidence in the form of email correspondence between

FCSB and illegitimate email addresses referred to in the Appeal Brief.

77. FCSB denied having copies of any email correspondence between FCSB and illegitimate email addresses referred to in the Appeal Brief, and stated that logs from the email server of FCSB was only kept for 30 days.

78. The Panel notes that Pursuant to Article R44.3 of the CAS Code, which is also applicable in appeal proceedings, a party can request the CAS panel to order the other party to produce documents in its custody or under its control, if the party seeking such an order can demonstrate that the documents in question are likely to exist and are relevant to the case.

79. The Panel holds that FCSB's explanation that it does not have copies of any email correspondence between FCSB and illegitimate email addresses referred to in the Appeal Brief is credible, and that Al Gharafa has not demonstrated that the documents in question are likely to exist.

80. Consequently, the Panel concludes that Al Gharafa's request for the Panel to order FCSB to produce additional evidence shall be dismissed.

IX. MERITS

A. The Main Issues

81. The Panel notes that it is not disputed between the Parties that they have validly concluded the Transfer Agreement, or that the transfer fee, as agreed by the Parties in the Transfer Agreement, was paid by Al Gharafa to an illegitimate bank account in Vietnam, and not to FCSB' bank account in Romania. It is neither disputed that FCSB has not received the said transfer fee or that the amount has been returned to Al Gharafa.

82. The dispute, in essence, concerns whether Al Gharafa has complied with its obligation to pay the transfer fee as agreed in the Transfer Agreement. In this regard, the Panel must assess which of the Parties that is responsible for the transfer fee being paid to an illegitimate bank account in Vietnam, and not to FCSB' bank account in Romania.

83. Furthermore, Al Gharafa subsidiarily claims that the fee stipulated in the Penalty Clause should not be enforced or, alternatively, reduced.

84. Consequently, the main issues to be resolved by the Panel are:

    i. Has Al Gharafa complied with its obligation to pay the transfer fee?

    ii. If Al Gharafa has not complied with its obligation to pay the transfer fee, should the fee stipulated in the Penalty Clause be enforced or reduced?

85. The Panel will address these issues in turn.

86. However, before turning to these issues, the Panel notes that the Parties have different views concerning the facts of the case. In this regard, Article 8 of the Swiss Civil Code ("SCC") provides with respect to burden of proof that: *"Unless the law provides otherwise, each party shall prove the facts upon which it relies to claim its right"*.

87. This principle has been applied in previous CAS awards, for example in the

case CAS 2020/A/6796, where the panel stated as follows (paragraph 98).:

"[I]n CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (…). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence".

88. In this respect, pursuant to Article 8 of the SCC, it is the party that wishes to establish a fact that has the burden of proving the alleged fact that it relies its claim upon.

i. Has Al Gharafa complied with its obligation to pay the transfer fee?

89. In accordance with the Transfer Agreement, Al Gharafa was obliged to pay the transfer fee related to the transfer of the Player to FCSB, in the amount of EUR 5,000,000 plus training compensation, no later than 31 July 2024. As the transfer fee was paid by Al Gharafa to an illegitimate bank account in Vietnam instead of FCSB's bank account in Romania, the central issue is whether Al Gharafa, by paying the transfer fee to the illegitimate bank account in Vietnam, has fulfilled its contractual obligation to pay the transfer fee.

90. Al Gharafa's payment of the transfer fee to an illegitimate bank account in Vietnam instead of FCSB's bank account in Romania must be seen in connection with the email allegedly sent from Mr Argăseală's email address on 15 July 2024, in which Al Gharafa was informed that FCSB had updated the Transfer Agreement, and requested to pay the transfer fee in accordance with the information contained in the enclosed invoice. The enclosed invoice and the enclosed updated Transfer Agreement both included information about an illegitimate Vietnamese bank account. The Panel holds that Al Gharafa's payment of the transfer fee to an illegitimate bank account in Vietnam was a direct consequence of the information contained in this email, and its enclosures.

91. In this regard, the Panel notes that the HKA Report states that the said email was sent from Mr Argăseală legitimate email address, which was also confirmed in Mr Mullin's testimony. Although it appears likely that Argăseală's email account was hacked or compromised and that the email sent on 15 July 2024 was not sent by Mr Argăseală himself, the Panel holds that Al Gharafa has sufficiently established that the email sent on 15 July 2024, including an amended Transfer Agreement and an invoice, was indeed sent from Mr Argăseală's email address.

92. However, the Panel notes that the Parties, in the Transfer Agreement, validly agreed that the transfer fee should be paid to FCSB's bank account in Romania. Furthermore, the Parties validly agreed that the provisions of the Transfer Agreement could not effectively be modified, amended or waived unless made in writing and signed by the Parties, and that notices between the Parties relating to the Transfer Agreement must be delivered

either personally or sent by, *inter alia*, specified email addresses, hereunder Mr Argăseală's email address.

93. In this regard, the Panel holds that the email sent by Mr Argăseală on 15 July 2024, including an amended Transfer Agreement and an invoice, fulfils the Transfer Agreement's requirement with regards to how notices between the Parties regarding the Transfer Agreement should be sent, and, in principle, is binding on FCSB.

94. However, the amended Transfer Agreement that was enclosed to the said email sent on 15 July 2024 was still dated 1 July 2024 and did not contain any new signatures. As such, the Transfer Agreement's requirement that it could not effectively be modified, amended or waived unless made in writing and signed by the Parties, was not fulfilled. The Panel does not agree with Al Gharafa that formal requirements regulated in the Transfer Agreement can be waived informally in the case at hand, as Article 5.1 of the Transfer Agreement explicitly states that provisions in the Transfer Agreement cannot be waived unless made in writing and signed by the Parties.

95. Consequently, the Panel holds that the email sent by Mr Argăseală on 15 July 2024, including an amended Transfer Agreement, did not effectively modify or amend the Transfer Agreement. As such, the Panel holds that when the time limit to pay the transfer fee expired, i.e. on 31 July 2024, the Transfer Agreement had not validly been modified or amended.

96. Furthermore, in accordance with Article 3.4 of the Transfer Agreement, the payment of the transfer fee was subject to FCSB issuing a valid invoice to Al Gharafa. For the sake of good order, the Panel notes that FCSB's issuing of a valid invoice was not subject to the same requirements as the Transfer Agreement, i.e. that it could not effectively be modified, amended or waived unless made in writing and signed by the Parties. As such, a valid invoice could, in principle, be issued to Al Gharafa, provided that it was issued in accordance with the notices requirements, as regulated in Article 4.1 of the Transfer Agreement, i.e. that it could, *inter alia*, be sent by email from Mr Argăseală's email address.

97. Prior to the time limit to pay the transfer fee on 31 July 2024 FCSB only once attempted to issue a valid invoice containing FCSB's Romanian bank account to Al Gharafa, i.e. by the email sent on 15 July from simona@fscb.ro, to the email address algharafafcc@qsl-qa.com. The recipient's email address was an illegitimate email address that did not belong to Al Gharafa. In other words, a valid invoice with FCSB's Romanian bank account was never issued to Al Gharafa prior to the time limit to pay the transfer fee.

98. As such, the only invoice Al Gharafa had received prior to the time limit to pay the transfer fee on 31 July 2024, was the invoice enclosed to the email sent by Mr Argăseală on 15 July 2024, an invoice that included the bank details of the illegitimate bank account in Vietnam.

99. To summarise, at the time the transfer fee was paid by Al Gharafa, the Transfer Agreement, in relation to information about FCSB's bank account, had not validly been amended

or modified, and as such the Transfer Agreement's provisions regarding FCSB's bank account in Romania remained valid. On the other side, Al Gharafa had, in accordance with the notices requirements stipulated in the Transfer Agreement, received from FCSB an invoice with the illegitimate Vietnamese bank account.

100. As the information Al Gharafa had received about FCSB's bank account, as stipulated in the valid Transfer Agreement and in the invoice issued by FCSB, was contradictory, the issue of which of the Parties that is responsible for the transfer fee being paid to an illegitimate bank account in Vietnam, and not to FCSB' bank account in Romania, must be assessed taken into account the context in which the payment was made.

101. In this regard the Panel notes that in accordance with CAS jurisprudence, in particular CAS 2020/A/7442 (paragraph 128 et sec) with further references to Article 99 of the Swiss Code of Obligations ("SCO"), parties to a contract are obliged to act with due diligence when complying with their financial obligations.

102. With regards to Mr Argăseală's email sent on 31 July 2024 and the message he sent on Whatsapp the same day, where he confirmed that he had received the email and the Whatsapp message from Al Gharafa, which confirmed that the payment for the transfer of the Player had been made, the majority of the Panel notes that although the screenshots of the payment approval enclosed in the email and Whatsapp message sent to Mr Argăseală contained information about the bank account of the Vietnamese bank, Mr Argăseală cannot be blamed for not verifying if the bank account in the screenshots corresponded to the legitimate bank account of FCSB. The email and Whatsapp message sent to Mr Argăseală must be seen in context with the previous correspondence between the Parties, where Mr Argăseală had requested a confirmation of the transfer fee being paid. The screenshots of the payment approval must, in this context, be considered simply as a confirmation that the payment had been made, and not as a request from Al Gharafa to Mr Argăseală to verify that the payment had been made to the correct bank account. Furthermore, Mr Argăseală had no reason to suspect that the payment would be paid to a different bank account than FCSB's legitimate bank account, and as such had no reason to verify that the payment was made to the correct bank account.

103. Regarding the issue of whether Al Gharafa acted with an adequate level of due diligence when performing the payment of the transfer fee, the Panel notes that attempts of fraud in relation to international transfers of football players appear to occur rather frequently, and FIFA encourages clubs to pay attention to possible fraud attempts and to double check financial information before performing any payment. As such, Al Gharafa had good reason to be attentive with regards to the procedure of paying the transfer fee.

104. The transfer report uploaded and instructed in TMS by FCSB, also sent by email to Al Gharafa on 11 July 2024, contained information about FCSB's legitimate bank account in Romania. The transfer report must be seen in

relation to FIFA RSTP Annexe 3, Article 10.4 litra f, which obliges clubs to enter, *inter alia*, bank account details in TMS. The obligation to use TMS in international transfers is described in the FIFA RSTP Commentary (2023 edition) (page 577):

"Improving the administrative procedure governing transfers between member associations.

The original and core mission of TMS was and remains to facilitate and manage the process associated with the international transfer of players.

TMS must be used for all international transfers in eleven-a-side football. In other words, transfers outside of TMS are, as a fundamental and general rule, strictly prohibited.

Generally, it is for the club(s) involved in transferring a player internationally to enter the relevant transfer instruction in TMS. This is done by entering all the required information and supporting documentation into the system".

105. The Panel holds that, in general, clubs' obligation to use TMS in accordance with FIFA RSTP Annexe 3 may contribute to decrease the chances of fraud attempts being successful. The fact that FCSB sent Al Gharafa a transfer report in TMS with its legitimate Romanian bank account, indicates that Al Gharafa has not acted with an adequate level of diligence when choosing to perform the payment of the transfer fee to a bank account that differed from the bank account referred to in the transfer report uploaded in TMS.

106. The Panel further notes that the amended Transfer Agreement, enclosed in the email sent by Mr Argăseală on 15 July 2024, contained amendments with regards to FCSB's bank account, where the illegitimate Vietnamese bank account was referred to as FCSB's bank account. These amendments were rather unprofessionally executed, as the information of the Vietnamese bank account was in a different font than the rest of the text and obviously pasted over the original text. The Panel holds that the unprofessional execution of the amendments should have triggered suspicions for Al Gharafa with regards to the legitimacy of the amended information. The fact that Al Gharafa's did not take any measures in order to verify the legitimacy of the amendments indicates that Al Gharafa has not acted with an adequate level of diligence.

107. Furthermore, the Panel holds that a change of bank account that the transfer fee should be paid to, from a Romanian bank account to a Vietnamese bank account, should be sufficient to trigger concerns for Al Gharafa. There were no indications that FCSB had any link to Vietnam, and there was no apparent reason why it should have a bank account in Vietnam. As Al Gharafa seemingly simply accepted that FCSB changed to a Vietnamese bank account without taking any measures to verify that FCSB indeed had a Vietnamese bank account indicates that Al Gharafa did not act with a necessary level of diligence.

108. In conclusion, the Panel holds that Al Gharafa had an obligation to act

diligently, which included a duty to verify the correctness of the Vietnamese bank account. There were several suspicious circumstances that should have raised concerns with regards to the legitimacy of the Vietnamese bank account. Al Gharafa failed to act on these suspicious circumstances and consequently breached its obligation of acting diligently.

109. Against this background, the Panel holds that Al Gharafa is responsible for the transfer fee being paid to an illegitimate bank account in Vietnam, and not to FCSB' bank account in Romania, and that Al Gharafa has not complied with its obligation to pay the transfer fee.

ii. If Al Gharafa has not complied with its obligation to pay the transfer fee, should the f ee stipulated in the Penalty Clause be enforced or reduced?

110. Having concluded that Al Gharafa has not complied with its obligation to pay the transfer fee, the Panel turns to the issue of whether Al Gharafa is responsible to pay the Penalty Clause.

111. In this regard, as a starting point, the Panel observes that in accordance with the principles of contractual freedom and pacta sunt servanda, contracts should, in principle, be interpreted in accordance with the intention of the parties. Within the framework of the parties' autonomy, the parties may agree on terms, hereunder a contractual penalty, that will be triggered by a specific contractual condition, that will be enforceable unless applicable law or regulations stipulate otherwise.

112. Article 3.5 of the Transfer Agreement stipulates that if Al Gharafa fails to pay the transfer fee within 31 July 2024 a penalty of EUR 1,000,000 shall be payable by Al Gharafa to FCSB.

113. The Panel notes that FIFA Regulations do not regulate the enforceability of the Penalty Clause, and consequently the question of whether Al Gharafa is responsible to pay the Penalty Clause must be assessed according to Swiss law, as Swiss law is applicable to the case-at-hand subsidiarily.

114. Al Gharafa argues that, in accordance with Article 160 SCO, where a penalty is promised for non-performance or defective performance of a contract, the creditor may only compel performance or claim the penalty, unless otherwise agreed. As Mr Argăseală accepted performance without reservation on 31 July 2024, FCSB is not entitled to demand the penalty in addition to the fulfilment of the contract.

115. The English translation of Article 160 paragraph 1 and 2 SCO reads as follows:

"1. Where a penalty is promised for non-performance or defective performance of a contract, unless otherwise agreed, the creditor may only compel performance or claim the penalty.

2. Where the penalty is promised for failure to comply with the stipulated time or place of performance, the creditor may claim the penalty in addition to performance provided he has not expressly waived such right or accepted performance without reservation".

116. The majority of the Panel does not concur with Al Gharafa's claim that FCSB is not entitled to demand the penalty in addition to the fulfilment of

the contract because Mr Argăseală accepted performance without reservation on 31 July 2024. Mr Argăseală's email sent on 31 July 2024 and the message he sent on Whatsapp the same day, simply confirmed that he had received the email from Al Gharafa, an email that confirmed that the payment had been made, and cannot be considered as an acceptance of Al Gharafa's performance without reservation pursuant to Article 160 paragraph 1 and 2 SCO.

117. The majority of the Panel holds that the intention of the Penalty Clause was to function cumulatively with the performance of Al Gharafa's main obligations in accordance with the Transfer Agreement, i.e. to pay the transfer fee. The Penalty Clause clearly refers to the fact that Al Gharafa must pay the transfer fee within a stated deadline, and that failing to do so triggers the obligation to also pay the penalty. Consequently, the majority of the Panel finds that Al Gharafa's failure to pay the transfer fee to the correct bank account triggered the obligation to also pay the penalty fee.

118. Subsidiarily, Al Garafa claims that the amount stipulated in the Penalty Clause is excessively high and should be subject to reduction by the Panel pursuant to SCO Article 163.

119. The English translation of Article 163 SCO reads as follows:

"1 The parties are free to determine the amount of the contractual penalty.

2 The penalty may not be claimed where its purpose is to reinforce an unlawful or immoral undertaking or, unless otherwise agreed, where performance has been prevented by circumstances beyond the debtor's control.

3 At its discretion, the court may reduce penalties that it considers excessive".

120. In this regard, the central issue is whether the Penalty Clause, which obliges Al Gharafa to pay FCSB an additional fee of EUR 1,000,000 if the transfer fee is not paid within 31 July 2024, should be categorised as excessive, pursuant to SCO Article 163 paragraph 3.

121. SCO Article 163 paragraph 3 provides that the Panel may reduce penalties which are found to be excessive. Reduction of penalties in accordance with SCO Article 163 paragraph 3 has been considered by CAS on numerous occasions. In the case CAS 2012/A/2847 (paragraph 69), the panel stated as follows:

"However, the reduction of the is reserved for exceptional cases and solely in cases where the penalty is considered as grossly unfair. This follows from Article 163(1) CO, which expressly provides that a penalty can be set at any amount by the parties. As a rule, the parties are therefore bound by their agreement and the principle of freedom of contract commands that the tribunal abides by the parties' agreement".

122. In CAS 2015/A/3909 (paragraph 104), the panel stated that:

"[T]here must be a manifest contradiction between justice and fairness on the one hand and the liquidated damages on the other hand, in other words a massive imbalance is required for interfering with the parties' agreed assessment of the liquidated damages".

123. The Panel notes that in accordance with CAS jurisprudence, it must be assumed that the reduction of a penalty in

accordance with SCO Article 163 paragraph 3 is limited to exceptional cases where an agreement constitutes a massive imbalance.

124. In the consideration of whether the amount stipulated in the Clause should be characterized as excessive, the Panel observes that the payable amount stipulated in the Penalty Clause, EUR 1,000,000, constituted 20 percent of the fixed transfer fee of EUR 5,000,000. Furthermore, the Panel notes that the penalty was proposed by Al Gharafa.

125. In the case CAS 2018/A/5697 (paragraph 94), the sole arbitrator concluded that a penalty that constituted 10 percent of the principal dept was not excessive.

126. In the case CAS 2012/A/2847 (paragraph 106), the panel found that a penalty fee that constituted 33 percent of the agreed transfer fee should not be considered as excessive.

127. Against this background, taking into consideration CAS jurisprudence regarding excessive penalty clauses, the Panel holds that the fee stipulated in the Penalty Clause was relatively modest and proportionate seen in connection with the particular circumstances of the case, and that the penalty fee cannot be considered as excessive or that it constitutes a massive imbalance. Consequently, the Panel finds that the requirements for reducing the fee stipulated in the Penalty Clause are not met.

iii. Interest

128. The Panel notes that FIFA PSC, in the Appealed Decision, concluded that Al Gharafa was liable to pay to FCSB the total amount of EUR 6,000,000 and that interest were not awarded. The Panel further notes that the issue of interest has not been appealed by any of the Parties. As such, this operative part of the Appealed Decision is already final and binding upon the Parties, and it is beyond the scope of the Panel's power of review to consider FCSB's claim for interest on the awarded amounts.

B. Conclusion

129. Based on the foregoing, the Panel finds that:

- Al Gharafa has not complied with its obligation to pay the transfer fee.
- Al Gharafa's failure to pay the transfer fee to the correct bank account triggered the obligation to also pay the penalty fee.
- The agreed penalty fee is not excessive, and the requirements for reducing the fee stipulated in the Penalty Clause are not met.
- It is beyond the scope of the Panel's power of review to consider FCSB's claim for interest on the awarded amounts.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 30 December 2024 by Al Gharafa Sports Club against the decision issued on 5 November 2024 by the Players' Status Chamber of the

Fédération Internationale de Football Association is dismissed.

2. The decision issued on 5 November 2024 by the Players' Status Chamber of the Fédération Internationale de Football Association is confirmed.

3. (…).

4. (…).

5. All other and further motions or requests for relief are dismissed.

CAS 2025/A/11140
Mohamed Katir v. World Athletics (WA) &
CAS 2025/A/11183
WA v. Mohamed Katir
award of 19 September 2025

Athletics (running); Doping (whereabouts, tampering); Concept of tampering; Period of ineligibility; Disqualification of results

Panel
Prof. Ulrich Haas (Germany), President
Mr Efraim Barak (Israel)
Prof. Luigi Fumagalli (Italy)

1. **The concept of tampering or attempted tampering refers to a conduct that is intended to subvert the doping control process. It includes falsifying the documents submitted to an anti-doping organisation in order to explain a missed test.**

2. **The period of ineligibility for tampering or attempted tampering is four years, unless specific circumstances justify its reduction or aggravation. It excludes other sanctions, provided that it is not a second separate offence committed after notification of the first anti-doping rule violation.**

3. **The disqualification of the competitive results obtained from the date of the sample collection to the provisional suspension must be disqualified, unless fairness requires otherwise.**

I. THE PARTIES

1. Mr. Mohamed Katir (the "Appellant" or "Athlete") is a Spanish middle- and long-distance runner, affiliated to the Spanish National Athletics Federation and World Athletics.

2. World Athletics (the "Respondent" or "WA") is the world governing body of the sport of athletics, with its registered seat in Monaco.

3. The Appellant and the Respondent are hereinafter jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions, pleadings, evidence adduced in the course of the present proceedings. Additional facts, allegations and evidence may be set out, where relevant, in other parts of this award. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in the award only to the submissions and evidence they consider necessary to explain their reasoning.

5. At the outset, it is prudent to clarify that the present case pertains to an alleged Anti-Doping Rule Violation (ADRV) of *"Tampering or Attempted Tampering with any Part of Doping Control by an Athlete or Other Person"* (hereinafter referred to as "Tampering") under Rule 2.5 of the World Athletics Anti-Doping Rules (the "ADR"). However, the ADRV in question was made in relation to another ADRV of *"Whereabouts Failures by an Athlete"* (hereinafter referred to as "Whereabouts Failure") under Rule 2.4 of the ADR. The relevant circumstances around both alleged ADRVs are as

follows.

A. Result Management for Whereabouts Failures Charge

6. The Athlete provided whereabouts information for the date of 28 February 2023, which includes a one-hour timeslot from 07:00 to 08:00 at his registered address in Murcia, Spain (the "Murcia Address") in the Anti-Doping Administration & Management System ("ADAMS").

7. On 28 February 2023, at approximately 20:10, a doping control officer (DCO) instructed by the Athletics Integrity Unit (the "AIU") arrived at the Murcia Address for an out-of-competition doping ("OoC") test outside the one-hour timeslot. The DCO was informed by the Athlete's father and the Athlete that the Athlete was at the residence of his fiancée in Portugal at that time. The DCO left at 21:15.

8. On 2 March 2023, the AIU formally notified the Athlete that an evaluation procedure was initiated against him for an apparent Whereabouts Failure, *"specifically for [his] failure to update [his] whereabouts information as soon as possible after [his] circumstances changed"*, and invited the Athlete to provide an explanation for review (the "2 March Notice").

9. On 9 March 2023, the Athlete responded to the AIU, stipulating – in relevant parts – as follows:

"[…]

As referred to in my Whereabouts information, I was in my house during the slot time that I had written down on this and where clearly you can see that on February 28th, my slot time was 07.00 to 08.00. And during this period I can assure you that I was there and nobody came to my house. So for this reason I was totally convinced that I was doing the correct thing. And if somebody comes to my house at 20.10 to do a Control OUT OF THE TIME SLOT, and as far as I understand (please correct me if I am wrong), I am not obliged to stay localized 24 hours a day every day.

Once I have given you the facts, let me explain you the situation. On February 28th, and after 08.30, I went for an easy training and I received a telephone call from my fiancée, telling me that she was sick and asking me to go to see her. Immediately I made a reservation and took a plane to Lisbon (attached boarding card). As soon as I decided this I also updated my Whereabouts for the following day and I informed Whereabouts about her address in Portugal (attached document). So I think I did everything correctly. Besides, my Whereabouts were updated for the first quarter.

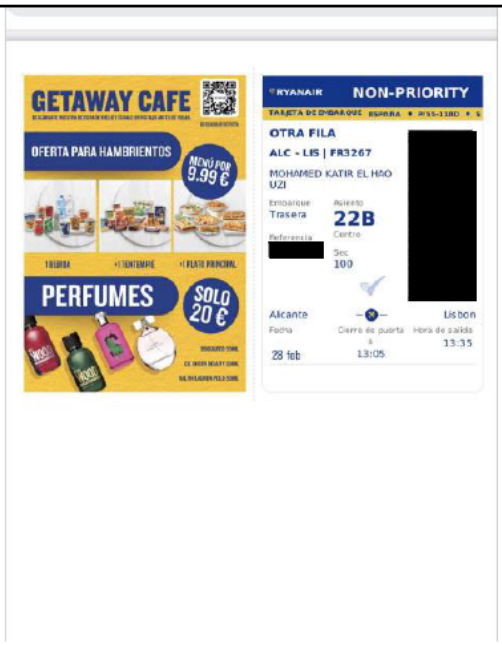
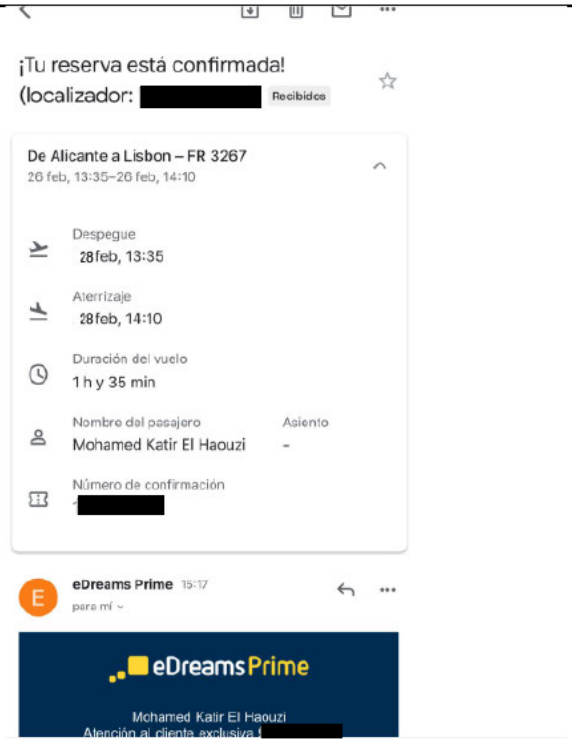
In conclusion, I feel sure that I acted according to Whereabouts protocol. For this reason, I hope you acknowledge these allegations as truthful and honest, and that you therefore do not consider this a missed test. Of course I recognise as important and necessary the fight against doping, which I firmly believe in.

[…]*"*

(hereinafter referred to as the "Athlete's Explanation" or the "Athlete's 9 March Letter")

10. Enclosed with the Athlete's Explanation are – *inter alia* – three pages worth of documents of travel documents, with screenshots reproduced below:

Description	Document Reproduction
The "Travel Itinerary"	

Description	Document Reproduction
The "Boarding Pass"	
The "Booking Confirmation	
(hereinafter referred to as the "Altered Documents"	

11. On 22 March 2023 and 28 March 2023, the AIU asked the Athlete to provide the booking confirmation for his flight to Lisbon, in particular, the date he booked the said flight which allegedly flew on 28 February 2023.

12. On 29 March 2023, the Athlete did not provide additional information and only produced the Booking Confirmation (as above) again (the "Athlete's 29 March Letter"), which provided two dates "26 Feb" and "28 Feb", for which the AIU employee Ms. Clara El Ayat (hereafter referred to as "Ms. El Ayat") had determined that the Athlete booked his flight on 26 February 2023.

13. On 31 March 2023, the AIU confirmed the Apparent Whereabouts Failure and stipulated – in relevant parts – the following:

> *"Further to our letter of 2 March 2023, the Athletics Integrity Unit ("AIU") has confirmed a Whereabouts Failure against you in accordance with the 2021 World Athletics Anti-Doping Rules (the "Rules").*
>
> […]
>
> *On 9 March 2023, the AIU received your explanation in response to the apparent Whereabouts Failure on 28 February 2023. In summary, you stated that on 28 February 2023 after 8.30 a.m. you went for a training session and your fiancée who lives abroad, called you to say that she was ill and that you had to join her urgently, you immediately booked a flight to Lisbon, Portugal and updated your Whereabouts information as soon as your situation changed.*
>
> *Having also attached your flight ticket in your explanation, the AIU also requested the confirmation of your booking flight, which you provided, enabling us to discover that you had in fact booked your flight on 26 February 2023 i.e., two (2) days before your departure and not on the day of the attempt, 28 February 2023 as you stated. Therefore, you did not update your Whereabouts as soon as your circumstances changed.*
>
> […]".

14. On 3 April 2023, the Athlete committed a second Whereabouts Failure in a twelve-month period starting on 28 February 2023.

15. On 10 October 2023, the Athlete committed his third Whereabouts Failure in a twelve-month period starting on 28 February 2023.

16. On 7 February 2024, the AIU issued a Notice of Allegation to the Athlete for a violation of Whereabouts Failure under Rule 2.4 of the ADR, based on his commission of three Whereabouts Failures in the twelve-month period starting on 28 February 2023, which sought Consequences including a period of Ineligibility of two (2) years and a disqualification of the Athlete's results since 10 October 2023.

17. On 13 February 2024, the Athlete admitted to the ADRV of Whereabouts Failure, and accepted the Consequences specified by the AIU in the Notice of Allegation dated 7 February 2024.

18. On 16 February 2024, the AIU published the decision and details of the Athlete's admission of the ADRV under Rule 2.4 of the ADR.

19. On 19 February 2024, the Athlete raised certain points to the AIU about the

decision published on 16 February 2024, and requested the removal of the reference to "appearance money" and clarification on the sanction involving the forfeiture of appearance money.

20. On 19 March 2024, the AIU responded to the letter from the Athlete on 19 February 2024 on the appearance money and clarified that the agreed revision to the decision dated 16 February 2024 pertaining to appearance money cannot be excluded practically, given that forfeiture of appearance money is determined between athletes and meeting organisers or third parties.

21. On the same day, the AIU published the amended decision pertaining to the Athlete's ADRV under Rule 2.4 of the ADR, and excluded the term "appearance money".

22. Sometime during the assessment of the Athlete's ADRV on Whereabouts Failure, another employee of the AIU, Mr. Tuomo Salonen (hereinafter referred to as "Mr. Salonen"), noted that there was a potential manipulation of the flight date in the documents on the file, and investigated further.

B. Result Management for Tampering Charge

23. On 18 March 2024, the AIU issued a Notice of Allegation to the Athlete for a potential violation of Rule 2.5 on Tampering, including a written demand to attend an interview with the AIU to provide his explanation for the documents that he had submitted.

24. On 3 April 2024, the Athlete attended an interview of the AIU and was accompanied by his legal counsel. At the said interview, the Athlete made the following admissions:

a. He had travelled to Lisbon on 26 February 2023, and not on 28 February 2023 as suggested by the Travel Itinerary, the Boarding Pass, and the Booking Confirmation (also referred to herein as the "Altered Documents") that he previously submitted to the AIU;

b. He had falsified the Altered Documents to make them look like he travelled to Lisbon on 28 February 2023; and

c. He had falsified the Altered Documents himself, by using Instagram to change the information on the documents, and no one assisted him.

25. On 9 April 2024, the AIU wrote to the Athlete giving him the opportunity to confirm those admissions and accept the Consequences specified i.e., a period of Ineligibility of six (6) years and disqualification of results since 9 March 2023; failing which, the AIU will proceed to issue him a Notice of Charge.

26. On 15 April 2024, the Athlete replied to the AIU and stated that he was not willing to accept the proposed Consequences.

27. On the same day, the AIU requested for a meeting with the Athlete on the same day.

28. On 17 April 2024, the Athlete expressed willingness to attend the said meeting, but preferred an in-person meeting rather than a videoconference.

29. On 18 April 2024, the AIU confirmed its

agreement to hold the meeting and requested the contact details of the Athlete's representative to facilitate the said meeting.

30. On 22 April 2024, the AIU and the Athlete (via his legal representative) had a video conference, wherein the Athlete's decision not to accept the proposed ADRV and consequences were reaffirmed.

31. On 30 April 2024, the AIU received an email from the Athlete confirming that he will not accept the Consequences proposed by the AIU.

32. On 12 June 2024, the AIU issued the Athlete with a Notice of Charge for the commission of an ADRV pursuant to Rule 2.5 of the ADR, in particular, for the Athlete's submission of falsified/ manipulated documents to the AIU on 9 March 2024 and 29 March 2024. The Consequences set out therein were as follows:

"4.1. In accordance with Rule 10.9.3(a), the (admitted) violation of Rule 2.4, for which you are currently serving a period of ineligibility until 6 February 2026, and the alleged violation of Rule 2.5 that is the subject of this correspondence, would be considered together as a single (first) Anti-Doping Rule Violation resulting in a sanction based on the violation of the two that carries the more severe sanction (i.e., the violation of Rule 2.5), including the application of Aggravating Circumstances.

4.2. The Consequences being sought by the AIU (which shall have binding effect on all Signatories to the World Anti-Doping Code, in all sports and countries as per Code Article 15) are:

4.2.1. ***an effective period of ineligibility of five (5) years*** *effective from the date of the final decision in this matter, with credit for the period of Provisional Suspension since 7 February 2024 (provided that this has been effectively served) to run concurrently with the period of Ineligibility of two years already imposed for the Rule 2.4 violation); and*

4.2.2. ***Disqualification of your results*** *with all resulting consequences including forfeiture of any medals, titles, points, prize money and prizes since 9 March 2023; and*

4.2.3. ***Public Disclosure:*** *the AIU shall immediately Publicly Disclose the full details of this matter in accordance with Rule 14.3.2.*

4.3. In addition to the foregoing, the AIU may also seek financial consequences against you, including, without limitation, the full recovery of all costs associated with determining the Anti-Doping Rule Violations asserted against you, including all costs associated with any hearing before the Tribunal (see Section 5.B, below)".

33. On 24 June 2024, the Athlete responded to the Notice of Charge and denied that he had committed an ADRV, and requested a hearing in this matter.

C. Proceedings before the World Athletics Disciplinary Tribunal (SR/111/2024)

34. On 15 July 2024, the World Athletics Disciplinary Tribunal (the "Tribunal") was formed with a sole arbitrator, Mr. Charles Hollander KC.

35. On 8 November 2024, an oral hearing was conducted by the Tribunal and the Parties by video-conference, with the Athlete as the only witness.

36. On 11 December 2024, the Tribunal rendered a decision as follows:

"a) The Disciplinary Tribunal has jurisdiction to decide over the present matter.

b) The Athlete has committed an ADRV pursuant to Rule 2.5 2024 ADR.

c) The Athlete is sanctioned with a period of Ineligibility of four (4) years starting on the date of the Disciplinary Tribunal's Award set out below.

d) This period shall operate concurrently with the period of Ineligibility currently being served by the Athlete in relation to the Rule 2.4 ADR violation, and the period of ineligibility being served since 7 February 2024 until the date of the Disciplinary Tribunal's Award shall be credited against the total period of Ineligibility to be served.

e) There will be no Disqualification of any medals, titles, points, prize money, and prizes obtained by the Athlete prior to 7 February 2024"

(the "Tribunal Decision").

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

37. On 9 January 2025, the Athlete filed a Statement of Appeal against the Tribunal Decision with the Court of Arbitration for Sport (CAS) in accordance with Article R47 et seq. of the Code of Sports-related Arbitration (the "Code"). The Statement of Appeal included a request for an extension of time limit to file the Appeal Brief, and a nomination of Mr. Efraim Barak as arbitrator. The procedure was docketed as CAS 2025/A/11140.

38. On 16 January 2025, the CAS Court Office acknowledged receipt of the Athlete's Statement of Appeal, and invited the Athlete to file his Appeal Brief within the relevant time-limit.

39. On 27 January 2025, World Athletics informed the CAS Court Office that the law firm Kellerhals Carrard will be representing it, and nominated Prof. Luigi Fumagalli as arbitrator.

40. On the same day, the Athlete filed his Appeal Brief in accordance with Article R51 of the Code.

41. On 29 January 2025, the CAS Court Office acknowledged receipt of the Athlete's Appeal Brief and set a deadline for World Athletics to file its Answer. The CAS Court Office also confirmed that the present case is of a disciplinary nature and falls under the provisions of Article R65 of the Code.

42. On 11 February 2025, the CAS Court Office informed the Parties that Prof. Dr Ulrich Haas has been appointed as President of the Panel by the Division President.

43. On 25 February 2025, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division has decided to submit the present case to a panel and that in accordance with Article R54 of the Code, the Panel appointed to decide the present matter was constituted as follows:

President:

Mr. Ulrich Haas, Professor in Zurich, Switzerland and Attorney-at-Law in Hamburg, Germany

Co-Arbitrators:

Mr. Efraim Barak, Attorney-at-law in Tel Aviv, Israel

Prof. Luigi Fumagalli, Attorney-at-law in Milan, Italy

44. On 7 March 2025, World Athletics, within the previously extended time limit, filed its Answer in accordance with Article R55 of the Code.

45. On the same day, World Athletics filed its Statement of Appeal and Appeal Brief on the cross-appeal against the same Tribunal's Decision, which was docketed as CAS 2025/A/11183.

46. On 11 March 2025, the CAS Court Office acknowledged receipt of World Athletics' Answer in the matter CAS 2025/A/11140, as well as its Statement of Appeal and Appeal Brief for CAS 2025/A/11183. The CAS Court Office confirmed that CAS 2025/A/11183 is also subjected to Article R65 of the Code, and will be submitted to the same Panel as CAS 2025/A/11140. The CAS Court Office also set a deadline for the Athlete to file his Answer in the matter CAS 2025/A/11183.

47. On 8 April 2025, the Athlete, within the previously extended time limit, filed his Answer in CAS 2025/A/11183, in accordance with Article R55 of the Code.

48. On 9 April 2025, the CAS Court Office acknowledged receipt of the Athlete's Answer and invited the Parties to inform it whether they prefer a hearing on the matter, and whether they request for a case management conference ("CMC") with the Panel to be held.

49. On 16 April 2025, World Athletics informed the CAS Court Office that it does not believe that a hearing or a CMC is necessary and that it is content for the present case to be decided on the basis of the written submissions.

50. On the same day, the Athlete informed the CAS Court Office that it also does not believe that a hearing or a CMC is necessary and that the Panel may issue its award solely on the basis of the Parties' submissions.

51. On 20 May 2025, the CAS Court Office clarified and confirmed that the proceedings of CAS 2025/A/11140 and CAS 2025/A/11183 are submitted to the same Panel and consolidated in accordance with Article R52(5) of the Code. Additionally, the CAS Court Office issued an Order of Procedure ("OoP") and invited the Parties to return signed copies thereof.

52. On 26 May 2025, the Appellant and on 21 May 2025 the Respondent returned a signed copy of the OoP to the CAS Court Office.

IV. SUBMISSION OF THE PARTIES

53. This section of the award does not contain an exhaustive list of the Parties' contentions, its aim being to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this award, the Panel has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the award or in the discussion of the claims below.

A. The Athlete's Position

54. The Athlete submitted his appeal under CAS 2025/A/11140 and responded to the appeal of World Athletics under CAS 2025/A/11183.

i. Requests for Relief

55. In the appeal case of CAS 2025/A/11140, the Athlete seeks the following relief before this Court:

> *"On these grounds, Mohamed Katir requests the Court of Arbitration for Sport decide as follows:*
>
> *1. The decision of the World Athletics Disciplinary Tribunal dated 11 December 2024 is set aside.*
>
> *2. It is declared that the Athlete has not committed any Anti-Doping Rule Violation, and no period of ineligibility is imposed.*
>
> *3. Alternatively, the minimum period of ineligibility is imposed, considering the lack of impact on the anti-doping process, the absence of intent to subvert the procedure, and the proportionality of the sanction.*
>
> *4. A contribution towards the Appellant's legal fees and other expenses incurred in this arbitration is granted".*

56. In his Answer in the matter of CAS 2025/A/11183, the Athlete filed the following requests for relief:

> *"On those grounds, Mohamed Katir requests that the Court of Arbitration for Sport decide as follows:*
>
> *1. The appeal lodged by World Athletics against the decision rendered by the Disciplinary Tribunal on 11 December 2024 is rejected.*
>
> *2. The entire costs of the proceedings, if any, and a contribution towards the legal fees and other expenses of Mohamed Katir are paid by the Appellant".*

ii. Jurisdiction for CAS 2025/A/11140

57. The Athlete contends that the jurisdiction of the CAS arises out of Article R47 of the Code, read together with Rules 13.2 and 13.2.1 of the ADR; in particular, that the Athlete was an "International-Level Athlete" at material time.

58. The Athlete further contends that his Statement of Appeal and Appeal Brief are admissible as they were submitted by the Appellant within the prescribed time limits.

iii. Applicable Law

59. The Athlete maintains that Article R58 of the Code, read together with Rules 13.7.4 and 13.7.5 of the ADR, provides that the World Athletics' regulatory framework ought to apply to the present case, with Monegasque law to apply subsidiarily.

iv. Submissions on the Merits for CAS 2025/A/11140

60. The Athlete submits that the definition and application of a Tampering charge under Rule 2.5 of the ADR requires significant subversion of the doping control process, which is not present in the instant case.

(i) The detailed definition of "Tampering" as provided in Appendix 1 (Definitions) of

the ADR describes "Tampering" as *"intentional conduct that subverts the doping control process"*, which includes acts such as *"offering or accepting a bribe to perform or fail to perform an act, preventing the collection of a Sample, affecting or making impossible the analysis of a Sample, falsifying documents submitted to an Anti-Doping Organisation or TUE committee or hearing panel, procuring false testimony from witnesses, committing any other fraudulent act upon the Anti- Doping Organisation or hearing body to affect Results Management or the imposition of Consequences"*.

(ii) Rule 5.7.10 of the ADR further provides that *"[i]f an Athlete or other Person obstructs or delays an investigation (e.g., by providing false, misleading or incomplete information or documentation and/or by tampering or destroying any documentation or other information that may be relevant to the investigation), proceedings may be brought under Article 2.5"*.

(iii) The above provides that Tampering requires intentional interference with or obstruction of the doping control process, such as delaying or obstructing the investigation or results management in a tangible and meaningful way.

(iv) This interpretation has been consistently upheld in legal jurisprudence, wherein Tampering violations have only been upheld in cases which involve deliberate efforts to mislead, obstruct or undermine the doping control process.

- In CAS 2015/O/4128, the athlete submitted a falsified medical report which was determined by the panel therein as a Tampering violation as it was a deliberate act intended to mislead the result management process and justify a positive test result.

- In SR/Adhocsport/140/2018, the athlete submitted false medical reports to justify the EPO in her system, which was determined by the tribunal as a Tampering violation.

- In CAS 2021/A/7983 & 8059, the athlete altered the date of a medical procedure to attempt to justify her failure to respond to a doping control, which was determined by the panel as a Tampering violation.

- In SR/009/2020, the athlete submitted falsified documents to explain a Missed Test, which was determined by the tribunal as an act of Tampering.

- In CAS 2017/A/4937, the panel considered whether a simple lie would constitute a

Tampering violation and concluded that while dishonesty was relevant, it does not automatically constitute as Tampering as the violation would require an intentional and substantial effort to obstruct the doping control process.

(v) The legal jurisprudence collectively establishes that Tampering under Rule 2.5 of the ADR involves a conduct that goes beyond providing false information and requires an intentional act that materially subverts or obstructs the doping control process, such as delaying an investigation, affecting results management, or undermining the integrity of the disciplinary proceedings.

61. The Athlete also contends that there was an erroneous interpretation and reasoning of the Filing Failure ADRV, pursuant to the applicable regulations.

(i) The Tribunal Decision is alleged by the Athlete to contain a fundamental error in reasoning, in particular on the establishment of the Whereabouts Failure (Filing Failure) and its connection to the Athlete's letter dated 9 March 2023.

(ii) The Tribunal Decision concludes that the Whereabouts Failure could not be considered fully established until the receipt of the Athlete's letter on 9 March 2023, as the Whereabouts Failure requires negligence, and the said letter provided the explanation to avoid the Filing Failure from being recorded; this is alleged to be incorrect by the Athlete.

(iii) Under the applicable regulations, a Whereabouts Failure is determined based on two criteria: (1) the Athlete's absence during the designated timeslot in ADAMS (making it a *Missed Test*), or (2) the failure of the Athlete to update their ADAMS Whereabouts as soon as possible after becoming aware of a change in circumstances (*Filing Failure*).

(iv) However, the first instance of Whereabouts Failure – which is central to the Tampering allegation – constitutes a Filing Failure and not a Missed Test, as the DCO arrived at the Athlete's registered location *outside* the designated 60-minute time slot for conducting the test.

(v) The obligations of athletes on their updates for Whereabouts are defined in the ISTI, *viz*, Articles 4.8.6.2 and 4.8.8.6, with the latter requiring:

"An Athlete who is in a Registered Testing Pool shall:

a) Make quarterly Whereabouts Filings that provide accurate and complete information about the Athlete's

whereabouts during the forthcoming quarter, including identifying where they will be living, training, and competing during that quarter, and to update those Whereabouts Filings where necessary, so that they can be located for Testing during that quarter at the times and locations specified in the relevant Whereabouts Filing, as specified in Article 4.8.8. A failure to do so may be declared a Filing Failure".

(vi) Pursuant to the above, athletes have two primary obligations: (1) initial filing of their detailed and accurate information about their Whereabouts for the entire quarter; and (2) ongoing updates, wherein athletes must promptly update their Whereabouts whenever their circumstances change to ensure that the information remains accurate and facilitates potential testing.

(vii) Article 4.8.8.6 of the ISTI further emphasises the importance of timely updates, in particular *"prior to the 60-minute time slot specified in their filing for the relevant day"*.

(viii) The above highlights the importance of the duty of athletes to reflect changes in circumstances by ensuring that any change in location is promptly updated and the duty to ensure the timeliness of the updates by submitting them *"as soon as possible"*. In particular, the requirement for athletes to update their Whereabouts prior to the 60-minute slot is a fundamental obligation to ensure the integrity of the doping control process.

(ix) To establish a Filing Failure under Rule 2.4 of the ADR, an athlete must either fail to provide accurate and complete Whereabouts information, or fail to update such information in a timely manner when circumstances change. The ISRM, in particular, Article B.1.3 of Annex B, provides clarity on when a Filing Failure is deemed to have occurred and ties the violation to specific factual circumstances and timing:

"For purposes of determining whether a Whereabouts Failure has occurred within the 12-month period referred to in Code Article 2.4:

a) A Filing Failure will be deemed to have occurred (i) where the Athlete fails to provide complete information in due time in advance of an upcoming quarter, on the first day of that quarter, and (ii) where any information provided by the Athlete (whether in advance of the quarter or by way of update) transpires to be inaccurate, on the (first) date on which such information can be shown to be inaccurate".

(x) From the above provision, there are two distinct scenarios for which an athlete can be deemed as having committed a Filing Failure:

- For failure to provide complete quarterly information: Filing Failure is deemed to have occurred on the first day of the relevant quarter.

- For failure to provide accurate updates: Filing Failure is deemed to have occurred on the first day when any information provided by the Athlete (advance of quarter or as an update) is identified as inaccurate or incomplete.

(xi) The Filing Failure attributed to the Athlete in the present case was fully and conclusively established on the date of the doping control attempt, *viz*, 28 February 2023, when the DCO arrived at the Athlete's registered location and found him absent. The DCO immediately became aware that the information recorded in ADAMS was inaccurate for 28 February 2023, and it was evident that the Athlete had not fulfilled his obligations to update his Whereabouts Filing.

(xii) Article B.2.1 of Annex B, ISRM, sets forth criteria which has to be fulfilled before an athlete can be declared to have committed a Filing Failure, in part, to ensure a structured and fair process for the determination of such violations and include safeguards to ensure violations are grounded in clear, objective evidence and procedural integrity, as follows:

"B.2.1 An Athlete may only be declared to have committed a Filing Failure where the Results Management Authority establishes each of the following:

a) That the Athlete was duly notified: (i) that they had been designated for inclusion in a Registered Testing Pool; (ii) of the consequent requirement to make Whereabouts Filing; and (iii) of the Consequences of any Failure to Comply with that requirement;

b) That the Athlete failed to comply with that requirement by the applicable deadline;

[Comment to Article B.2.1(b): An Athlete fails to comply with the requirement to make Whereabouts Filing (i) where they do not make any such filing, or where they fail to update the filing as required by Article 4.8.8.6 of the International Standard for Testing and Investigations; or (ii) where they make the filing or update but do not include all of the required information in that filing or update (e.g. they do not include the place where they will be staying overnight for each day in the following quarter, or for each day covered by the update, or omit to declare a regular activity that they will be pursuing during the quarter, or during the period covered by the update); or (iii) where they include information in the original filing or the update that is inaccurate (e.g., an address that does not exist) or insufficient to enable the Anti-Doping Organization to

locate them for Testing (e.g., "running in the Black Forest").]

c) In the case of a second or third Filing Failure, that they were given notice, in accordance with Article B.3.2(d), of the previous Filing Failure, and (if that Filing Failure revealed deficiencies in the Whereabouts Filing that would lead to further Filing Failures if not rectified) was advised in the notice that in order to avoid a further Filing Failure they must file the required Whereabouts Filing (or update) by the deadline specified in the notice (which must be within 48 hours after receipt of the notice) and yet failed to rectify that Filing Failure by the deadline specified in the notice; and

[Comment to Article B.2.1(c): All that is required is to give the Athlete notice of the first Filing Failure and an opportunity to avoid a subsequent one, before a subsequent Filing Failure may be pursued against them. In particular, it is not necessary to complete the Results Management process with respect to the first Filing Failure before pursuing a second Filing Failure against the Athlete.]

d) That the Athlete's failure to file was at least negligent. For these purposes, the Athlete will be presumed to have committed the failure negligently upon proof that they were notified of the requirements yet did not comply with them. That presumption may only be rebutted by the Athlete establishing that no negligent behavior on their part caused or contributed to the failure".

(xiii) Under Article B.2.1(d) of Annex B of the ISRM, there is a requirement of *negligence* as a requisite element to establish a Filing Failure. This requisite creates a *presumption iuris tantum* of negligence which only operates once it can be demonstrated that the athlete was duly notified of their Whereabouts obligations and failed to comply. However, athletes are permitted to rebut this presumption by providing evidence that no negligent behaviour on their part caused or contributed to the Filing Failure.

The Tribunal Decision failed to properly address or apply the *presumption iuris tantum* of negligence, which will allow the Athlete to present evidence to rebut the presumption of negligence. The Athlete neither presented arguments nor provided evidence to rebut this presumption of negligence.

(xiv) As such, the date of the Filing Failure must have been determined to have occurred on 28 February 2023, as the Athlete's failure to update his Whereabouts by the relevant deadline was negligent under the application rules. The Tribunal Decision's omission of this key procedural mechanism and its failure to acknowledge that the Athlete did not contest the Filing Failure, undermines the legal soundness of its conclusions.

62. The Athlete maintains that his 9 March

Letter does not constitute evidence of Tampering.

(i) The Tribunal Decision is fundamentally based on the Athlete's 9 March Letter, to substantiate the commission of the Tampering violation, but the analysis of this Letter reveals that at no point does the Athlete attempt to challenge the Filing Failure recorded on 28 February 2023, but only to provide an explanation regarding the first Missed Test. There is no dispute by the Athlete on the Filing Failure.

(ii) In the 9 March Letter, the Athlete was responding to a notification issued by the AIU on 2 March 2023 which informed him of an attempted doping control outside the designated 60-minute slot on 28 February 2023. The Athlete emphasised that he was at his registered location during the specific slot on 28 February 2023, *viz*, between 07:00 and 08:00.

(iii) §The Athlete's sole objective of the 9 March Letter was to clarify and explain the circumstances surrounding the attempted doping control on 28 February 2023 and endeavoured to prevent the incident from being recorded as a Missed Test. The Athlete does not dispute or challenge the Filing Failure.

(iv) Notwithstanding the Athlete's assertion that he travelled to Lisbon on 28 February 2023 after 08:30, the Athlete concedes that he did not update his overnight location in ADAMS prior to his travel, thereby implicitly acknowledging that the information on ADAMS was not updated "as soon as possible" as required under Article 4.8.8.6 of the ISTI.

(v) Under Article B.1.3 of Annex B of the ISRM, a Filing Failure is deemed to have occurred *"on the first date on which such information can be shown to be inaccurate"*, which would be 28 February 2023, when the doping control officer determined that the Athlete was not at the location he had indicated on ADAMS. The 9 March Letter does not contest this fact but confirms the change in circumstances, the Athlete's travel to Portugal, and his failure to update his whereabouts information on ADAMS.

(vi) In the 9 March Letter, the Athlete requested that the incident on 28 February 2023 not be recorded as a Missed Test, demonstrating that his sole intention was to address the Missed Test, not contest the Filing Failure.

(vii) Notably, the 9 March Letter does not present any arguments or evidence to rebut the presumption of negligence. The contents of

the 9 March Letter implicitly confirm the Filing Failure by acknowledging that the Athlete travelled to Lisbon on 28 February 2023 without updating his Whereabouts information on ADAMS, which supports the conclusion that the Filing Failure was committed as of 28 February 2023.

(viii) As such, the Tribunal Decision was wrong in relying on the 9 March Letter to establish a Tampering violation. The contents of the 9 March Letter neither contests the Filing Failure or indicate any attempt to subvert or obstruct the doping control process, but reinforces the conclusion that the Filing Failure was appropriately recorded based on the Athlete's non-compliance with his Whereabouts obligations.

(ix) Recalling CAS 2017/A/4937 wherein it was determined by the panel that *"[t]elling a lie does not equate to committing 'fraud' or providing 'fraudulent information'"*, the 9 March Letter constitutes a "simple lie", with no intention to subvert or interfere with the doping control process, and therefore insufficient to constitute Tampering.

63. The Athlete submits that the Altered Documents did not subvert or obstruct the doping control process as the Filing Failure was established independently from the Altered Documents, thereby not supporting the Tampering ADRV.

(i) The Altered Documents submitted by the Athlete had no bearing on the determination of the Filing Failure, as the Filing Failure was established based on the Athlete's failure to comply with his obligations under Article 4.8.8.6 ISTI, *viz*, his failure to update his Whereabouts in ADAM "as soon as possible" after becoming aware of his travel plans to Portugal.

(ii) The contents of the Altered Document did and could not alter the fundamental basis of the Filing Failure, which was committed by the Athlete being absent at the registered location on 28 February 2023 and his failure to update ADAMS to reflect his actual location or overnight stay. Whether the Athlete travelled to Portugal on 26 or 28 February is immaterial to the determination of the Filing Failure. As such, there was no subversion or obstruction of the doping control process required under Rule 2.5 ADR for a finding of Tampering.

(iii) The Filing Failure was established independently and without interference from the Altered Documents, which violation was not contested by the Athlete in the 9 March Letter and subsequent communications.

(iv) Rule 5.7.10 of the ADR emphasises that for the finding of Tampering, there must be tangible consequences, such as the obstruction or delay of an investigation. In the present case, there is no evidence that the Altered Documents delayed or obstructed the result management process relating to the Filing Failure, and thereby cannot form the basis of a Tampering violation under Rule 2.5 of the ADR.

64. The Athlete maintains that his conduct cannot constitute Tampering as there was no subversion or obstruction of the doping control process.

(i) The conduct of the Athlete does not qualify as Tampering under Rule 2.5 of the ADR, which requires intentional conduct that subverts or obstructs the doping control process.

(ii) The Filing Failure was established by the Athlete's absence at the registered location on 28 February 2023 and his failure to update ADAMS to reflect his actual location or overnight stay according to Article 4.8.8.6 of the ISTI. The Filing Failure was committed and determined independently from any subsequent submissions and explanations provided by the Athlete.

(iii) There is no evidence that the Athlete's actions obstructed or delayed the doping control process as required under Rule 2.5 of the ADR. Rule 5.7.10 of the ADR further emphasises that Tampering requires a tangible impact on the investigation or results management process. The Altered Documents did not obstruct or delay any aspect of the process, wherein the AIU was aware of the Filing Failure and confirmed it on 31 March 2023, solely based on the Athlete's absence at the registered location on 28 February 2023 and his failure to update ADAMS to reflect his actual location or overnight stay. The Altered Documents submitted by the Athlete played no role in determining the Filing Failure and did not influence the outcome of the results management process.

(iv) The Tribunal Decision was wrong to rely on the Altered Documents to supporting the finding of Tampering. In any event, the timeline and procedural context of the anti-doping process demonstrate that the Athlete's action did and could not obstruct or subvert the doping control process:

- There are three key stages of Whereabouts Failure cases, (1) the moment the Filing Failure occurs (2) the moment that the AIU informs the Athlete of the Whereabouts Failure; and (3)

the moment the AIU confirms the Filing Failure.

- The timeline relating to the Athlete's Filing Failure on 28 February 2023 reveals that there is no such obstruction or subversion:

Whereabouts Failure	Date of Failure	Date of AIU Notification	Date of AIU Determination	Time Between Failure and Notification	Time Between Failure and Determination
1st	28-02-2023	02-03-2023	31-03-2023	2 days	31 days
2nd	03-04-2023	06-04-2023	28-04-2023	3 days	25 days
3rd	10-10-2023	17-10-2023	12-12-2023	7 days	63 days

- The timeframes for the first Whereabouts Failure (*viz*, the Filing Failure) are shorter or comparable to the timeframes for the second and third Whereabouts Failures, which indicates that the Athlete's actions – including the submission of the Altered Documents – did not obstruct or delay the AIU's determination of the Filing Failure recorded on 28 February 2023.

- Moreover, the short timeframe between the Athlete's submission of the Altered Documents (9 March 2023 and 29 March 2023) and the AIU's determination of the Filing Failure (31 March 2023) further disproves any allegation of obstruction or subversion. In fact, the AIU confirmed the Filing Failure just two days after the Athlete's second submissions on 29 March 2023.

- The short and nominal time elapsed between the Athlete's submissions and the AIU determination of the Filing Failure demonstrates that the Altered Documents had no impact on the anti-doping process, and that the Filing Failure was established independently of the submission of the Altered Documents.

- Additionally, the Athlete ultimately accepted the Filing Failure for 28 February 2023 notwithstanding the Altered Documents that he submitted, which further underscores that the Altered Documents did not influence the AIU's determination of the Filing Failure or the result management process.

- The timeline and procedural facts show that the Athlete's actions, including submitting the Altered Documents, do not meet the threshold for Tampering under Rule 2.5 of the ADR.

65. Further and/or in the alternative, the Athlete submits that the circumstances warrant a reduction of the Period of Ineligibility to two years.

(i) Rule 10.3.1 of the ADR provides that:

"For violations of Rule 2.3 or Rule 2.5, the period of Ineligibility will be four (4) years except: (i) in the case of failing to

submit to Sample collection, if the Athlete can establish that the commission of the anti-doping rule violation was not intentional, the period of Ineligibility will be two (2) years; (ii) in all other cases, if the Athlete or other Person can establish exceptional circumstances that justify a reduction of the period of Ineligibility, the period of Ineligibility will be in a range from two (2) years to four (4) years depending on the Athlete's or other Person's degree of Fault; or (iii) in a case involving a Protected Person or Recreational Athlete, the period of Ineligibility will be in a range between a maximum of two (2) years and, at a minimum, a reprimand and no period of Ineligibility, depending on the Protected Person or Recreational Athlete's degree of Fault".

(ii) The Athlete's conduct through the process demonstrates a willingness to cooperate, as evidenced by his admission of a violation of Rule 2.4 of the ADR, which justifies the reduction of the Period of Ineligibility to two years.

(iii) The Athlete had reasonably believed that accepting the two-year Period of Ineligibility for his violation of Rule 2.4 of the ADR would fully address any potential culpability relating to the explanations and documents he provided to the AIU. The decision to accept the charge and sanction for Whereabouts Failure under Rule 2.4 of the ADR reflects the Athlete's acknowledgement of responsibility and his good faith intention to cooperate with the anti-doping process.

(iv) The Athlete's actions, at no point, sought to obstruct or undermine the anti-doping process. The Athlete's submission of the Altered Documents was solely an attempt to provide an explanation for his absence at the registered location on 28 February 2023, not to influence the outcome of the process. In fact, the Athlete implicitly admitted to the Filing Failure recorded on 28 February 2023 along with the associated violation of Rule 2.4 of the ADR, demonstrating transparency and willingness to comply with the process.

(v) The Athlete's actions of submitting the Altered Documents or the 9 March Letter caused no delay or disruption to the anti-doping process, wherein it has been shown that the Filing Failure was determined and processed within standard timeframes for similar cases. The Altered Documents had no effect on the result management process or the integrity of the anti-doping process. The determination of the Filing Failure was independent from the Altered Documents submitted by the Athlete.

(vi) There are compelling

circumstances that establish the existence of exceptional conditions to justify the reduction of the Period of Ineligibility to two years. The Athlete's conduct was consistently marked by transparency, cooperation, and the absence of any intention of obstruct or subvert the doping control procedure; and did not cause any delay or disruption to the process.

66. The Athlete contends also that the present charge of Tampering under Rule 2.5 of the ADR should be considered as a "single first violation" together with the Whereabouts Failure under Rule 2.4 of the ADR, and the same Period of Ineligibility of two years should apply.

(i) Rule 10.9.3(a) of the ADR provides that:

"For the purposes of imposing sanctions under Rule 10.9, except as provided in Rules 10.9.3(b) and 10.9.3(c), an anti-doping rule violation will only be considered a second (or third, as applicable) violation if the Integrity Unit can establish that the Athlete or other Person committed the additional antidoping rule violation after the Athlete or other Person received notice pursuant to Rule 7, or after the Integrity Unit made reasonable efforts to give notice, of the first anti-doping rule violation. If the Integrity Unit cannot establish this, the violations will be considered together as one single first violation, and the sanction imposed will be based on the violation that carries the more severe sanction, including the application of Aggravating Circumstances".

(ii) Following the above, the alleged Tampering violation in the present case should not be treated as a separate second violation as it was only communicated to the Athlete after he had already accepted a sanction for the Rule 2.4 ADR violation. The Whereabouts Failure violation and the present Tampering violation should be considered as a single first violation, with the sanction based on the more severe violation.

(iii) Given that the sanction for Whereabouts Failure was two years, the same Period of Ineligibility could apply to the present charge of Tampering if the above exceptional circumstances are considered. The more severe sanction to be imposed would therefore be a two-year Period of Ineligibility.

(iv) Under CAS jurisprudence, any sanctions imposed must be proportionate to the violation committed (CAS 2016/O/4469) and excessive sanctions are prohibited (CAS 2005/C/976 & 986, para. 143). A sanction of four-year Period of Ineligibility would be disproportionate as it would effectively compel the Athlete to abandon his career in athletics.

(v) If the Panel determines that the Athlete committed a Tampering violation under Rule 2.5 of the ADR, a two-year Period of Ineligibility remains the most appropriate and proportionate sanction, as it would ensure that the disciplinary measure reflects the circumstances and the conduct of the Athlete, which neither compromised the anti-doping process or caused any material delay or obstruction.

v. Answer to Appeal of World Athletics for CAS 2025/A/11183

67. In response to the appeal of World Athletics for an increase in Period of Ineligibility based on aggravating circumstances, the Athlete maintains that the Tribunal Decision rightly concluded against it.

(i) The Tribunal rightly considered that there was no aggravating circumstance in the present case, highlighting that:

- The Athlete's conduct did not result in any actual advantage.
- The Athlete's promptly admitted the facts during his first interview with the AIU.
- The manipulation of the Altered Documents and the 9 March Letter occurred in relation to the Athlete's first Whereabouts Failure, and is therefore not a repeated or more serious violation
- Since Tampering inherently involves an intentional deceptive conduct, the standard Period of Ineligibility (*viz*, four years) would already reflect the same.

(ii) World Athletics miscategorises the Athlete's conduct as repeated or sustained, given that the Athlete's conduct is a single and indivisible course of action aimed solely at justifying his absence from his residence on 28 February 2023. In particular, the submission on 29 March 2023 was in relation to the AIU's repeated request for the Athlete to submit further documents, and form part of the same chain of event. The Athlete's submission on 29 March 2023 cannot be separated into independent or successive acts of misconduct.

(iii) The Athlete did not proceed to seek an administrative review after the AIU determined his first Whereabouts Failure on 31 March 2023.

(iv) Rule 10.3 of the ADR only authorises an increased Period of Ineligibility when aggravating circumstances are established by the AIU and when they can justify such an increase based on the *"seriousness of the violation and the nature of the Aggravating*

Circumstances".

(v) Appendix I of the ADR provides illustrative examples of what constitutes Aggravating Circumstances, such as the use or possession of multiple Prohibited Substances or Methods, repeated violations, or efforts to obstruct the adjudication process; which are all not present in the instant case, in particular:

- There was no use or possession of any Prohibited Substances or Methods.
- The Athlete only committed a single ADRV, and there is no basis to suggest that there are multiple or repeated breaches.
- There was no pattern of obstruction or ongoing deception.

(vi) The Athlete was subjected to three out-of-competition doping controls immediately before and after 28 February 2023, and the results do not support the presence of any performance-enhancing intent or effect.

(vii) World Athletics failed to provide a concrete and reasoned basis to support the application to apply Aggravating Circumstances pursuant to Rule 10.4 of the ADR. If the reasoning provided by World Athletics is accepted, an exceptional measure will become a default rule, it would mean that all Tampering violations would warrant a sanction above the standard four-year ban.

68. With regards to World Athletics' position on the disqualification of results from 9 March 2023 to 7 February 2024, pursuant to Rule 10.10 of the ADR, the Athlete submits that disqualification is not automatic and should not apply in the present case as "fairness requires otherwise", as invoked by the Tribunal in the Tribunal Decision.

(i) The Tribunal Decision was correct in deciding that fairness did not support the disqualification of results obtained prior to the Athlete's provisional suspension as the Athlete did not gain any competitive advantage from the alleged act of Tampering, which was committed in the context of the first Whereabouts failure on 28 February 2023. The deception then was intended to explain the Athlete's absence and had no bearing on the Athlete's sporting performance.

(ii) Under Rule 10.10 of the ADR, it is only lawful and equitable to impose a disqualification of results from the start of the provisional suspension, which is in line with CAS jurisprudence (CAS 2016/O/4481; 2022/A/9033).

(iii) Between 9 March 2023 and 7

February 2024, there were 16 doping controls with negative results, which serve as objective evidence that the Athlete did not engage in doping during the period in question and should not have his sporting results during that period disqualified.

(iv) Further, the alleged Tampering in the present case did not interfere with or delay the imposition of the provisional suspension, wherein the Athlete did not contest the Whereabouts violation under Rule 2.4 of the ADR.

(v) As such, extending the disqualification of the Athlete's results in the absence of any AAF would constitute a manifestly disproportionate and unfair sanction, inconsistent with Rule 10.10 ADR.

B. World Athletics' Position

69. World Athletics responded to the appeal of the Athlete under CAS 2025/A/11140 and submitted its appeal under CAS 2025/A/11183.

i. Requests for Relief

70. In its Answer to the appeal of the Athlete under CAS 2025/A/11140, World Athletics sought the following relief before this Panel:

"World Athletics requests that the CAS Panel grants the following relief:

(i) The appeal of Mr Mohamed Katir is dismissed.

(ii) The decision of the World Athletics Disciplinary Tribunal dated 11 December 2024 in case SR/211/2024 is upheld.

(iii) Mr Mohamed Katir is to bear the arbitration costs of these proceedings, if any.

(iv) World Athletics is granted a significant contribution to its legal costs and expenses incurred in relation to these proceedings".

71. In its Statement of Appeal and Appeal Brief under CAS 2025/A/11183, World Athletics sought the following relief before this Court:

"WA respectfully requests that the Panel grant the following relief:

(i) The Appeal of World Athletics is admissible.

(ii) Mohamed Katir is found to have committed the anti-doping rule violation of Tampering and/or Attempted Tampering pursuant to Rule 2.5 of the WA 2021 ADR.

(iii) The decision of the World Athletics Disciplinary Tribunal dated 11 December 2024 is set aside, solely in relation to the period of Ineligibility and disqualification of results to be imposed upon Mohamed Katir.

(iv) Mohamed Katir is sanctioned with a period of Ineligibility of five years pursuant to Rules 10.3.1 and 10.4 and 10.9.3(a) of the WA 2021 ADR, to commence on the date of the Panel's award. Any period of provisional suspension and/or period of ineligibility effectively served by Mohamed Katir shall be credited against the period of Ineligibility imposed upon him.

(v) All competitive results obtained by Mohamed Katir between 9 March 2023 and 7 February 2024 shall be disqualified, with all resulting Consequences including forfeiture of any medals, titles, points, prize money, and prizes, pursuant to Rule 10.10 WA 2021 ADR.

(vi) Mohamed Katir is to bear the arbitration costs of the proceedings, if any.

(vii) Mohamed Katir is to provide a significant contribution to World Athletics' legal costs in relation to the proceedings".

ii. Jurisdiction and Admissibility

72. World Athletics submits that this Panel has jurisdiction to hear the present dispute under Article R47 of the Code read together with Rule 13.2.1 of the ADR.

73. World Athletics further submits that its Appeal under CAS 2025/A/11183 is admissible under Rule 13.2.4 of the ADR, which provides that the deadline for cross-appeals is *"at the latest with the party's answer to the appeal"*.

iii. Answer to Appeal of the Athlete for CAS 2025/A/11140

74. World Athletics preliminarily contends that the Athlete's arguments are spurious and do not reflect the overwhelming trend of case law on Tampering or the way in which the Whereabouts provisions of the ADR operate. Further, the Athlete's arguments were similar before the Tribunal, which were swiftly dismissed therein with strong indubitable terminology on the Athlete's intentional conduct pertaining to Rule 2.5 of the ADR. World Athletics relies on its detailed submissions of the Tribunal and restates several for easy reference.

75. World Athletics submits that the Athlete's deliberate falsification and submissions of the Altered Documents is clearly Tampering or Attempted Tampering, or an intentional conduct to subvert the doping control process, which includes all aspects of Results Management.

    (i) The Athlete tried to avoid a Whereabouts Failure (Missed Test or Filing Failure) by attempting to have the AIU believe a false story and accept false documents supporting the story. This goes beyond and trespasses the *"threshold of legitimate defence"* as per CAS 2015/O/4128, which panel described the conduct which suffices Tampering, *viz*, *"where the administration of justice is put fundamentally in danger by the behaviour of the athlete"*. This is also established in SR/Adhocsport/140/2018.

    (ii) The decision CAS 2021/A/7983 & 8059 provides authority that on top of establishing conduct which meets the definition of Tampering, the Anti-Doping Organisation must also establish that (1) the conduct subverted (or had the potential to subvert) the doping control process and (2) the Athlete intended that conduct to subvert the doping control process. This decision also clarified that there was no need to establish causation in a Tampering case.

(iii) The case of SR/187/2022 also confirmed that knowing provision of fraudulent documentation and false explanations to the AIU is sufficient to constitute Tampering (see para. 34).

(iv) The case of SR/009/2020 also did not hesitate to determine that submitting false explanations and evidence to the AIU in the context of Results Management of Whereabouts Failures is similarly sufficient to constitute Tampering, and has described the purpose or intended effect of doing so being to *"quite obvious[ly]"* subvert the proceedings.

(v) The Athlete's intentional conduct of falsification and submission of the Altered Documents on 9 and 29 March 2023 to the AIU was in relation to the processes of doping control as defined in the ADR and Article 5.3.1.2 of the ISRM, especially since it was committed after the notification of Whereabouts Failure on 2 March 2023.

(vi) The fact that the AIU did not know that the Altered Documents were manipulated and was forced to consider them as legitimate amounted to a clear subversion of the doping control process by the Athlete. The fact that the AIU took a shorter period of time (*viz*, days, not months) to consider the Athlete's Whereabouts Failure is not relevant to whether there was a subversion of the process or not. The Athlete, in fact, hid the truth of the authenticity of the Altered Documents for around one year before it was eventually discovered by the AIU.

(vii) The Athlete's conduct is very similar to other cases which were cited, such as CAS 2021/A/7983 & 8059, wherein the athlete was deemed to have Tampered with evidence pertaining to Whereabouts Failure. The facts of the present case are also similar to the case in CAS 2021/O/7668, wherein the athlete committed tampering with a false story and evidence.

(viii) The Athlete's conduct was not just a "simple lie" as found in CAS 2017/A/4937. The Athlete's conduct was a deliberate and targeted false version of events corroborated by false documents which were created by the Athlete using Instagram, which is the very essence of Tampering. The creation of false documents is the "further element" present in this case, which was not found in CAS 2017/A/4937 or CAS 2015/O/4128.

76. World Athletics contends that the Athlete's argument that he did not challenge the Filing Failure is wrong. In the 9 March Letter and in the 2 March Notice of the AIU, there was no clear

and explicit reference to a Missed Test. Therefore, the response to the above letters provided by the Athlete was also directed against an alleged Filing Failure:

(i) The 2 March Notice referred to Article 4.8.8.6 of the ISTI and the requirements to update whereabouts information as soon as possible, referring to a Filing Failure rather than a Missed Test. The 2 March Notice also refers to an alleged failure that the Athlete was in Portugal on 28 February 2023, when ADAMS information indicated that he will be in Spain. Lastly, the 2 March Notice also specifically requested for an explanation for the fact that the whereabouts information was not accurate and not updated.

(ii) In the 9 March Letter from the Athlete, the Athlete used the term "missed test" not in the technical sense, but in a way that meant Whereabouts Failure, as he was responding to the allegations in the 2 March Notice. In the 9 March Letter, the Athlete also explained (albeit, falsely) that his fiancé called him to tell him she was sick, after which he immediately and urgently booked a plane to Lisbon, explaining the Filing Failure rather than Missed Test.

(iii) Given the above, by lying and providing false evidence to explain the Filing Failure, the Athlete did subvert the doping control process. It therefore cannot be said that the Athlete "never contested" the Filing Failure, or "neither presented arguments nor provided evidence to rebut this presumption of negligence".

(iv) The fact that the Athlete did not request an administrative review of the AIU's decision to confirm the Filing Failure does not excuse or override the nature of his conduct, which amounted to Tampering.

77. World Athletics further submits that just because the Filing Failure was established, it does not mean that the Athlete's conduct or words (which were fraudulent) are irrelevant – this explanation ignores the whole process of the Whereabouts regime under the ADR.

(i) If the Athlete's logic is to be accepted, it means that all legitimate explanations of emergency are irrelevant to the determination of a Filing Failure. This cannot stand as the Whereabouts regime is not there to punish emergencies, wherein there is a change of circumstances due to emergencies. This was the reason why the AIU gave the Athlete the opportunity to explain (albeit falsely) the reason for his failure to update his whereabouts and whether there was indeed an emergency.

(ii) The Tribunal Decision was right to focus on the fact that

the AIU (as the Result Management Authority) was required to assess the "no negligence" criteria within Annex B of the ISRM, and the Filing Failure was not predetermined on 28 February 2023. It is recalled that the Athlete tried to explain and contest the Filing Failure allegations and did not accept his "failure" to the AIU.

(iii) The Athlete's repeated focus on Article 4.8.8.6 of the ISTI on filing whereabouts update prior to the 60-minute slot is questionable, as this provision pertains to Missed Test within the 60-minute slot daily.

(iv) The Athlete's reference to Article B1.3 of the ISRM is irrelevant to the case, as it pertains to the commission of three Whereabouts Failure in a 12-month period, and does not help the Athlete's case to override the criteria for establishing a Filing Failure or explain that his conduct did not subvert or attempt to subvert doping control.

78. In any event, World Athletics maintains that there is no exceptional circumstances to justify a reduction from the standard four-year Period of Ineligibility mandated by Rule 10.3.1 of the ADR.

(i) It was cautioned in CAS 2021/A/7983 & 8059 that "exceptional circumstances" must be interpreted restrictively, and with the greatest possible care to only include very unusual or abnormal circumstances.

(ii) The Athlete falsified three documents, *viz*, the Altered Documents.

(iii) While the Athlete vaguely accepted that he made a mistake, he did not accept responsibility fully on how he had intended to mislead the AIU.

(iv) There was no reason or representation made for the Athlete to think that by accepting the charge in Article 2.4 of the ADR that he would avoid the charges for Tampering.

(v) World Athletics will proceed to also make arguments that there were aggravating circumstances to justify an extra year of Period of Ineligibility for the Athlete in CAS 2025/A/11183.

iv. Submissions on the Merits for CAS 2025/A/11183

79. World Athletics contends that that there are aggravating circumstances to justify the increase of Period of Ineligibility on the Player, pursuant to Rule 10.4. of the ADR and defined at Appendix A of the ADR.

(i) The Athlete falsified three separate documents on two occasions to support his false story. He acted alone without assistance.

(ii) The Athlete committed multiple ADRV, given that this violation would be his second after the Rule 2.4 violation.

(iii) The admission at the interview by the Athlete was overridden by the athlete's complete lack of transparency or contribution under cross-examination regarding his Tampering conduct. In particular:

- The Athlete's evidence was notably divorced from reality and unaccepting of his fault, wherein he deemed himself as honest albeit only partially, and that he liked to know if he did something wrong.

- The Athlete admitted on certain issues but failed to engage with what the mistake actually was, and how it amounted to deliberate fraudulent conduct.

- The Athlete frequently referred to his version of events as just *"an explanation"* without engaging in why it was untrue or what he was trying to achieve by providing an untrue explanation. He considered the *"explanation"* as a *"human mistake"* and not *"something illegal"* or in *"bad faith"*. He conceded to the manipulation of the Altered Documents but stated that he *"didn't mean to deceive"*, and did it because *"[he] had to give an explanation, being it flawed, fake, [his] obligation is to give [the AIU] an explanation"*.

(iv) The Tribunal Decision erred in relying on the fact that the Tampering had "failed", as all "failed" Tampering are eventually charged as failed attempts. There is no need for Tampering to "succeed" in order for Tampering to be established, and there can be no mitigation for such intentional misconduct carried out in a "failed" or flawed way. In any event, the Tampering in this case was only discovered a year later, and did not "fail" as the Athlete has alleged.

80. World Athletics also appeals for the disqualification of the Athlete's results, which were dismissed in the Tribunal Decision.

(i) The Tribunal Decision erred in reasoning that the present Tampering charge related to the Athlete's Whereabouts Failure violation, and therefore should not include disqualification of results. If the same reasoning applies, there would be no disqualification imposed for any violations arising out of Article 2.4 of the ADR, which cannot be right. This reasoning also contradicts Rule 10.10 of the ADR, which puts the burden on the Athlete to show why the disqualification should not occur. Further, the standard length of the Period of

Ineligibility for Tampering/ Attempted Tampering violations is more serious that Whereabouts Failures violations, which is even less reason not to disqualify results.

(ii) It is inaccurate to assert that no results were affected when the Athlete was not available for testing. The Athlete's misconduct prevented testing from being conducted and the true status of whether the Athlete had any Prohibited Substance in his system cannot be ascertained.

(iii) CAS case law highlights that a Tampering violation which occurred in relation to Whereabouts Failure violation is not a reason for *"fairness requiring otherwise"*; the award CAS 2021/A/7983 & 8059 held that there were no substantial reasons not to disqualify the athlete's results even though she had not used a Prohibited Substance.

V. JURISDICTION

81. Article R47 of the Code provides as follows:

> *"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body".*

82. 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 sports-related body from whose decision the appeal is being made must expressly recognise the CAS as an arbitral body of appeal.

83. The jurisdiction of the CAS is derived from Rules 13.2 of the ADR, which provides the following:

> *"13.2 Appeals against decisions regarding Anti-Doping Rule Violations, Consequences, Provisional Suspensions, Implementation of Decisions and Authority*
>
> *The following decisions may be appealed exclusively as provided in Rules 13.2 to 13.7: a decision that an anti-doping rule violation was committed; a decision imposing Consequences or not imposing Consequences for an antidoping rule violation;* […].
>
> *13.2.1 Appeals involving International-Level Athletes or International Competitions*
>
> *In cases involving International-Level Athletes or arising from Persons participating in an International Competition, the decision may be appealed exclusively to CAS.*
>
> *[…]*
>
> *13.2.3 Persons entitled to appeal*
>
> *(a) In cases under Rule 13.2.1, the following parties will have the right to appeal to CAS:*
>
> […]
>
> *(iii) the Integrity Unit on behalf of World Athletics* […]*".*

84. It is uncontested that the ADR is applicable to the present case at hand,

and that the Athlete is an *"International-Level Athlete"* under Article 13.2.1 of the ADR. It is also not disputed that World Athletics (via the AIU) has the right to appeal against the Tribunal Decision. Furthermore, the Panel notes that the jurisdiction of the CAS is uncontested between the Parties and that both Parties have signed the OoP without reservation. As such, the Panel is satisfied that it has jurisdiction to decide the dispute.

VI. ADMISSIBILITY

85. Article R49 of the Code provides – in its pertinent parts – 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".*

86. The Athlete filed the Statement of Appeal on 9 January 2025, after receiving the Tribunal Decision on 11 December 2024. The Athlete's appeal (CAS 2025/A/11140) was, therefore, filed within the 21-day time-limit under Article R49 of the Code. The Panel, therefore, finds that the appeal is admissible.

87. Rule 13.2.4 of the ADR provides that cross-appeals can be brought at the latest, with the party's answer to the appeal. The provision reads as follows:

> ***"13.2.4 Cross-appeals and other subsequent appeals allowed. Cross-appeals and other subsequent appeals by any respondent named in cases brought to CAS under these Anti- Doping Rules are specifically permitted. Any party with a right to appeal under this Rule 13 must file a cross-appeal or subsequent appeal at the latest with the party's answer to the appeal".***

88. World Athletics filed its Statement of Appeal on 7 March 2025, after receiving the Athlete's Appeal Brief on 27 January 2025. On 13 February 2025, World Athletics requested for an extension of time to file its Answer from 18 February 2025 to 10 March 2025, which was eventually granted by the CAS Court Office. As such, the cross-appeal of World Athletics (CAS 2025/A/11183) was filed within the deadline of Rule 13.2.4 of the ADR, because it was filed together with the answer to the appeal and, therefore, within the deadline provided for in Article R49 of the Code.

89. The Panel, therefore, finds that both the appeals in the present case are admissible.

VII. SCOPE OF REVIEW

90. Article R57 of the Code provides – in its pertinent parts – as follows:

> *"The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance".*

91. Pursuant to Article R57 of the Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which replaces the decision challenged or may annul the decision and refer the case back to the previous instance.

VIII. APPLICABLE LAW

92. Article R58 of the Code provides as follows:

> *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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".*

93. In the present case, it is not disputed that the applicable regulations to be applied are the rules and regulations of World Athletics, specifically, the ADR. Furthermore, the Parties agree that the law of the country in which World Athletics is domiciled at, which is Monegasque law, shall apply subsidiarily. The Panel, thus, determines that it shall decide the dispute – primarily – in accordance with the rules and regulations of World Athletics.

94. With respect to whether or not Monegasque law applies subsidiarily, the ADR seem somewhat contradictory. On the one hand Rule 21.3 of the ADR provides as follows:

> *"The Code must be interpreted as an independent and autonomous text and not by reference to the existing law or statutes of the Signatories or governments".*

95. On the other hand, Rule 13.7.5 provides the following:

> *"In all CAS appeals involving World Athletics, the governing law shall be Monegasque law and the appeal shall be conducted in English, unless the parties agree otherwise".*

96. In the case at hand, the Panel does not need to resolve the issue of the subsidiarily applicable law, since the case can be perfectly dealt with applying the ADR only.

IX. MERITS

97. The consolidated cases of CAS 2025/A/11143 and CAS 2025/A/11183 pivot on the alleged ADRV of Tampering by the Athlete and the corresponding sanctions which ought to apply to the said violation. While the Athlete seeks the Tribunal Decision to be set aside in *toto*, World Athletics seek requests the Tampering charge to be affirmed with the period of Ineligibility to be increased and the disqualification of results to be imposed.

98. The Panel determines that there are two main discussions on the merits of the case, in light of the submissions of the Parties:

a Did the Athlete commit the act of Tampering/ Attempted Tampering under Rule 2.5 of the ADR given that the Altered Documents did not affect the Filing Failure recorded on 31 March 2023 and the eventual uncontested charge of Whereabouts Failure under Rule 2.4 of the ADR?

b. If so, what consequences shall be imposed on the Athlete, considering the claims on the presence of "aggravating" and "exceptional" circumstances pertaining to the Period of Ineligibility, and the start date of

the disqualification of Athlete's sporting results?

A. The Charge of Tampering/ Attempted Tampering

99. The first issue is determining whether the Athlete committed the act of Tampering or Attempted Tampering under Rule 2.5 of the ADR.

i. The Applicable Regulations

100. The ADR defines Tampering or Attempted Tampering as follows:

> *"Intentional conduct that subverts the Doping Control process but that would not otherwise be included in the definition of Prohibited Methods. Tampering shall include, without limitation, offering or accepting a bribe to perform or fail to perform an act, preventing the collection of a Sample, affecting or making impossible the analysis of a Sample, falsifying documents submitted to an Anti-Doping Organisation or TUE committee or hearing panel, procuring false testimony from witnesses, committing any other fraudulent act upon the Anti-Doping Organisation or hearing body to affect Results Management or the imposition of Consequences, and any other similar intentional interference or Attempted interference with any aspect of Doping Control".*

101. Furthermore, the comment to the definition reads as follows:

> *"For example, this Rule would prohibit altering identification numbers on a Doping Control form during Testing, breaking the B bottle at the time of B Sample analysis, altering a Sample by the addition of a foreign substance, or intimidating or attempting to intimidate a potential witness or a witness who has provided testimony or information in the Doping Control process. Tampering includes misconduct that occurs during the Results Management process. See Rule 10.9.3(c). However, actions taken as part of a Person's legitimate defence to an anti-doping rule violation charge shall not be considered Tampering. Offensive conduct towards a Doping Control official or other Person involved in Doping Control that does not otherwise constitute Tampering shall be addressed in the disciplinary rules of sport organisations".*

102 To establish that the Athlete has tampered or attempted to tamper with any of the steps or processes that make up the doping control process, the AIU has the burden of establishing to the comfortable satisfaction of the Panel that the Athlete engaged in one or more of the actions specified in the definition of Tampering, as set out above.

ii. The Position of the Parties

103. The Athlete in the case at hand contends that:

(i) Tampering under the ADR requires significant subversion of the doping control process which is not present in the Athlete's conduct vis-à-vis the Altered Documents and the 9 March Letter;

(ii) The Altered Documents and the 9 March Letter did not subvert or obstruct the doping control Process as the Filing Failure decided on 31 March 2023 was established independently from the said documents;

(iii) The Athlete only intended to provide an explanation about the Missed Test on 28 February 2025, and did not contest the Filing Failure in the 9 March Letter.

104. World Athletics submits that the Athlete's deliberate falsification and submissions of the Altered Documents is clearly Tampering or Attempted Tampering, or an intentional conduct to subvert the doping control process, which includes all aspects of Results Management.

iii. The view held by the Panel

105. Pursuant to the definition of Tampering/ Attempted Tampering in the ADR, the ADRV under Rule 2.5 refers specifically to the *"intentional conduct that subverts the Doping Control process"*. The requirement is further elaborated to include:

d. Conduct which *"affect Result Management or the imposition of Consequences"*; as well as

e. Conduct which amounts to *"similar intentional interference or attempted interference with any aspect of Doping Control"*.

106. Examples of Tampering or Attempted Tampering include the *"offering or accepting a bribe to perform or fail to perform an act, preventing the collection of a Sample, affecting or making impossible the analysis of a Sample, falsifying documents submitted to an Anti-Doping Organisation or TUE committee or hearing panel, procuring false testimony from witnesses, committing any other fraudulent act upon the Anti-Doping Organisation or hearing body"*.

107. It is prudent to note that the act of manipulating the Altered Documents (which is undisputed by the Athlete) and sending the 9 March Letter falls squarely under the example of *"falsifying documents submitted to an Anti-Doping Organisation"*, which is AIU in this instance. The primary argument proffered by the Athlete is that this act did not *"subvert the Doping Control process"*, wherein the Athlete primarily was explaining his failure to update his Whereabouts which was eventually not accepted by the AIU anyway, and therefore did not affect the outcome of his first Whereabouts Failure recorded.

108. Should this argument be followed by the Panel, wherein the culpability of athletes vis-à-vis a Tampering charge is dependent on the success of their action in falsifying documents, there is no impetus for athletes not to *"try"* to falsify documents and have there be no charge if it fails, thereby creating a loophole and advantage for athletes to falsify or attempt to falsify documents. Further, the Panel is cognisant of the fact that the ADRV under Rule 2.5 of the ADR does not just encapsulate Tampering but also *"Attempted"* Tampering, which would capture situations wherein the athletes were not successful in falsifying documents, like the present case with the Athlete. As such, the Panel does not consider it necessary that the Doping Control process be entirely subverted, as long as the conduct in question, in theory, is capable of subverting the said process (CAS 202/A/7983 & 8059, para. 213 et seq.). This is supported by the second part of Rule 2.5 of the ADR, which stipulates that conduct which amounts to *"intentional interference or attempted interference with any aspect of Doping Control"* constitutes Tampering /

Attempted Tampering, and there is no requirement for there to be a *result* of a subversion of the Doping Control process in order to find the said ADRV. Even if one were to accept that a certain threshold is needed to qualify actions as 'tampering' in order to weed out completely futile attempts (such as 'praying,' attempting to perform magic, or casting spells to interfere with any aspects of Doping Control), this threshold is far exceeded in this case where the Athlete has submitted forged documents.

109. In any event, the Panel notes that even though the AIU decided to record the Filing Failure of the Athlete for the incident on 28 February 2023 – thereby making the Athlete's explanation apparently moot –, the Athlete's act of providing the Altered Documents and the 9 March Letter did add support to the Athlete's explanation, which was accepted by the AIU. The act of the Athlete of presenting the Altered Documents and the 9 March Letter, thus, did have the *effect* of the AIU believing the explanation of the Athlete (with AIU's Ms. El Ayat believing that the Athlete booked his flight on 26 February 2023, when the flight was on 26 February 2023), although the explanation itself was deemed insufficient to warrant a change in the decision of the Filing Failure. It was only until the Result Management procedure for the Whereabouts Failure charge that it came to the attention of the AIU that the provided documents were manipulated. As such, it is also possible to contend that the Doping Control process was – in some way – subverted.

110- The term *"intentional"* is expressly included as a requirement to find the violation of Tampering/ Attempted Tampering under Rule 2.5 of the ADR, as part of *"intentional conduct"* and *"intentional interference"*. Whether the definition of the term "intentional" enshrined in Rule 10.2.3 of the ADR applies to a case of tampering, may be debateable. However, this issue does not need to be decided here, since the Athlete manipulated the documents knowingly and willingly and also submitted them knowingly and willingly to World Athletics in the context of a result management process. It is trite that the intention to commit the said acts is sufficient for the ADRV of Tampering, even if the offender was unaware that his or her act would subvert the Doping Control process (CAS 2021/A/7983 & 8059, paras. 218 to 222). It is undisputed that in presenting the Altered Documents and the 9 March Letter to the AIU, the Athlete had *intended* to convince the AIU that he left Spain on 28 February 2023 (instead of 26 February 2023) urgently, and he was therefore unable to update his Whereabouts in time. In any event the Athlete did intend – with the use of the Altered Documents – to support and bolster his explanation of his absence on 28 February 2023, albeit fraudulently. Objectively and subjectively, the Athlete had conceded that he intended explain away the Filing Failure on 28 February 2023, and intended to use the Altered Documents to do so, and there are no facts which can support otherwise.

111. The Panel is therefore comfortably satisfied that the Athlete intentionally altered the date on the Altered Documents and provided the said Documents (and the 9 March Letter) to the AIU with the intent to subvert the Doping Control process. It is unnecessary to determine whether or not

the Doping Control process was indeed subverted, given the wording of Rule 2.5 of the ADR. World Athletics has successfully discharged its burden of proof based on the evidence tendered that the Athlete had committed the Tampering ADRV under Rule 2.5 of the ADR.

B. Determination of the Consequences

112. Following from the above decision by the Panel, the Panel will now proceed to determine the appropriate consequences to be imposed on the Athlete.

113. There are three considerations related to the Period of Ineligibility based on the submissions of the Parties, *viz*:

(i) Specifically, should this ADRV of Tampering / Attempted Tampering under Rule 2.5 of the ADR be recorded as a *stand-alone offence* under Rule 10.9.3.3 of the ADR or included together with the uncontested ADRV of Whereabouts Failure under Rule 2.4 of the ADR as *one single first offence*?

(ii) Are there any *"exceptional circumstances"* which can render a reduction in the Period of Ineligibility on the Athlete, specifically given that the Athlete admitted to the nature of the Altered Documents?

(iii) Are there any aggravated circumstances to be considered for the increment of the Period of Ineligibility from the standard four (4) years to five (5) years?

1114. For the Tampering / Attempted Tampering the default Period of Ineligibility is four (4) years, pursuant to Rule 10.3.1 of the ADR, unless it can be established that there are *"exceptional circumstances that can justify a reduction"*. In the latter case the Period of Ineligibility can be reduced to a range from two (2) years to four (4) years depending on the Athlete's degree of fault.

115. World Athletics further submitted that the sporting results of the Athlete from 9 March 2023 to 7 February 2024 should be disqualified, which will also be determined below.

i. The Charge in Conjunction with Whereabouts Failure Offence

116. Considering the above, the Athlete contends that the present charge under Rule 2.5 of the ADR should be considered a *"single first violation"* together with the uncontested Whereabouts Failure ADRV under Rule 2.4 of the ADR, for which the same Period of Ineligibility of two (2) years should apply. This contention is made in light of Rule 10.9.3(a) of the ADR, which provides the following:

"For the purposes of imposing sanctions under Rule 10.9, except as provided in Rules 10.9.3(b) and 10.9.3(c), an anti-doping rule violation will only be considered a second (or third, as applicable) violation if the Integrity Unit can establish that the Athlete or other Person committed the additional anti-doping rule violation after the Athlete or other Person received notice pursuant to Rule 7, or after the Integrity Unit made reasonable efforts to give notice, of the first anti-doping rule violation. If the Integrity Unit cannot establish this, the violations will be considered together as one single first violation, and the sanction imposed will be based on the violation that carries the more severe

sanction, including the application of Aggravating Circumstances".

117. From the above Rule, an ADRV can only be considered a separate, second offence for the purposes of imposing sanctions if the athlete committed the said offence after he or she has received notice (or reasonable efforts by the ADO to give notice) of the first ADRV. This is clearly not the case in the present circumstances, wherein the Athlete provided the Altered Documents and the 9 March Letter on 9 March 2023 and 29 March 2023, when the ADRV of Whereabouts Failure was only notified on 18 March 2024. As such, the Panel is satisfied that the ADRV of Tampering is not a separate, second offence for the purposes of imposing sanctions. Instead, both ADRVs are to be considered together as a single first infraction. Furthermore, Rule 10.9.3 ADR provides that the period of ineligibility imposed will be based on the violation that carries the more severe sanction (i.. Tampering / Attempted Tampering in the case at hand), including the application of Aggravating Circumstances.

ii. The Application of Aggravated Circumstances

118. The next question to be considered is whether aggravated circumstances apply in this case. World Athletics' appeal (CAS 2025/A/11183) submits that there are aggravating circumstances to justify the increment of the standard Period of Ineligibility from four (4) to five (5) years. Specifically, World Athletics submit that:

(i) The Athlete falsified three separate documents on two occasions to support his false story. He acted alone without assistance.

(ii) The Athlete committed multiple ADRV, given that this violation would be his second after the Rule 2.4 violation.

(iii) The admission at the interview by the Athlete was overridden by the athlete's complete lack of transparency or contribution under cross-examination regarding his Tampering conduct. In particular:

- The Athlete's evidence was notably divorced from reality and unaccepting of his fault, wherein he deemed himself as honest albeit only partially, and that he liked to know if he did something wrong.

- The Athlete admitted on certain issues but failed to engage with what the mistake actually was, and how it amounted to deliberate fraudulent conduct.

- The Athlete frequently referred to his version of events as just *"an explanation"* without engaging in why it was untrue or what he was trying to achieve by providing an untrue explanation. He considered the *"explanation"* as a *"human mistake"* and not *"something illegal"* or in *"bad faith"*. He conceded to the manipulation of the Altered Documents but stated that he

"didn't mean to deceive", and did it because *"[he] had to give an explanation, being it flawed, fake, [his] obligation is to give [the AIU] an explanation"*.

119. Rule 10.4 of the ADR comprises of the following:

> *"10.4 Aggravating Circumstances that may increase the period of Ineligibility*
>
> *If the Integrity Unit or other prosecuting authority establishes in an individual case involving an anti-doping rule violation other than violations under Rule 2.7 (Trafficking or Attempted Trafficking), Rule 2.8 (Administration or Attempted Administration), Rule 2.9 (Complicity or Attempted Complicity) or Rule 2.11 (Acts by an Athlete or other Person to discourage or retaliate against reporting) that Aggravating Circumstances are present which justify the imposition of a period of Ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable will be increased by an additional period of Ineligibility of up to two (2) years depending on the seriousness of the violation and the nature of the Aggravating Circumstances, unless the Athlete or other Person can establish that they did not knowingly commit the anti-doping rule violation.*
>
> *[Comment to Rule 10.4: Violations under Rules 2.7, 2.8, 2.9, and 2.11 are not included in the application of Rule 10.4 because the sanctions for these violations already build in sufficient discretion up to a lifetime ban to allow consideration of any Aggravating Circumstance]".*

120. The ADR defines Aggravating Circumstances as follows:

> *"Circumstances involving, or actions by, an Athlete or other Person that may justify the imposition of a period of Ineligibility greater than the standard sanction. Such circumstances and actions include, but are not limited to: the Athlete or other Person Used or Possessed multiple Prohibited Substances or Prohibited Methods, Used or Possessed a Prohibited Substance or Prohibited Method on multiple occasions or committed multiple other anti-doping rule violations; a normal individual would be likely to enjoy the performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Athlete or other Person engaged in deceptive or obstructive conduct to avoid the detection or adjudication of an anti-doping rule violation; or the Athlete or other Person engaged in Tampering during Results Management. For the avoidance of doubt, the examples of circumstances and conduct described herein are not exclusive and other similar circumstances or conduct may also justify the imposition of a longer period of Ineligibility".*

121. The examples provided under the ADR on Aggravating Circumstances which might apply to this case relate to athletes who have committed ADRVs on multiple occasions, as well as athletes who engage in deceptive or obstructive conduct to avoid the detection or adjudication of an ADRV, or Tampering during the Results Management. The case at hand is a case where the Athlete committed Tampering / Attempted Tampering during Results Management. However, at the relevant time no ADRV had been committed that the Athlete sought to cover up. Instead, he had committed a single Whereabouts Failure at the relevant time that by itself does not qualify as an ADRV. It is true that the

Athlete subsequently accumulated further strikes and thereby committed an ADRV under Rule 2.4 ADR. However, the Tampering / Attempted Tampering committed by the Athlete did not serve to cover up that charge and – more particularly – was not committed during the results management process of the Rule 2.4 ADRV.

122. World Athletics submits that the Athlete submitted multiple documents (the three Altered Documents, with the 9 March Letter, on both 9 March 2023 and 29 March 2023), which acts are argued to be numerous in occasion and therefore aggravating. The Panel accepts that submitting the Altered Documents not on a single, but on multiple occasions is a sign of increased "criminal" energy that Rule 10.4 ADR, in principle, intends to capture. However, the threshold of such criminal energy must, however, attain a certain level in order to justify an increased sanction pursuant to Rule 10.4 ADR. The Panel is not persuaded that such level has been reached in the case at hand. Despite the multiple documents submitted by the Athlete in two occasions, the story which the Athlete sought to proffer i.e., that he left Spain urgently on 28 February 2023, was effectively the same, and the documents which were manipulated and falsified were limited to that very one purpose. Thus, the falsification of the story and documents by the Athlete was limited in scope. Furthermore, the false story (and the evidence in support of such story) submitted by the Athlete was unsuitable for achieving the goal that the Athlete was pursuing, namely that his failure to update his Whereabouts would not be recorded as a first strike in the context of Rule 2.4 ADR. There is also no evidence to show that the Athlete was lying about going to Portugal to visit his fiancée, only the dispute as the date for which he took the flight from Spain. The Panel concurs with the Tribunal that this is a borderline case, but that – considering the totality of the circumstances - the Athlete did not act in a manner which is more culpable than an average Tampering / Attempted Tampering case, or attract a period of Ineligibility more than the default four (4) years. Comparing the Athlete's conduct to other Tampering cases with Aggravated Circumstances like CAS 2017/A/5283 – which comprised of a sophisticated, long-term, orchestrated doping scheme – the present case should not attract any more than the standard period of Ineligibility of four (4) years.

123. World Athletics also addresses the fact that the Athlete behaved in a manner which was evasive and divorced from reality at the hearing before the Tribunal. The Panel notes and recalls that the evidence of the Athlete's confession before the AIU over video was tendered into evidence in the present case, wherein the Athlete confessed to using Instagram story to manipulate the Altered Documents and submitted a falsified story in the 9 March Letter. Looking at the collective evidence tendered as a whole, the Panel does not see any need to put weight on the Athlete's conduct at the hearing before the Tribunal, which was at the most confusing rather than avoidant.

124. As such, the Panel is satisfied that there are no Aggravated Circumstances here to justify the increase in the period of Ineligibility of four (4) years.

iii. Are there any "exceptional circumstances" to justify reduction?

125. The Athlete contends that his conduct through the process demonstrate a willingness to cooperate and did not obstruct the process, while World Athletics highlighted the facts that the Athlete provided multiple manipulated documents and false accounts, as well as the Athlete's conduct of being divorced from reality and failing to accept his actions during the course of the hearing before the Tribunal.

126. It is provided in Rule 10.3.1 of the ADR that if the Athlete can establish that there are *"exceptional circumstances"* that can justify a reduction, the period of Ineligibility can be reduced to a period between two (2) and four (4) years. Rule 10.3.1 of the ADR is as follows:

> "*10.3.1 For violations of Rule 2.3 or Rule 2.5, the period of Ineligibility will be four (4) years except: (i) in the case of failing to submit to Sample collection, if the Athlete can establish that the commission of the anti-doping rule violation was not intentional, the period of Ineligibility will be two (2) years; (ii) in all other cases, if the Athlete or other Person can establish exceptional circumstances that justify a reduction of the period of Ineligibility, the period of Ineligibility will be in a range from two (2) years to four (4) years depending on the Athlete's or other Person's degree of Fault; or (iii) in a case involving a Protected Person or Recreational Athlete, the period of Ineligibility will be in a range between a maximum of two (2) years and, at a minimum, a reprimand and no period of Ineligibility, depending on the Protected Person or Recreational Athlete's degree of Fault".*

127. The Panel notes that the term *"exceptional circumstances"* is not explicitly defined in the ADR or the WADA Code, but it would generally refer to extraordinary factors which would reduce the culpability and degree of Fault of the Athlete. The Athlete's late admission to the acts of manipulating and falsifying the Altered Documents and 9 March Letter unfortunately does to reduce the culpability and Fault of the Athlete. The Athlete intentionally – knowingly and willingly – manipulated and falsified the said documents, and cannot mitigate his Tampering violation by confessing to the act a year later when being confronted with clear and strong evidence.

128. As such, the Panel is not satisfied that there are *"exceptional circumstances"* to justify the reduction of the period of Ineligibility below four (4) years.

iv. Disqualification of Sporting Results before 7 February 2024

129. World Athletics included, in its Appeal, the disqualification of the sporting results of the Athlete before the start of the provisional suspension on 7 February 2024, from 9 March 2023, and contends that the Tribunal Decision erred and that there was no situation of "fairness" requiring otherwise. Specifically, World Athletics maintains that the Tribunal erred in the reasoning that the present charge for Tampering was made in relation to the Athlete's Whereabouts Failure ADRV.

130. Under the ADR, disqualification of sporting results begins at the commencement of any Provisional Suspension or Period of Ineligibility, which began on 7 February 2024 as the date when the AIU issued a Notice of Allegation to the Athlete for a violation of Whereabouts Failure under Rule 2.4 of the ADR, and the Provisional Suspension commenced.

131. In case of multiple violations that are to

be qualified as a single first infraction, Rule 10.9.3 ADR provides as follows:

"Results in all Competitions dating back to the earlier anti-doping rule violation will be Disqualified as provided in Rule 10.10.".

132. The earlier ADRV within the above meaning is the Tampering / Attempted Tampering charge.

133. Rule 10.10 of the ADR provides as follows:

"10.10 Disqualification of results in Competitions subsequent to Sample collection or commission of an anti-doping rule violation

In addition to the automatic Disqualification of the results in the Competition that produced the positive Sample under Rule 9, all other competitive results obtained by the Athlete from the date a positive Sample was collected (whether In-Competition or Out-of-Competition) or other anti-doping rule violation occurred through the commencement of any Provisional Suspension or Ineligibility period, will, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, titles, points, prize money, and prizes. [Comment to Rule 10.10: Nothing in these Anti-Doping Rules precludes clean Athletes or other Persons who have been damaged by the actions of a Person who has committed an anti-doping rule violation from pursuing any right that they would otherwise have to seek damages from such Person".

134. In general, the Panel notes that the object of Rule 10.10 of the ADR is to define the starting date of the period of disqualification. According thereto the default starting date is the date when *"a positive Sample was collected"* or *"the anti-doping rule violation occurred"*. The disqualification of sporting results from this date is justified on grounds that wrongdoing was established and performance-enhancing effects / potential can be deemed to have been enjoyed by the athlete from that moment in time. This follows – inter alia – from CAS 2017/A/5301 & 5302 (para. 216), where the panel stated as follows:

"In the appealed decision, the IT limited the duration of the disqualification of results until 7 June 2017, the date of the Athlete's first negative doping control, and hereby acknowledged that the fairness exception applied to a situation where, during a phase of non-suspension, performance-enhancing effects were no longer present. The Panel accepts this general approach of the IT, as the Parties did in the present proceedings".

135. In CAS 2024/A/10535, para. 150 the panel clarified that a panel has a certain margin of discretion when applying the "fairness" exception:

"As noted by the Sole Arbitrator in the Appealed Decision, a CAS panel enjoys a wide discretion in this respect and may take account of a range of factors in exercising that discretion. The decision is not to rest on any particular factor, but an overall evaluation of the evidence in support of fairness, including delays in results management, the athlete's degree of fault, sporting results unaffected by the administration of the prohibited substance, significant (financial or sporting) consequences and, in the case of an ADRV based on non-analytical evidence, a long period of time between the commission of the ADRV and the athlete's suspension".

136. In CAS 2022/A/9033, para. 176, the panel when applying the "fairness" exception put particular emphasis on whether or not there was *"any evidence suggesting that the Player's results have been influenced by any doping"*. The panel in CAS

2011/A/2671 para. 84 argued similarly by stating that it *"finds it important to emphasize the circumstance that … the First Respondent's competitive results after 28 April 2011 had not been affected by any doping practice, and were fairly obtained by* [the athlete]. *Therefore, the Panel sees no reason to disqualify them"*.

137. In the case at hand there is no evidence on file indicating that the Athlete was taking Prohibited Substances at the relevant time or enjoyed any illicit performance enhancing effects as of 9 March 2023. In conclusion, the Panel applies the "fairness" exception, exercises the discretion provided therein and dismisses – in line with the first instance – the request to back-date the starting of the period of disqualification. Following the above, the Panel is not satisfied that the period of disqualification of the Athlete should be extended to include the period from 9 March 2023 and 7 February 2024.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mohamed Katir on 9 January 2025 against the decision issued by the World Athletics' Disciplinary Tribunal on 11 December 2024 is dismissed.

2. The appeal filed by World Athletics on 7 March 2025 against the decision issued by the World Athletics' Disciplinary Tribunal on 11 December 2024 is dismissed.

3. The decision of the World Athletics' Disciplinary Tribunal on 11 December 2024 is confirmed.

4. (…).

5. (…).

6. All other motions or prayers for relief are dismissed.

CAS 2025/A/11161
Antani Ivanov v. World Aquatics (WA)
award of 29 August 2025

Aquatics; Disciplinary sanction; Bifurcation of the proceedings; Timely filing of an appeal as a question of admissibility; Lack of procedural guidance in an appealed decision; Standard of diligence; Interpretation of the exceptions to the time limits in Article R49 of the CAS Code; Reinstatement of the deadline to appeal; Cumulative conditions of Article 63 CPC; Strict nature of the deadline to appeal before CAS

Panel
Mr Mario Vigna (Italy), President
Prof. Ulrich Haas (Germany)
Mr Markus Bösiger (Switzerland)

1. **According to Article 125 of the Swiss Code of Civil Procedure (CPC), a court may – in order to streamline and simplify the proceedings – limit the scope of the proceedings to specific issues or claims. The guiding principles for the exercise of this discretionary power are the proper administration of justice and procedural efficiency.**

2. **The question of whether an appeal was filed in a timely manner constitutes a matter of admissibility, rather than jurisdiction.**

3. **The mere omission of procedural guidance in an appealed decision does not suffice to infer that an appellant was actively misled or that the respondent acted in bad faith. In this sense, the lack of procedural guidance in a decision does not excuse an appellant's late filing and does not invalidate the time bar imposed by Article R49 of the CAS Code.**

4. **A party cannot invoke incorrect information concerning legal remedies to its benefit if it failed to exercise the requisite standard of diligence. A party is under a duty to consult and interpret the applicable rules and regulations. In addition, under Swiss law, a heightened standard of diligence is expected from legal professionals. Lawyers are required, in all cases, to conduct a summary review of procedural guidance concerning legal remedies.**

5. **The exceptions to the time limits prescribed under Article R49 of the CAS Code must be interpreted narrowly and restrictively. As a rule, the time limit for lodging an appeal is fixed, non-extendable and preclusive in nature. Whether the deadline is established by the CAS Code itself or by the underlying federation's rules, arbitral tribunals are not authorised to extend it, even on grounds of equity or good faith – save for truly exceptional circumstances. The application of equitable principles such as proportionality or good faith cannot override the inadmissibility of a time-barred appeal.**

6. **Although there is no uniform approach in the literature regarding the application of Article 63 CPC in international arbitration proceedings before the CAS, it has been considered, in a similar situation, that if a party decides to proceed before a civil court first, the time limit for appeal to CAS cannot be**

reinstated later. In such circumstances, nothing prevents an appellant from filing at the same time an appeal before a civil court and before CAS to preserve its rights. The underlying purpose of Article 63 CPC is to protect parties acting in good faith from suffering undue prejudice as a result of a procedural misstep of having chosen the wrong forum, thereby permitting reinstatement of the original filing date under certain conditions. Swiss legal commentary supports the possibility of reinstatement of the appeal deadline under the principle of good faith, provided that: (i) the failure to meet the time limit was not due to the fault of the party seeking reinstatement (e.g. due to misinformation from the decision-making body); and (ii) the re-filing occurred promptly after the obstacle ceased to exist.

7. Article 63 CPC contains a number of cumulative conditions. A guiding principle contained in Article 63.1 CPC is that the initial filing before the wrong forum must have occurred as a result of a misjudgement that was neither tactical nor deliberate. Indeed, in the context of Article 63.1 CPC, a distinction must be drawn between a mere misjudgement – where a party mistakenly but sincerely chooses the wrong forum – and a strategic or intentional choice to seize the wrong forum. Only in case of a genuine misjudgement a party is entitled to benefit from the safeguard set forth in Article 63.1 CPC.

8. The deadline to file an appeal before the CAS is short and strict. In case of doubt regarding which forum (state court or arbitral tribunal) is competent to decide the dispute, an analogous application of Article 63.1 of the CPC may be contemplated by a panel. However, in such context the temporal scope of said provision needs to be adapted. The appellant must take corrective actions as soon as possible, where the arbitral avenue becomes a viable option. This follows from the strict nature of the deadline of appeal, the low threshold for filing a statement of appeal and the interests of all parties involved to speedily resolve sports-related disputes. To conclude otherwise would give rise to untenable results: it would allow a party who failed to comply with the binding CAS deadline to revive its claim merely by engaging in state court litigation after the time limit had passed. This would fundamentally undermine the legal certainty and finality of decisions, create opportunities for forum shopping and procedural gamesmanship, and directly conflict with the principle of preclusion (*Verwirkungsfrist*) that is well established in Swiss arbitration law.

I. PARTIES

1. Mr Antani Ivanov ("Mr Ivanov", the "Athlete" or the "Appellant") is a professional swimmer of Bulgarian nationality.

2. World Aquatics (the "WA" or the "Respondent") is an international federation recognised by the International Olympic Committee as the world governing body for aquatic sports.

3. The Appellant and the Respondent are hereinafter jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

4. The following is a summary of the relevant facts and allegations derived from the Parties' written submissions and supporting documentation. Additional facts and allegations found in the Parties' written submissions and evidence may be set out, where appropriate, in connection with the legal discussion that follows. While the Panel has carefully reviewed all factual, legal and evidentiary submissions, it refers in its Award only to those it considers necessary to its reasoning.

5. On 30 January 2024, the Disciplinary Commission of the Bulgarian Swimming Federation (the "BSF DC") issued a decision imposing a two year suspension and a fine of BGN 1,000 on Mr Ivanov for violations of Article 26(1) and (3) of the BSF Disciplinary Rules (*"Actions or omissions that constitute indecent behaviour or an offence of an official or an athlete"*) and Article 31(1) and (3) of the BSF Disciplinary Rules (*"Media appearances [...] during which unreasonably disrespectful attitude to the activity and the contribution of the [BSF] is demonstrated, and generally the [BSF] is ignored or its reputation is infringed"* (the "BSF DC Decision").

6. On 29 February 2024, Mr Ivanov lodged an appeal against the BSF DC Decision before the Appeal Committee of the BSF (the "BSF AC").

7. On 14 March 2024, the BSF AC dismissed the appeal and upheld the BSF DC Decision.

8. On 18 April 2024, the BSF DC Decision was transmitted to the World Aquatics Integrity Unit (the "AQIU"), the body responsible for handling all integrity-related matters on behalf of WA.

9. On 23 May 2024, the AQIU issued a "Recognition of Decision" pursuant to Article 36.2 of the World Aquatics Integrity Code (the "Integrity Code"), according to which WA *"[...] shall recognise and take all necessary and reasonable steps within their powers to enforce and give effect to all decisions taken under the regulations of a Continental Organisation or World Aquatics Member"* (the "Appealed Decision").

10. The Appealed Decision states as follows:

> *"(i) The Decision and the consequent sanction imposed by the [DC] is recognised and extended worldwide to all competitions and activities organised by [WA].*
>
> *(ii) During the suspension which runs from 14 March 2024 until 14 March 2026, Mr. Ivanov is not allowed to take part in any Aquatic-related activities or events on behalf of [WA] or any other [WA] Continental Organisation, Member Federation and recognised body.*
>
> *(iii) This decision is rendered without costs".*

11. On 24 May 2024, Mr Ivanov sent an email to the AQIU requesting that the Appealed Decision be annulled and inviting the AQIU to clarify whether he had the right to appeal to CAS.

12. On 27 May 2024, the AQIU replied to Mr Ivanov, stating that it would *"contact the [BSF] for further clarifications"*.

13. On the same day, Mr Ivanov sent a follow-up email to the AQIU, reiterating

his request for confirmation of the right to appeal before the CAS.

14. On 5 June 2024, Mr Ivanov once again inquired about his right to appeal against the Appealed Decision before the CAS as per Article 35 of the Integrity Code. He added: *"Should I not hear from you, I will assume in good faith that Mr. Ivanov is entitled to appeal to CAS, and I will proceed to file an appeal next week"*.

15. On 6 June 2024, the AQIU sent a letter to Mr Ivanov on behalf of the Chair of the Adjudicatory Body of the AQIU, which, *inter alia*, stated the following:

> *"[…] we would like to refer to Article 36.2 of the [Integrity Code] which states that '[WA], all Continental Organisations and all [WA] Members shall recognise and take all necessary and reasonable steps within their powers to enforce and give effect to all decisions taken under the regulations of a Continental Organisation or [WA] Member adopted in accordance with Article 3. [WA] may decide not to recognise such a decision if it violates the [WA] Constitution or important principles of law'. In this respect, please note that the recognition of the decision merely extends worldwide the effects of the decision issued by a [WA] Member - in this case by the bodies of the [BSF].*
>
> *Furthermore, please note that as per Article 35.2 of the Integrity Code: 'Only final decisions of the Adjudicatory Body determining that an Integrity Code Violation has been committed may be appealed by any Party to the proceedings in question. Any such appeal shall be filed exclusively to the CAS'.*
>
> *Having clarified this, we would like to confirm that the necessary process has been undertaken prior to extending worldwide the effects of the aforementioned decision. Be it as it may, the considerations you mentioned in your email dated 24 May 2024 appear to primarily refer to the decision(s) passed at national level and thus should be, or should have been discussed in the context of the appropriate national appeal avenue, if any"*.

16. On the same date, Mr Ivanov responded, stating that he *"… will proceed to submit the matter to the Swiss civil courts, as such a gross violation of due process is truly remarkable and must be remedied"*.

17. On 24 June 2024, Mr Ivanov filed an application for provisional measures with the Lausanne District Court.

18. On the same day, Mr Ivanov filed a request for conciliation (or *"requête de conciliation"*) before the Lausanne District Court.

19. On 19 August 2024, the Lausanne District Court issued the operative part of its decision on provisional measures, rejecting the Appellant's request.

20. On 27 August 2024, the Appellant requested the grounds of such decision.

21. On 4 December 2024, a conciliation hearing was held before the competent authority, which proved to be unsuccessful.

22. On 11 December 2024, the Lausanne District Court issued the authorisation to proceed (*"Klagebewilligung"* or *"autorisation de procéder"*) pursuant to Article 209 of the Swiss Code of Civil Procedure (the "CPC"), which was notified to the Appellant on 12 December 2024.

23. On 21 January 2025, the Lausanne District Court issued the reasoned decision on provisional measures, citing, *inter alia*, the following reasons for dismissing the Appellant's request

(written in French and reported in this award on the basis of the English translation provided by the Appellant):

"[…]

that in accordance with the Constitution of [WA], the [CAS], headquartered in Lausanne, is recognised as the exclusive authority to resolve any type of dispute between [WA], its members, continental organisations, national bodies, athletes, officials and any person or organisation subject to this Constitution and/or any [WA] rules (art. 31.1 of the [WA] Constitution),

that an appeal to the ordinary national courts is moreover expressly prohibited (art. 31.5 of the [WA] Constitution),

that the Integrity Code confirms the above in the sense that the final decisions of the AQIU Adjudicatory Body may be appealed, which must be lodged exclusively with the CAS,

it should therefore be noted that the rules of [WA] are clear with regard to dispute resolution, which is the exclusive competence of the CAS,

that this regulation applies when the parties have agreed to submit a sports-related dispute to the CAS,

this submission being possible as a result of an arbitration clause appearing in a contract or regulation (art. R27 of the CAS Rules of Procedure),

that this is indeed the case here, that it appears in particular from the aforementioned regulation that the parties who have a dispute falling within the jurisdiction of the CAS waive the right to request provisional and conservatory measures from state authorities or courts (art. R37 of the CAS Rules of Procedure),

that, consequently, it is clear that this authority does not have jurisdiction to hear the present dispute, which falls within the exclusive jurisdiction of the CAS,

[…]

that in view of the above, his request of June 24, 2024, must be declared inadmissible".

24. On 28 March 2025, the Appellant filed a claim based on Article 75 of the Swiss Civil Code (the "CC"). In the brief submitted to the Lausanne District Court, the Appellant stated as follows:

"This action is based on Article 75 of the CC, which provides as follows … For actions based on Art. 75 CC, the action must be brought before the court with jurisdiction over the registered office of the defendant association […]".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

25. On 2 February 2025, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") against the Respondent pursuant to Article 35.1 of the Integrity Code and Article R47 of the Code of Sports-Related Arbitration (the "CAS Code") in respect of the Appealed Decision. Together with the Statement of Appeal, the Appellant included a Request for Provisional Measures (the "First RPM"), in accordance with Article R37 of the CAS Code.

26. On 7 February 2025, the Respondent requested the CAS to *"terminate the procedure without delay because of the late Statement of Appeal and to remove the present proceedings from the CAS roll".*

27. On 11 February 2025, the Appellant filed his comments in response to the Respondent's request to terminate the proceedings (the "Brief on Admissibility").

28. On 12 February 2025, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division (the "Deputy President") *"has decided to leave it to the Panel, once constituted, to rule on the timeliness of the appeal"*.

29. On 24 February 2025, the Respondent filed its Answer to the Appellant's First RPM, in accordance with Article R37 of the CAS Code.

30. On 3 March 2025, the Deputy President issued an Order on Provisional Measures (the "First OPM"), in which she denied the Appellant's First RPM.

31. On 4 March 2025, the Appellant filed his Appeal Brief pursuant to Article R51 of the CAS Code.

32. On 7 March 2025, the Respondent requested the bifurcation of the present procedure *"so that the Panel first considers the (lack of) timeliness of the appeal"*.

33. On 10 March 2025, the Appellant filed a second Request for Provisional Measures (the "Second RPM"), in accordance with Article R37 of the CAS Code.

34. On 19 March 2025, the Respondent submitted its comments in response to the Second RPM, in accordance with Article R37 of the CAS Code.

35. On 20 March 2025, the Appellant sent an email to the CAS Court Office stating *inter alia* the following: *"In the current procedure, our position is that the Appealed Decision is null and void, implying no time limit for appeal. Consequently, the Panel, once constituted, would need to consider the merits to determine admissibility. Therefore, bifurcation is not appropriate"*.

36. On 24 March 2025, the CAS Court Office informed the Parties that *"[i]t will be for the Panel, once constituted, to rule on the request for bifurcation upon receipt of the Respondent's position on the admissibility of the appeal and the Appellant's comments"*.

37. On 25 March 2025, the Respondent filed its submissions on the (lack of) timeliness of the Appeal.

38. On 26 March 2025, the Appellant informed the CAS Court Office that he had set out his position on the admissibility of the appeal in his Statement of Appeal, Brief on Admissibility and the Appeal Brief and *"therefore does not consider it necessary to file any further arguments or submissions at this stage and will rely on those already submitted to CAS"*.

39. On 1 April 2025, the CAS Court Office informed the Parties that the Panel appointed to adjudicate the matter would consist of Mr Mario Vigna as President, Mr Ulrich Haas, nominated by the Appellant, and Mr Markus Bösiger, nominated by the Respondent.

40. On 7 April 2025, the CAS Court Office informed the Parties that it will be for the Panel to rule on the Appellant's Second RPM and that *"[t]he Panel has decided to bifurcate the proceedings to address the admissibility of the appeal"* (the "Bifurcated Issue"). Accordingly, the CAS Court Office invited the Parties to indicate their preference as to *"whether they prefer a hearing to be held on the [Bifurcated Issue] or*

for the Panel to issue a (preliminary) award based solely on the Parties' written submissions".

41. On 8 April 2025, the Appellant informed the CAS Court Office of his preference for the Panel to issue an award on the Bifurcated Issue based solely on the Parties' written submissions.

42. On 1 May 2025, the CAS Court Office informed the Parties that after considering the Parties' positions with respect to a hearing and pursuant to Article R57 of the CAS Code, the *"… Panel deems itself sufficiently well-informed to render a (preliminary) Award on the timeliness of the appeal based solely on the Parties' written submissions, without the need to hold a hearing".*

43. On the same date, the Panel issued an Order on Provisional Measures (the "Second OPM"), whereby it denied the Appellant's Second RPM.

44. On 9 July 2025, pursuant to Article R44.3 of the CAS Code and on behalf of the Panel, the CAS Court Office invited the Appellant to file: (i) the authorisation to proceed (*"Klagebewilligung"* or *"autorisation de procéder"*) which was delivered by the Lausanne District Court following the filing of his application for conciliation dated 24 June 2024; and (ii) evidence of subsequent legal action taken (if any) before the Swiss courts.

45. On 14 July 2025, the Appellant filed the authorisation to proceed (*"Klagebewilligung"* or *"autorisation de procéder"*) issued by the Lausanne District Court on 11 December 2024; and the subsequent claim filed before the Lausanne District Court on 28 March 2025. As to this subsequent claim, the Respondent informed the Panel that it had not been notified of such application.

IV. SUBMISSIONS OF THE PARTIES ON THE BIFURCATED ISSUE

46. The following summary of the Parties' respective positions on the Bifurcated Issue is illustrative and does not necessarily comprise every argument advanced by the Parties. However, the Panel has carefully considered all of the submissions put forward by the Parties, regardless of whether they are explicitly referenced in the discussion below.

A. The Appellant

47. The Appellant, in his Appeal Brief, requested the following reliefs:

> *"1. Deal with this matter in an expedited manner and issue the operative part of the award prior to the reason as soon as practically possible.*
>
> *2. Declare that CAS has jurisdiction to hear the matter and that this appeal is admissible.*
>
> *3. Annul the AQIU's decision dated May 23, 2024, thereby revoking the recognition and worldwide extension of the [BSF Decision] against the Appellant.*
>
> *4. Rule that the two-year suspension and fine imposed on the Appellant shall not be given effect within WA or its member federations, except by the BSF – effectively lifting the Appellant's suspension for all competitions under WA's authority.*
>
> *5. Order that the Appellant be immediately eligible and reinstated to compete and participate in all aquatic events*

worldwide, except those under the BSF's authority (subject only to any separate sanctions that may be lawfully in place, if any).

6. Rule that the underlying BSF sanctions (the three-year and two-year suspensions imposed in 2023-2024) shall not be recognised or given effect by WA.

7. Grant any further or alternative relief the Panel deems just and appropriate.

8. Order the Respondent to bear all costs incurred in these proceedings.

9. Order the Respondent to pay the Appellant a contribution towards his legal and other costs, in an amount to be determined at the Panel's discretion".

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

a) The Respondent's conduct induced the Appellant to file before the Lausanne District Court

- The Appealed Decision failed to specify the appropriate appellate body and applicable deadline, thereby violating procedural fairness:

  (i) the Respondent, as the drafter of WA's rules and author of the Appealed Decision, was in a position, and under a duty, to indicate the proper appeal route;

  (ii) a federation's decisions must be reasoned, clearly designated, properly notified to the parties, and include an indication of the legal remedy available (CAS 2004/A/659, para. 24);

  (iii) the principle of good faith requires that the failure to mention appeal instructions should not prejudice the procedural rights of the concerned parties. Classically, such informalities would lead to precluding an objection against an appeal based on the fact that it was filed past the normally applicable deadline (CAS 2004/A/659, para. 24). Furthermore, good faith, codified in Article 2 of the CC, permeates all aspects of Swiss law, including the enforcement of procedural deadlines;

  (iv) in view of the fact that many sports governing bodies include a "notice of appeal rights" paragraph, explicitly referencing the appellate body and deadline, the Appellant should not be prejudiced for initially filing with the Lausanne District Court.

- The WA's reply dated 6 June 2024 was ambiguous and unhelpful, as it merely quoted Article 35.2 of the Integrity Code without explicitly designating CAS as the sole avenue of appeal. The WA's reply did not explicitly state that the Appellant must appeal to CAS, nor did it refer to the World Aquatics Constitution (the "WA Constitution") appeal arbitration

clauses. The Respondent, who could have answered with a 'yes' or 'no' – effectively induced a procedural error by failing to provide a clear answer when directly asked about the competent appeal body. This strategic ambiguity prevented the Appellant from knowing the correct procedural path and constituted a violation of the principle of good faith.

- The Appellant's decision to file the application before the Lausanne District Court was not the result of negligence or procedural oversight, but rather a reasoned legal determination based on the wording of the Integrity Code and the nature of the Appealed Decision. In particular:

  (i) the Appealed Decision is not a disciplinary ruling concerning the violation of the Integrity Code, but rather an administrative act recognising and enforcing a national federation's sanction;

  (ii) the Appealed Decision explicitly referenced Article 36.2 of its Integrity Code, which governs the recognition of external decisions, but it did not specify the appeal mechanism applicable to such recognition;

  (iii) WA's response to the request for clarification was vague and ambiguous, and failed to indicate that CAS was the exclusive forum for appeal;

  (iv) all the above factors led the Appellant and his legal counsel to form a *bona fide* and reasonable belief that a decision recognising and extending a national federation's sanction was subject to review by the Swiss civil courts rather than the CAS.

- Once the Appellant communicated his intention to bring the matter before the Swiss civil courts, WA did not object to this course of action. It neither clarified that the Appellant had misunderstood its communication nor stated that CAS was the exclusive forum. WA's current position is therefore contrary to the principle of *venire contra factum proprium* (and the related doctrine of estoppel by silence or acquiescence).

- The Appellant acted in good faith throughout. First, he saw fit to issue a challenge under Article 75 of the CC in the state courts as an appropriate and timely remedy. When the Lausanne District Court later ruled that it had no jurisdiction and directed the Appeal to CAS, the Appellant immediately redirected the Appeal to the CAS, showing his willingness to comply with procedural requirements in good faith. Additionally, no party has suffered prejudice due to the initial filing in Lausanne.

- Legal certainty, the right to be heard, and procedural fairness all support the admissibility of the Appeal. In particular:

  (i) the Swiss Federal Tribunal (the "SFT") recognises that ambiguous procedural instructions must be interpreted in favour of access to justice. Under basic fairness principles, when one party causes or contributes to a misunderstanding about the procedure, the other party should be given the benefit of the doubt in resolving the consequences of that misunderstanding;

  (ii) the very purpose of time limits is to ensure finality and to prevent respondents from facing stale claims without notice. Here, the Respondent received timely notice of the challenge (just via the court instead of CAS). Thus, the spirit and purpose of the deadline rule were fulfilled. The Respondent was not lulled into believing that the Appellant accepted the Appealed Decision or missed the deadline and legal certainty was maintained, as the matter was *sub judice* within the deadline;

  (iii) procedural fairness owed to the Appellant outweighs any nominal inconvenience to the Respondent, which had to address the jurisdiction in court before addressing the merits in CAS. That slight inconvenience is a direct result of the WA's unclear rules and vague response to the Appellant's inquiries. Such inconvenience is far outweighed by the injustice that would occur if the Appellant were denied a hearing altogether;

  (iv) denying admissibility in this case would violate the principles of legal certainty and procedural fairness, as it would punish an athlete for a procedural error directly caused by WA's conduct.

b) The Appeal should be considered timely under Article 63 of the CPC

- While the general rule is that compliance with Article R49 of the CAS Code is a prerequisite for admissibility absent extraordinary circumstances, the present dispute constitutes precisely the type of extraordinary circumstances in which Swiss law and CAS precedents recognise an exception to the strict deadline. In other words, an appeal may be considered timely even if the filing with CAS occurred outside the deadline, provided that the appellant initially lodged a valid action before another competent forum within the relevant time limit. This principle is reflected in Swiss procedural law, in particular Article 65 of the CPC), which explicitly protects parties who erroneously commence

proceedings before an incorrect forum.

- Article 63 of the CPC applies to CAS proceedings in general:

  (i) CAS panels regularly refer to Swiss law for guidance on procedural matters not expressly governed by the CAS Code, provided such reference does not conflict with any specific CAS rule. This approach is warranted given that CAS is seated in Switzerland, and Swiss law, including the CPC and the Swiss Private International Law Act (the "PILA"), forms part of the framework governing CAS proceedings;

  (ii) Swiss law supplements the CAS Code on procedural issues where the CAS Code is silent or ambiguous (*ex multis*, CAS 2024/A/10290, para. 76; CAS 2023/O/10000, para. 66; CAS 2020/A/7373, para. 88; CAS 2019/A/6179, para. 84). According to legal doctrine, based on the principle of good faith, the rule contained in Article 63.1 of the CPC shall apply by analogy. The CAS has embraced the approach wherein the appeal was deemed admissible, even though the CAS filing came after the usual deadline (CAS 2008/A/1528 & 1546, para. 7.12). The SFT has also recognised CAS appeals as essentially equivalent to domestic Swiss association-law appeals (under Article 75 of the CC), which reinforces the fact that Swiss domestic procedural safeguards are relevant to CAS;

  (iii) the issue at hand – namely, the consequences of a mistakenly filed appeal in another forum – is not explicitly addressed in the CAS Code. Accordingly, the solution provided by Article 63.1 of the CPC should be applied by analogy. The underlying principle is that a federation's decision ought not to evade judicial review merely because the aggrieved party initially sought relief in an incorrect venue. In this respect, the scope of Article 63.1 of the CPC extends beyond ordinary civil proceedings and includes appeals against decisions of an association (e.g. a sports federation);

  (iv) far from overriding the CAS Code, an interpretation and application of Article R49 of the CAS Code that accords with Swiss procedural law would thereby promote harmony between the CAS procedure and fundamental legal principles.

- Article 63 of the CPC applies in this case:

  (i) the Lausanne District Court declined jurisdiction over

the Appeal, thereby rejecting the submission on jurisdictional grounds;

(ii) the Appellant promptly re-filed the appeal with CAS within one month of the Lausanne District Court's decision.

- Under Article 63 of the CPC, the legal consequence is that the original filing date before the Lausanne District Court should be deemed the commencement date for proceedings before the CAS.:

(i) the date of filing "relates back" to the original submission date, provided that the claimant/appellant resubmits the case to the proper forum within a short period thereafter (CAS 2008/A/1528 & 1546, para. 7.12);

(ii) a party might initially resort to state courts for legitimate reasons, including questions of jurisdiction, without being deemed to have evaded arbitration, provided they acted in good faith. Swiss law is clear that unless it is established that the appellant brought the challenge in the state courts solely in an attempt to cure his failure to meet the CAS time limit, or for any other abusive reason, the party must be given another opportunity to file the appeal, irrespective of whether the state court was seized within the time limit that would have been applicable before the CAS. Thus, even if an appellant had filed in the state court a few days outside the 21-day CAS window but still within the one-month deadline per Article 75 of the CC, Swiss law would still forgive that, provided the filing was within the state court's own deadline and not a bad-faith ploy;

(iii) by operation of the above principles, the appeal ought to be treated as if it had been filed on the date of the initial submission to the Lausanne District Court. The deadline was, in effect, suspended from that date.

c) The Appealed Decision is null and void and, therefore, time limits do not apply

- It is a recognised principle under Swiss law that decisions tainted by a qualified breach of law or statutory provisions are not merely voidable but null and void *ab initio*. In other words, if the illegality is sufficiently grave, the impugned act is treated as having never produced legal effects.

- Swiss jurisprudence is unequivocal: a null and void act may be challenged at any time. The SFT clarified that, subject only to the doctrine of abuse of rights, nullity may be invoked at any time and by any party, without being bound by any deadline, as the act is void *ipso jure* (SFT

5A_205/2013, consid. 4). Pursuant to Article 75 of the CC, the one-month time limit for challenging decisions applies exclusively to voidable resolutions. Where a decision is null and void, no such deadline applies (CAS 2010/A/2188, para. 80; CAS 98/185, para. 5). Moreover, given the fundamental nature of the right to be heard, any violation thereof results in the automatic nullification of the contested decision (SFT 142 III 360, consid. 4.1.4; SFT 133 III 235, consid. 5.3).

- According to the established case law of the SFT, a decision rendered by an association will be deemed null and void only where the defect is: (i) particularly serious (*i.e.,* it constitutes a fundamental infringement of law or internal regulations), (ii) manifest (it is obvious or readily ascertainable), and (iii) the recognition of nullity does not gravely endanger legal certainty (see SFT 145 III 436, consid. 4; SFT 144 IV 362, consid. 1.4.3). These criteria are clearly satisfied in the present case since:

  (i) the Appealed Decision is vitiated by gross procedural irregularities, namely a denial of any opportunity to be heard and the failure to provide notification of rights of appeal. These violations are so fundamental that they call into question the validity of the entire disciplinary process. Both CAS and the SFT have consistently recognised that a decision adopted in manifest breach of natural justice may be deemed null;

  (ii) the requirement of legal certainty is not compromised by acknowledging nullity. On the contrary, it is upheld, as recognising the void nature of the Appealed Decision ensures that only decisions adopted in conformity with basic procedural safeguards are enforced.

- Finally, it bears emphasis that a disciplinary process which deprives the individual of the most basic guarantees of due process cannot yield a valid decision. The proper remedy is the nullification of such a decision, with the possibility for the governing body to initiate a new and lawfully conducted process should it wish to pursue the matter.

B. The Respondent

49. The Respondent, in its Answer, requested the following reliefs:

> *"(i) Dismiss Appellant's appeal in proceedings CAS 2025/A/11161 in its entirety and confirm the Recognition of the Decision;*
>
> *(ii) Order Appellant to pay Respondent's legal costs and other expenses of at least CHF 25'000, considering inter alia the legal fees incurred in connection with Appellant's two request for provisional measures".*

50. The Respondent's submissions, in essence, may be summarised as follows:

a) The Respondent did not act in bad faith and did not mislead the Appellant

- WA acted consistently in good faith, communicated promptly and clearly, and did not, at any point, mislead the Appellant regarding his procedural rights. This holds true for the WA's letter dated 6 June 2024, in which WA simply cited the unambiguous Article 35.1 of the Integrity Code;

- the WA Constitution, as well as the Integrity Code, unequivocally establish the exclusive jurisdiction of CAS, and clearly provide that any appeal shall be filed exclusively with CAS;

- the Respondent's position has also been recognised by the Lausanne District Court, which did not "direct the appeal to CAS" as incorrectly claimed by Appellant, but rather explicitly stated that the WA statutes and regulations: (i) are clear regarding the resolution of disputes; (ii) clearly recognise CAS as the exclusive authority for resolving all types of disputes; and (iii) expressly prohibit recourse to ordinary national courts. There are, therefore, certainly no "procedural ambiguities" whatsoever.

- In any event, the Appellant's assertion that WA did not specify CAS as the competent appellate body in the Appealed Decision cannot avail him. According to constant jurisprudence of the SFT, the Appellant should have carried out a minimum review of the legal remedies. Even in circumstances where information regarding the applicable legal remedy is incorrect (*quod non*), a party cannot benefit from such error if it failed to exercise the requisite level of diligence. In fact, it is incumbent on any party to familiarise itself with the relevant rules and regulations (SFT 5A_706/2018, consid. 3.1; SFT 141 III 270, consid. 3.3).

b) The Appeal is filed well beyond the 21-day limit, which is non-extendable

- The Appeal was manifestly filed out of time, *i.e.* after the expiry of the 21-day deadline provided for under Articles 30.6 and 31.2 of the WA Constitution and Article 35 of the Integrity Code.

- The time limit to submit a Statement of Appeal is fixed, strictly non-extendable, and preclusive in nature. This is supported by the fact that this is the only deadline under the CAS Code that may be assessed *ex officio*, as provided by its Article R49. The time limit constitutes a *"Verwirkungsfrist"* (preclusion period) under Article 75 of the CC. Accordingly, it may neither be interrupted nor extended and must be enforced ex officio.

- Failure to comply with the applicable time limit results in the irrevocable loss of the right to challenge the decision (CAS 2016/A/4814, para. 65; CAS 2013/A/3135, para. 27). Once the

time period for filing an appeal to CAS has expired, the decision becomes final and binding, and it is no longer possible to contest it before any state court (SFT 4A_488/2011, consid. 4.3.1)

- Strict adherence to the rules on time limits is of paramount importance to ensure equal treatment of the parties and to preserve the legal certainty of decisions rendered by federations, associations or sports-related bodies (CAS 2020/A/7517, para. 86; CAS 2010/A/2315, para. 16).

- The SFT has held that requiring strict compliance with time limits for filing an appeal does not amount to excessive formalism. On the contrary, *"procedural rules are necessary for implementing legal remedies that guarantee proceedings can take place under the principle of equal treatment. In respect of this principle and legal certainty, strict adherence to the provisions governing the time limit for filing an appeal is thus obvious, without this requirement standing in contradiction with the prohibition of excessive formalism"* (SFT 4A_690/2016, consid. 4.2).

- Since the 21 days following the Appealed Decision expired on 13 June 2024, from that date the recognition of the BSF Decision became final, binding and *res judicata*. The *res judicata* effect applies not only to the Parties but to all members of WA; this is the *erga omnes* effect of a decision that must be protected.

- The Appellant's attempt to invoke Article 63 of the CPC to justify his late filing is misplaced and unfounded, as:

  (i) the CPC does not apply to appeals in relation to final decisions of associations;

  (ii) Article 63.1 of the CPC is a provision of Swiss domestic procedural law and does not apply to international arbitral proceedings; in fact, the CPC is not applicable to disputes regarding international matters (Articles 1 and 2 of the CPC). In such cases, the relevant law is Chapter 12 of the PILA, which governs international arbitration seated in Switzerland, where at least one of the parties did not have its domicile, its habitual residence or its seat in Switzerland (*in casu* the Appellant);

  (iii) Article 182 of the PILA applies, according to which the parties may determine the arbitral procedure by reference to arbitration rules, *i.e.* the CAS Code in the present case;

  (iv) the CAS Code clearly and unequivocally states that the time limit to submit the Statement of Appeal is fixed, non-extendable *stricto sensu*, and preclusive. This means that it must be observed *ex officio*.

c) The Appealed Decision is not null and void

- The recognition of the Appealed Decision is not null and void, but was rendered in conformity with the WA's rules and regulations.

- The doctrine of nullity is reserved for exceptional and narrowly defined cases. In case of doubt, established jurisprudence and scholarly opinion consistently favour the concept of voidability rather than nullity, thereby preserving legal certainty and procedural order.

- As a consequence, once the deadline to appeal a decision rendered by a Swiss association has expired, any alleged violations of law or of the association's internal statutes are deemed to be cured, and the contested decision becomes final and binding.

V. JURISDICTION

51. 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 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 it prior to the appeal, in accordance with the statutes or regulations of that body".

52. The Appellant relies on Articles 30.6 and 31 of the WA Constitution as the relevant legal bases for the jurisdiction of the CAS. The Respondent similarly refers to Articles 30.6 and 31 of the WA Constitution, and additionally invokes Article 35 of the Integrity Code. These provisions read as follows:

- Article 30.6 of the WA Constitution:

"Unless otherwise provided in this Constitution or in the [WA] Rules, a final decision of [WA] imposing a disciplinary sanction or measure can be appealed within twenty-one (21) Days from the date of the decision to the [CAS]. The recourse to other tribunals or courts is excluded. The CAS shall also have exclusive jurisdiction over interlocutory orders and interim measures and no other court or tribunal shall have authority to issue interlocutory orders or interim measures relating to matters before the CAS".

- Article 31 of the WA Constitution:

"31.1 World Aquatics recognises the [CAS], with seat in Lausanne, Switzerland, as exclusive court to resolve any kind of disputes between [WA], [WA] Members, members of [WA] Members, Continental Organisations, National Aquatics bodies, Athletes, Officials and any person or organisation subject to this Constitution and/or any [WA] rule or regulation.

31.2 Provided no internal legal remedy is available, any appeal against a final decision of [WA] shall be submitted to the exclusive jurisdiction of CAS within twenty-one (21) Days from the date of the decision being appealed. Unless otherwise specified in the applicable [WA] Rules, an appeal shall not have suspensive effect: subject to any other decision by CAS, the decision being appealed shall therefore remain in full force. [WA] is entitled to file an appeal to CAS against any final and binding decision of a body of [WA].

[…]

31.5 Recourse to ordinary state courts is prohibited".

- Article 35 of the Integrity Code:

"Only final decisions of the Adjudicatory Body determining that an Integrity Code Violation has been committed may be appealed by any Party to the proceedings in question. Any such appeal shall be filed exclusively to the CAS".

53. Although the Parties do not dispute the jurisdiction of the CAS in this matter, the Panel considers it appropriate and necessary to identify the specific provisions conferring such jurisdiction. Specifically, the Panel notes that the proper legal basis for CAS jurisdiction lies in Articles 30.6 and 31.2 of the WA Constitution. Article 35 of the Integrity Code, by contrast, governs appeals from final decisions of the Adjudicatory Body finding an Integrity Code Violation. Since the Appealed Decision is a recognition decision under Article 36.2 of the Integrity Code, and not a disciplinary decision of the Adjudicatory Body, Article 35 of the Integrity Code is not applicable in the present context (see *infra* paras. 79 to 88).

54. In light of the foregoing, the Panel is satisfied that the Appealed Decision is capable of being appealed before CAS pursuant to Articles 30.6 and 31.2 of the WA Constitution.

55. Accordingly, the Panel confirms that the CAS has jurisdiction to adjudicate this dispute.

VI. BIFURCATION

56. The Panel recalls that, on 7 March 2025, the Respondent requested the bifurcation of the present procedure in order to address the admissibility of the appeal (see *supra* para. 32). The Appellant commented said request in his email of 20 March 2025, where he stated that *"bifurcation is not appropriate"*.

57. Thereafter, on 24 March 2025, the CAS Court Office informed the Parties that *"[i]t will be for the Panel, once constituted, to rule on the request for bifurcation upon receipt of the Respondent's position on the admissibility of the appeal and the Appellant's comments"*. The request for bifurcation was then granted on 7 April 2025.

58. The CAS Code does not regulate the conditions under which a panel may bifurcate the proceedings (other than in case of jurisdiction). In the absence of any provision in the CAS Code and any agreement between the Parties in this respect, the Panel falls back on Article 182(2) of the PILA, which provides as follows:

"Where the parties have not determined the procedure, the arbitral tribunal shall determine it to the extent necessary, either directly or by reference to a law or to arbitration rules".

59. In doing so, the Panel draws inspiration from Article 125 of the CPC, which reads as follows:

"In order to simplify the proceedings, the court may, in particular:

a. limit the proceedings to specific issues or claims;

b. order the division of cases;

c. order the joinder of cases;

d. refer the counterclaim to separate proceedings".

60. According to this provision, a court may – in order to streamline and simplify the proceedings – limit the scope of the

proceedings to specific issues or claims. The guiding principles for the exercise of this discretionary power are the proper administration of justice and procedural efficiency.

61. The Panel considers that it is in the interests of the proper administration of justice and procedural efficiency to rule and decide in this award first on the Bifurcated Issue *i.e.* the question of the admissibility of the appeal.

VII. ADMISSIBILITY

62. 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 in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document".*

63. The Appealed Decision was notified to the Appellant on 23 May 2024. The Appellant filed his Statement of Appeal on 2 February 2025, *i.e.* – as pointed out by the Respondent and acknowledged by the Appellant – **significantly beyond the twenty-one (21) day time limit stipulated in** Articles 30.6 and 31 of the WA Constitution (see *supra* paras. 9, 23 and 52).

64. In this context, the admissibility of the appeal has been contested by the Respondent. The Appellant, however, contends that the Appeal should nonetheless be considered admissible.

65. The Panel addresses the question of admissibility of the Appeal in detail in paras. 73 to 125 *infra*.

VIII. APPLICABLE LAW

66. The Panel observes that the Bifurcated Issue is a matter of admissibility (see *infra* para. 73) that is purely procedural.

67. In this respect, the Panel recalls that procedural issues are to be decided based on the relevant *lex arbitri*.

68. As the seat of the present arbitration is Switzerland and at least one of the Parties was domiciled outside Switzerland at the time when the relevant arbitration agreement is executed (Mr. Ivanov) reference must be made to Articles 176 *et seq.* of the PILA.

69. In particular, the Panel notes that, under Article 182(1) of the PILA, the parties may determine the arbitral procedure *"either themselves or by reference to arbitration rules"*.

70. In this regard, Article 35.4 of the Integrity Code refers to the applicability of the provisions of the CAS Code (*"The appeal proceedings before CAS shall be conducted in English and the procedure will be governed by the procedural rules of the CAS [Code]"*). Moreover, by submitting themselves to the CAS, not contesting directly its jurisdiction, the Parties made an implicit agreement to accept the CAS Code as the applicable procedural rules (see CAS 2020/A/7605, para. 168).

71. Lastly, the Panel recalls that if certain aspects of the procedure are not addressed by the CAS Code, *i.e.* if there is a lacuna, the procedure must be determined, in accordance with Article 182(2) of the PILA (see *supra* para. 58)

either directly or by reference to a law or to arbitration rules (see CAS 2019/A/6179, para. 84).

72. Accordingly, where necessary, the Panel can rely on Swiss law.

IX. PROCEDURAL ISSUES: LEGAL ANALYSIS OF THE BIFURCATED ISSUE

73. As a preliminary observation, the Panel notes that the question of whether the Appeal was filed in a timely manner constitutes a matter of admissibility, rather than jurisdiction (CAS 2023/A/9515, para. 44; CAS 2019/A/6294, para. 82; SFT 4A_406/2021; STACHER, Jurisdiction and Admissibility under Swiss Arbitration Law - the Relevance of the Distinction and a New Hope, in Bulletin ASA 2020/1 p. 67 s. et 73).

74. That said, in order to determine the admissibility issue, the Panel observes that there are several key dates which have been accepted or not disputed by the Parties (see *supra* paras. 9, 17, 23 and 25):

- 23 May 2024: the AQIU transmitted the Appealed Decision directly to Mr Ivanov by letter;
- 24 June 2024: the Appellant lodged an application before the Lausanne District Court;
- 21 January 2025: the Lausanne District Court dismissed the application on the grounds of lack of jurisdiction;
- 2 February 2025: the Appellant filed its Statement of Appeal with the CAS.

75. That said, the Panel notes that, pursuant to Articles 30.6 and 31.2 of the WA Constitution (see *supra* para. 52) read in conjunction with Article R49 of the CAS Code, the relevant *dies a quo* that triggers the 21-day deadline for filing an appeal is the *"date of the decision"*. Accordingly, in the present case the deadline started to run on 23 May 2024 and expired on 13 June 2024. Since it is undisputed that the Appeal was lodged with the CAS well beyond the applicable deadline, the issue to be determined is whether the Appeal can nonetheless be considered admissible despite non-compliance with such a time limit.

76. In this regard, and in light of the arguments raised by the Parties, the main issues to be examined by the Panel are as follows:

- whether the Respondent acted in bad faith and/or misled the Appellant, such that an exception to the 21-day deadline should be granted pursuant to the principle of good faith;
- whether the Appeal may nonetheless be considered timely under Article 63 of the CPC;
- whether the Appealed Decision is null and void, in which case – according to the Appellant – any statutory time limit would be rendered irrelevant under Swiss law.

A. Whether the Respondent acted in bad faith and/or misled the Appellant in filing his application before the Lausanne District Court

77. The Appellant submits, *inter alia*, that the decision to initially seize the Swiss civil

courts rather than the CAS stemmed from: (i) the Respondent's failure to specify the competent appeal body and relevant deadline in the Appealed Decision; (ii) the ambiguous and uninformative nature of WA's letter dated 6 June 2024, which did not explicitly confirm CAS as the sole appellate forum; and (iii) the Respondent's failure to object or clarify the matter upon being informed of the Appellant's intention to proceed before the Swiss civil courts.

78. The Respondent contests these assertions and submits, *inter alia*, that: (i) it acted transparently and referred to clear regulatory provisions designating the CAS as the exclusive appellate body, a conclusion later upheld by the Lausanne District Court; and (ii) in any event, parties have a duty of diligence to consult the relevant rules themselves. As established by the Swiss Federal Tribunal (the "SFT"), even incorrect information concerning legal remedies does not exempt a party from this obligation.

79. The Panel preliminarily observes that the Appealed Decision did not expressly indicate the procedural avenues available to the Appellant and that WA's letter dated 6 June 2024 actually referred to a possible appeal before the CAS, but under Article 35 of the Integrity Code. However, the Panel notes that said article is not the correct provision granting jurisdiction to the CAS. To elaborate, the Panel recalls Article 35 of the Integrity Code, along with the definitions of "Adjudicatory Body" and "Integrity Code Violation" under the Integrity Code:

a. Article 35 of the Integrity Code:

"Only final decisions of the Adjudicatory Body determining that an Integrity Code Violation has been committed may be appealed by any Party to the proceedings in question. Any such appeal shall be filed exclusively to the CAS"

(emphasis added).

b. Adjudicatory Body

"The independent adjudicatory body of the AQIU, established in accordance with Article 24 of the [WA] Constitution".

c. Integrity Code Violation:

"Where a Covered Person:

- *Fails to comply with any of the requirements set out in this Integrity Code or;*

- *attempts or agrees with any other person to engage in conduct (whether by act or omission) that would culminate in a breach of any requirement of this Integrity Code (unless the Covered Person renounces their attempt or agreement prior to it being discovered by a third group not involved in the attempt or agreement);*

- *solicits, induces, instructs, persuades or encourages any person to engage in conduct (whether by act or omission) that would amount to a breach of any requirement of this Integrity Code if committed by the Covered Person themself; and/or*

- *authorises, causes, or knowingly assists, encourages, aids and abets, covers up, or is otherwise complicit in, any act or omission by any person that would amount to a breach of any requirement of this Integrity Code if committed by the Covered Person themself.*

[…]".

80. A plain reading of the above provisions confirms that although the AQIU is indeed an "Adjudicatory Body", its act of recognising and extending the BSF Decision does not amount to a determination of an "Integrity Code Violation". It follows that Article 35 of the Integrity Code does not govern the present matter. Rather, the AQIU acted pursuant to its powers under Article 36.2 of the Integrity Code to recognise and enforce a domestic disciplinary sanction at the international level (see *supra* para. 9).

81. Despite the above, the Panel also notes that Articles 30.6 and 31.2 of the WA Constitution unambiguously provide that the sole competent appeal authority against *"a final decision of World Aquatics"* is the CAS, and that the relevant deadline is 21 days from the date of the decision.

82. Therefore, regardless of the information provided in the Appealed Decision and in WA's letter of 6 June 2024, the Panel concludes that, in the absence of any other applicable provision establishing an internal legal remedy against such recognition decisions, Articles 30.6 and 31.2 of the WA Constitution clearly provide the proper route of appeal, namely to the CAS. These provisions state as follows:

- Article 30.6 of the WA Constitution:

"Unless otherwise provided in this Constitution or in the [WA] Rules, a final decision of [WA] imposing a disciplinary sanction or measure can be appealed within twenty-one (21) Days from the date of the decision to the [CAS]. The recourse to other tribunals or courts is excluded. The CAS shall also have exclusive jurisdiction over interlocutory orders and interim measures and no other court or tribunal shall have authority to issue interlocutory orders or interim measures relating to matters before the CAS".

- Article 31.2 of the WA Constitution:

"Provided no internal legal remedy is available, any appeal against a final decision of [WA] shall be submitted to the exclusive jurisdiction of CAS within twenty-one (21) Days from the date of the decision being appealed. Unless otherwise specified in the applicable [WA] Rules, an appeal shall not have suspensive effect: subject to any other decision by CAS, the decision being appealed shall therefore remain in full force. [WA] is entitled to file an appeal to CAS against any final and binding decision of a body of [WA]"

(emphasis added).

83. Accordingly, although the Appealed Decision did not explicitly state the available legal remedy or deadline, the WA Constitution leaves no room for ambiguity in establishing the exclusive jurisdiction of the CAS and the applicable 21-day time limit. In any event, the mere omission of procedural guidance in the Appealed Decision does not suffice to infer that the Appellant was actively misled or that the Respondent acted in bad faith (see CAS 2016/A/4817, para. 96).

84. It is worth noting that the Lausanne District Court, in its judgment, confirmed the clarity of the relevant WA regulations in this respect, as it, *inter alia*, held that the WA regulations: (i) are unequivocal with respect to the resolution of disputes; (ii) clearly designate the CAS as the exclusive dispute resolution authority for all categories of disputes; and (iii) expressly exclude recourse to ordinary national courts (see *supra* para. 23).

85. Thus, the Panel considers that the lack of procedural guidance in the Appealed Decision does not excuse the Appellant's late filing and does not invalidate the time bar imposed by Article R49 of the CAS Code.

86. Moreover, turning to WA's reply dated 6 June 2024 (see *supra* para. 15), the Panel acknowledges that the response cited Article 35 of the Integrity Code, which is not applicable *in casu*. Furthermore, the letter did not respond to the question posed by the Athlete. On 5 June 2024, the Appellant inquired with the AQIU, whether the proper appeal route against the Appealed Decision was to the CAS. Instead of answering that question, the AQIU confirmed that it respected *"the necessary process"* prior of issuing the Appealed decision and that the Appellant's *"considerations [he] mentioned in … [his] email … appear to primarily refer to the decision(s) passed at national level and thus should be, or should have been discussed in the context of the appropriate national appeal avenue, if any"*. Thus, the letter of the AQIU appears to be saying that there was, in practice, no appeal route open against the Appealed Decision.

87. The Panel acknowledges that the answer by the AQIU lacks clarity, but it is of the view that said answer did not mislead the Athlete, since it did not refer the latter to an appeal route in front of state courts.

88. In reaching this conclusion, the Panel also notes that Article 35 of the Integrity Code itself unequivocally states that an appeal must be lodged *"exclusively to the CAS"* (see *supra* para. 79). Neither the WA's letter dated 6 June 2024 nor Article 35 of the Integrity Code contain any reference to Swiss civil courts. Furthermore, there is no evidence on record to suggest that the WA ever indicated, either explicitly or implicitly, that Swiss civil courts had jurisdiction. On the contrary, Articles 30.6 and 31.5 of the WA Constitution expressly exclude recourse to any other tribunal or ordinary state court (see *supra* para. 52). As a consequence, the Panel finds that the WA did not mislead the Appellant in any manner.

89. The Appellant also expressly acknowledged in his submissions that Article 35 of the Integrity Code was not applicable to the Appealed Decision. It was thus incumbent upon him to rely on the WA Constitution, which the Lausanne District Court ultimately applied in finding it lacked jurisdiction.

90. The Panel further recalls that, under established Swiss jurisprudence, a party cannot invoke incorrect information concerning legal remedies to its benefit if it failed to exercise the requisite standard of diligence. A party is under a duty to consult and interpret the applicable rules and regulations (SFT 5A_706/2018, consid. 3.1; SFT 141 III 270, consid. 3.3; SFT 138 I 49, consid. 8.3.2).

91. In addition, the Panel observes that under Swiss law, a heightened standard of diligence is expected from legal professionals. Lawyers are required, in all cases, to conduct a summary review of procedural guidance concerning legal remedies (SFT 135 III 374, consid. 1.2.2.2; SFT 134 I 199, consid. 1.3.1). Given that the Appellant is, and has been, represented by experienced legal counsel with specific expertise in sports arbitration, their conduct must be attributed to the Appellant (see HAAS U., *The 'Time Limit for Appeal' in Arbitration*

Proceedings before the Court of Arbitration for Sport (CAS), SchiedsVZ 1/2011, pg. 14).

92. Moreover, the Panel is mindful that exceptions to the time limits prescribed under Article R49 of the CAS Code must be interpreted narrowly and restrictively. As a rule, the time limit for lodging an appeal is fixed, non-extendable and preclusive in nature (CAS 2016/A/4814, para. 65; ARROYO M. (ed.), *Arbitration in Switzerland – The Practitioner's Guide: Article R49 CAS Code* – RIGOZZI/HASLER, 2018, Wolters Kluwer, p. 1598). Whether the deadline is established by the CAS Code itself or by the underlying federation's rules, arbitral tribunals are not authorised to extend it, even on grounds of equity or good faith – save for truly exceptional circumstances (CAS 2020/A/7075, para. 77; SFT 101 II 86, consid. 2).

93. Finally, the Panel reiterates that the application of equitable principles such as proportionality or good faith cannot override the inadmissibility of a time-barred appeal (CAS 2013/A/3135, para. 28).

94. Such a strict interpretation of the 21-day time limit for the filing of the Statement of Appeal is reinforced by Article R32 of the CAS Code, which provides, *inter alia,* as follows:

> *"Upon application on justified grounds and after consultation with the other party (or parties), either the President of the Panel or, if she/he has not yet been appointed, the President of the relevant Division, may extend the time limits provided in these Procedural Rules, with the exception of the time limit for the filing of the statement of appeal, if the circumstances so warrant and provided that the initial time limit has not already expired. With the exception of the time limit for the statement of appeal, any request for a first extension of time of a maximum of ten days can be decided by the CAS Director General without consultation with the other party (-ies)"*
>
> (emphasis supplied).

95. In the case at hand, the Panel finds that the Appellant's decision to initiate proceedings before the Lausanne District Court cannot be attributed to any bad faith, misrepresentation, or procedural misconduct on the part of the Respondent. Consequently, such conduct does not justify an exception to the strict 21-day time limit for lodging an appeal under Article R49 of the CAS Code. In this respect, the Panel finds no breach of the principle of good faith, which applies equally to procedural matters, including in the context of international arbitration (see SFT 4A_600/2020 and SFT 4P.196/2003).

96. Likewise, the Panel does not find any other special circumstances that would justify any departure from the 21-day time limit under Article R49 of the CAS Code.

97. In light of the above, the Panel finds no basis for deviating from the narrow interpretation of the time limit under Article R49 of the CAS Code. If an appeal is not filed within the prescribed time, its inadmissibility is automatic. The Appellant's (in)action cannot override this result. The expiry of the deadline has a preclusive effect and must be assessed by the Panel based on the facts established by the parties. The Panel has no discretion to extend this deadline (CAS 2019/A/6241, para. 68; CAS 2016/A/4814, para. 65).

98. The consequence of non-compliance with the deadline is automatic and self-

executing. The silence, inaction or even acquiescence of the Respondent does not alter this legal effect (CAS 2016/A/4814, para. 66; CAS 2006/A/1168, para. 43). Furthermore, the consequence is not merely the forfeiture of the right to appeal before the CAS, but the loss of the Appellant's substantive claim altogether (CAS 2020/A/7075, para. 77; CAS 2016/A/4814, para. 65; FUMAGALLI L., *Review of CAS jurisprudence regarding jurisdiction and admissibility*, CAS Bulletin 2016/1, pg. 23).

99. Finally, and in any event, as established above, the Respondent has never suggested that the Swiss civil courts had jurisdiction (see *supra* paras. 86 and 87). Consequently, the doctrines of *venire contra factum proprium* and estoppel by silence of acquiescence are not applicable in the present case.

100. For all of the foregoing reasons, no breach of the duty of good faith is found in order to justify an exception to the strict time limit under Article R49 of the CAS Code.

B. Whether the Appeal should be considered admissible in light of Article 63 of the CPC

101. On the one hand, the Appellant argues that, while the general rule requires strict compliance with Article R49 of the CAS Code as a prerequisite for admissibility, the present dispute constitutes precisely the type of exceptional circumstances in which Swiss law and CAS jurisprudence permit a derogation from the deadline. In particular, the Appellant submits that Article 63.1 of the CPC should be applied by analogy, given that the CAS Code does not expressly address this issue. Accordingly, the Appellant contends that the Appeal should be deemed to have been lodged on the date of the original filing before the Lausanne District Court, thereby suspending or tolling the applicable time limit as of that date.

102. On the other hand, the Respondent maintains that the time limit for filing a Statement of Appeal is non-extendable and, in any event: (i) the CPC is not applicable to appeals against final decisions of associations; and (ii) the CPC forms part of Swiss domestic procedural law and is inapplicable to disputes before international arbitral tribunals.

103. In essence, the question before the Panel is whether the timely filing of an appeal before an incompetent forum has the effect of suspending the running of the time limit, such that a new time limit would commence following the jurisdictional rejection by the said forum.

104. However, the Panel must first assess the threshold question of whether Article 63.1 of the CPC is applicable to the present dispute. Article 63.1 of the CPC provides as follows:

"If a submission that has been withdrawn or rejected due to lack of jurisdiction is filed again with the competent conciliation authority or court within one month of withdrawal or the declaration of non-admissibility, or if it is forwarded in accordance with Article 143 paragraph 1bis, the date of the first filing is deemed to be the date of pendency".

105. As a general principle, arbitral tribunals seated in Switzerland are not required to apply the *lex fori* procedural rules (CAS 2019/A/6144 & 6145, para. 100; BERGER/KELLERHALS, *International and*

Domestic Arbitration in Switzerland, 3rd edition, 2014, p. 643). The Panel notes, however, that the CAS Code does not contain any specific provision governing the reinstatement or suspension of time limits for filing an appeal. Consequently, in application of Article 182(2) of the PILA (see *supra* para. 72) CAS panels have, on occasion, looked to Swiss law – including the CPC – to resolve procedural *lacunae* or ambiguities (*ex multis*, CAS 2024/A/10290, para. 76; CAS 2023/O/10000, para. 66; CAS 2020/A/7373, para. 88; CAS 2019/A/6179, para. 84). That being said, although there is no uniform approach in the literature regarding the application of Article 63 CPC in international arbitration proceedings before the CAS, the CAS jurisprudence shows that, in a similar situation, a Panel has considered that if a party decides to proceed before a civil court first, the time limit for appeal to CAS cannot be reinstated later (CAS 2005/A/953). It shall be emphasised that, in such circumstances, nothing prevents an Appellant from filing at the same time an appeal before a civil court and before CAS to preserve its rights.

106. The underlying purpose of Article 63 of the CPC is to protect parties acting in good faith from suffering undue prejudice as a result of a procedural misstep of having chosen the wrong forum, thereby permitting reinstatement of the original filing date under certain conditions (CAS 2023/A/9515, para. 54). Swiss legal commentary supports the possibility of reinstatement of the appeal deadline under the principle of good faith, provided that: (i) the failure to meet the time limit was not due to the fault of the party seeking reinstatement (*e.g.* due to misinformation from the decision-making body); and (ii) the re-filing occurred promptly after the obstacle ceased to exist (MAVROMATI/REEB, *The Code for the Court of Arbitration for Sport: Commentary, Cases and Materials*, 2nd ed. 2025, Wolters Kluwer, Art. R49 no. 18).

107. In addition, the Panel is aware that recent jurisprudence of the SFT may be interpreted as showing a certain reluctance to apply Article 63 of the CPC by analogy in an arbitral context. In SFT 4A_16/2023, consid. 5.3, the SFT held as follows:

> *"Et même si la doctrine fortement majoritaire reconnaît le caractère hybride de l'art. 63 CPC … elle souligne aussi les lacunes et incertitudes causées par l'insertion d'une telle réglementation dans un code procédural destiné aux tribunaux internes. Dans un tel contexte, l'on ne saurait taxer d'arbitraire le refus d'appliquer par analogie l'art. 63 CPC au présent litige".*
>
> Free translation: *"And even if the strong majority of legal doctrine recognises the hybrid nature of Art. 63 CPC…, it also highlights the gaps and uncertainties caused by the insertion of such a regulation in a procedural code intended for domestic courts. In such a context, the refusal to apply Art. 63 CPC by analogy to the present dispute cannot be considered arbitrary".*

108. That said, the Panel has duly considered the Appellant's argument that the procedural error, namely the filing of the action before a Swiss civil court rather than the CAS, could be remedied by analogy through the application of Article 63 of the CPC. While the Panel acknowledges that Article 63 of the CPC is a complex provision with a hybrid nature, in that it is a procedural rule containing elements of substantive law, as observed by the SFT (see SFT 4A_16/2023 of 8 November 2023), it does not consider it necessary, for the

purposes of this case, to engage in abstract considerations regarding the theoretical applicability of this domestic rule to international arbitration governed by the PILA. Rather, the Panel finds that the matter can be resolved on practical grounds since – even assuming, *arguendo*, that Article 63.1 of the CPC could be applied by analogy – the appeal would still fall short of admissibility requirements.

109. When contemplating an analogous application of Article 63.1 of the CPC, the Panel is mindful of the strict nature of Article R32.2 of the CAS Code that does not foresee any extension of the time limit for appeal (Article R49 of the CAS Code). The provision provides for a strict expiry period ("*délai de péremption*") for the deadline to appeal in the interest of legal security, exceptions of which cannot be accepted lightly. Therefore, the Panel must be particularly cautious when applying Article 63.1 of the CPC by analogy to arbitration proceedings before the CAS. This is all the more true considering that Article 63.1 of the CPC is designed first and foremost for cases where the forum chosen by mistake and the correct forum are both before Swiss courts. The provision, thus, cannot be applied *verbatim* to a case where a party misinterpreted or misjudged the existence or validity of an arbitration agreement. Consequently, when assessing whether to apply Article 63.1 of the CPC by analogy, this Panel only takes into account the guiding principles of that provision and will not apply it in a literal manner.

110. In this regard, Article 63 of the CPC contains a number of cumulative conditions, as consistently developed in jurisprudence and doctrine (see, *inter alia*, SFT 145 III 428, consid. 3.5.2; SFT 141 III 481, consid. 3.2.2; KUKO ZPO-DROESE, 3rd ed. 2021, Art. 63, N. 14). A guiding principle contained in Article 63.1 of the CPC is that the initial filing before the wrong forum must have occurred as a result of a misjudgement that was neither tactical nor deliberate. In this respect, the Panel is not persuaded that the Appellant's conduct meets this threshold. Indeed, in the context of Article 63.1 of the CPC , a distinction must be drawn between a mere misjudgement – where a party mistakenly but sincerely chooses the wrong forum – and a strategic or intentional choice to seize the wrong forum (see SEILER, in SUTTER-SOMM/LÖTSCHER/LEUENBERGER/SEILER, ZPO, 3rd ed. 2025, Art. 63 N. 8; KUKO-ZPO/DROESE, 3rd ed. 2021, Art. 63 N. 1; SFT 5A_421/2012, consid. 2.2; SFT 4A_332/2015, consid. 4.4.2). Only in case of a genuine misjudgement a party is entitled to benefit from the safeguard set forth in Article 63.1 of the CPC.

111. When assessing the procedural chronology of the present case as a whole and the Appellant's conduct in light of the above guiding principles and procedural safeguards, it appears that the Appellant engaged in a calculated strategy when pursuing proceedings before the Swiss state courts. It appears that the Appellant thought that his chances of succeeding on provisional measures would be higher in front of state courts than before CAS. Article R37 of the CAS Code would have barred him from seeking provisional measures before state courts once a statement of appeal has been filed. The conclusion that the Appellant was rather guided by

strategic aims than by mistake is reinforced by the fact that, even after initiating the present arbitral proceedings, the Appellant proceeded to file a substantive claim before the Lausanne District Court on 28 March 2025. Notably, that filing included a dedicated section on *"recevabilité"*, in which the Appellant expressly asserted the jurisdiction of the Swiss civil court, thus confirming a continued reliance on that forum despite the parallel pendency of the present CAS proceedings. In the end, however, the Panel can leave this issue open.

112. A further guiding principle that can be deduced from Article 63.1 of the CPC is that the party that mistakenly initiated the proceeding before the wrong forum must file its claim before the correct forum promptly, in order to benefit from the effects of continuous *lis pendens*. Article 63.1 of the CPC, thus, contains a temporal element of paramount importance. This temporal requirement must be interpreted and applied even more strictly in a sporting context as the one at hand. Indeed, once a party realises, or ought reasonably to have realised, that the forum seized may be incorrect, such party must act without delay by submitting the claim before the competent forum within a short timeframe to preserve the original filing date. Considering that the deadlines in the CAS Code are, generally speaking, much shorter than in the CPC and taking into account the paramount importance of the deadline in Article R49 of the CAS Code, the Panel is of the view that the party in question must remedy its mistake without delay and, therefore, cannot exhaust the one-month deadline contained in Article 63.1 of the CPC designed for different purposes.

113. In the present case, the Panel does not consider that this condition of prompt corrective action was satisfied. More particularly, the Panel notes that the Appellant received the operative part of the Lausanne District Court's decision on provisional measures on 19 August 2024, which clearly indicated that his request was "inadmissible". An unsuccessful conciliation hearing followed on 4 December 2024 – presumably involving discussions on jurisdiction –, and on 21 January 2025, the Appellant received the full reasoning of the above decision on provisional measures, expressly stating that the state court lacked jurisdiction and that the competent forum was the CAS.

114. Despite this sequence of events, the Appellant waited until 2 February 2025, *i.e.* more than 10 days later, to file a Statement of Appeal before the CAS. Notably, the decision being challenged had originally been issued on 23 May 2024. In the Panel's view, this delay in taking corrective action fails to meet the promptness requirement derived from Article 63 of the CPC, and does not merit protection under the narrow exception to Article R32.2 of the CAS Code. This is all the more true, considering that the threshold for filing a statement of appeal (within the meaning of Article R48 of the CAS Code) is low. In practice, a Statement of Appeal with which an arbitration proceedings becomes pending is a very brief document (MAVROMATI/REEB, *The Code for the Court of Arbitration for Sport: Commentary, Cases and Materials*, 2nd ed. 2025, Wolters Kluwer, Art. R48 no. 7).

115. Furthermore, the Panel notes from the exchange of correspondence between

the Parties that the Appellant was aware of the possibility that the appropriate forum for appeal was the CAS. Consequently, it would have been entirely feasible and also appropriate for the Appellant to immediately file a Statement of Appeal and, subsequently request a stay of proceedings once he became aware that CAS could be the appropriate forum. This precautionary measure would not have prevented the Appellant to further explore the potential jurisdiction of the civil courts. His failure to do so cannot now be invoked to justify the disregard of the clear and strict procedural deadline as set forth in Articles R32.2 and R49 of the CAS Code.

116. Finally, although not considering this factor decisive for its conclusion, the Panel notes that both the request for provisional measures and the request for conciliation were submitted to the Lausanne District Court on 24 June 2024, which is significantly later than the expiry of the 21-day deadline for appealing to the CAS. That deadline, triggered by notification of the Appealed Decision on 23 May 2024, expired on 13 June 2024. From that date onwards, the Appellant's right to appeal under Article R49 of the CAS Code lapsed and, in the Panel's view, based on the specific circumstances of the present case, the subsequent initiation of proceedings before the Lausanne District Court – and any alleged retroactive *lis pendens* arising therefrom – cannot serve to retroactively cure the inadmissibility of the appeal, *i.e.* by reinstating the time limit to file the statement of appeal under the general principle of good faith and the analogous application of Article 63.1 of the CPC.

117. To conclude, the deadline to file an appeal before the CAS is short and strict. In case of doubt regarding which forum (state court or arbitral tribunal) is competent to decide the dispute, the Panel is willing to contemplate an analogous application of Article 63.1 of the CPC. However, the Panel is of the view that in such context the temporal scope of said provision needs to be adapted. The Appellant must take corrective actions as soon as possible, where the arbitral avenue becomes a viable option. This follows from the strict nature of the deadline of appeal, the low threshold for filing a statement of appeal and the interests of all parties involved to speedily resolve sports-related disputes. To conclude otherwise would give rise to untenable results: it would allow a party who failed to comply with the binding CAS deadline to revive its claim merely by engaging in state court litigation after the time limit had passed. This would fundamentally undermine the legal certainty and finality of decisions, create opportunities for forum shopping and procedural gamesmanship, and directly conflict with the principle of preclusion (*Verwirkungsfrist*) that is well established in Swiss arbitration law (see SFT 4A_690/2016, consid. 4).

118. In light of the foregoing considerations, the Panel concludes that the appeal was submitted out of time and must therefore be declared inadmissible.

C. Whether the time limits for the Appeal are inconsequential if the Appealed Decision is null and void

119. The Appellant submits that the Appealed Decision is vitiated by fundamental procedural irregularities

and manifest breaches of applicable legal standards, which, taken together, render the decision not merely voidable, but null and void *ab initio*. Consequently, according to the Appellant, the time limit referred to in Article R49 of the Code (or its equivalent in the WA Constitution or the Integrity Code) does not apply.

120. Conversely, the Respondent maintains that the Appealed Decision was rendered in conformity with the applicable legal framework of WA, and that any procedural shortcomings do not rise to the level required to establish legal nullity. According to the Respondent, under Swiss law, the concept of nullity is reserved for rare and exceptional cases involving particularly egregious and manifest violations of mandatory legal provisions. In situations of doubt, decisions are presumed to be voidable, and not null, and any such defects are cured by the expiry of the applicable time limit. Accordingly, once the time limit to file an appeal has lapsed, the decision acquires binding force, regardless of the alleged flaws.

121. The Panel begins by noting that the question of whether a decision is null and void, or merely voidable, is a question of substance and pertains to the merits of the dispute. However, the resolution of that issue is not determinative for the procedural admissibility of an appeal under the CAS Code. This is because Article R49 of the CAS Code imposes a procedural threshold that applies irrespective of the substantive characterisation of the underlying decision. In particular, the 21-day deadline is a mandatory statutory time limit that the Parties accepted to abide by when selected the CAS as a *forum*. This position is firmly established in CAS jurisprudence, with which this Panel concurs (CAS 2016/A/4817, para. 100; CAS 2011/A/2360 & 2392).

122. In addition, the Panel refers to CAS 2011/A/2360 & 2392, where it was held (at paras. 52 *et seq.*) that Article R49 of the CAS Code is not confined to appeals against merely voidable decisions. The Panel in that case reasoned that:

"Contrary to the view held by the Appellants, the Panel finds that Article R49 of the CAS Code is not limited to appeals filed against 'annullable' decisions. First, nothing in the wording indicated such a limited scope of applicability of said provision. Second, in the Panel's opinion, the Appellants' argument that Article R49 of the CAS Code must be applied in light of Article 75 of the [CC] and the distinction made in that connection between 'null and void' decisions on the one hand and 'annullable' decisions on the other, simply cannot fit with what must have been the intention of the drafters of Article R49, since that provision is designed to apply to all parties appealing decisions to the CAS whatever the substantive law applicable to the dispute. In other words, subject to the parties being entitled to agree on a different time limit, Article R49 purports to place an admissibility threshold upon all appeals, without reference to the substantive law applicable to a dispute before CAS. […] Therefore, the time limit for the commencement of claims set out in Article R49 of the CAS Code, being part of the procedural rules chosen by the parties to these arbitration proceedings, is applicable irrespective of the fact that other time limits may exist for filing appeals in front of State courts as provided for example by Article 75 of the [CC] as interpreted by Swiss law. Consequently, the substantive characterisation of the underlying decision as "null and void" or "challengeable" and the effect of such characterisation on the time limit set out in Article 75 of the SCC are irrelevant to the

procedural admissibility of the claim under Article R49 of the CAS Code".

123. The Panel is mindful that, according to certain doctrinal and jurisprudential interpretations, Article R49 of the CAS Code may, in exceptional cases, be subject to derogation where the ground for nullity of the decision under appeal is of such gravity that it may raise concerns of incompatibility with fundamental principles of public policy. That said, even if such a possibility were to be entertained in theory, the Panel sees no basis, on the facts of this case, to conclude that the Appealed Decision rises to a level of seriousness capable of engaging such considerations.

124. In conclusion, the Appeal was belatedly filed and, therefore, cannot be entertained.

125. In view of the above conclusion, it is unnecessary for the Panel to address the other prayers for relief and ancillary requests made by the Parties. All other or further claims or requests are hereby dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed on 2 February 2025 by Mr Antani Ivanov against the decision rendered on 23 May 2024 by the World Aquatics Integrity Unit is inadmissible.

2. (…).

3. (…).

CAS 2025/A/11162
Asociación Liga Deportiva Alajuelense v. Club León & Club de Fútbol Pachuca & Fédération Internationale de Football Association (FIFA)
award of 7 November 2025 (operative part of 6 May 2025)

Football; Eligibility – Multi-club ownership; Denial of justice under Swiss law; Formal denial of justice; Definition of "decision"; Exception to the exhaustion of internal legal remedies; Interest worthy of protection

Panel
Mr Roberto Moreno Rodriguez Alcalá (Paraguay), President
Mr David Arias (Spain)
Mr Juan Pablo Arriagada Aljaro (Chile)

1. **Swiss law adopts a "broad conception" of the denial of justice institution, distinguishing formal and substantive denial of justice. Formal (or procedural) denial of justice includes (i) violation of the right to obtain a ruling on a claim within a reasonable time; (ii) to be judged by properly constituted and independent authorities at all levels, irrespective of whether the irregularity had an effect on the decision; (iii) not to have a claim rejected due to an inconsequential procedural error; (iv) to consult one's court file and present evidence; (v) to obtain a reasoned decision; and even (vi) to obtain financial legal assistance. Substantive denial of justice includes not only a violation of a citizen's right to a correct and uniform interpretation of the law, but also the right to a decision free of 'arbitrariness'.**

2. **A formal denial of justice exists if the judicial body fails to rule within a reasonable period of time on a request falling within its competence. There is not necessarily denial of justice if the sports body does not rule on a request within a time limit set by the requesting party. Denial of justice occurs if the judicial body has failed to issue and communicate a decision following a party's request, also taking into account the particular urgency existing in some cases. If there is a lacuna in the rules of the sports body regarding cases of inactivity and lack of answer to a request, a decision not to open a case or the absence of reaction in general must be considered as a decision subject to an appeal to the CAS. For a formal denial of justice to occur, in principle three elements must be met: (i) a party has presented a complaint or request in due time and manner; (ii) the adjudicating body has a duty to rule on the complaint or request; and (iii) it fails to do so or fails to do so in due time.**

3. **The term "decision" must be interpreted in "broad" terms in order not to restrain due relief, and it is the "substance" and not the "form" that is relevant; this entails that a letter can count as a decision. As has been stated, simple letters addressed from a federation to a club/athlete cannot qualify as "appealable decisions" unless they affect the legal situation of their addressee(s). In general, a communication is qualified as a**

decision if it contains a ruling intending to affect the legal state of the addressee of the decision or other parties. The decision is a normative act and the conclusion of a discussion or a deliberation, entailing the creation or suppression of a right by the authorities or competent bodies and not a simple finding by a competent body.

4. The fulfilment of the exhaustion of legal remedies may be waived if the remedies do not exist or are illusory. Specifically for sporting disputes, the obligation to exhaust internal remedies does not apply in certain circumstances where it could not be reasonably requested. This could be the case when the internal remedy seized risks to excessively retard the procedure or refuses to hear the case or cannot hear the case with the necessary impartiality. Therefore, only if the association's internal instances are willing and able to grant effective legal protection do the appellant have the right to impose the exhaustion of internal remedies prior to the appeal to the CAS.

5. In order to have standing to sue, an appellant must have an interest worthy of protection or a legitimate interest. Only an aggrieved party who has something at stake and thus a concrete interest in challenging a decision adopted by a sports body may appeal against that decision to CAS. Moreover, sufficient interest is a broad, flexible concept free from undesirable rigidity and includes whether an appellant can demonstrate a sporting and financial interest; however, a more restrictive approach is taken when the matter involves a non-addressee of a first instance decision. Such party only has a right to appeal in very restricted cases. As a general rule in such circumstances, the appellant's interest must be concrete, legitimate, and personal.

I. PARTIES

1. Asociación Liga Deportiva Alajuelense (the "Appellant" or "LDA"), is a professional football club from Costa Rica, affiliated to the Costa Rican Primera División and the *Federación Costarricense de Fútbol* ("FCF"), which in turn is affiliated to *Fédération Internationale de Football Association* (FIFA).

2. Club León (the "First Respondent" or "Club León"), is a Mexican football club affiliated to the *Federación Mexicana de Fútbol Asociación* ("FMF"), which is affiliated to *Fédération Internationale de Football Association* (FIFA).

3. Club de Fútbol Pachuca (the "Second Respondent" or "Club Pachuca"), is also a Mexican club affiliated to the FMF.

4. *Fédération Internationale de Football Association* (the "Third Respondent" or "FIFA"), is the international governing body of football, with its headquarters in Zurich, Switzerland.

5. Club León and Club Pachuca shall be jointly referred to as the "Mexican Clubs", where applicable; the Mexican Clubs and FIFA shall be jointly referred to as the "Respondents", where applicable; the Appellant and the Respondents together shall jointly be referred to as the "Parties".

II. FACTUAL BACKGROUND

6. The elements set out below constitute a summary of the main relevant facts of the case as established by the Panel, based on the written and oral submissions presented and the evidence examined during these proceedings; it is made for the sole purpose of providing a synopsis of the dispute. Thus, additional facts or issues may be set out, where relevant, in the legal considerations contained in this award (the "Award"). While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in the Award only to the submissions and evidence it considers necessary to explain its reasoning.

A. The Competition and its regulations

7. On 16 December 2022, the FIFA Council, convened in Doha, Qatar, approved a 32-team international club competition named the FIFA Club World Cup (the "Competition").

8. On 14 February 2023, the FIFA Council unanimously approved the slot allocation for the Competition ("Slot Allocation"), the breakdown of which is as follows:

   (vi) Asian Football Confederation ("AFC"): 4 slots,

   (vii) *Confédération Africaine de Football* ("CAF"): 4 slots,

   (viii) Confederation of North, Central America and Caribbean Association Football ("Concacaf"): 4 slots,

   (ix) *Confederación Sudamericana de Fútbol* ("CONMEBOL"): 6 slots,

   (x) Oceania Football Confederation ("OFC"): 1 slot,

   (xi) *Union des associations européennes de football* ("UEFA"): 12 slots, and

   (xii) The tournament's host: 1 slot.

9. On 14 March 2023, the FIFA Council unanimously approved the following *"key principles of access"* ("Access Principles"):

"With a period of consideration being the four-year period of the seasons ending in 2021 and 2024, the key principles of access are as follows:

- *For confederations with more than four slots: access for the champions of the previous four editions of the confederation's premier club competition, and additional teams to be determined by a club ranking based on the same four-year period*

- *For confederations with four slots: access for the champions of the previous four editions of the confederation's premier club competition*

- *For confederations with one slot: access for the highest ranked club between the champions of the confederation's premier club competition in the four-year period*

- *For the host country: access for the club occupying this slot will be determined at a later stage*

Other criteria also apply:

- *In the event of a club winning two or more editions of the confederation's premier club competition during the 2021-2024 period, a club ranking calculated based on sporting criteria will be used to grant access*

- *A cap of two clubs per country will be applied to the access list with an exception in case more than two clubs from the same country win the confederation's premier club competition over the four-year period*

- *Further consultation will follow with confederations and stakeholders to define the calculation mechanisms of the club ranking, which will be based on sporting criteria".*

10. On 4 June 2023, Club León won the Concacaf Champions Cup and qualified for the Competition.

11. On 1 June 2024, Club Pachuca won the Concacaf Champions Cup, qualifying for the Competition as the fourth winner of this tournament.

12. On 3 October 2024, the FIFA Council approved the FIFA Club World Cup 2025 Regulations (the "CWC Regulations").

B. The exchange of documents between FIFA and the Mexican Clubs

13. On 17 October 2024, FIFA, via its Chief Legal and Compliance Officer, sent a request for information to the Mexican Clubs. FIFA's stated purpose for the request was to conduct a preliminary review of any possible links between Grupo Pachuca, Club Pachuca and Club León in the context of Article 10 of the CWC Regulations:

"A tenor de lo dispuesto en el artículo 11 del Reglamento FCWC, el Club Pachuca y el Club León ostentan el derecho deportivo a participar en el Mundial de Clubes de la FIFA 2025™, ello sujeto al cumplimiento de los requisitos reglamentarios y, en particular, a lo determinado en el mencionado artículo 10 del Reglamento FCWC.

En este marco preliminar, la administración de la FIFA debe de proceder a examinar, con carácter inicial, la posible existencia de vínculos entre Grupo Pachuca, el Club Pachuca y el Club León en el contexto reglamentario anteriormente referido, ello sin perjuicio de las competencias que, en su caso, dispondría la Comisión Disciplinaria de la FIFA en un momento procesal posterior de este proceso".

14. FIFA requested, *inter alia*, the following: documents showing the shareholding and voting structure of both Clubs, including any such document that would show links with Grupo Pachuca or any other entity that could control or exert influence over both Clubs; documents indicating whether Grupo Pachuca or any other individual or legal entity had the right to name or substitute people involved in the administration, management or supervision of both Clubs; and documents evidencing any form of influence over the decision-making process of both Clubs by Grupo Pachuca or any other individual or legal entity. The letter granted the Clubs seven days to produce the requested documents.

15. On 23 October 2024, the Mexican Clubs replied to FIFA's request by way of separate letters. In response, Club Pachuca provided the following documents: (i) a copy of the certificate of incorporation of *Promotora del Club Pachuca Sociedad Anónima de Capital Variable* –the corporate entity behind Pachuca– dated 24 July 1995; and (ii) a copy of public deed reflecting alterations to the ownership structure of Pachuca, dated 5 January 2023; León produced (i) a copy of the certificate of incorporation

of *Fuerza Deportiva del Club León Sociedad Anónima de Capital Variable* –the corporate entity behind León– dated 23 December 2010; and (ii) a copy of public deed reflecting alterations to the ownership structure of León, dated 5 January 2023.

16. Both Club León and Club Pachuca asserted in their respective communications that Grupo Pachuca was not a legal entity, but rather a brand that identifies a set of independent companies as part of a wider corporate group. They further denied the existence of any document pertaining to FIFA's other requests relating to Grupo Pachuca or other entities influencing several aspects of both clubs' independence.

17. On 30 October 2024, FIFA informed the Mexican League ("Liga MX") about its preliminary analysis on the control and influence structures relating to Grupo Pachuca and the Clubs and requested a series of documents.

18. On the same day, FIFA acknowledged receipt of the Mexican Clubs' letters and documents annexed. In response, FIFA issued a new set of document requests, with a seven-day deadline for presenting the following: copy of the Clubs' statutes, internal regulations and other documents relating to the ownership, control, influence, and decision-making processes of the clubs; clarification on the role of the shareholders and members of the board of directors on the administration of the clubs; minutes of meeting of the board of directors; confirmation of any financial support given to the clubs by Grupo Pachuca; documentation on the clubs' registration before Liga MX for the 2024/2025 season, including the registration of the club owners and representatives; and explanations and relevant documental evidence of any specific procedures or policies adopted by Liga MX to protect the its competitions integrity in relation to the clubs.

19. On 6 November 2024, Liga MX replied to the request, presenting nine documents.

20. On 8 November 2024, the Mexican Clubs replied to FIFA's document requests within the extended deadline. They presented 11 documents each, some of which had been forwarded previously (*i.e.*, certificate of incorporation and current ownership structure, the interim Internal Regulation of Liga MX, the Liga MX's Competition Regulations for the 2024-2025 season, the minutes of the Ordinary General Assembly of Clubs dated 22 May 2023, etc.). As a newly presented document, the Mexican Clubs presented the trademark registry of Grupo Pachuca and affirmed that Grupo Pachuca had not provided any financial support to either of the clubs as it is not a corporate entity.

C. The Complaint filed by LDA and subsequent exchanges with FIFA

21. On 19 November 2024, LDA filed a complaint with FIFA (the "Complaint"), whereby it argued that the Mexican Clubs were in an alleged situation of Multi-Club Ownership ("MCO"), prohibited by Article 10 of the CWC Regulations, and therefore one of them should be expelled from the Competition and replaced by LDA.

22. *In concreto*, in the Complaint the Appellant requested FIFA the following matters:

> *"i. Admit this Complaint as provided for by the FCWC 2025 Regulations;*
>
> *ii. Urgently open an expedited investigation into the Respondents;*
>
> *iii. Without delay, open disciplinary proceedings against the Respondents and include all necessary parties, particularly, giving LDA the opportunity to intervene in such proceedings;*
>
> *iv. Expel either the First or Second Respondent or both from the FCWC 2025, on the basis of being in violation of the MCO provisions found in Article 10.1 of the Regulations, as deemed appropriate by the General Secretariat according to Article 10.4 of the Regulations;*
>
> *v. Declare that LDA shall be admitted to the FCWC 2025 and shall fill the vacancy left by one of the Respondents based on the provisions of Article 10.4 and based on the criteria found in Article 11 of the Regulations;*
>
> *vi. Issue provisional measures according to Article 51 FDC, namely, to carry out the Group Draw of the FCWC on 05 December 2024 without the inclusion of the Respondents and instead leave two vacant spots to be filled at a later date; and*
>
> *vii. Declare that FIFA or the Respondents shall bear the costs of any and all procedures related to or deriving from this Complaint as deemed most appropriate".*

23. The Complaint was accompanied by an intelligence and investigation report conducted by *Sportradar* (the "Report") which stated *inter alia* that there existed a MCO situation with Club Pachuca and Club León.

24. On 22 November 2024, FIFA answered LDA as follows (the "FIFA Reply"):

> *"In this regard, please be advised that the matter is currently undergoing due analysis. Furthermore, please be advised that even though you are entitled to file a complaint with regard to a conduct considered incompatible with the FDC and/or any other provisions of FIFA regulations, it does not follow that you become a party to the proceedings (if any).*
>
> *With the above in mind, we would also like to draw your attention to the fact that we will not be in a position to provide you with information concerning your inquiries or regarding the state of the proceedings before the FIFA Disciplinary Committee (if any).*
>
> *However, in the event that we require any further information or documents from your part, we will contact you in due course".*

25. On 27 November 2024, LDA presented an Answer to this FIFA communication (the "LDA Answer").

26. In the LDA Answer the club stated *inter alia* that this is not a disciplinary procedure, that the role of the FIFA Disciplinary Committee ("FIFA DC") is limited to assessing whether Club Pachuca or Club León fail to meet the MCO criteria, and that decision of the FIFA General Secretary ("FIFA SG") not only pertains to admitting one of the

clubs and correlatively excluding the other but also to deciding which third club will replace the excluded club and reasserted LDA's alleged legitimate interest which prevents its exclusion from the procedure. LDA also stated that even if it were deemed a disciplinary procedure, FIFA cannot hide behind its bodies to exclude LDA as it should nevertheless be involved as a party with legitimate interests in the outcome of the case. LDA also stated that its Complaint falls within the factual pattern of the "Byron Castillo" case and there does not appear to be in any reason why FIFA should not commit itself to again adopt this position, and that LDA has a clear stake in the matter being the "next-in-line" club. LDA finally asserted that the continuing exclusion of it from the proceedings and from any clarity and information is growing tantamount to a denial of justice, and that if FIFA fails to duly take action or appears to do so, LDA would be left with no option but to refer the matter directly to the Court of Arbitration for Sport.

27. The LDA Answer finalized with the following additional requests:

"viii. FIFA reconsider its position laid out in its communication dated 22 November 2024 whereby it did not explicitly admit or deny any of LDA's requests but did seemingly exclude LDA from any involvement.
ix. FIFA disclose the facts surrounding the Participation Agreement, specifically, what representations were made by Leon and Pachuca, and what verification process (inter alia, documented due diligence), if any, was undertaken by FIFA in this regard;

x. FIFA set a transparent and clear schedule for a procedure to address the matter and ensure the rights of the parties are respected.

xi. If FIFA does not consider this a disciplinary matter for the reasons laid out in this Answer, then to involve LDA in any other type(s) of procedure that is opened in this matter".

28. On 5 December 2024, the draw for the Competition group stage was held in Miami, Florida, which included the Mexican Clubs.

29. On 9 December 2024, LDA sent a communication to FIFA via email stating that FIFA's conduct had amounted to a violation of LDA's procedural and substantive rights and reasserted its position. It also included an update on the Report.

30. On 10 December 2024, FIFA responded to the Appellant and referred to it to *"the previous email of 22 November 2024, the contents of which are self-explanatory"* (the "Second FIFA Reply").

31. On 16 January 2025, the Appellant sent FIFA another communication insisting on the Complaint and stating *inter alia* that:

"LDA explicitly states that it considers it within its rights to have a communicated decision on this matter by the end of this month. If LDA is not in receipt of an Answer by the end of January (31 January 2025), it will understand that FIFA is refusing to enforce its own regulations and LDA reserves the right to pursue its legitimate interests based on the Competition Regulations and other applicable regulations and laws via any and all appropriate legal avenues".

D. The Participation Agreements and the Appeal by LDA

32. On 3 February 2025, FIFA sent the Participation Agreements to all qualified clubs to the FIFA Club World Cup 2025 –including the Mexican Clubs– granting them a deadline until 7 February 2025 to submit a signed copy of it.

33. The Participation Agreements provided, *inter alia,* that:

> *"1. The undersigned club ('Club') hereby confirms that its participation in the FIFA Club World Cup™ 2025 ('Competition'), is inter alia subject to it signing a Participation Agreement and fulfilling, in particular, the criteria under articles 4, 5 and 10 of the Regulations for the FIFA Club World Cup ™ 2025 ('Competition Regulations').*
>
> *2. The Club acknowledges and agrees that by signing this Short Form, it is directly bound by articles 4, 5 and 10 of the Competition Regulations. Whilst FIFA and the Club acknowledge that a detailed Participation Agreement will follow in due course, the Club acknowledges and agrees that this Short Form constitutes the 'Participation Agreement' for the purpose of articles 4, 5 and 10 of the Competition Regulations.*
>
> *3. The Club also acknowledges and agrees that FIFA is entitled to issue additional FIFA Regulations and/or to reissue, amend and revise existing FIFA Regulations at its sole discretion. If at any time there is an inconsistency between this Short Form and the FIFA Regulations, the FIFA Regulations shall take precedence.*
>
> […]
>
> *5. This form shall be sent back by no later than 7 February 2025, failing which it may be considered that the Club has waived its right to participate in the Competition".*

34. On that same date, the Appellant filed an appeal before the Court of Arbitration for Sport (*infra* para. 45).

35. On 6 February 2025, the Mexican Clubs submitted the signed Participation Agreements to FIFA.

E. Subsequent proceedings before FIFA regarding the Mexican Clubs: the FIFA AC Decision and the FIFA SG Decision

36. On 7 February 2025, the FIFA SG sent a letter to the Chairperson of the FIFA DC regarding his *"doubt as to whether Club Pachuca and Club León fully comply with the criteria outlined in Article 10 of the FCWC Regulations".*

37. Consequently, and pursuant to Article 10.2 of the CWC Regulations, the FIFA SG formally referred the case to the FIFA DC.

38. On 11 February 2025, the FIFA DC formally opened disciplinary proceedings against the Mexican Clubs for an alleged breach of Article 10.1 of the CWC Regulations, following the FIFA SG's referral. In the communication notifying the commencement of the disciplinary proceedings, registered under number FDD-21931, the FIFA DC granted the Mexican Clubs 10 days to present their initial observations.

39. On 24 February 2025, the Mexican Clubs submitted their initial

observations regarding the alleged breach of Article 10.1 of the CWC Regulations within the extended deadline. Both Clubs submitted separate observations.

40. O that same date, the Chairperson of the FIFA DC informed the Mexican Clubs that (a) due to the urgency of the matter and (b) in light of the possibility that the outcome of these proceedings affects the development of the Competition, and pursuant to Article 56.3 of FIFA's Disciplinary Code ("FD Code"), the case would be referred to the FIFA Appeal Committee ("FIFA AC").

41. On 25 February 2025, the Mexican Clubs were invited to present their final positions by 7 March 2025. Furthermore, a hearing was called to be held on 17 March 2025 at FIFA's offices in Miami, USA.

42. On 17 March 2025, a hearing was held in connection with proceedings FDD-21931.

43. On 20 March 2025, the FIFA AC issued the following decision regarding the MCO situation of the Mexican Clubs (the "FIFA AC Decision"):

> *"1. CF Pachuca and Club León fail to meet the criteria defined under Article 10.1 of the Regulations for the FIFA Club World Cup 2025™.*
>
> *2. The FIFA general secretariat shall decide which club may be admitted to the FIFA Club World Cup 2025™ and how the club that is not admitted shall be replaced in accordance with Article 10.4 of the Regulations for the FIFA Club World Cup 2025™".*

44. On 21 March 2025, the FIFA SG notified the following decision to the Mexican Clubs (the "FIFA SG Decision"):

> *"We would like to refer you to the decision passed by the FIFA Appeal Committee, notified on 21 March 2025, which establishes that both clubs, Club de Fútbol Pachuca and Club León, failed to meet the criteria on multi-club ownership, defined under article 10 paragraph 1 of the Regulations for the FIFA Club World Cup 2025.*
>
> *According to article 10 paragraphs 3 and 4 of the Regulations for the FIFA Club World Cup 2025, if two clubs fail to meet the criteria on multi-club ownership, only one of them may be admitted to the competition. In such cases, the FIFA general secretariat shall decide which club may be admitted to the competition, and how the club that is not admitted shall be replaced.*
>
> *On the basis of the above, and taking into consideration different criteria including sporting, Club de Fútbol Pachuca shall be the club admitted to the FIFA Club World Cup 2025. The decision on the club admitted to the competition as a replacement of Club León will be taken in due course, in accordance with the principles established in the Regulations for the FIFA Club World Cup 2025".*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT ("CAS")

45. On 3 February 2025 (*supra* para. 34), LDA filed its Statement of Appeal to the Court of Arbitration for Sport in English, pursuant to Article R48 *et seq.* of the Code of Sports-related Arbitration – 2023 Edition (the "CAS Code"), against

Club León, Club Pachuca and FIFA, with respect to an alleged denial of justice. LDA designated its Statement of Appeal as its Appeal Brief and requested the present case be subject to an expedited procedure.

46. On 4 February 2025, the CAS Court Office then invited the Respondents to inform whether they agreed with the implementation of an expedited procedure.

47. On 5 February 2025, FIFA and Club Pachuca objected to the implementation of an expedited procedure in this matter.

48. On 6 February 2025, the CAS Court Office suggested to the Parties the implementation of a bilingual procedure (English and Spanish) and invited to the Parties to comment.

49. On 7 February 2025, Club León objected to the implementation of an expedited procedure and communicated that it accepted the CAS Court Office's proposal for the implementation of a bilingual procedure (Spanish-English); on that same date, FIFA and Club Pachuca informed that they agreed to said proposal.

50. On 10 February 2025, the CAS Court Office confirmed that the present proceedings shall be conducted bilingually (Spanish-English).

51. On 14 February 2025, FIFA submitted to the CAS Court Office a request for bifurcation and the issuance of a preliminary award on admissibility and jurisdiction, pursuant to Article R55 of the CAS Code (the "Request for Bifurcation"). FIFA asked for a preliminary award declaring the appeal inadmissible or, alternatively, declining the jurisdiction of CAS; or, in any case, declaring the claim for damages inadmissible.

52. On 18 February 2025, the Appellant nominated Mr. David Arias as arbitrator.

53. On 19 February 2025, Club León and Club Pachuca filed their position regarding FIFA's Request for Bifurcation in which they stated their adherence to the petition by FIFA.

54. On the same date, the Appellant submitted its response to FIFA's Request for Bifurcation and the issuance of a preliminary award on jurisdiction and admissibility, requesting *inter alia* that FIFA's request be dismissed in its entirety and FIFA be ordered to disclose the Participation Agreements allegedly signed by Club Pachuca and Club León on 6 February 2025 as well as all Circulars regarding the Competition.

55. On 21 February 2025, Club Pachuca communicated that the Respondents, by mutual agreement, had decided to nominate Mr. Juan Pablo Arriagada Aljaro as arbitrator.

56. On 5 March 2025, the CAS Court Office, pursuant to Article R54 of the CAS Code and on behalf of the President of the CAS Appeals Arbitration Division, enclosed a "Notice of Formation of the Panel", and informed the Parties that the Panel appointed to decide the case had been constituted as follows:

<u>President</u>:

Roberto Moreno, Attorney-at-Law and

Professor in Asunción, Paraguay

Co-arbitrators:

David Arias, Attorney-at-Law and Professor in Madrid, Spain

Juan Pablo Arriagada Aljaro, Attorney-at-Law in Santiago, Chile

57. On 13 March 2025, the CAS Court Office informed the Parties that the Panel had decided to reject FIFA's Request for Bifurcation.

58. On 19 March 2025, considering the urgency of the matter, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing in Madrid (Spain) on 23 April 2025 (9h30 local time).

59. On that same date, Club Pachuca presented a communication informing that its legal representatives would not be available on the date established "unilaterally" by the Panel and requested alternative dates, invoking the protection of its right to be heard.

60. On 21 March 2025, on behalf of the Panel, the CAS Court Office ordered FIFA to submit the Participation Agreements of the Mexican Clubs, and to submit its comments on the Appellant's request to present all FIFA Circulars mentioned in the Regulations.

61. On 26 March 2025, the Panel confirmed the date of 23 April 2025 as the hearing date in accordance with Article R44(2) of the CAS Code, stating *inter alia* that:

"Se confirma el 23 de abril de 2025 como fecha de audiencia por los siguientes motivos: (i) en primer término, en el ámbito del procedimiento arbitral del TAS, la fijación de la fecha de audiencia es una potestad de la Formación Arbitral (vide: Artículo R44.2 del Código (…) (iii) in casu, la fijación de la fecha de la audiencia no solo es una decisión de la Formación Arbitral que se ajusta a la norma del Artículo R44.2 del Código TAS sino que además responde a las características particulares del presente caso (…) que imponen tomar especialmente en cuenta la inminencia urgente de los plazos, pues el Mundial de Clubes se desarrollará en junio, siendo por ello necesario tener un tiempo prudencial para realizar la audiencia, permitir las deliberaciones de la Formación Arbitral, y comunicar la decisión de la Formación Arbitral con una antelación razonable, desde que la misma --al menos potencialmente o en abstracto-- podría tener un impacto en la competencia misma (…) (vi) por último, el derecho de defensa de FC Pachuca y las demás partes del caso se encuentra plenamente garantizado desde el momento que los representantes letrados tendrán acceso absoluto e irrestricto a la audiencia por vía de videoconferencia, una posibilidad prevista expresamente en el Código del TAS (Art. 44.2. …) y es, además, una práctica usual en esta institución arbitral, pudiendo por ende el club y sus representantes letrados participar por dicho medio, garantizando así totalmente su derecho a la defensa y ser oído, sin perjuicio de designar otros letrados que comparezcan físicamente a la audiencia si así lo considera conveniente a sus intereses".

62. On the same date, FIFA submitted its comments to the Appellant's request for production of FIFA Circulars. FIFA also requested that the Panel reconsider its decision not to bifurcate the proceedings.

63. Club Pachuca, on that same date, and Club León on 27 March 2025, also expressed their support for the request made by FIFA regarding the bifurcation of the proceedings.

64. On 27 March 2025, the Appellant submitted its response, requesting that the second bifurcation request made by FIFA be dismissed with further evidentiary requests.

65. On 31 March 2025, the CAS Court Office informed that the Panel had decided to reject the new bifurcation request.

66. On 1 April 2025, the CAS Court Office invited FIFA to submit the "Participation Agreements" and all Circulars related to the qualification process for the Competition.

67. On 3 April 2025, FIFA filed a copy of the "Participation Agreements" executed by Club Pachuca and Club León.

68. On 7 April 2025, the Appellant submitted a letter to the CAS Court Office referencing the existence of a situation of *lis pendens* and *res judicata* in the present proceeding, in relation to the FIFA AC Decision of 21 March 2025. The Respondents were subsequently given the opportunity to comment on this presentation.

69. On 8 April 2025, FIFA replied stating that it is not the responsibility of the Respondents to provide an analysis of the legal consequences of the CAS appeal regarding the issues raised by the Appellant (*i.e.*, *lis pendens* and *res judicata*). On the same date, Club Pachuca and Club León also submitted their respective responses to the Appellant's presentation denying the existence of the alleged *lis pendens* or *res judicata* situation.

70. On 14 April 2025, and pursuant to Article R55 of the CAS Code, Club Pachuca, Club León and FIFA filed their respective Answers to the Appeal Brief.

71. On 15 April 2025, the CAS Court Office clarified to the Parties the content of the request for submission of the Circulars and requested FIFA to produce the two decisions requested by the Appellant by 16 April 2025.

72. On 16 April 2025, the CAS Court Office invited the Appellant to quantify *item (ix)* of its prayers in the Appeal Brief.

73. On the same date, the Appellant informed that *item (ix)* of its request for relief in the Appeal Brief can be quantified in the amount of USD 23,050,000.

74. On the same date, the CAS Court Office sent the Parties the Order of Procedure.

75. On that same date, LDA and Club Pachuca submitted the Order of Procedure duly signed.

76. Also, on the same date, FIFA submitted the Circulars requested by the Panel.

77. On 17 April 2025, Club León and FIFA submitted the Order of Procedure duly signed.

78. On 18 April 2025, the Appellant requested the Panel to allow new evidence to be submitted to the file in advance of the hearing, which consisted

of a video and transcription of a media declaration by the President of FIFA.

79. On 22 April 2025, Club León, Club Pachuca and FIFA informed that they did not oppose the admission of the evidence submitted by the Appellant.

80. On 23 April 2025, at 9:30 a.m., the hearing in the case was held in Madrid, Spain. In addition to the Panel, the hearing was attended by Antonio De Quesada, Head of Arbitration Services at CAS, and the following:

For LDA	Alberto Ruiz de Aguiar (Counsel) Botond Pintér (Counsel) Joseph Joseph Saidy (President) Juan Carlos Tristan (Counsel) León Weinstok (Counsel - declared as Party representative) Kandela Arruabarena (Counsel) Karen Alejandra Zaragoza (Counsel) Adam Pennock (Expert witness – declared via Webex)
For Club León	Gorka Villar Bolain
For Club Pachuca	Lucas Ferrer (via Webex) Luis Torres
For FIFA	Miguel Liétard Fernández-Palacios

81. At the outset of the hearing, the Parties confirmed they had no objections as to the composition of the Panel or any other procedural aspect of this arbitration.

82. During the hearing, the Parties had full opportunity to present their case, submit their argument, and answer the questions of the Panel. Furthermore, the Parties and the Panel heard and had the opportunity to question Mr Adam Pennock and Mr León Weinstok, as expert witness and party representative, respectively.

83. At the conclusion of the hearing, all Parties confirmed to the Panel had respected their right to be heard and equal treatment in the hearing and during the arbitral proceedings.

IV. SUBMISSIONS OF THE PARTIES

84. This section of the Award contains a summary of the Parties' factual and legal arguments. Whilst it does not contain an exhaustive exposition of all of the Parties' contentions, it provides a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this Award, the Panel has nonetheless accounted for and carefully considered all the legal and factual submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the Award or in the discussion of the claims below.

85. The Appellant's submission in its Statement of Appeal, also considered as

the Appeal Brief, can be summarized as follows:

- The Appellant began by affirming its clear legal standing in the case, citing CAS precedent (CAS 2015/A/4151), which supports that a club has standing if it would replace a disqualified team under the relevant rules. It asserted that FIFA wrongly excluded LDA from the 2025 Club World Cup, despite its rightful qualification under FIFA's MCO rules.

- LDA emphasized the serious financial and sporting consequences of this exclusion, including lost prize money (over USD 50 million), sponsorships, transfer opportunities, and the chance to participate in a prestigious international tournament held only every 4 years.

- LDA acknowledged that other parties might have an interest but chose not to name them as respondents, arguing that the claim is properly directed solely at FIFA. It asserted that any clubs claiming rights should file their own appeals, and that LDA fulfilled its obligations by notifying potentially interested parties and inviting FIFA to include them.

- On the principle of non-retroactivity, LDA argued that it should not apply here, as the Respondents' rights had not crystallized, there was no detrimental reliance, and the principle of integrity outweighs any retroactive effect. Furthermore, the MCO rules were published in November 2024, well ahead of the tournament.

- The core of the case centers on the breach of Article 10 of the CWC Regulations by Pachuca and León. A report by Sportradar presented overwhelming evidence that both clubs are owned and controlled by Grupo Pachuca and Jesús Martínez Patiño, showing shared ownership, management, operations, sponsors, and digital infrastructure.

- LDA stressed that this extensive overlap makes compliance with MCO rules impossible in time for the tournament, and that the owner has openly stated he intends to retain ownership in both clubs. Thus, separation is unrealistic, and exclusion of one club is necessary.

- LDA questioned why FIFA failed to act proactively, given the public nature of Grupo Pachuca's ownership structure. It also argued that the burden of proving compliance lies with the clubs, who control the relevant information.

- Regarding the consequences of the MCO breach, LDA pointed to Articles 10.2 to 10.4 of the CWC Regulations, which require the exclusion of one of the clubs. Once disqualified, Article 10.4 of the CWC Regulations directs FIFA to replace the club based on Article 11 criteria.

- Since both Mexico and the U.S. already have two clubs each in the tournament —Mexico (Monterrey and one of either León or Pachuca), and the U.S. (Seattle Sounders and Inter Miami)— no additional club from those countries may qualify, per the two-club-per-country cap in Article 11.5 of the CWC Regulations.

- LDA noted that Inter Miami, though qualified as host, still counts towards the U.S. cap because the regulations refer to a country limit on the full "access list," not just CONCACAF slots. Thus, no other U.S. or Mexican club can be added.

- Given these limits, LDA, ranked 15th in the FIFA CONCACAF rankings and the highest-ranked club outside Mexico and the U.S., should fill the vacancy. All higher-ranked clubs (positions 1–14) are from the U.S. or Mexico.

- In conclusion, LDA maintained that under the clear application of the Regulations, it must be selected to replace the excluded club. Any other outcome would violate FIFA's rules and risk damaging the integrity and reputation of the Competition.

86. For its part, Club León, in its Reply, makes the following considerations:

- Club León began by clarifying that its arguments are submitted on a subsidiary basis, maintaining its prior objection to CAS jurisdiction under Article R55 of the CAS Code. It argued that the appeal by LDA is now moot, as FIFA's Appeal Committee issued a formal decision on 20 March 2025, resolving the issue. That decision is already under appeal in CAS proceedings (2025/A/11314, 11315, 11316) involving the directly affected parties.

- Given this, it asserted that LDA's appeal lacks purpose, overlaps with ongoing cases, and risks inconsistent rulings, undermining legal certainty and procedural coherence. This redundancy, Club León argued, violates the principles of ***lis pendens*** and ***res judicata***.

- Club León further argued that LDA lacks standing. It was not a party to the FIFA disciplinary proceedings and was not affected directly by the 21 March 2025, decisions. Jurisprudence (*e.g.*, CAS 2017/A/5001, CAS 2020/A/6921) confirms that complainants in disciplinary proceedings do not have standing unless directly affected. Club León contended LDA's interest in participating in the Competition is speculative, depending on future, uncertain events: Club León's exclusion, FIFA's decision to fill the vacancy, and LDA's selection.

- Moreover, Article 10.4 of the CWC Regulations grants FIFA's Secretary General discretion to decide replacements, and no such decision has yet been made. CAS jurisprudence consistently rejects

appeals based on hypothetical interests (*e.g.*, CAS 2018/A/5785).

- As a subsidiary argument, Club León defended its right to participate in the Competition. It noted that its qualification was secured on 4 June 2023, as CONCACAF Champions League winner, based on rules approved between December 2022 and March 2023. At that time, no multi-ownership restrictions or review mechanisms were in place.

- FIFA reinforced its qualification over the next year through official acts and communications, including its inclusion in the December 2024 draw. This created a legitimate expectation and acquired right, protected by principles of good faith and legal certainty.

- Club León contended that Article 10 of the CWC Regulations was introduced only in October 2024 and applied retroactively without transitional provisions, violating fundamental principles of sports law. This retroactive application is under challenge in separate CAS proceedings.

- As an alternative defense, Club León explained it took prompt action to comply with Article 10.1 of the CWC Regulations by establishing a Trust in Texas on 1 March 2025. All shares were transferred to independent trustees, the previous board resigned, and new independent directors were appointed. Former shareholders were excluded from any influence, and the Trust was designed with full autonomy and subject to FIFA oversight.

- Club León argued the Trust ensures full compliance with Article 10.1 of the CWC Regulations: it provides operational, managerial, and strategic independence, with trustees acting free from influence by previous owners. FIFA was informed of this structure during a March 17 hearing but dismissed it without a proper evaluation —an action León claims lacked good faith and violated procedural fairness.

- Club León concluded that it adopted effective, verifiable measures to eliminate any risk of shared ownership or control. Even if the Panel were to consider the substance of the appeal, there is no current violation of Article 10.1 of the CWC Regulations. Lastly, it reiterated that the legality of the Trust and its compliance with FIFA regulations are already under review in ongoing CAS proceedings, which are the appropriate venue for resolution.

87. For its part, Club Pachuca, in its Reply, makes the following considerations:

- Club Pachuca argued that LDA's appeal suffers from multiple procedural flaws that prevent the CAS from ruling on the requested relief —primarily the declaration that Pachuca and León breached Article 10.1 of the CWC

Regulations and the subsequent exclusion of one or both clubs in favor of LDA.

- Firstly, it asserted that the appeal has become moot. FIFA's Appeal Committee already ruled on the alleged breach on 21 March 2025, and the Secretary General subsequently excluded one club. These decisions are now under appeal in CAS cases 2025/A/11314, 11315, and 11316. Thus, the matter LDA seeks to resolve has already been addressed by the competent FIFA bodies.

- The appeal, therefore, lacks procedural and substantive purpose, as it attempts to reopen a matter that has already progressed through FIFA's structured decision-making framework (Article 10, paragraphs 2–4). Club Pachuca contended that LDA seeks to collapse multiple steps into one CAS proceeding, disregarding the appropriate process and undermining the rights of the parties involved.

- Moreover, Club Pachuca stated that LDA filed its appeal prematurely, choosing not to await the natural conclusion of FIFA's procedures. As a result, its claims are inadmissible and devoid of object.

- Club Pachuca also challenged LDA's standing. It argued that LDA is neither a party to the FIFA proceedings nor directly affected by the decisions. CAS jurisprudence holds that a mere complainant does not acquire the right to appeal. Additionally, any right to occupy a vacated spot is hypothetical and contingent on multiple unresolved factors, including the outcome of ongoing CAS appeals.

- Even if a Concacaf club is excluded, LDA has not established that it is the rightful replacement. The regulations do not confer such a right, and the allocation of slots by FIFA – including the distinct host-country slot for Inter Miami – does not automatically entitle LDA to participate. Furthermore, Club Pachuca highlighted that LDA acknowledged other potentially eligible clubs, such as Philadelphia Union, yet failed to include them in the appeal, weakening its procedural argument.

- On the applicability of Article 10.1 of the CWC Regulations, Club Pachuca rejected the claim that the rule should apply retroactively. The provision was adopted only in October 2024, after clubs had already qualified under earlier rules. Applying it retroactively violates legal certainty, especially given that no transitional measures were announced and clubs had not yet been notified of such compliance requirements at the time of qualification.

- Club Pachuca also noted that LDA lacks the necessary context or evidence to argue the immediate applicability of Article 10.1, as it was not involved in the internal FIFA proceedings and

does not know the procedural history or FIFA's legal reasoning. Those matters are currently being challenged through proper legal channels by the affected parties.

- Lastly, while reiterating that CAS is not the proper forum for substantive resolution of these issues in this appeal, Pachuca briefly noted – on a strictly subsidiary basis – that its right to participate in the Competition remains valid and that Article 10.1 of the CWC Regulations should not apply to its situation.

88. Finally, in its Answer to the Appeal Brief, FIFA made the following observations:

- FIFA argues that LDA lacks standing to appeal under Swiss law and consistent CAS jurisprudence. According to Article 75 of the Swiss Civil Code, only members of an association who demonstrate a direct, personal, and legitimate interest may challenge a decision. This interest must be present when the appeal is filed and remain until the final decision. The mere submission of a complaint does not create any procedural rights, nor does it make the complainant a party to disciplinary proceedings. FIFA emphasizes that this principle has been reaffirmed by CAS and the Swiss Federal Tribunal ("**SFT**"), which have ruled that complainants or third parties with indirect or hypothetical interests lack standing to appeal (SFT 4A_620/2015; CAS 2018/A/5746).

- FIFA further notes that LDA's belief that it would replace a disqualified club is speculative and not supported by the applicable regulations. The authority to determine a replacement lies exclusively with the FIFA SG under Article 10.4 of the CWC Regulations, and there is no automatic right to admission. Even under a strict reading of the relevant provisions, multiple other clubs – particularly from Mexico and the United States – rank higher than the Appellant in the Concacaf standings and may be eligible. LDA's interpretation of the two-club-per-country limit ignores the regulatory exception that allows more than two clubs from the same country if they win the confederation's premier competition over the four-year period, which has occurred in the case of Mexico.

- In any case, the appeal is now moot. LDA's original claim was based on an alleged denial of justice due to FIFA's inaction. However, FIFA's competent bodies issued decisions on 21 March 2025: the FIFA AC found that Club Pachuca and Club León violated Article 10 of the CWC Regulations, and the FIFA SG excluded one of the clubs. These actions addressed the very issues raised by the Appellant. Therefore, the procedural foundation for alleging denial of justice no longer exists, and LDA's claims have no remaining object. The appeal, initially unfounded, has now lost all its relevance.

- FIFA underlines that the request to admit LDA to the Competition is premature and outside the scope of this procedure. The replacement of the excluded club is a matter pending before the FIFA SG, which holds full discretion to evaluate all relevant sporting and eligibility criteria. LDA's attempt to compel FIFA to admit it into the tournament disregards the process outlined in the regulations and seeks to bypass a decision-making step that has not yet occurred.

- Regarding the claim for damages, FIFA asserts that it is inadmissible. LDA never raised such a claim in the original complaint, nor was it addressed in any FIFA decision. CAS case law confirms that a claim for damages introduced only at the appeal stage is not justiciable in this context. Moreover, LDA has failed to provide any evidence of actual harm or quantify any specific losses, thereby not meeting the burden of proof under Article 42(1) of the Swiss Code of Obligations ("SCO"). As such, the damages claim cannot establish standing and must be dismissed.

- On the substance of the MCO issue, FIFA reiterates that the FIFA AC Decision confirmed that the Mexican Clubs did not meet the criteria of Article 10 of the CWC Regulations. The investigation revealed common control, shared governance structures, and centralized decision-making incompatible with the principle of operational independence. FIFA also emphasized that the creation of a trust by León does not cure the violation, as its validity is contested and insufficient to establish genuine separation.

- FIFA concludes that there has been no denial of justice, that the appeal is moot, that the Appellant lacks legal standing, and that any request to be admitted or compensated is either premature, inadmissible, or unsupported. Accordingly, the appeal must be dismissed.

V. REQUESTS FOR RELIEF

89. In its Appeal Brief, the Appellant requested that CAS rule as follows:

i) The Panel admit this Appeal.

ii) The Panel find that FIFA has committed a denial of justice against the Appellant.

iii) The Panel find that CAS has jurisdiction to hear this Appeal.

iv) The Panel find that the Appellant has standing to sue.

v) The Panel find that other parties who may join these proceedings do not have standing to sue.

vi) The Panel find that CF Pachuca and Club León are in breach of the Multi Club Ownership provisions of the FCWC Regulations.

vii) Upon such basis, the Panel compel FIFA to remove at least either CF

Pachuca or Club León (or both) from the FCWC 2025 competition.

viii) Consequently, the Panel compel FIFA to admit LDA to the FCWC 2025 competition in place of the removed team.

ix) In the alternate, order FIFA to pay LDA the sum of money (according to the prize pool), that it would have won had it been permitted to participate in the FCWC 2025 and having LDA qualified up to the first knockout stage of the competition, plus 5% interest as of the date of the end of the FCWC 2025.

x) Order that all costs of the proceedings, including the costs of the arbitration, be borne by the First Respondent.

xi) Order the First Respondent to make a contribution of EUR 30,000 towards the legal costs of the Appellant.

xii) Grant any further relief that the CAS Panel considers fair and equitable in light of the evidence and arguments presented.

90. For its part, in its Answer to the Appeal, León submitted the following *petitum*:

A. On the merits:

1º. Principal request: That the procedural objection of lack of jurisdiction be upheld on the grounds set forth in this brief, and that, consequently, the Panel render an award declaring the appeal lodged by Liga Deportiva Alajuelense inadmissible.

2º. First subsidiary request: In the unlikely event that the Panel decides to examine the merits of the case, dismissing the principal claim, Club León requests that the appeal be entirely dismissed on the following grounds:

a. Due to a supervening loss of object of the proceedings, as FIFA's decisions on the merits have already been issued and formally appealed;

b. Due to the Appellant's lack of standing, as it was neither a party to the disciplinary proceedings nor directly affected by the decisions adopted.

3º. Second subsidiary request: In the event the first subsidiary request is not granted, León requests that the Appellant's claims be rejected, as Club León has validly acquired the right to participate in the FIFA Club World Cup 2025, in accordance with the qualification system approved by FIFA and the principles of legitimate expectation, good faith, and legal certainty.

4º. Third subsidiary request: And, in the alternative, should the second subsidiary request also be dismissed, León requests that the Appellant's claims be rejected on the grounds that there has been no breach of Article 10.1 of the FIFA Club World Cup 2025 Regulations, as Club León has implemented an irrevocable, effective, and fully compliant trust arrangement that guarantees its complete operational and decision-making independence.

B. Costs and legal expenses:

Club León also requests that the Panel order the Appellant, Liga Deportiva Alajuelense:

5°. To bear all costs of the present arbitration proceedings, including CAS fees and any other related expenses;

6º. To pay Club León a contribution toward reasonable legal costs, in an amount no less than twenty-five thousand euros (€25,000), in consideration of the scope of the proceedings, the legal complexity of the case, and the diligent conduct of this party throughout the process.[1]

91. In turn, in its Answer to the Appeal, CF Pachuca submitted the following *petitum*:

a) That the present Answer to the Statement of Appeal be admitted.

b) That it be determined that the Panel lacks jurisdiction to review the appeal filed by Asociación Liga Deportiva Alajuelense.

c) That the appeal filed by Asociación Liga Deportiva Alajuelense be declared inadmissible due to the failure to exhaust internal remedies.

i. Subsidiarily to (b) and (c): That all claims submitted by Asociación Liga Deportiva Alajuelense be entirely dismissed.

d) In any event, that Asociación Liga Deportiva Alajuelense be ordered to bear the costs of the present proceedings.

e) In any event, that Asociación Liga Deportiva Alajuelense be ordered to pay a contribution of CHF 20,000 toward Club de Fútbol Pachuca's legal expenses[2].

92. Lastly, in its Answer to the Appeal, FIFA requested the following relief:

a) Declaring the Appeal inadmissible; Alternatively,

b) Declining CAS' jurisdiction to hear the Appeal; Further alternatively,

c) Rejecting the reliefs sought by the Appellant;

In all cases,

d) Declaring the Claim for Damages inadmissible; and,

e) Ordering the Appellant to bear the full costs of these arbitration proceedings.

f) Ordering the Appellant to pay a contribution to FIFA's legal costs and expenses in an amount to be determined by the Panel, which, under the circumstances, FIFA submits shall be no less than CHF 10,000.

VI. JURISDICTION

93. 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 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 it prior to the appeal, in accordance with the statutes or regulations of that body".

94. In turn, Article 50(1) of the FIFA Statutes (May 2024 edition) establishes that *"[a]ppeals against final decisions passed by FIFA and its bodies shall be lodged with CAS*

[1] Free translation by the Panel.

[2] Free translation by the Panel.

within 21 days of receipt of the decision in question".

95. In this case, however, the appeal filed on 3 February 2025 is not directed against any particular decision issued by FIFA but is based on the doctrine of "denial of justice".

A. The denial of justice alleged by the Appellant due to a lack of decision

96. Indeed: in its Appeal Brief, the Appellant submitted that in this case, despite several weeks having passed since the Complaint was filed, FIFA failed to provide a formal decision; instead, the Appellant has been sent emails by FIFA excluding it from any proceedings. This, according to the Appellant, constituted a series of 'negative' decisions and a general refusal to act:

> *"As confirmed by well-established CAS jurisprudence, the failure, or negative, of FIFA to provide a decision, is in and of itself an appealable decision.*
>
> *The present appeal is therefore brought on grounds of denial of justice. The lack of decision is the decision appealed against"*[3].

97. The Appellant asserted that this failure to provide a decision must be considered *"the appealed decision on the basis of denial of justice"*, invoking cases CAS 2005/A/944 and CAS 2017/A/5460. These cases, according to the Appellant, lead to the consideration that FIFA has failed to rule on an issue in a reasonable amount of time. The matter was formally brought to FIFA's urgent attention on 19 November 2024, almost three months before this appeal and FIFA had due time to carry out its investigations and decide whether to launch disciplinary proceedings or simply close the matter. Moreover, it sent FIFA multiple requests and a final deadline on 16 January 2025 to render a decision, to which not even an acknowledgement of receipt was returned by FIFA. Bearing in mind the duration of CAS proceedings (even on an expedited basis), the Appellant argued that it was not reasonable to further await for a decision from FIFA.

98. The Appellant also noted that normally a decision of the FIFA DC is appealable to the FIFA AC (only when there is a decision, which in this case there is not), and that given that both are internal bodies of FIFA which has, as an entire institution, failed to render any decision, the Appellant is permitted to forego this step and directly appeal to CAS, mentioning CAS jurisprudence (CAS 2017/A/5086 and again CAS 2005/A/944).

99. In a nutshell, then, for the Appellant there is denial of justice since there was no decision issued by FIFA: the decision appealed, as the Appellant puts it, is *"the lack of decision"*.

B. Applicable law to the question of denial of justice

100. As a preliminary observation, the Panel clarifies that matters of alleged denial of justice before the CAS are to be adjudicated in accordance with Swiss law.

[3] Para. 8 and 9 of the Appeal Brief.

101. Indeed: according to Article R28 of the CAS Code *"the seat of CAS and of each Arbitration Panel ('Panel') is Lausanne, Switzerland"*. In connection to this rule, Article 176(1) of the Private International Law Act of Switzerland ("PILA") states that:

> *"The provisions of this Chapter apply to arbitral tribunals that have their seat in Switzerland if, at the time that the arbitration agreement was concluded, at least one of the parties thereto did not have its domicile, its habitual residence or its seat in Switzerland"*[4].

102. Moreover, Article 186(1) of PILA states that: *"The arbitral tribunal shall decide on its own jurisdiction"*[5].

103. This entails that the *lex loci arbitri* of the seat – *i.e.,* Swiss law – is applicable to the determination of the existence of denial of justice as a basis for jurisdiction to the CAS.

104. Doctrinal authority reaffirms this conclusion: *"denial of justice is to be examined under Swiss law"*[6].

105. The following legal analysis will thus proceed taking into consideration Swiss law.

C. The position of FIFA regarding the alleged denial of justice

106. The Respondents have all alleged that the CAS lacks jurisdiction to hear this appeal since no denial of justice exists. However, the reasons given by FIFA and the Mexican Clubs differ.

107. When first presenting its objection in its Request for Bifurcation of these proceedings, FIFA presented three different sets of preliminary counter-arguments. Firstly, the appeal was inadmissible because the Appellant had not exhausted all internal legal remedies; secondly, that the Appellant's claim for damages is inadmissible; and thirdly, that the CAS does not have jurisdiction in the absence of a denial of justice.

108. According to FIFA, there is no denial of justice since at the moment the Appellant filed its Complaint (5 November 2024), the Mexican Clubs had not yet signed the Participation Agreements, and FIFA only had jurisdiction in connection to the Competition once those documents were signed. This, in accordance with Article 4 of the CWC Regulations, which establishes that by *"submitting the Participation Agreement, each participating club automatically undertakes to comply at all times […] these Regulations"*. FIFA states that only by signing these documents can the clubs be considered "participating clubs", and participating clubs in turn are only subject to the jurisdiction of FIFA Judicial Bodies in connection with the Competition once they sign these documents. In short, for FIFA, without the Participation Agreements FIFA could not open any proceedings and less so take action against these clubs. Moreover, FIFA asserts that the Appellant accepts this fact, recalling the Appellant's statement in para. 105 of its Appeal Brief (*"clubs must comply as from the moment of signing the Participation Agreements"*).

[4] Free translation by the Panel.
[5] Free translation by the Panel.
[6] MAVROMATI/REEB, *The Code of the Court of Arbitration for Sport, Commentary, Cases and Materials*, Kluwer 2015, p. 387.

109. FIFA further added that in accordance with Article 10.2 of the CWC Regulations, the submission of a case by the FIFA SG to the FIFA DC is a "discretionary decision". Thus, the submission of a complaint does not automatically lead to the opening of a disciplinary proceeding (nor is this required by the applicable rules). The mere filing of a complaint does not entail any "right" to any "justice" and there is therefore no denial of justice.

110. In its Answer to the Appeal Brief, FIFA further elaborated. According to FIFA, its own investigation into a potential breach of Article 10 CWC Regulations by the Mexican Clubs started on 17 October 2024 ***"over a month before the Complaint was filed by the Appellant on 19 November 2024 (!)"***[7], and it is wrong to accuse FIFA of not having investigated the issues connected to its Complaint, as FIFA was obviously making its own enquiries long before. Moreover, as far as the Appellant argues that an investigation into the alleged MCO of the Mexican Clubs could be carried out in a matter of days, such an assertion is overly simplistic and extremely biased and additionally, unrealistic. The fact that FIFA initiated an investigation long before the Complaint, which continued for months due to the information that needed to be collected from the Mexican Clubs and relevant parties, precisely shows that a proper investigation of such a complex issue cannot be carried out in a matter of days as suggested by the Appellant. In any event, FIFA conducted this formal process in only 49 days following the signing of the Participation Agreements by the Mexican Clubs.

111. Finally, there was no justice to be denied in a case in which (i) the Mexican Clubs were not bound by the CWC Regulations because they had not submitted the Participation Agreements, and (ii) there was no breach of Article 10.1 to examine at the time the Appeal was filed (or any time before the submission of the Participation Agreements): *"the Appellant's actions have been nothing more than premature"*.

D. The position of the Mexican Clubs regarding the alleged denial of justice

112. At the Request for Bifurcation stage, Club León also objected to the denial of justice, but for its own reasons. For Club León, FIFA did reply to the Appellant in its 22 November 2024 communication in which it acknowledged receipt of the Complaint and confirmed that the matter was undergoing investigation, and that in case additional information was needed it would contact the Appellant. Thus, *"no arbitrary denial can be said to exist, but a process which was being conducted and not yet finished"*. In any case, FIFA is not obliged to accept the Appellant as party to the proceeding, and the time before the Competition of more than four months is "sufficient" for FIFA to finish its investigations.

113. In its Answer to the Appeal Brief, Club León reiterated these ideas and added that the concept of denial of justice is *"exceptional and restrictive"*, and that in the case at hand FIFA did not incur in a persistent omission: it replied to the Complaint on 22 November 2024 and it

[7] Emphasis in the original.

repeated this reply on 10 December 2024. Thus, no administrative silence or institutional inactivity exists. Moreover, on 11 February 2025 FIFA notified the initiation of formal disciplinary proceedings against León and Pachuca. In contrast, in case CAS 2005/A/944 the CAS found denial of justice because FIFA failed to reply for nine months; here FIFA issued the relevant formal decisions on 21 March 2025, precisely on the subject matter of the Appellant's complaint, so no denial of justice can exist. The fact that the Appellant was not recognized as a party to that proceeding does not amount to a denial of justice: according to CAS case law (*e.g.*, CAS 2020/A/6921), a complainant does not acquire automatically the status of procedural party, save an express provision in the applicable regulations or a direct effect on their substantive rights: neither exists in this case. The appeal is thus for Club León both groundless and premature.

114. While asserting the absence of denial of justice, Club Pachuca also differed with FIFA's views on the matter, in lines broadly similar to León. For Pachuca, reference to the Participation Agreements is unnecessary to establish the absence of denial of justice, given that the Appellant has "hurried" its case, since conditions for appeal have not yet been met. Citing CAS 2017/A/5460 and recalling Article 10.2 and 10.3 of the CWC Regulations, Pachuca states that at the time of the filing of the Complaint *"FIFA was still undergoing investigation in this case"* and only once these investigations are over can the Appellant be able to appeal a decision which affects it. FIFA –up to this moment— acted in accordance with its autonomy and the applicable regulations, and the Appellant has not proven that FIFA acted beyond these limits. Moreover, as FIFA informed the Appellant, the matter was undergoing investigation, so no denial of justice can be said to exist. Finally, Club Pachuca distinguishes case CAS 2022/A/9175-9176 from this one, mentioning that in this case there was a one-and-a-half-month lapse before the competition and in this case we are before a longer term (*i.e.*, four and a half months).

115. In its Reply to the Appeal Brief, Club Pachuca further elaborated, stating that in this case, FIFA expressly informed LDA –in its letter of 22 November 2024– that the matter was being subject to "due analysis" and, precisely, that statement was not only subsequently reiterated by FIFA, but was also confirmed by subsequent events (*i.e.*, the timely issuance of the requested decisions). In particular, the decisions on which the Appellant bases its alleged denial of justice were indeed issued subsequently by FIFA. The existence of these decisions not only demonstrates that the procedure was indeed ongoing – as FIFA indicated– but also confirms that there was no basis to subsequently allege a denial of justice at the time LDA filed its appeal with the CAS. Club Pachuca insisted that a denial of justice cannot arise simply because the complaining party subjectively believes that the proceedings should have been resolved within a certain timeframe, or worse, within the timeframe it deems appropriate, and randomly and unjustifiably imposed on FIFA. Therefore, the artificial, hasty and unfounded appeal, which has been filed outside of –and against— the applicable regulatory framework, cannot be admitted.

116. Finally, both León and Pachuca also insisted on the lack of admissibility of the appeal, as adduced by FIFA, due to the non-exhaustion of previous remedies.

E. The analytical framework for analyzing the *quaestio* of denial of justice

117. For the sake of due analytical order, the Panel must first –and separately— address the matter of the alleged lack of jurisdiction of the CAS, which was objected by all three Respondents (albeit, as has been noted, grounded on different reasons).

118. As a matter of principle, questions of admissibility – *i.e.*, issues of standing to sue or to be sued – remain issues on the merits, as is well established by the jurisprudence of the SFT and the CAS[8]. The defense of inadmissibility of the claims for damages, introduced by FIFA, must then be a *posterius* to the jurisdictional question. With respect to the inadmissibility based on the non-exhaustion of legal remedies, which all three Respondents have defended, it is indeed a jurisdiction matter, but conceptually and logically subsequent to the determination of whether there has been a denial of justice.

119. Therefore, in analyzing the issue of denial of justice, the Panel will proceed with the following analytical framework to decide whether it has jurisdiction to hear this appeal:

(i) *First preliminary issue: Does the CAS lack jurisdiction because there has been no denial of justice by FIFA against the Appellant?*

(ii) *Second preliminary issue: In case a denial of justice can be established, has the Appellant exhausted all previous legal remedies?*

120. Depending on the answers given to these matters, the Panel will then proceed with the substantive aspects of this appeal. Thenceforth, and *ad eventum* to the jurisdiction issue, the Panel must deal with the following merits issues: (i) the admissibility of the damages claim; (ii) the standing to sue of the Appellant in this case; and (iii) whether the Appellant has the right to the substantive relief requested in its Appeal Brief (*i.e.*, prayers for relief *items (vi)* to *(viii)* of its Appeal Brief).

F. First preliminary issue: Does the CAS lack jurisdiction because there has been no denial of justice by FIFA against the Appellant?

○ *The basic legal framework for determining denial of justice in Swiss law and CAS jurisprudence*

121. With regards to denial of justice, it has been remarked that Swiss law adopts a *"broad conception"* of this institution, distinguishing formal and substantive denial of justice:

"Formal (or procedural) denial of justice was interpreted to include a violation of the right to obtain a ruling on a claim within a reasonable time; to be judged by properly constituted and

[8] *Ad exemplum:* SFT 137 I 296, para. 1.3.1; CAS 2018/A/5746; para. 173, SFT 4A_426/2017, para. 3.1; SFT 4A_620/2015 para. 1.1; TAS 2021/A/7650, para. 80 (and see further below, para. 185 *et seq.*).

independent authorities at all levels, irrespective of whether the irregularity had an effect on the decision; not to have a claim rejected due to an inconsequential procedural error; to consult one's court file and present evidence; to obtained a reasoned decision; and even to obtain financial legal assistance. Substantive denial of justice included only a violation of a citizen's right to a correct and uniform interpretation of the law, but also the emblematic right to a decision free of 'arbitrariness' – an expression familiar even to occasional students of Swiss jurisprudence"[9].

122. The case presented by the Appellant, however, is related to the first type, *i.e.,* formal denial of justice.

123. Doctrinal authority commenting on the jurisprudence of the CAS on this matter, and also referencing other authors, has summarized that:

> *"A formal denial of justice exists if the judicial body fails to rule within a reasonable period of time on a request falling within its competence […].*
>
> *There is not necessarily denial of justice if the sports body does not rule on a request within a time limit set by the requesting party. Denial of justice occurs if the judicial body has failed to issue and communicate a decision following a party's request, also taking into account the particular urgency existing in some cases. If there is a lacuna in the rules of the sports body regarding cases of inactivity and lack of answer to a request, a decision not to open a case or the absence of reaction in general must be considered as a decision subject to an appeal to the CAS"*[10].

124. For a formal denial of justice to occur, as the SFT jurisprudence has held, in principle three elements must be met: (i) a party has presented a complaint or request in due time and manner; (ii) the adjudicating body has a duty to rule on the complaint or request; and (iii) it fails to do so or fails to do so in due time. Thus:

> *"According to the practice of the Federal Supreme Court, a violation of the right to be heard in the sense of a formal denial of justice occurs when an authority fails to act on a matter submitted to it in due time and in due form, even though it is obligated to decide on it"* (BGE 134 I 229, at 2.3)[11].
>
> *"According to the practice of the Federal Supreme Court, a formal denial of justice occurs when an authority fails to act on a matter submitted to it in due time and in due form, even though it should decide on it"* (BGE 135 I 6 at 2.1)[12].

125. With regards to relevant CAS jurisprudence, in CAS 2005/A/899 it was held that:

> *"If a body refuses without reasons to issue a decision or delays the issuance of a decision beyond a reasonable period of time, there can be a denial of justice, opening the way for an appeal against the absence of a decision"*[13].

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[9] PAULSSON, *Denial of Justice in International Law,* Cambridge Univ. Press, 2011, pp. 11-12.

[10] MAVROMATI/REEB, *The Code of the Court of Arbitration for Sport, Commentary, Cases and Materials*, Kluwer Law, 2015, pp. 386-387 (and specially notes 43 and 44).

[11] Free translation by the Panel.

[12] Free translation by the Panel. See also: BGE 117 Ia 116 at para. 3.

[13] Quoted approvingly in CAS 2005/A/944.

126. It was further clarified in CAS 2005/A/944 that *"there is not necessarily a denial of justice when a body does not rule on a request within a time-limit set by the requesting party"*[14], a matter which depends on the particular circumstances of the case at hand. In that case, the Panel applied the doctrine noting the *"particular urgency"* since the tournament would begin only within a couple of weeks[15].

127. In other words, failure to issue a decision, even on a request by a complaining party, does not *per se* amount to denial of justice: this is a matter that will depend on the relevant rules and the circumstances particular to a case.

128. The Sole Arbitrator in another relevant precedent, CAS 2017/A/5460, confirmed the case-by-case approach to the issue of denial of justice, paying consideration to the circumstances of each appeal. This refers, particularly, to the consideration of whether there is a "decision" in the relevant sense of the word:

> *"The Sole Arbitrator notes the Player's arguments regarding when 'refusals to decide' or 'negative decisions' can be considered as appealable decisions. Whilst the Sole Arbitrator acknowledges that parties could have the right to argue that there had been a denial of justice in certain circumstances, this needs to be balanced with an adjudicatory body's right to investigate a claim and issue its decision. In the case at hand, the Sole Arbitrator finds that the wording of FIFA's letter of 7 September 2017 lacks a final ruling that would affect the Player's interests. It does refer to no procedure being opened, but it does also say that the investigation is ongoing. This contrasts with FIFA's letter of 1 February 2018 (which is not under appeal) whereby a final decision to close the procedure is contained. The Sole Arbitrator does not class the FIFA letter of 7 September 2017 as a 'decision'"*[16].

129. The need to undertake an approach sensitive to the specific facts of each case can also be found in the relevant legal doctrine[17].

130. The Panel finds that a case-by-case approach, which attends to specific circumstances of each appeal, is the reasonable standard for assessing cases of denial of justice before the CAS.

- ***Analysis by the Panel: the* prima facie *insufficiency of the FIFA Reply and the Second FIFA Reply***

131. Thus, the starting point of the analysis must be the specific terms of the Complaint introduced by the Appellant before FIFA, since this document establishes the fundamental framework from which it can be considered –given the facts of this case— whether a denial of justice has existed.

132. To recall, in its Complaint, the Appellant requested from FIFA the following:

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[14] CAS 2005/A/944, at para. 9.

[15] *Ibid.*

[16] CAS 2017/A/5460, at para. 86.

[17] Thus: *"under certain circumstances, 'negative decisions' or 'refusal to decide' can be considered as appealable decisions […]"*: BERNASCONI M., *"When is a 'decision' an appealable decision?"* in: RIGOZZI/BERNASCONI (eds.), *The Proceedings before the Court of Arbitration for Sport*, Bern 2007, p. 273 (emphasis added).

"i. Admit this Complaint as provided for by the FCWC 2025 Regulations;

ii. Urgently open an expedited investigation into the Respondents;

iii. Without delay, open disciplinary proceedings against the Respondents and include all necessary parties, particularly, giving LDA the opportunity to intervene in such proceedings;

iv. Expel either the First or Second Respondent or both from the FCWC 2025, on the basis of being in violation of the MCO provisions found in Article 10.1 of the Regulations, as deemed appropriate by the General Secretariat according to Article 10.4 of the Regulations;

v. Declare that LDA shall be admitted to the FCWC 2025 and shall fill the vacancy left by one of the Respondents based on the provisions of Article 10.4 and based on the criteria found in Article 11 of the Regulations;

vi. Issue provisional measures according to Article 51 FDC, namely, to carry out the Group Draw of the FCWC on 05 December 2024 without the inclusion of the Respondents and instead leave two vacant spots to be filled at a later date […]".

133. The FIFA Reply stated that:

"In this regard, please be advised that the matter is currently undergoing due analysis. Furthermore, please be advised that even though you are entitled to file a complaint with regard to a conduct considered incompatible with the FDC and/or any other provisions of FIFA regulations, it does not follow that you become a party to the proceedings (if any).

With the above in mind, we would also like to draw your attention to the fact that we will not be in a position to provide you with information concerning your inquiries or regarding the state of the proceedings before the FIFA Disciplinary Committee (if any).

However, in the event that we require any further information or documents from your part, we will contact you in due course".

134. Both Club León and Club Pachuca have contended that there is no denial of justice because FIFA did reply to the Appellant and a "decision" in the relevant legal sense exists.

135. The Panel, however, cannot agree with this position. While it is true that FIFA did "reply" to the Appellant, the FIFA Reply is however both evidently insufficient and inadequate as to count as a "decision" *vis-à-vis* the specific requests made in the Complaint.

136. As is well known in CAS practice and jurisprudence, the term "decision" must be interpreted in "broad" terms in order not to restrain due relief[18], and it is the "substance" and not the "form" that is relevant[19]; this entails that a letter can

[18] See, *e.g.,* CAS 2005/A/899, paras. 61 & 63; CAS 2004/A/748 paras. 90 & 91; or CAS 2008/A/1583 & 1584 para. 5.2.1.

[19] Thus, *"the form of a communication has no relevance to determine whether there exists a decision or not. In particular, the fact that the communication is made in the form of a letter does not rule out the possibility that it constitutes a decision subject to*

count as a decision. As has been stated, *"simple letters addressed from a federation to a club/athlete cannot qualify as 'appealable decisions' unless they affect the legal situation of their addressee(s)"*:

"In general, a communication is qualified as a decision if it contains a ruling intending to affect the legal state of the addressee of the decision or other parties. The decision is normative act and the conclusion of a discussion or a deliberation, entailing the creation or suppression of a right by the authorities or competent bodies and not a simple finding by a competent body"[20].

137. Applying these ideas to the FIFA Reply, the response appears to be both insufficient and ambiguous, in relation to the specific terms and requests of the Complaint filed by the Appellant, and thus, for the Panel, it does not amount to a "decision" *stricto sensu* given the circumstances of this case.

138. In this sense, the Complaint had several requests, only one of which was the opening of an investigation. As mentioned above, *item (ii)* referred to an "investigation" while *item (iii)* referred to the opening of the "disciplinary proceedings" and the admission of the Appellant as party to the proceedings. However, *item (iv)* went well beyond the investigation and the disciplinary proceedings, as it requested the exclusion of one of the Mexican Clubs for a MCO non-compliance of Article 10 of the CWC Regulations, while *item (v)* petitioned the inclusion of the Appellant into the Competition. Moreover, *item (vi)* requested provisional measures regarding the Competition draw.

139. Hence, there are in fact five different substantial requests presented by the Appellant.

140. The FIFA Reply, however, simply did not address these five items but, at most, *item (ii)* and, perhaps, *item (iii)*.

141. With regards to *item (ii)*, referring to the investigation, the FIFA Reply laconically states that the matter is *"currently undergoing due analysis"* without further clarification. Given the important stakes in play, this does not seem *prima facie* as a sufficient and complete answer. Moreover, the parenthetical addition of the phrase "if any", once again given the matter at hand, is at best ambiguous, implying that no proceedings were necessary, a fact that was of course belied by ulterior events. In relation to *item (iii)*, there is something which may amount to a reply, but is in fact elliptical: it only states that eventually, if a disciplinary proceeding was opened, *"it does not follow"* that the Appellant would be party to the proceedings. Considering the legal nature of the case at hand, this bald assertion is in itself questionable (*infra* paras. 203 *et seq*.). In any case, the reality is that no direct response – which should have been in a binary manner, such as (for example), "we will open", "we will not open" – was given.

142. With respect to the other three specific requests (*items iv-vi*), the FIFA Reply gave

appeal" (CAS 2005/A/899, para. 63). See also CAS 2007/A/1251 para. 30; CAS 2004/A/748 para. 90; CAS 2008/A/1633 para. 31.

[20] MAVROMATI/REEB, *The Code of the Court of Arbitration for Sport, Commentary, Cases and Materials*, Kluwer 2015, p. 384, citing abundant jurisprudence from the CAS (at footnotes 22-23).

no response, nor even a mention, in its answer to the Appellant.

143. Moreover, when the Appellant introduced a further presentation in the LDA Answer, which in fact included new requests (*supra para.* 27), the FIFA Second Reply limited itself to referring to the first one. That is to say: regarding the previous requests, the same situation remained; and with respect to the further new requests introduced by the Appellant, there is no response whatsoever from FIFA.

144. The situation up to this point may then be summarized as follows: the Appellant introduced five substantial requests to FIFA, and the FIFA Reply – at best – answered two of the requests, remaining completely silent on the other three requests. However, even the two responses given may be considered as insufficient, in the first case, and ambiguous, in the second case. The answer does not state what is the nature of the "ongoing analysis" and whether the case would indeed be subject to disciplinary proceedings, but only what would be the hypothetical situation of the Appellant if the proceedings were initiated (which, additionally, is a *prima facie* questionable proposition). These would not appear to be actual and full responses. Finally, regarding other requests of the Complaint, and the new requests introduced in the LDA Answer afterwards, there is no reply by FIFA, which limited itself to the answers given originally in the FIFA Reply.

145. Arguably, then, the Appellant had good reasons to find that its requests were not being answered, up to that moment.

146. However, taken by themselves, the FIFA Reply and the Second FIFA Reply are not tantamount to a situation of denial of justice for the Panel; it is only when these replies – or better: lack thereof – are coupled with FIFA's ulterior acts and positions that they become irreversibly problematic as to amount to a denial of justice.

- ***Further analysis by the Panel of the subsequent acts and positions staked out by FIFA with regards to the Appellant***

147. FIFA's ulterior acts and positions *vis-à-vis* the Appellant can be divided into three different moments.

148. In the first moment, with the FIFA Reply – in November 2024 –, the position is that there was an "ongoing analysis" and that if a disciplinary proceeding is opened, *"it does not follow that you become a party"*. In the second moment, when it presented its Request for Bifurcation – in February 2025 – the position was, succinctly, that the Mexican Clubs had not yet signed the Participation Agreements and could not yet be subject to disciplinary proceedings, and that according to Article 10.2 of the CWC Regulations, in any case, the decision to open the proceedings is a "discretionary decision". In the third moment, in its Reply to the Appeal Brief – in April 2025 – FIFA referred to the arguments exposed in the Request for Bifurcation but added that its investigation into a potential breach of Article 10 CWC Regulations by the Mexican Clubs actually started on 17 October 2024 ***"over a month before the Complaint was filed by the Appellant on 19 November 2024 (!)"***. And more:

FIFA argued that the matter requested by the Appellant is "moot" and the FIFA AC Decision has *"rendered the appeal without object"*. As the Reply to the Appeal Brief by FIFA states:

> *"156. Simply put: because the underlying issues at stake (i.e. those that would have been the object of the proceedings in which the Appellant claims justice has been denied) have been resolved by the competent bodies, CAS is no longer in a position to grant the reliefs sought in that context by the Appellant.*
>
> *157. The only reality is that, once the alleged denial of justice has ceased to exist – in casu, through the rendering of the MCO Decision – this appeal, which was based exclusively on the purported denial of justice, becomes moot".*

149. The Panel submits that these subtle yet real changes of positions *vis-à-vis* the Appellant do not hold subject to scrutiny under a standard of appropriate fairness.

150. The matter is, at bottom, straightforward: if the position was always the same –*i.e.*, that the Complaint could not be answered due to the fact that the Mexican Clubs had not yet signed the Participation Agreements and were thus not subject to Article 10 of the CWC Regulations— then: why did it not simply state this in the FIFA Reply? If the matter was so clear, there seems to be no reason why this answer was not given in the first place. The CWC Regulations had already been published by the time the Complaint was introduced; the same applies to Circular No. 1 of the Competition, which also mentioned Article 10; moreover, the mechanism of the Participation Agreement was also foreseen by the date of the Complaint; and the Mexican Clubs had not yet signed the Participation Agreements at that moment; all of which FIFA had knowledge of at the time. Furthermore, FIFA was also fully aware at that time that the decision to include the Appellant was temporarily posterior – again, according to its own interpretation of the CWC Regulations— and should have clarified this fact when the Complaint was introduced, not leaving doubt as to the Complaint's claims.

151. Thus, all the elements for giving a complete and thorough answer to the Complaint were fully available to FIFA when the FIFA Reply was issued. Such an answer would have not only constituted a full and acceptable reply to the Complaint's requests, but could have – potentially at least – saved all the affected parties from this dispute.

152. At this juncture, a crucial datum must be mentioned, which the subsequent events should not cloud: the Appellant had no official information regarding the signing of the Participation Agreements by the Mexican Clubs at the time of filing its Complaint. In fact, the Appellant did not have this information when filing this appeal either or even after these arbitral proceedings were underway. Moreover, FIFA was still reluctant to disclose this information once requested: it was only when ordered by the Panel that the agreements and their execution dates were finally produced and became known to the Appellant. The only confirmed information that the Appellant had at the time of the Complaint was that the Mexican Clubs were being profusely presented in official social media and even invited to

the Competition draw, in which they freely participated.

153. For an objective observer without all the relevant information, it is not wholly unreasonable or far-fetched to suppose that the Mexican Clubs were indeed being included by FIFA in the Competition. In any event, FIFA's subsequent position – first presented when requesting the bifurcation of these proceedings, months later – that the Appellant had no standing to sue because the Mexican Clubs had not yet signed the Participation Agreements is based upon a fact that was not known by – or that was not in the event timely disclosed to – the Appellant, and thus cannot be reasonably held against LDA (see further *infra* para. 213). Perhaps, had this fact been informed, the Appellant would have dropped its Complaint or at least would have waited for the relevant moment for further action: these are counter-factuals that the Panel cannot confirm. But what can be confirmed is that the Appellant could have been furnished with that information in due time with a reply by FIFA stating that the Participation Agreements had not yet been signed and that the CWC Regulations were not yet applicable, a disclosure which it appears would cause no detriment or prejudice to the Mexican Clubs, FIFA, or the whole process.

154. The same can be affirmed with regards to the – at bottom – fundamental petition of the Appellant, which was to be included in the Competition. In its Reply to the Appeal Brief, FIFA includes a section which in detail argues that no "automatic right" to substitution existed for the Appellant. There appears to be no reasonable explanation as to why this was not communicated, in the first moment, to the Appellant. The situation was not different when the Complaint was introduced.

155. For the Panel the conduct of the Appellant, albeit ultimately found to be in haste and wrongheaded in many of its aspects, was, as a whole, in good faith given what was at stake: participation in a tournament of the importance of the Competition. For any club, such an opportunity would indeed be historic. Moreover, the MCO situation of the Mexican Clubs had *fumus bonis iuris* (and, as it turned out, was in fact correct). The conduct of the Appellant, in the context of the facts of the case, cannot be considered as unreasonable: the Complaint is not in the eyes of the Panel frivolous. In turn, the FIFA Reply – coupled with FIFA's own ulterior acts – can reasonably be considered as insufficient, particularly considering what was at stake, its position in the football world and the context of the situation.

156. In this setting, the fact that FIFA has decided to subsequently present this appeal as *ex post facto* "without object" also appears to be problematic. If the appeal turned out to be *ex post facto* without object because of the decisions that were taken, then the Complaint cannot be discarded as unreasonable or baseless in the first place. To the contrary, the fact that the MCO situation of the Mexican Clubs was subsequently confirmed, gives the Complaint, and the need to give an adequate answer to it, considerable weight. The further point cannot go unmentioned: if the subsequent FIFA AC Decision has rendered *this particular appeal moot or without object*, as FIFA has in fact alleged, then it follows that at least it is arguable

that the Complaint had *the same object* as the subsequent disciplinary proceedings undertaken by FIFA against the Mexican Clubs. But this reinforces, rather than debilitates, the *prima facie* reasonable factual basis of the Complaint, and the need to provide it with an adequate and sufficient answer. None of which happened.

157. To this a final critical matter must be added: in the FIFA Reply, FIFA invoked the FD Code to state that *"it does not follow that you [the Appellant] become a party to the proceedings (if any)"* and that it would not be *"in a position to provide you [the Appellant] with information concerning your enquiries"*.

158. However, as will be further expounded below (*infra* para. 203 *et seq.*), this case in fact appears to be fundamentally about eligibility, and not about *stricto sensu* disciplinary matters. "Eligibility" in sports law is not to be equated automatically or without further qualification as "disciplinary". Thus, the invocation of the limitations set forth in the FD Code for a complainant's participation in the process, which in normal disciplinary cases seems reasonable, appears *prima facie* problematic in an eligibility case. Furthermore, rather than adopting an open stance towards the protection of the relevant interest – *in casu*, *"the integrity of the Competition"* as Article 10.1 of the CWC puts it – the stance taken appears the contrary and moreover tending to deny access to justice.

159. In any event, questions may be raised about whether the limitations regarding participation of third parties, usually accepted as reasonable for strict "disciplinary proceedings", apply with the same strictness to an "eligibility" case, particularly, considering the potential interest of replacement if one club is finally excluded. As will be further established in the *Merits* section (*infra* paras. 198 *et seq.*), it is in this ambiguity of the CWC Regulations between "eligibility" and "disciplinary" that in fact the sole firm case for the Appellant's standing can be found. Here, it suffices to note that a position implying the application of a strict disciplinary standard to an eligibility issue is at least controvertible, but in any case, equivocal and what is more important: it cannot be considered a full and sufficient response to the Complaint's arguments and petitions.

- ***The conclusion of the Panel for the alleged lack of decision* vis-à-vis *the concrete facts of this case***

160. Based on the foregoing considerations, the Panel deems that, given the particular and concrete circumstances of this case, there has been a lack of decision in part of FIFA *vis-à-vis* the Complaint – lack of decision which, given the high stakes at hand, and the *prima facie* strong factual basis of the Complaint (which, at least in relation to the MCO, turned out to be true), does not seem justifiable.

161. In reaching this conclusion, the Panel emphasizes that it fully agrees with the already cited holding of case CAS 2017/A/5460, that the right to argue for a denial of justice *"needs to be balanced with an adjudicatory body's right to investigate a claim and issue its decision"*; this is indeed a fundamental principle in this area of the law that must be in general adhered to. However, it is also clear that in this particular case FIFA could have wholly protected its right to investigate the issue whilst at the same time replying to the

Appellant's Complaint in a sufficient and clear manner what it already was fully aware at that time. *Inter alia*: disclosure of the fact that the Participation Agreements had not been yet signed by the Mexican Clubs at the moment of the Complaint (and even afterwards); that the CWC Regulations required the signature of the Participation Agreements for the opening of the disciplinary proceedings; that the procedure includes various and separate phases, with different bodies involved, which cannot be conflated into one single procedure; and that in any case the substance of the Complaint, the potential substitution by LDA, was a matter to be decided in a later stage; even, that there is no "automatic right" to substitution in the CWC Regulations – all positions which were in fact defended at subsequent moments. Finally, the references to the FD Code and its limitations on third-party participation are equivocal given the ambiguity of the CWC Regulations in this point and do not seem *prima facie* apposite.

162. In the Panel's view, the withholding of (such an) answer is not justifiable and amounts, *in casu*, to a lack of decision, giving it jurisdiction to hear this case, without prejudice to the ulterior consideration of the substantive merit of the Complaint's petitions.

163. The Panel thus finds that it has jurisdiction to adjudicate this appeal and the objections by the Respondents in this regard are dismissed in their entirety.

G. <u>Second preliminary issue</u>: In case a denial of justice can be established, has the Appellant exhausted all previous legal remedies?

164. The Respondents have further objected to the lack of jurisdiction of the appeal due to the non-exhaustion of internal remedies by the Appellant.

165. The matter of non-exhaustion of legal remedies in the previous instance is a matter that affects the issue of jurisdiction of the CAS, as the SFT has in fact held[21].

166. Under the architecture of FIFA's judicial bodies, there is indeed a double instance: the FIFA DC and the FIFA AC as an appellate instance. In this case, it is not disputed that the Appellant did not apply to the FIFA AC. This would entail that there is a non-exhaustion of legal remedies.

167. Notwithstanding this, and summarizing the position held in CAS precedents, it has been stated that:

"[T]he fulfilment of the exhaustion of legal remedies may be waived if the remedies do not exist or are illusory. Specifically for sporting disputes, the obligation to exhaust internal remedies does not apply in certain circumstances where it could not be reasonably requested. This could be the case when the internal remedy seized risks to excessively retard the procedure or refuses to hear the case or cannot hear the case with the necessary impartiality. Therefore, only if the association's internal instances are willing and able to grant effective legal protection do the appellant have the right to impose the

[21] See *e.g.* ATF 4A_682/2012.

exhaustion of internal remedies prior to the appeal to the CAS"[22].

168. Applying these ideas, it seems evident that the purported imposition of the exhaustion of internal remedies prior to this concrete appeal is not reasonable.

169. Firstly, we are in a denial of justice case, which presupposes precisely that the applicable entity is unwilling to grant a hearing to the petitioner's requests. Secondly, and decisively, in this case FIFA's relevant body itself (*i.e.*, the FIFA DC) submitted the case directly to the upper appeal instance, that is, to the FIFA AC. To pretend to impose the burden to the Appellant that FIFA did not impose on itself does not seem reasonable.

170. In sum, no question of exhaustion of internal remedies can be entertained when the internal remedy itself has been subject to a *per saltum* treatment.

171. Hence, for the Panel, the exception to the exhaustion of internal legal remedies is met in this case, and the objection to jurisdiction based on this ground must be dismissed. The finding that the CAS has jurisdiction to hear this appeal is reaffirmed.

VII. APPLICABLE LAW

172. In relation to this matter, Article R58 of the Code establishes that:

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

173. As for the positions of the Parties: the Appellant has not addressed the applicable law in the case of dispute in its respective written submission. On the other hand, Club León stated that the present procedure should be resolved, first and foremost, in accordance with the statutes and regulations of FIFA, and, subsidiarily, in the absence of a specific applicable rule, by the provisions of Swiss law, as the country where FIFA is domiciled. Furthermore, it noted that as an integral part of the applicable legal framework, general principles of law and the *lex sportiva*, which informs the sports legal system, should be taken into account, including, among the former, legal certainty, good faith, proportionality, legitimate trust, and due process. For its part, Club Pachuca referenced Article 49(2) of FIFA's Statutes, concluding that the present arbitral procedure should be governed, primarily, by the applicable FIFA regulations in this case, and, complementarily, by Swiss law. It also mentioned general principles of law (*e.g.*, *lex sportiva*). Lastly, FIFA expressed that according to Article 49(2) of FIFA's Statutes, the CAS will primarily apply the various regulations of FIFA and, additionally, Swiss law.

174. In this case, there is no doubt about the primary rule under Article R58: the applicable rules are constituted by

[22] MAVROMATI/REEB, *The Code of the Court of Arbitration for Sport, Commentary, Cases and Materials*, Kluwer 2015, p. 391, and specially the CAS case-law cited in footnotes 64 & 66.

FIFA's regulatory framework; fundamentally, the CWC Regulations, the FD Code and the FIFA Statutes. On the other hand, these regulations must be complemented by Swiss law, pursuant to Article 49(2) of the FIFA Statutes. Finally, with regards to the subsidiarily applicable law, Swiss law must also apply, given the fact that the domicile of FIFA is in Switzerland.

175. Thus, the Panel finds that this dispute must be adjudicated primarily according to the applicable FIFA regulations, complemented by Swiss law; and subsidiarily, by Swiss law.

VIII. MERITS

176. As stated above (*supra* para. 120), given that the CAS has jurisdiction to hear this appeal, the Panel must proceed with the analysis of the merits, which can be divided into three separate issues:

(i) *First merits issue: Is the damages claim admissible?*

(ii) *Second merits issue: Does the Appellant have standing to sue?*

(iii) *Third merits issue(s): In the affirmative, does the Appellant have the right to the substantive relief requested in its Appeal Brief (i.e., prayers for relief vi-viii of its requests for relief)?*

177. The Panel will treat these issues separately in the following paragraphs.

A. First merits issue: Is the damages claim admissible?

178. The first matter that will be adjudicated by the Panel is the matter of the admissibility of the damages claim introduced by the Appellant in *item (viii)* of its Appeal Brief. FIFA, as already mentioned, has forcefully objected to the admissibility of this claim.

179. As a second instance, this Panel's scope of review is demarcated by its fundamentally appellatory nature and by the implications of the *disposition, ne ultra petita* and *tantum devolutum quantum appellatum* procedural maxims: an appellate court cannot adjudicate claims that were not the subject of a dispute in the first instance. These ideas are of course firmly embedded in the jurisprudence of the CAS, as cannot be otherwise. In this sense, the Panel sees no reason to depart from the holdings of recent case CAS 2023/A/9867 and the long line of precedents therein mentioned: TAS 2017/A/5195, CAS 2014/A/3523, CAS 2007/A/1426, TAS 2020/A/7468, and CAS 2014/A/3776.

180. As this jurisprudential line correctly establishes, a panel's *"power of review is limited by the object of the dispute such as delimited in the previous instance"*[23].

181. The holding of the Panel in case CAS 2014/A/3776 is especially apposite in this context:

"With regard to damages, the Appellant requests the Panel to issue an order reserving judgment in respect of the loss and damage GFA has sustained by reason of FIFA's wrongful failure to admit it to membership. The Panel observes, however, that this is a CAS appeal procedure seeking the reversal of a

[23] See *e.g.* CAS 2017/A/5195 at para. 80.

decision of FIFA, and that the Panel may rule only on the dispute as defined by the Appealed Decision and as limited by its objective and subjective scope (see CAS 2005/A/835 & 942, CAS 2006/A/1206, CAS 2013/A/3314). If GFA wishes to seek damages against FIFA, it will have to start a new and different legal action. Accordingly, the Panel dismisses the Appellant's motion for relief under para. 280.7 of the Appeal Brief"[24].

182. It is manifest that the Complaint, albeit profuse in its requests, makes absolutely no mention to any damages claim. This, by itself, is sufficient to seal the fate of the damages request included in the Appeal Brief: the Panel cannot entertain, as an appellate instance, a claim that was not introduced in the primary instance. The damages claim is hence manifestly inadmissible.

183. For avoidance of doubt, the Panel further notes that the Complaint deals with issues of non-compliance with the CWC Regulations and the eventual substitution of clubs in the Competition. The proceedings, *per* the CWC Regulations, were to be channeled via the FIFA DC with the FD Code. Given the competence of FIFA's Judicial Bodies[25], claims of damages are not in principle within the scope of these bodies. Thus, even if introduced in the first instance, the damages claim would also be *prima facie* inadmissible.

B. Second substantive issue: Does the Appellant have standing to sue?

184. At this juncture of the award, the Panel must address the matter of standing to sue of the Appellant. This, not only because it was expressly requested by the Appellant itself as a logically prior matter to its other requests, but *imprimis* due to the fact that, as the SFT jurisprudence has held, denial of justice exists *"when an authority fails to act on a matter submitted to it in due time and in due form, even though it should decide on it"* (*supra* para. 124). In other words, if FIFA was not under an obligation to decide upon any of the Appellant's requests, no denial of justice could be said to exist in the first place.

i. The relevant criteria for assessing the standing to sue

185. As mentioned above, the question of standing to sue or be sued under Swiss law is a matter that is to be adjudged as a merits or substantive issue: this is a pacific position both in the jurisprudence of the SFT[26] and the CAS[27].

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[24] At para. 343.

[25] See *ad exemplum* articles 1, 2, 56, 57, 60 of the FD Code.

[26] See ATF 128 II 50, 55: *"Sur le plan des principes, il sied de faire clairement la distinction entre la notion de légitimation active ou passive (appelée aussi qualité pour agir ou pour défendre; Aktiv- oder Passivlegitimation), d'une part, et celle de capacité d'être partie (Parteifähigkeit), d'autre part. La légitimation active ou passive dans un procès civil relève du fondement matériel de l'action; elle appartient au sujet (actif ou passif) du droit invoqué en justice et son absence entraîne, non pas l'irrecevabilité de la demande, mais son rejet" or ATF 126 III 59, at c.1a: "La qualité pour agir et la qualité pour défendre appartiennent aux conditions matérielles de la prétention litigieuse. Elles se déterminent selon le droit au fond et leur défaut conduit au rejet de l'action, qui intervient indépendamment de la réalisation des éléments objectifs de la prétention litigieuse. Ainsi, la reconnaissance de la qualité pour défendre signifie que le demandeur peut faire valoir sa prétention contre le défendeur"*. See also SFT 137 I 296, para. 1.3.1; SFT 4A_426/2017, para. 3.1; SFT 4A_620/2015.

[27] See, for example: TAS 2021/A/7650, para. 80; CAS 2020/A/6694; CAS 2018/A/5746; para. 173 or CAS 2016/A/4602.

186. Moreover, the Panel agrees with the assertions of the Appellant regarding the question of standing to sue. In particular, that *"according to established CAS jurisprudence, in order to have standing to sue, the Appellant must have an interest worthy of protection (CAS 2013/A/3140 para. 8.3) or a legitimate interest (CAS 2015/A/3880 para. 46 with further references)"*[28]; that according *"to CAS 2009/A/1880 & 2009/A/1881 para. 29, only an aggrieved party who has something at stake and thus a concrete interest in challenging a decision adopted by a sports body may appeal against that decision to CAS"*[29] and with *"the Panel in CAS 2008/A/1674"* which stated that: *"sufficient interest is a broad, flexible concept free from undesirable rigidity and includes whether the Appellant can demonstrate a sporting and financial interest"*[30]; however, *"that being said, a more restrictive approach is taken when the matter involves a non-addressee of a first instance decision. Such party only has a right to appeal in very restricted cases (ATF 131 II 649). As a general rule in such circumstances, the appellant's interest must be* ***concrete, legitimate, and personal***"[31], concluding with a reference to the SFT jurisprudence that a *"purely theoretical/indirect interest is not sufficient (ATF 133 II 353)"*[32].

187. The Panel fully agrees with these ideas. However, as the analysis by the Panel in the subsequent paragraphs will demonstrate, these positions, expounded by the Appellant itself, lead to the inevitable conclusion that the appeal must be dismissed.

ii. The inseparability of the standing to sue question from the concrete substantive relief requested by the Appellant

188. In its Appeal Brief, after its request for asserting the jurisdiction of the CAS, the Appellant itself requests in *item (iv)* that the *"Panel find that the Appellant has standing to sue"*.

189. Albeit seemingly a logically previous question to the other issues of substantive relief the Appellant is seeking – *i.e.*, *items (vi)* to *(viii)* of its Appeal Brief – it is in fact not possible to adjudicate the question of standing to sue without consideration to each of the underlying reliefs sought by the Appellant. To put it in other words, the determination of whether the Appellant has standing to sue is inevitably tied to the specific requests made under *items (vi)* to *(viii)* of its request for relief: *i.e.*, (vi) whether the Mexican Clubs are in breach of the MCO provision of the CWC Regulations, (vii) whether the Panel can remove either (or both) teams from the Competition and finally (viii) whether it can compel FIFA to admit the Appellant into the Competition.

190. This is asserted, moreover, by the Appellant itself in its Appeal Brief: *"standing to sue in these circumstances must be taken together with the merits"* and thus it proceeds to *"lay these out below and not duplicate the same discussion"*[33].

191. Hence, the analysis of the Appellant's standing to sue is intimately intertwined

[28] Para. 70 of the Appeal Brief (in turn, referencing DE LA ROCHEFOUCAULD E., "Standing to sue, a procedural issue before the CAS", CAS Bulletin 1/2011, p. 13 *et seq*).
[29] Para. 72 of the Appeal Brief.
[30] Para. 73 of the Appeal Brief.
[31] Para. 74 of the Appeal Brief (emphasis in the original).
[32] *Ibid.*
[33] Para. 81 (emphasis added).

with its substantive requests, enumerated in *items (vi) to (viii)* of its requests for relief.

iii. The unification of the requests by the Appellant and the overarching petition to be included in the Competition

192. The matter is further complicated in this case however by the additional fact that the Appellant has presented its requests together under a single or overarching petition of being included in the Competition, alleging an "automatic right" to substitution.

193. The Appellant has undeniably decided to present its appeal under a clear overarching or unifying theme: the determination of an MCO situation *vis-à-vis* the Mexican Clubs is inseparably tied to its alleged "automatic right" of substitution and consequently of being included in the Competition. This was expressly emphasized in its Appeal Brief, not only in its requests for relief, as already noted but also, *inter alia*, when discussing the petition of inclusion in the Competition: *"upon the removal of one of the Second and Third Respondent, the Panel **must** then consider the question of how to fill the vacancy"*[34]. It was also asserted when defending its standing to sue[35]; more specifically, it cited a *"previous CAS Panel"* (*i.e.*, CAS 2015/A/4151) that *"stated that a club has standing to sue when it could show that it would replace the excluded club from a competition based on the relevant regulations"*[36]. It was likewise emphatically defended by its counsel in the hearing, alleging that its petitions were inextricably tied to its alleged right to substitute one of the Mexican Clubs and participate in the Competition.

194. Furthermore, the alleged "automatic right" of the Appellant to substitute one of the Mexican Clubs – or what is the same: to be included in the Competition – was a matter also repeatedly asserted in its Appeal Brief and reiterated during the hearing as its central or overarching substantive relief. Thus, the Appellant asserted *inter plurium alia* that *"based on the Regulations, LDA would indeed be the club that **must** replace the excluded club – this would not be down to second-guessing or speculation but instead a direct application of the Regulations"*[37]; that *"other parties have **no actual right** to replace the excluded club"*[38]; *"Why LDA **Must** Be Chosen"*[39]; or that the CWC Regulations *"**give LDA the automatic right to fill the vacancy**"*[40]; and the *"rules are **clear**"* and the Panel *"**must compel** FIFA to follow them"*[41], etc.

195. The fact that Appellant has decided to unify –or better, to conflate— these different and distinct requests seals, in the Panel's considered judgment, the fate of its appeal and its necessary rejection.

196. As the subsequent analysis will show, the Panel was prepared to analyze and consider the Appellant's standing to sue in respect of one of its single, isolated

[34] Para. 122 of the Appeal Brief (emphasis added).
[35] See paras. 75-75 of the Appeal Brief.
[36] Para. 78.
[37] Para. 79 of the Appeal Brief (emphasis added).
[38] Para 92 of the Appeal Brief (referencing and denying the existence of other potentially interested clubs – emphasis added).
[39] At page 38 of the Appeal Brief (emphasis added).
[40] Para. 145 of the Appeal Brief (emphasis in the original).
[41] Para. 150 of the Appeal Brief (emphasis added).

requests: *item (vi)*, referring to the investigation of the MCO situation of the Mexican Clubs. Here, as it will be further submitted, the ambiguity of the applicable regulations could have, by itself, opened the way to establish a basis for the Appellant's standing to sue.

197. However, given that the Appellant itself has decided to tie this request together with the clearly different and distinct matters of (i) the exclusion of one of the two Mexican Clubs – to which it clearly has no standing and which is in any case subject to a different body and procedure in FIFA – and (ii) the matter of the eventual replacement – which had not even been decided at the moment of filing of the appeal – and (iii) even to its alleged "automatic right" to substitution – which for the Panel does not exist – the appeal must in the final analysis be rejected.

iv. The isolated request of item (vi) regarding the MCO situation

198. The Panel will begin its analysis of *items (vi) to (viii)* of the Appellant's request for relief – which constitute, to reiterate, its substantial petitions – with a consideration related specifically to the first request: the determination that the Mexican Clubs were under a MCO situation of non-compliance with Article 10 of the CWC Regulations. This analysis will reveal that this request, isolated and taken by itself, could have established a *prima facie* interest on part of the Appellant. This in turn justifies the Panel's previous finding that there has been a threshold denial of justice, in accordance with the SFT jurisprudence holding that denial of justice exists when an authority fails to act on a matter submitted to it *"even though it is obligated to decide on it"* (*supra* para. 124).

199. Firstly, the Panel must set forth the basic interpretative framework for analyzing the CWC Regulations and, specifically, the provisions contained in Article 10. As is well-established in the jurisprudence of the CAS and the SFT, regulations issued by associations, such as FIFA, are to be interpreted under the same regime as statutes[42]. The SFT has further noted that such regulations must be interpreted using four methods, starting with the letter of the law, but also taking into account the systematic, teleological and historical elements[43]. While these four methods of interpretation are widely used in CAS jurisprudence, it is commonly accepted – and, undoubtedly, on solid grounds – that *"[t]here is no reason to depart from the plain text, unless there are objective reasons to think that it does not reflect the core meaning of the provision under review"*[44].

200. The Panel submits that, *in genere*, the wording and construction of Article 10 of the CWC Regulations are sufficiently clear and straightforward and do not require further methodological deviations beyond a plain reading of the text. As such, in principle, it does not

[42] *"It is generally admitted that rules and regulations of international sports federations are subject to the methods of interpretation applicable to statutory provisions rather than contracts":* CAS 2020/A/7331, para. 105. See also, CAS 2022/A/8915, 8918, 8919 & 89120, para. 71, citing CAS 2020/A/7356; SFT Judgement 4A_314/2017, stating *"the Federal Court has interpreted the statutes of major sports associations, such as UEFA, FIFA and the IAAF, in the same way as a statute"* (free translation).

[43] See for example the mentions in: CAS 2022/A/8915, 8918, 8919 & 89120, para. 71, citing CAS 2020/A/7008 & 700,9 para. 61; CAS 2013/A/3365 & 3366, para. 88.

[44] *Vide* CAS 2013/A/3365 & 3366, para. 89.

necessitate a complex interpretative exercise: there is no reason to question its (i) underlying *rationale* (*"To ensure the integrity of the Competition"*) nor (ii) its detailed provisions (both substantive, in paragraph 1, and procedural, paragraphs 2-4).

201. There is, nonetheless, one shining exception to this finding: the determination of the nature of the proceedings for determination of the potential MCO non-compliance.

202. At first glance, the matter appears simple. Article 10.2 of the CWC Regulations reads:

> *"If, on the basis of a complaint or the information available to FIFA, there is a doubt as to whether a participating club fulfils the criteria established above, the FIFA general secretariat may refer the case to the FIFA Disciplinary Committee, who shall decide on the admission without delay in accordance with the FIFA Disciplinary Code".*

203. However, as already stated above, the case at hand appears to be about "eligibility" rather than a purely "disciplinary" matter. Eligibility requirements refer to certain "conditions"[45] or "preconditions"[46] that are established for participation in a particular competition. They are thus distinguishable from qualification based on sporting merit: although a necessary condition, sporting qualification does not normally constitute a sufficient condition to entitle a club to participate in a competition, a matter which is subject to the further "preconditions" of eligibility.

204. In any event, given its distinct conceptual structure, eligibility matters related to conditions for participation in a tournament cannot be equated, automatically or without further qualification, to disciplinary matters, which refer in principle to questions of "infringements" of rules and, consequently, of "sanctions"[47].

205. In the case at hand, it is very difficult, if not impossible, to contest that Article 10 fundamentally regulates a matter of eligibility for clubs that have previously qualified on sporting merit for the Competition. As such, again in principle, it cannot be equated automatically or without qualification to a disciplinary rule.

206. At the same time, Article 10 also refers the case to the FIFA Judicial Bodies, which oversee disciplinary matters, and it even establishes that the FD Code is applicable.

207. The Panel, without expressing a definitive opinion on this matter, notes that from certain of its features, the procedure implemented appears to present a hybrid or at least a *sui generis*

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[45] See, *e.g.,* CAS 98/200, *para.* 84: *"the Panel does not see in the Contested Rule any creation of different categories of member clubs but rather the establishment of conditions of participation in UEFA competitions. Among such conditions are also, for example, stadium safety requirements"* (emphasis added).

[46] *Vide* CAS 2015/A/4097, para. 71; *"Different from ordinary businesses, football clubs are in general not automatically entitled to participate in the market (competition) they would like to participate in. Rather, participation may be made subject to certain preconditions. In order to participate in the Romanian Liga 1 National Championship football clubs need to qualify on the basis of sporting merit, but football clubs also need to comply with other preconditions, such as compliance with the RFF Licensing Regulations".* (emphasis added)

[47] See Article 1 FD Code.

nature. In this regard, the Panel notes that on the one hand, Article 10 conceptually deals with a question of "eligibility", yet it also contains or entails certain disciplinary features. For example: (i) Article 10 is under the subheading *"Disciplinary matters and procedures"* of the CWC Regulations; (ii) Article 10.2 of the CWC Regulations prescribes the referral of cases to the FIFA DC in accordance with the FD Code; (iii) Article 10.3 of the CWC Regulations grants jurisdiction to the FIFA DC to assess compliance. Moreover, the FIFA AC Decision, while declaring the Mexican Clubs "non-compliant" in the operative part, made multiple references in its reasoning to "breaches" of the rules. These features in turn hint towards disciplinary aspects rather than pure eligibility aspects.

208. The Panel considers that, in the final analysis, it is unnecessary to express a definitive opinion on the precise legal nature of Article 10 for solving this dispute; it suffices to note that whilst presenting certain disciplinary features, Article 10 cannot be read disconnected from the, at bottom, clearly distinct issue it purports to regulate: eligibility.

209. This finding has an important implication for this case. For, it renders as quite problematic the overtly confident assertions contained in the FIFA Reply that given that the FD Code was applicable *"it does not follow that you become a party to the proceedings (if any)"* and that FIFA would not be in a position to provide the Appellant *"with information concerning your inquiries or regarding the state of the proceedings before the FIFA Disciplinary Committee (if any)"*. The conclusion also renders as problematic the similarly unqualified assertions contained in the Reply to the Appeal Brief by FIFA[48] alleging that the Appellant does not have standing to sue, invoking the limitations recognized to third parties in pure disciplinary proceedings. In this sense, the Panel deems that whilst these limitations indeed have a solid rationale in disciplinary cases, they lose their gravitational pull when the matter at hand refers to a different issue such as eligibility, in which other clubs may, in principle, be found to have an interest worthy of protection and thus be admitted as parties to the pertinent proceedings.

210. In this context of defining the interest worthy of protection, it is important to make a distinction between the nature of proceedings before Swiss public courts and in the context of private arbitration. In particular, the Panel considers that, while limiting access to public judicial dockets is an understandable policy concern which warrants a strict application of the matter of standing, such considerations diminish or lose weight in the context of proceedings before private arbitral institutions. In this regard, in this case the Panel concurs with the assessment of the Sole Arbitrator in case CAS 2017/A/5054:

"In order for the claim to be admissible, the Appellant must have a legal interest ("Rechtsschutzinteresse","intérêt d'agir"). Since the requirement of a legal interest determines if in a given case whether a claimant has access to justice, the bar must be set with prudence and – in any respect – not too high […].

[48] See para. 141 to 150 of the Reply to the Appeal Brief by FIFA.

In doing so, the Sole Arbitrator does not take recourse to the Swiss law of civil procedure. In principle, the Sole Arbitrator finds that the threshold for a legal interest must be set low before an arbitral tribunal. The prerequisite of a legal interest is designed to protect the courts from being deadlocked with needless disputes. The prerequisite, thus, helps to manage the work load of the courts and to protect scarce public resources.

The answer to the question, however, what disputes shall be considered 'needless' is very different in cases in which the state provides and pays for courts that adjudicate a dispute compared to cases where the parties mandate and pay (in full) a private institution to adjudicate the matter. In the latter case, a legal interest should only be denied if there is no benefit for the party whatsoever in obtaining a judgement in this matter in his or her favour" (paras. 75-78, emphasis added).

211. The Panel considers this to be an appropriate standard: a strict application of the idea of an interest can result, in certain cases, in a *distortion* of the underlying policy consideration that frames the doctrine of standing before Swiss courts. Different circumstances require nuanced approaches. Moreover, such a strict application can represent, in specific cases, an undue and *artificial* restriction on the right to access justice. Instead, as the cited CAS precedent aptly puts it, the bar to access to justice must be set with prudence (*i.e.*, reasonableness).

212. For the Panel, the fundamental ambiguity contained in Article 10 in this regard – regulating mainly an eligibility issue, but also with certain disciplinary features – cannot be held against the Appellant to outright deny the existence of any interest whatsoever. As recognized by CAS jurisprudence, any lack of clarity or opacity regarding a regulation issued by a sporting body such as FIFA must be interpreted against the regulatory party and not against its members[49]. This entails that the proposition that a club may have an interest worthy of protection in a case of eligibility such as the one ambiguously regulated by Article 10 of the CWC Regulations cannot be *ab initio* discarded or rejected. In this case, at least with regards to *item (iii)* of the Complaint and *item (vi)* of the Appeal Brief prayer for relief, holding a strict, unqualified and unexplained denial of any participation in "disciplinary" proceedings does not appear reasonable: being a matter of eligibility, an interest worthy of protection may be in play *vis-à-vis* clubs that are in line, especially when the applicable regulations – *i.e.*, the CWC Regulations – are not clear in this regard. This in turn reinforces the conclusion that, at least regarding this specific request, an unjustified lack of decision is found in this case (*supra* para. 160).

213. Moreover, given the silence of FIFA in relation to the execution of the Participation Agreements by the Mexican Clubs (*supra* para. 152 *et seq.*), the potential defense that these documents had not been yet signed –

[49] See, *e.g.,* CAS 2008/A/1622 & 1624, para. 55: *"Under Swiss law, a general principle states that any provision with an unclear wording has to be interpreted against the author of the wording (contra proferentem). This principle also applies to association law (cf. RIEMER, op. cit., N 346). This means that in principle, if no other reasons require a different treatment, any ambiguous, or otherwise unclear, provision of the statutes has to be interpreted against the association that has drafted the statutes, and not against the members"*; see also CAS 2016/A/4839 and CAS 2013/A/3324 & 3369.

and thus, Article 10 was not yet enforceable against the Mexican Clubs – cannot be invoked in good faith, *ex post facto*, to deny a *prima facie* interest of the Appellant: *venire contra factum proprium non potest*. This latter idea is but a natural emanation of the good faith principle enshrined in Article 2(1) of the Swiss Civil Code ("SCC") and has been steadfastly recognized in CAS jurisprudence[50]. Of course, with a rearview mirror and all the information available, different courses of action may be envisaged or imagined; but in this case, there was only one reality at that time: the Appellant had no official knowledge regarding the signing of the Participation Agreements by the Mexican Clubs and FIFA remained silent, not mentioning this temporary defense in the FIFA Reply, when it was cognizant that the documents had not yet been signed. FIFA is thus estopped from invoking *now* a situation that it did not invoke *then*, to deny an, at least, *prima facie* interest of the Appellant in this specific point.

214. In sum, regarding this particular issue – *i.e.*, participation in the proceedings for determining an MCO situation – an interest worthy of protection cannot be outright or unqualifiedly denied, considering the ambiguity of Article 10 of the CWC Regulations with respect to the eligibility/disciplinary dichotomy, FIFA's own ulterior changes in position and the need to apply a reasonable standard for assessing legal standing and not the normal strict standard applied to pure disciplinary proceedings.

215. However, it is precisely in this point where the appeal by the Appellant completely miscarriages. By deciding to conjoin this specific request with other further petitions – thus conflating and confounding into one single appeal what are clearly separate issues – the appeal hereafter loses any ulterior possible interest worthy of protection and is, in the final analysis, groundless and premature.

v. The Appellant's appeal, as presented, conflates various distinct issues and procedures and must be rejected

216. To recall: the Appellant in these proceedings seeks not only (i) a decision on the MCO situation with regards to the Mexican Clubs and their non-compliance with the CWC Regulations, but also (ii) the removal of "at least" one of the clubs ("or both"[51]) and also (iii) to compel FIFA "to admit LDA" to the Competition (again: *vide requests (vi)* to *(viii)* of its Appeal Brief). To reiterate, these petitions are presented under a unified or overarching theme of its "automatic right" to substitution.

217. The applicable regulations – and in particular: Article 10 of the CWC Regulations – however establish that these matters are separate and cannot be

[50] The *venire* principle is commonly found in CAS jurisprudence: *ex multis,* CAS 2015/A/4195 (which also quotes an earlier precedent: *"As maintained in CAS jurisprudence, the Sole Arbitrator understands that the doctrine of venire contra factum proprium is recognized by Swiss law, and provides that 'where the conduct of one party has induced legitimate expectations in another party, the first party is estopped from changing its course of action to the detriment of the second party' (CAS 2008/O/1455, §16 of abstract published on CAS website)".*

[51] The Panel notes, incidentally, that this remark by the Appellant is frankly incomprehensible: even if the request could be entertained, there is no question at all of removal of both clubs, something which would not only be clearly against the CWC Regulations but would also be fundamentally unfair.

mixed or mingled indiscriminately, as this appeal has incorrectly done.

218. In this sense, Article 10 of the CWC Regulations not only sets forth the basic concept of MCO and the characteristics of this figure for the purposes of the Competition (in its paragraph 1), but then specifies – it can be argued, even in painstaking detail – the procedure for determination of a MCO situation, the consequences and the eventual replacement of a team which is subject to a MCO situation in its paragraphs 2 to 4.

219. As the analysis below will conclude, the matter of (i) determining a situation of MCO is distinct and previous – and, moreover, undertaken by a different FIFA body – to (ii) the decision to exclude one club which in turn is distinct and previous (iii) to the decision to determine the eventual substitute.

220. As presented by the Appellant, the appeal must thus be unequivocally dismissed.

221. Indeed: even if it is held that its first request could be *prima facie* entertained, this request has in turn been tied by the Appellant itself to the further requests of (ii) removing one (or both) of the Mexican Clubs and (iii) including LDA in the competition. This is simply not possible under the applicable regulations.

222. Firstly, the provisions of Article 10.3 and 10.4 of the CWC Regulations clearly stand in the way. For, as this paragraph of Article 10 makes it clear, and as has been argued by FIFA, the decision to exclude one team is both logically and chronologically posterior to the determination of non-compliance with Article 10.1 – and, moreover and crucially, it is a decision which must be taken by a different body of FIFA.

223. In this sense, Article 10.3 unequivocally states that it is the competence of the FIFA DC (and, eventually, the FIFA AC) to determine if there is non-compliance with Article 10.1:

"If two or more clubs fail to meet the criteria defined in paragraph 1 above, only one of them may be admitted to the Competition. The FIFA Disciplinary Committee shall have jurisdiction to decide whether the criteria defined in paragraph 1 above are met".

224. Article 10.4 then proceeds to establish that in the eventuality a non-compliance of Article 10.1 is found, then it is for the FIFA SG to decide which club will be excluded and which will remain in the Competition:

"If the FIFA Disciplinary Committee decides that two or more clubs fail to meet the criteria defined in paragraph 1 above, the FIFA general secretariat shall decide which club may be admitted to the Competition and how a club that is not admitted shall be replaced in accordance with the following principles, taking into account, in particular, the respective ranking(s) of the club(s) concerned and the applicable quota per confederation and/or member association to which the club(s) concerned is/are affiliated".

225. Manifestly, the Appellant has conflated the distinct phases of the MCO provision into one single phase or instance, a non-admissible *totum revolutum*. We are between patently distinct phases and even distinct competent bodies. In any case, it is more than evident that with respect to this second, distinct and chronologically

posterior decision of the FIFA SG to exclude one of the Mexican Clubs, taken by itself, the Appellant has no direct, concrete, legitimate interest. For the Appellant it is wholly indifferent whether the chosen club is Club León or Club Pachuca: as to the decision of the FIFA SG, isolated, there is simply no possible direct legal interest which may be recognized for the Appellant.

226. The Appellant admits – at least implicitly – this fact, which explains why all the requests, including this second one, have been tied inextricably to its "automatic right" to substitute and be chosen to be included in the Competition. However, the CWC Regulations are clear and straightforward here: the determination of a non-compliance with Article 10 is a distinct phase or procedure from the exclusion of one of the teams and in turn this is a distinct phase or procedure from the selection of the club which will substitute. Albeit these phases or procedures take place within the same legal entity – FIFA – they are nonetheless clearly defined and differentiated in the regulations. There is thus no reason to depart from this plain textual meaning (*supra* para. 199).

227. In any event, for the sake of completeness, the Panel further emphasizes that even if these phases could be taken as one inextricably bound phase or process (they cannot), the Appellant would still have no legal interest worthy of protection in this appeal procedure. The reason is quite simple: the decision of substitution had not been taken by FIFA, neither at the time of filing of the appeal – which is the decisive moment – but not even at the time of issuance of the operative part of this Award. This is moreover easily explainable, as Article 10.4 establishes that this decision is taken by another body, the FIFA SG, and at a subsequent moment.

228. Given that the substitution decision has not been taken yet, either at the time of filing of the appeal, or at the time of the issuance of the operative part of the award, the appeal is in this specific point also clearly premature: it has no object and hence no legal interest worthy of protection.

229. This in turn confirms the finding that the appeal has indeed conflated various and distinct phases or procedures into one single process, something which flatly contradicts the clearly detailed provisions of Article 10 of the CWC Regulations. This provision establishes, to repeat, the following process and competent bodies: (i) opening of the proceedings, before the FIFA Judicial Bodies; (ii) determination of the MCO situation (if any), by the FIFA Judicial Bodies; (iii) determination of the team to be excluded, by the FIFA SG; and (iv) finally, the decision of the team to be included, also by the FIFA SG.

230. The appeal must be dismissed.

vi. In any event, the requests to open proceedings and to exclude one of the Mexican Clubs have already been decided upon

231. However, for the sake of completeness, the Panel emphasizes that, in any case, the requests of *items (vi)* and *(vii)* of this appeal have been rendered without object both by the later FIFA AC Decision and the FIFA SG Decision.

232. To reopen these issues and order new proceedings – which is, at bottom, what the Appellant is requesting – while the Mexican Clubs have already been found non-compliant with Article 10 would be a merely theoretical or lyrical exercise – *i.e.*, without any concrete interest. This cannot be blamed on the Appellant, as FIFA's Answer to the Appeal Brief sustains. However, this does not alter the fundamental fact that, were the Panel to grant the relief requested by the Appellant, it would be completely redundant with respect to these two requests, given what was decided in the FIFA AC Decision and the FIFA SG Decision.

233. Thus, the bottom line is that subsequent events have rendered any potential interest without object in relation to *items (vi)* and *(vii)* of the prayers for relief; and, in relation to *item (viii)*, the appeal is clearly premature and thus without object.

vii. In any event, no "automatic right" exists in the context of Article 10 of the CWC Regulations

234. Finally, and solely for the sake of completeness – since the appeal has already been dismissed based on the foregoing reasons – the Panel briefly focuses on the at bottom fundamental petition of the Appellant: whether it has an "automatic right" of substitution as it has argued. For the Panel, it is manifest that the Appellant has no "automatic right", as this concept can be understood in the context of eligibility for a football competition and the applicable regulations, either *in abstracto* in connection to the regulations, or *in concreto* given its factual allegations.

235. Indeed, interpreting the detailed provisions of Article 10 of the CWC Regulations, the fundamental fact is that no such "automatic right" to substitution can be said to exist.

236. The pertinent rule, Article 10.4, clearly stands in the way of such a conclusion:

> *"If the FIFA Disciplinary Committee decides that two or more clubs fail to meet the criteria defined in paragraph 1 above, the FIFA general secretariat shall decide which club may be admitted to the Competition and how a club that is not admitted shall be replaced in accordance with the following principles, taking into account, in particular, the respective ranking(s) of the club(s) concerned and the applicable quota per confederation and/or member association to which the club(s) concerned is/are affiliated".*

237. The provision establishes (at least) two hurdles to the Appellant's purported interpretation of the existence of an "automatic right": first, that the decision hinges on the FIFA SG's discretion, and second, following a series of criteria. In other words, the conclusion of who will replace the excluded team requires both (i) an extensive interpretative exercise of the CWC Regulations and (ii) speculation as to how the Secretary General would apply these criteria (Separately? Jointly? By combination? What happens if more than one club meets the criteria? A run-off? *Et cetera*: the possibilities are manifold) in the exercise of its discretionary powers. In the Panel's view, for a right of qualification to be "automatic", it must be manifestly apparent, not subject to interpretation and speculation. No such "automatic right" can be here found.

238. In this context, to reinforce the idea that no such "automatic right" exists, the Panel finds it useful to recall the reasoning of a previous CAS panel when assessing Panathinaikos' standing to appeal a UEFA decision deciding to suspend disciplinary proceedings against Olympiakos and provisionally admit it into the UEFA Champions League. In that case, when assessing Panathinaikos' standing to appeal UEFA's decision to provisionally admit Olympiakos, the panel found that it would have to prove that it would automatically replace Olympiakos in the event of an exclusion or proof that UEFA would consider it a replacement, not being convinced that a general interest for UEFA rules to be upheld as sufficient[52]. In rejecting Panathinaikos' appeal, the panel found that:

"Ultimately the Panel notes the wide discretion that Article 81.01 of the UCLR gives to the Emergency Panel, however, standing to sue should be restricted to a club that could show to the Panel that it would directly replace an excluded club and not by the means of possibly being entered into a draw along with a number of other clubs or by a possible one-off decision that the Emergency Panel could take.

Panathinaikos has not established to the Panel that Article 4.08 of the UCLR should survive the commencement of the competition, nor that the outcome from the Emergency Panel would be that it would simply replace Olympiakos with Panathinaikos, as it had finished in second place in the Super League.

The Panel cannot second guess exactly what the Emergency Panel would do, and it does not have to, but there is some logic in UEFA's position that the most likely outcome would be to order a draw from the various clubs eliminated from the play-off round (so this would not include Panathinaikos in any event) as these were the last to be eliminated, so the closest on sporting merit; and that it would not advance Panathinaikos ahead of the club (Club Brugge KV) that had already eliminated it on the pitch"[53].

239. This Panel finds that although the facts in case CAS 2015/A/4151 are similar to the present, they are not identical. The Panel notes that, while the FIFA SG has some discretion in selecting the replacing club, Article 10.4 of the CWC Regulations establishes two specific criteria to be considered, namely (i) ranking and (ii) the confederation quota. In the context of selection disputes, Article 10.4 of the CWC Regulations can be thus considered as a hybrid, meaning that there are both objective and subjective criteria applicable to the selection of the participating club[54].

240. In this sense, while the degree of deference to be granted to the FIFA SG is – apparently, at least – less than what was applicable in CAS 2015/A/4151, a sufficient and undeniable level of discretionary powers exists. Hence, the confidence in the Appellant's contention that it has an automatic right to be selected by the FIFA SG seems quite unreasonable given the objective criteria that are established in Article 10.4, their multiple instantiation possibilities in practice and the not negligeable degree of discretion the FIFA SG retains.

[52] See CAS 2015/A/4151, paras. 134-135.

[53] CAS 2015/A/4151, paras. 146-148 (emphasis added).

[54] See: CAS 2016/A/4657, para. 50(1).

241. Thus, not only has the decision of replacement not yet taken at the time of filing of this appeal – which makes the appeal premature – but in any event no "automatic right" to substitution can be said to exist in the CWC Regulations; rather, what is found is a "second guessing" of what decision the FIFA SG would (eventually) take, given the objective criteria and the degree of discretion inherent to the rule.

viii. In any event, the arguments of the Appellant defending its participation are (highly) controvertible and prove that no "automatic right" of substitution exists

242. In any event – and again, solely for sake of thorough completeness – the Panel additionally notes that the *in concreto* allegations of the Appellant as to whether it is to be included prior to the other Mexican Clubs or the MLS clubs, are highly speculative – and controvertible – and require an extensive interpretative exercise.

243. The applicable provision of the CWC Regulations is Article 11.5, which states:

> *"In the event of a club winning two or more editions of the confederation's premier club competition during the 2021-2024 period, the FIFA club ranking calculated according to sporting criteria will be used to grant access. A cap of two clubs per country will be applied to the access list, with an exception in cases where more than two clubs from the same country win the confederation's premier club competition over the four-year period".*

244. As can be easily inferred, the position of the Appellant is not a direct and strict application of this article, but rather the Appellant makes several interpretative moves to establish its "automatic right" to substitution. This, by itself, is sufficient to establish that a *prima facie* extensive interpretive exercise is required and that no such "automatic right" exists.

245. That the Appellant has performed various interpretative moves cannot be denied. One interpretative move, key to its argument, is that the cap of two clubs per country applies to the clubs, and not the country itself. In this case, since three Mexican clubs won the Concacaf "premier club competition", and one is to be eliminated, the interpretative position would be that cap applies to the clubs themselves, and not their federation. Albeit this is a possible reading of the text, it is not the <u>only</u> interpretation. An argument that the cap applies to the country cannot be outright discarded as unreasonable. In any event, this only proves that an exercise in interpretation is necessary to defend its thesis, something which is *ex definitione* repugnant to the idea of an "automatic right".

246. Moreover, even if it were possible to sustain *ex hypothesi* that the quota is for the clubs themselves and not the federation, this interpretation would only rule out (again: hypothetically) Mexican clubs. But <u>not</u> the MLS clubs, since the Panel simply cannot follow the argument of the Appellant, so clearly <u>contradictory</u> with the CWC Regulations and the reality of the facts.

247. The chart included in Article 11.4 is clear: one place has been reserved to an MLS team – which turned out to be Inter Miami – as distinct to the places based on sporting merit:

Host (club TBC)	1	One club (access for the club occupying this slot will be determined by FIFA at a later stage)

248. As such, Inter Miami has been granted the place of the "host" and has not qualified based on sporting merit reasons. The quota for the MLS teams is not then full. This entails that even if the situation of Mexican clubs could be controverted or at least argued about, the situation for MLS teams does not really seem disputable: there is only one MLS which has qualified on sporting merits to the Competition and there is thus space for another team. Thus, even if the argument regarding Mexican clubs is accepted (*quod non*), this would leave a hurdle for the MLS teams which, for the Panel, is insurmountable.

249. However, and crucially, all of the arguments presented by the Appellant have an incorrect presupposition, already rejected by the Panel: that no degree of discretion is retained by the CWC Regulations for the FIFA SG, a possibility that has also been discarded as contrary to the text. This discretion implies that there is a margin of degree reserved for the FIFA SG for analyzing and applying the objective criteria and choosing the substitute, at least in the context of the CWC Regulations, and that not even the quota system is "automatic" or inflexible. Again, while this may be questioned abstractly, the scope of this Panel's review is not the existence of the rule itself, but its application.

250. Thus, the arguments by the Appellant are highly controvertible *in concreto* and in any event prove – again – that no "automatic right" to substitution may be said to exist.

ix. Conclusion

251. In sum: the appeal must be dismissed. The Appellant itself has chosen to present its appeal conflating or unifying the different phases or procedures which exist under the CWC Regulations for (i) determining an MCO situation, (ii) determining the club to be excluded and (iii) the club which will be included in its stead. Albeit the first phase or procedure may give rise to an interest worthy of protection in particular situations given the ambiguity of the CWC Regulations in this point – and thus, to a decision by FIFA – when presented as one single process under a unifying theme of replacement – and tied to an alleged "automatic right" of substitution which simply does not exist – as the Appellant has chosen to do, it is clear that no such interest(s) exists.

252. In any event, regarding the first two phases, the appeal has been rendered moot by (i) the FIFA AC Decision and (ii) the FIFA SG Decision which were subsequently adopted, and (iii) the replacement decision has not even been taken, ruling out logically any possibility of appeal: *i.e.*, it is in this regard a manifestly premature appeal. This also entails that analysis of further problems of the appeal, such as its obvious defects for not having designated other potentially affected clubs (*i.e.*, the request of *item (v)* that *"[t]he Panel find that other parties who may join these proceedings do not have standing to sue"*) are unnecessary given this conclusion.

253. The appeal must be rejected and thus all the other requests by the Appellant must henceforth also be dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. It has jurisdiction to hear the appeal filed by Asociación Liga Deportiva Alajuelense.

2. The appeal filed by Asociación Liga Deportiva Alajuelense is dismissed.

3. (…).

4. (…).

5. All other and further motions or prayers for relief are dismissed.

CAS 2025/A/11173
Tullio Tinti v. Fédération Internationale de Football Association (FIFA)
award of 22 October 2025

Football; Re-evaluation of an agent's license under the FIFA Football Agent Regulations; Nature of an automatic provisional suspension; Competence of the FIFA General Secretariat to provisionally suspend an agent's license; Standard of investigation for re-evaluation of licenses; Interpretation of eligibility requirements; Distinction between a "belief" and a "finding", "determination", "decision"; De novo review

Panel
Mr Rui Botica Santos (Portugal)
Mr Giulio Palermo (Italy)
Mr Jan Räker (Germany)

1. **The essence of a "provisional" measure lies in its temporary and short-term nature. It presupposes a limited duration and a clear prospect of subsequent review or replacement by a final decision of the competent body. Even if Article 21 of the FIFA Football Agent Regulations (FFAR) may eventually be reinstated, the absence of clarity or foreseeability as to when this might occur transforms the suspension into one of indefinite duration. A suspension that is indefinite in duration cannot properly be considered provisional; rather, it assumes the nature of a definitive measure.**

2. **Articles 5 *Eligibility requirements*, 17 *Compliance with ongoing licensing requirements* and 21 *Competence and enforcement* of the FFAR contemplate four procedural steps: (i) Investigation Phase - the FIFA General Secretariat (GS) is empowered to open and conduct an investigation; (ii) Adversarial Phase - the FIFA GS must inform the football agent and grant an opportunity to be heard; (iii) Provisional Suspension Phase - the FIFA GS is authorised to impose an automatic provisional suspension; and (iv) Final Decision Phase - the FIFA GS must refer the matter to the FIFA Disciplinary Committee (DC) for a final determination. If Article 21 FFAR has been suspended, the FIFA GS is unable to take the fourth step, i.e., to refer the matter to the FIFA Disciplinary Committee for a final decision. In the absence of a regulatory framework expressly conferring upon the FIFA GS the authority to render definitive determinations, the implementation of a *de facto definitive* suspension of an agent's license by the FIFA GS is without legal basis and must therefore be annulled. Such powers cannot be assumed *ex officio*.**

3. **The investigative competence of the FIFA GS under Article 17 FFAR must be construed with caution. While Article 17 FFAR empowers FIFA GS to investigate compliance with ongoing licensing requirements, its ordinary scope of application is intended for situations arising after the issuance of a license. By contrast, facts predating issuance – even if discovered only at a later stage – require a more thorough**

investigative procedure, since such an inquiry must also take into account the reasons why the competent FIFA department initially decided to issue the license. Moreover, the outcome of such an investigation may contradict FIFA's prior evaluation and could ultimately lead to the revocation of the license on grounds of error, omission of relevant information, or false statements by the agent or the relevant national federation. A re-interpretation of the facts underlying the issuance of a license that had been validly issued should therefore be undertaken with the diligence required to justify the suspension of such license.

4. The absence of explicit reference to "settlements" in Article 5(1)(a)(iii) FFAR, in contrast to Article 5(1)(a)(ii) FFAR which expressly includes *"any related settlements,"* may support the conclusion that sanctions imposed pursuant to a settlement are not captured by Article 5(1)(a)(iii) FFAR. A proper and systematic interpretation of the provision should be addressed expressly in a context of re-evaluation of licenses. In this respect, the settlement character of the national federation proceedings should be considered and the fact that the agent was ultimately cleared of the criminal allegations that gave rise to them. These elements are directly relevant both to the proportionality of the measure and to the scope of Article 5(1)(a)(iii) FFAR.

5. The formation of a *belief* is not tantamount to a *finding*, a *decision*, or a *determination*. The distinction between these concepts is not an artificial construct. Rather, the formation of a *belief* constitutes no more than a *prima facie* assessment, without a thorough analysis or full discussion of the underlying matter. This stage is a purely administrative process and cannot be regarded or characterized as a disciplinary proceeding. Such a *belief* serves merely as the trigger for the next procedural step.

6. Lacking sufficient elements to exercise its *de novo* powers and bearing in mind that the interpretation of regulatory provisions must, in the first instance, be clarified by the very body that drafted and enacted them, it is not possible for a CAS panel to substitute itself for the FIFA DC, either in reviewing the manner in which the agent's license was granted or in determining the proper interpretation of the applicable provisions.

I. THE PARTIES

1. Mr. Tullio Tinti (the "Appellant" or the "Agent") is an Italian football agent. He has exercised this profession since 1992 under the *Federazione Italiana Giuoco Calcio* (the "FIGC").

2. *Fédération Internationale de Football Association* (the "Respondent" or the "FIFA") is the worldwide governing body of international football. FIFA exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players. It is an

association under Swiss law with its registered office in Zurich, Switzerland and is the governing body of international football.

3. In this appeal proceedings (the "Appeal"), the Agent and FIFA are collectively referred to as the "Parties".

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced in the course of the present proceedings. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. This factual background information is given for the sole purpose of providing a synopsis of the matter in dispute. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this award (the "Award") only to the submissions and evidence it is considered necessary to explain its reasoning.

A) Introduction

5. This Appeal before the Court of Arbitration for Sport (the "CAS") is directed against the decision rendered by the FIFA General Secretariat (the "FIFA GS"), on 16 January 2025 (the "Appealed Decision"), by which the Appellant's FIFA license No. 202309-3517 was provisionally suspended on the grounds of an alleged failure to meet the eligibility requirements set forth in the FIFA Football Agent Regulations, adopted by the FIFA Council on 16 December 2022 (the "FFAR"). In the Appealed Decision, the FIFA GS determined that the FFAR rendered the Appellant ineligible to retain the license he had held since 2022. The FIFA GS based its decision on disciplinary proceedings initiated before the FIGC in 2012, i.e. 13 years ago, in which the Appellant had accepted a 36-month suspension.

B) Basic Context and Circumstances

B.1) The 2012 Decision of the FIGC

6. In 2012, the FIGC initiated disciplinary proceedings against several individuals, including the Agent, for alleged violations of the *Codice di Giustizia Sportiva* (the "CGS").

7. During the course of those disciplinary proceedings, and notwithstanding his continued denial of wrongdoing, the Agent reached an agreement with the prosecutor of the FIGC's disciplinary bodies prior to the issuance of a final decision. The Agent accepted a 36-month suspension of his license as well as the payment of a fine in the amount of EUR. 80,000.

8. On 21 September 2012, the National Disciplinary Committee of the FIGC passed the following ruling:

"(…)

Defendants (…) Tullio TINTI (…) ***agreed with the Federal Prosecutor's Office in a sanction under art. 23 CGS,***

(…)

In this regard, the Commission adopted the following order:

(…)

- *for Mr. Tullio Tinti,* ***pursuant to article 23 CGS****, a suspension of the license for 36 (thirty-six) months and a fine of EUR 80,000.00 (eighty thousand euros).*

Having noted that (…) the National Disciplinary Commission orders the application of the following sanctions:

(…)

- *for Mr. Tullio Tinti, suspension of the license for 36 (thirty-six) months and a fine of EUR 80,000.00 (eighty thousand euros).*

(…)

Declares the closure of the proceedings against the aforementioned.

(…)"

(Emphasis added by the Panel)

As seen above, this ruling, which was published in the Official Communiqué No. 20/CDN (2012/2013) dated 24 September 2012 (the "FIGC Decision"), sanctioned the Agent with *"a suspension of his license for 36 months and a fine of EUR 80,000"* (the "FIGC Sanction")

9. In 2015, the Agent resumed his activities as a licensed agent in Italy and was registered as an intermediary pursuant to the FIFA Regulation on Working with Intermediaries ("FIFA Regulations on Intermediaries 2025" or the "RWWI"), with the following football associations:

- The FIGC from 2015 to 2022;
- The Real Federación Española de Fútbol from 2018 to 2023;
- The English Football Association from 2018 to 2023;
- Fédération Française de Football in 2019 and 2020; and
- Hellenic Football Federation in 2023.

10. After the FIGC Decision, the Agent was not subjected to any further sanctions by any federation and, on a date that could not be precisely determined, the Agent was acquitted of the criminal charges brought against him in connection with the facts underlying the FIGC Decision.

B.2) The FIFA license and the consequent proceedings

11. On 16 December 2022, the FIFA Council approved the FFAR, which reinstated a global licensing system requiring every football agent to obtain a FIFA license to pursue their activities and which entered into force in two phases on 9 January 2023 and 1 October 2023.

12. On 2 September 2023, FIFA issued a license to the Agent in accordance with Article 23 of the FFAR.

13. On 25 October 2023, the FIGC updated its eligibility requirements for agents and provided an update regarding this to the Agent. The information provided by the FIGC is as follows:

"(…)

Following further verification, as reported in the Annex 1 (C.U. n.20 CDN 2012/2013), ***we inform you that Mr. Tinti has been convicted of 36 months of agent license suspension for violation of Art. 1.1 and 9.2 of the FIGC Sport Justice Code (…) by the "National Disciplinary Commission****". Please evaluate the compliance of this sanction with the eligibility requirement established by the art. 5.1, letter. a) iii of the FFAR: "have never been subject to suspension of two years or more, disqualification or disbarment by any regulatory authority or sports governing body for failure to comply with the rules relating to ethics and professional conduct".*

14. On 21 October 2024, the Agent received a letter dated 14 October 2024 from the FIFA Agent Department which reads as follows:

"(…)

We acknowledge your Football Agent license granted on 2 September 2023 in accordance with article 23 of the FIFA Football Agent Regulations (hereinafter the "FFAR").

In this respect, please be informed that all Football Agents must comply with the eligibility requirements at all times, as established by article 5 of the FFAR.

In order to confirm that you comply with license eligibility requirements pursuant to article 5 of the FFAR, please provide FIFA with the requested information below.

Please provide the following documentation in regard to the publicly available information that you had been subject to suspension in Italy by a sports governing body, therefore being in breach of article 5 of the FFAR paragraph 1 a) iii:

(i) a copy of your criminal records certificate issued by the relevant competent authorities in Italy (if applicable);

(ii) a copy of a decision not to prosecute (if applicable); and/or

(iii) a copy of a decision charges dismissed (if applicable).

(…)"

15. On 31 October 2024, the Agent submitted the requested documents and provided his comments to FIFA. In particular, the Agent stated that he had no criminal record and maintained that the suspension agreed with the FIGC in 2012 was not relevant for the purposes of Article 5(1)(a)(iii) FFAR, and that all eligibility requirements were therefore satisfied.

C) Proceedings under the Appealed Decision

16. On 16 January 2025, the FIFA GS issued the Appealed Decision which reads as follows:

"(…)

G. Decision

36. The FIFA general secretariat notifies the Agent that:

36.1 the license number 202309-3517 is provisionally suspended, as per article 17 par. 3 lit. a) of the FFAR; and

36.2 This is a final decision of the FIFA general secretariat for the purposes of article 50 paragraphs 1 and 2 of the FIFA Statutes".

17. The Appealed Decision was based on the following conclusions:

> *"(…)*
>
> *F. Conclusion*
>
> *32. (…) the FIFA general secretariat deems that the Agent's suspension of his license for 36 months for violating articles 1 and 9 of the* [Italian Code of Sports Justice] *has rendered him ineligible to continue being a Football Agent by virtue of art. 5 par. 1 a) lit. iii FFAR.*
>
> *33. Consequently, based on art. 17 para. 1 FFAR, the license of the Agent must be provisionally suspended.*
>
> *34. In this context, it must be noted that art. 21 FFAR is currently temporarily suspended, as provided in the FIFA Circular no. 1873. Accordingly, it is not possible for the FIFA general secretariat to refer this matter to the FIFA Disciplinary Committee, as would otherwise be provided in art. 17 para. 3 b) FFAR.*
>
> *(…)".*

18. The Agent was notified of the Appealed Decision on 16 January 2025.

III. PROCEEDINGS BEFORE THE CAS

19. On 5 February 2025, the Agent filed his statement of appeal (the "Statement of Appeal") in accordance with Article R47 and Article R48 of the Code of Sports-related Arbitration (the "CAS Code"), challenging the Appealed Decision. In his Statement of Appeal, the Appellant nominated Mr. Giulio Palermo as Arbitrator.

20. On 6 March 2025, FIFA nominated Dr. Jan Räker as Arbitrator.

21. On 17 March 2025, within the extended time limits, the Appellant filed his appeal brief (the "Appeal Brief").

22. On 8 May 2025, within the extended time limits, FIFA filed its answer (the "FIFA Answer").

23. On 9 May 2025, pursuant to Article R54 of the Code, the Deputy President of the CAS Appeals Arbitration Division appointed the following Panel:

President:
Mr. Rui Botica Santos, Attorney-at-Law in Lisbon, Portugal

Arbitrators:
Mr. Guilio Palermo, Attorney-at-Law in Geneva, Switzerland
Dr. Jan Räker, Attorney-at-Law in Stuttgart, Germany

24. On 22 May 2025, pursuant to Article R37 of the CAS Code, the Agent submitted an application for provisional measures, requesting a stay of the Appealed Decision (the "Request for Stay").

25. On 29 May 2025, within the agreed expedited time limit, FIFA submitted its response to the application for provisional measures, opposing the Request for Stay.

26. On 30 May 2025, the CAS Court Office communicated to the Parties, the operative part of the order on the

provisional measures (the "Order") issued by the Panel. The relevant part reads as follows:

"(…)

1. *The Request for a Stay filed by Mr Tullio Tinti on 22 May 2025 in the matter CAS 2025/A/11173 Tullio Tinti v. FIFA is dismissed.*

2. *The Costs of the present order shall be determined in the final award or in any other final disposition of this arbitration.*

(…)".

27. On 4 June 2025, following consultation with the Parties, the Panel decided to hold a hearing in this matter. The hearing was scheduled to take place at the CAS Court Office in Lausanne, Switzerland, on 30 June 2025.

28. On 11 June 2025, invoking exceptional circumstances, the Appellant requested that the hearing be postponed and rescheduled for a later date in the summer period.

29. On 20 June 2025, after both the Respondent and the Panel accepted the exceptional circumstances invoked by the Appellant, the CAS Court Office informed the Parties that the hearing originally scheduled for 30 June 2025 had been canceled and that a new date would be set in due course.

30. On 25 June 2025, after further consultation with the Parties, the Panel rescheduled the hearing for 4 September 2025, to be held at the CAS Court Office in Lausanne, Switzerland.

31. On 18 August 2025, the Parties submitted to the Panel a joint hearing schedule.

32. On 4 September 2025, a hearing was held at the CAS Court Office in Lausanne, Switzerland. In addition to the Panel and Ms. Shanaize Yahiaoui (CAS Counsel), who appeared in substitution of Mr. Giovanni Maria Fares (CAS Counsel), the following individuals attended the hearing:

(i) <u>For the Appellant:</u>

- Mr. Tullio Tinti – the Appellant
- Prof. Antonio Rigozzi – Counsel
- Mr. Patrick Pithon – Co-Counsel
- Mr. Gian Pietro Bianchi – Co-Counsel
- Ms. Sara Agostini – Co-Counsel
- Mr. Lorenzo Vigasio – Co-Counsel
- Mr. Roberto Invernizzi – Co-Counsel
- Mr. Luca Canuto – Interpreter

(ii) <u>For the Respondent</u>:

- Mr. Miguel Liétard Fernandéz-Palacios, FIFA Director of Litigation
- Mr. Alexandrer Jacobs, FIFA Senior Legal Counsel

33. At the opening of the hearing, the Parties confirmed that they had no objections to the constitution of the

Panel or to the procedural conduct of the proceedings up to that moment.

34. The Parties were given the full opportunity to submit their arguments during their opening and closing statements, as well as to respond to questions posed by the members of the Panel. Before the conclusion of the hearing, both Parties confirmed that they had been granted the opportunity to present their case and arguments in a fair and equal manner, and that their right to be heard had been fully respected.

35. The hearing was thereafter declared closed, and the Panel reserved its reasoned decision for the present written Award.

IV. THE PARTIES' SUBMISSIONS

36. The following summary of the Parties' positions is illustrative and does not necessarily comprise each contention put forward by the Parties. The Panel, however, has carefully considered all the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

A) The Agent's Submissions

37. In his Appeal Brief, the Agent submitted the following prayers and requests for relief:

"(…)

(i) The Appeal filed by [the Appellant] *is upheld;*

(ii) The decision of the FIFA General Secretariat of 16 January 2025 is null and void or alternatively, is set aside;

(iii) FIFA is ordered to reinstate [the Appellant's] *license number 202309-3517;*

(iv) FIFA shall bear all arbitration costs incurred with the present proceedings, if any, and cover all legal expenses of [the Appellant] *related to the present proceedings.*

(…)".

38. The Appellant put forth the following arguments in support of his position:

A.1) The Agent cannot be considered I neligible under the FFAR

A.1.1) The Appealed Decision infringes the principle of non-retroactivity

39. The Agent submits that FIFA cannot declare him ineligible under the FFAR, while solely relying on the FIGC Decision which was issued in 2012. The Agent had already been suspended for 36 months and fined with an amount of EUR 80,000 under the FIGC Decision. An additional suspension under the FFAR would clearly violate the principle of non-retroactivity.

40. The principle of non-retroactivity is enshrined as a fundamental principle within FIFA's regulatory framework and in general law. CAS panels have confirmed that FIFA regulations should not be applied retroactively without clear intent (*e.g.,* CAS 2014/A/3776). The FFAR, which came into force in 2023, contain no provision permitting this retroactive application. Yet FIFA relied on the FIGC Decision to revoke the Agent's license in 2025 by invoking a new eligibility rule under Article 5(1)(a)(iii)

FFAR that did not exist when the FIGC Decision was rendered. This action is contrary to FIFA's consistent past practice and amounts to an unfair retroactive imposition of a new penalty.

41. Under Swiss law, retroactivity is generally prohibited. The principle of non-retroactivity prevents a new set of rules from attaching legal consequences to facts that occurred before its entry into force. This guarantees legal certainty and predictability by protecting individuals against rules targeting past behavior that can no longer be altered. It additionally ensures the security of legal situations that were validly established under previous regulations. No one should have their rights and obligations withdrawn or modified by a legal act that they could not have been aware of or that they could not have foreseen at the time they took the material or legal steps that shaped their legal situation. Permitting rules to have a retroactive effect would contradict the legal certainty and predictability.

42. The consequence of the Agent's suspension to his eligibility should be assessed not with regards to the FFAR, but with regards to the regulations in force at the time. In 2012, the FIFA Agents Regulations 2008 were in force, and it was merely required that the applicant of a FIFA agent license be a natural person with *"an impeccable reputation"* and having *"no criminal sentence for a financial or violent crime"*.

43. The Agent acted in good faith and decided to cooperate with the FICG's disciplinary bodies and voluntarily agreed to a 36-month suspension along with a fine with the understanding that he would be able to resume his activities as an agent after the suspension, which he did until the Appealed Decision.

44. In the present case, by effectively suspending the Agent's license and barring him for life as a FIFA licensed football agent for a past conduct, FIFA has created intolerable legal uncertainty. FIFA cannot rely on a closed set of facts that occurred more than a decade ago to assess whether new requirements that were entered into force in 2023 are fulfilled or not, particularly in relation to a decision that was knowingly concluded under a different regulatory framework.

45. The Agent argues that had he known in 2012 that accepting the FIGC Decision would later bar him for life from his profession under a future regulation, he would have never agreed to it, even more so as he had no committed the wrongdoing for which the sanction was imposed and he only accepted such sanction because has lawyer at the time recommended him to do so in order to concentrate on a criminal investigation about the same subject, from which he was later acquitted. Barring the Agent for a past infraction with no further wrongdoing, punishes him for alleged actions that, at that time, did not constitute grounds for ineligibility. This violates his legitimate expectations and general principles against retroactive sanctions.

46. Therefore, the Appealed Decision clearly violates the principle of non-retroactivity and should be set aside.

A.1.2) The Appealed Decision infringes the principle of ne bis in idem

47. The Agent contends that, even if FIFA could invoke the 2012 suspension under the FFAR, the resulting decision violates the principle of *ne bis in idem*, which is a legal doctrine providing that a person cannot be prosecuted or punished twice under the same facts. CAS panels have consistently held that this principle applies to sanctions under sport law (CAS 2011/O/2422).

48. The question, therefore, is whether Article 5(1)(a)(iii) FFAR, which effectively impose a lifetime ban on any former agent who has been suspended for 24 months or more due to violations of ethics and professional conduct rules, qualifies as a sanction. Eligibility rules do not punish for misconduct but instead define the required attributes and formalities for eligibility. Rules that prevent a person from competition due to past misconduct are considered as a sanction.

49. Article 5(1)(a)(iii) FFAR must be assessed based on its substance rather than its name or form. The mere fact that the heading of the rule does not explicitly suggest a sanction does not mean it is not a sanction in substance. In CAS 2011/A/2658, the panel found that the British Olympic Association's by-laws which rendered any athlete previously sanctioned for doping ineligible for life from representing Great Britain at future Olympic Games, constituted a sanction.

50. The Agent states that there is no reason for the Panel to depart from this established definition. Article 5(1)(a)(iii) FFAR clearly constitute a disciplinary sanction. This is even confirmed by FIFA, pursuant to Article 17(3) FFAR, which provide that when an agent fails to meet the eligibility requirements, the case must be *"referred to the FIFA Disciplinary Committee for its decision"*.

51. Accordingly, within the Appealed Decision, the FIFA GS concluded that *"the Agent's suspension of his license for 36 months for violating articles 1 and 9 of the* [GSC] *has rendered him ineligible to continue being a Football Agent by virtue of art. 5 par. 1 a) lit. iii FFAR"*. (see para. 14 above)

52. The Appealed Decision, as can be seen, imposes a second sanction on the Agent for the same disciplinary violation already sanctioned by the FIGC which was the competent national federation under the FIFA Agent Regulations 2008 in force at the time. The effective purpose of the sanction is the same, the sanction is based on the same conduct of the Agent, and it results in the same, albeit harsher consequences. The Appealed Decision further violates Article 190(2)(e) PILA as the Swiss Federal Supreme Court has held that the principle of *ne bis in idem* forms part of public policy and should be followed.

53. Therefore, by retroactively converting the Agent's prior disciplinary record into grounds for a new ban, FIFA is effectively re-prosecuting and re-punishing him, clearly contravening the doctrine of *ne bis in idem*. The Appealed Decision is also contrary to public policy and must be annulled, reinstating the FIFA license of the Agent.

A.2) The Appealed Decision constitutes an illicit infringement of the Agent's personality rights under Swiss law

A.2.1) Excessive restriction of the Agent's personality rights

54. According to Article 27(2) of the Swiss Code of Obligations (the "SCC"):

> *"No person may surrender his or her freedom or restrict the use of it to a degree which violates the law or public morals".*

55. According to the *Matuzalem* case, Article 27(2) SCC is not limited to contractual agreements but also applies to the statutes and regulations of sports federations and its decisions. Interference with a person's economic future is considered excessive and unlawful if it *"eliminates a person's economic freedom or restricts it to such an extent that the foundations of their economic existence are put in jeopardy"*. It was held that the threat of an unlimited occupational ban constitutes an obvious and grave encroachment of an athlete's personal rights and violates Article 27(2) SCC.

56. The Agent submits that the present case is directly analogous. The FIFA GS concluded that the suspension of the Agent's license for 36 months in 2012 *"has rendered him ineligible to continue as a Football Agent by virtue of art. 5 par. 1 a) lit. iii FFAR"* and accordingly *"provisionally suspended"* his license.

57. While the FIFA GS characterizes this suspension as provisional, the Appealed Decision amounts to a lifetime ban from acting as a licensed football agent worldwide. Article 11 FFAR state that only an agent licensed by FIFA is authorized to provide agent services, including football-related services for or on behalf of a member association, club, player, coach or any related activities such as negotiations or communications aimed at concluding an employment contract or transfers of players. In other words, the Appealed Decision effectively deprives, for life, the Agent's ability to perform any agent activities related to football, which is the only profession he has ever learned and practiced.

58. This ban effectively terminates the Agent's ability to earn a livelihood in the profession he has practiced for over 30 years, solely due to a 13-year-old sanction that he has already served. This is a textbook example of an infringement so excessive that it jeopardizes the very foundations of the Agent's economic existence.

59. Consequently, this life-time ban based on Article 5(1)(a)(iii) FFAR is a clear and serious infringement of the Agent's personal rights and disregards the fundamental limits of Article 27(2) SCC.

60. As such, the Appealed Decision is null and void and the Agent's FIFA license should be reinstated.

A.2.2) Unlawful infringement of personality rights

61. If the Panel is not satisfied that the Appealed Decision constitutes an excessive restriction and an unlawful infringement of his personality rights pursuant to Article 27(2) SCC, it, at least, constitutes an unlawful infringement of his personality rights pursuant to Article 28 SCC.

62. Article 28 SCC does not provide a definition of what constitutes an infringement of personality rights and gives anyone who suffers an unlawful infringement of their personality, the right to take legal action for their protection against anyone involved in the infringement, unless it is justified. The guarantee under Article 28 SCC protects all essential values inherent to a person's existence, which may be infringed upon. Within the context of sport, these values include the right to health, bodily integrity, honor, professional reputation and the right to engage in sporting activities. This also encompasses the right to engage in an economic activity that enables an individual to earn a livelihood. Accordingly, such right allows the individual to invoke this protection against any third party that challenges their ability to engage in the economic activity.

63. According to Article 28(2) SCC, an infringement of personality rights is unlawful, unless it is justified by (i) the consent of the victim, (ii) by an overriding private or public interest, or (iii) by the law. None of these exceptions apply to the present case.

64. The Appealed Decision prohibits the Agent from exercising his profession of 30 years, which enabled him to support himself financially. It is incumbent on FIFA to prove the fulfillment of Article 28(2) SCC; however, according to the Agent, there are no overriding interests that would justify such infringement.

65. While FIFA's general mission is to raise professional and ethical standards for football agents, fostering solidarity and ensuring contractual stability, the Agent submits that FIFA lacks the legitimacy to pursue this objective when it comes to an agent's right to work, which extends far beyond the organization of football competitions.

66. Additionally, this objective cannot be achieved by suspending the Agent's license. FIFA is trying to punish the Agent based on a previous suspension that he agreed to over a decade ago and without him having committed any violation since then. Suspending his license now in the absence of any new facts justifying such action would not *"raise professional and ethical standards for the occupation for agents"* nor *"protect reputation of football and the occupation of football"*.

67. The public interest invoked by FIFA is not sufficiently compelling to justify such a severe and disproportionate ban. The ban is excessively long and there is simply no way of coming back after having purged the sanction. It is also worth noting in that regard that, since 2012 and up until today, the Agent has not been sanctioned for any violation of the ethical provisions of his national federation or FIFA. The ban pronounced by the Appealed Decision is solely made due to a suspension he served back in 2012.

68. As such, the *de facto* ban imposed by FIFA is simply abusive and clearly constitutes an infringement that is not justified.

69. Therefore, the Appealed Decision violates Article 28 SCC and is null and void. The FIFA license of the Agent should thus be reinstated.

A.2.3) Violation of Swiss public policy

70. The Appealed Decision, constituting an excessive limitation of the Agent's personality rights, also violates Swiss public policy within Article 190(2)(e) PILA.

71. In the *Matuzalem* case, the Swiss Federal Court stated that a commitment may be deemed excessive to the point of contravening public policy if it results in a manifest and serious violation of personality rights. The threat of an indefinite occupational ban could clearly constitute an encroachment of Mr. Matuzalem's personality rights and disregard the fundamental limits of legal commitments under Article 27(2) SCC to an extent that it was contrary to public policy.

72. The Agent's lifetime occupational ban from exercising his profession as a football agent constitutes an egregious infringement upon his personality rights similar to the *Matuzalem* case. The Appealed decision effectively and permanently excludes the Agent and thereby depriving him of his economic freedom as protected under Article 27 of the Swiss Constitution.

73. Therefore, the Appealed decision is equally violative of Swiss public policy and should be considered null and void.

A.3) The Appealed Decision and the FFAR violate European Union competition law

A.3.1) The infringement of Article 102 TFEU

74. Article 102 of the Treaty of the Functioning of the European Union (the "TFEU") states:

"[a]ny abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.

75. The lifetime ban imposed on agents who have been suspended for 24 months or more constitutes an abuse of a dominant position within the meaning of Article 102 TFEU. The Article prohibits, insofar as it may affect trade between Member States, the abuse of a dominant position within the market of the European Union (the "EU").

76. Article 102 TFEU aims at protecting competition to ensure that it is not restricted to the detriment of the general interest, individual undertakings, or providers and users of the relevant services. To this end, it sanctions conduct by undertakings in a dominant position that abuses such a position by restricting competition to the detriment of parties who may suffer direct or indirect harm from such a restriction, including harm resulting from a limitation of competition itself or its distortion.

77. It is clear that FIFA holds a dominant position within the EU market for football agents' services. By barring the Agent for life, FIFA has abused this dominant position.

(a) FIFA holds a dominant position within the EU market:

78. There is no doubt that FIFA holds a dominant position, within the meaning of Article 102 TFEU.

(b) FIFA has abused its dominant position with the EU market:

79. Determining whether a given conduct constitutes an abuse of a dominant position requires demonstrating that the conduct has the actual or potential effect of restricting competition, taking into account all the relevant factual circumstances.

80. FIFA holds a position of monopoly in the market for organizing football competitions and now, with the introduction of Article 5(1)(a)(iii) FFAR, has extended its authority into the market for football agents' services. This market is distinct from the governance of football as a sport and by unilaterally imposing its rules on this market, FIFA has exploited its position to control entry and restrict the independence of the market.

81. Through the FFAR, FIFA can exclude individuals who have been suspended for 24 months or more, without any possibility of reinstatement or case-by-case assessment. FIFA can unilaterally determine who can enter this market. While FIFA's objective of setting minimum professional and ethical standards is legitimate, FIFA alone cannot decide to unilaterally regulate. Due to this, football agents are ultimately *de facto* forced to submit to the FFAR and comply to practice their profession. This assertion of regulatory authority over third parties that are not FIFA members in an adjacent market is a textbook example of an abuse of a dominant position within Article 102 TFEU.

82. A permanent ban, with no possible pardon, applied automatically and without regard to an individual's subsequent conduct, is manifestly disproportionate and is a clear barrier to market access. FIFA's control over who can operate as a football agent raises concerns of exclusionary abuse under Article 102 TFEU, as it unjustifiably restricts and reduces competition.

83. Therefore, by unilaterally establishing the conditions agents must meet to enter the market for football agents' services, FIFA has abused its dominant position in the sense of Article 102 TFEU, and it would be incumbent on FIFA to demonstrate that its abuse could be justified. Consequently, insofar as the Appealed Decision revoked the Agent's license. Effectively preventing him from carrying out any activities as a football agent, it constitutes a breach of Article 102 TFEU and must be set aside.

A.3.2) The infringement of Article 101 TFEU

84. Article 101 TFEU states that:

> *"1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:*
>
> *(…)*

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void".

85. Before demonstrating that the relevant provisions of the FFAR constitute a restriction of competition, it is first necessary to determine whether FIFA qualifies as an "association of undertakings" and whether the FFAR constitute as a "decision" within the meaning of Article 101(1) TFEU.

(a) The FFAR is a decision by an association of undertakings:

86. In *J.C.J. Wouters and Others,* the European Court of Justice (the "ECJ") defined the term "association of undertakings" broadly, considering that it pertains to a group of entities involved in economic activities that assumes the responsibility of representing and safeguarding the collective interests of its members. In the *Bosman* case, it was held that national football federations are to be regarded as associations of undertakings as well.

87. The European Court of First Instance (the "ECFI") specifically confirmed that FIFA qualifies as an "association of undertakings" under Article 101(1) TFEU as FIFA members are groupings of football clubs and national associations whose economic activity is the practice of football, and as the FIFA statutes require them to participate in competitions organized by FIFA which is considered as an economic activity. As FIFA encompasses both national associations and football clubs, FIFA shall constitute an association of undertakings (CAS 2023/O/9370).

88. The ECJ further defined the term "decisions" by association of undertakings as a faithful expression of the members' intention to conduct themselves compulsorily on the market in conformity with the terms of Article 101(1) TFEU.

89. The ECFI confirmed that FIFA's football agent regulations, such as the FFAR, constitute a "decision of an association of undertakings" as football agent services are an economic activity and the FFAR are adopted by FIFA on its own authority, does not fall within the scope of the specific nature of sport and is binding on national associations that are members of FIFA.

90. In any event, FIFA has already admitted that it qualifies as an association of undertakings for the purposes of adopting and implementing the FFAR. Consequently, FIFA thus qualifies as an "association of undertakings" and the FFAR constitute a "decision" thereof within the meaning of Article 101(1) TFEU.

(b) The FFAR constitute a restriction of competition within the market:

91. According to Article 101(1) TFEU, an agreement by an association of undertakings must have an "object or effect" on the prevention, restriction or distortion of competition in the market of agent services worldwide.

92. The Agent states that the FFAR, by restricting access to the market exclusively to licensed agents who must meet FIFA's own eligibility requirements, constitute a restriction

of competition. The central question is whether limiting access to the European market for football agency services exclusively to individuals who meet the requirements is likely to have an appreciable effect on competition within that market.

93. It is evident that the FFAR control one of the essential parameters of competition, as it restricts market access solely to agents who comply with Article 5 FFAR. Players and clubs are restricted to engaging with FIFA-licensed agents, effectively granting FIFA regulatory control over the economic activity of what should be independent market participants, namely football agents, across the market. The Agent is precluded from continuing to operate in the market due to FIFA's unilateral decision to change the conditions to access it. This restriction reduces the number of agents able to operate in the market, thereby limiting competition.

94. Due to this restriction, the FFAR reduce the availability of agents for players and clubs to choose from. This prevents clubs, players and coaches from freely engaging with the agent of their choice, thereby distorting competition and reinforcing FIFA's control over an adjacent economic market. In the absence of these restrictions, the market could potentially be more competitive, with a broader range of agents offering their services.

95. In light of the above, the FFAR and its so-called "eligibility requirements" limiting access to the relevant market constitute a restriction of competition by effect.

A.4) Lack of justification of FIFA's restriction of competition and abuse of dominant position

97. It is FIFA's responsibility to justify its anti-competitive conduct, either under the *Meca-Medina* exception or Article 101(3) TFEU.

98. The *Meca-Medina* exception does not apply, as the FFAR are not rules aimed solely at ensuring the organization or proper conduct of sport.

99. FIFA cannot rely on Article 101(3) TFEU, as none of its four cumulative conditions are met. In particular, the third condition, that the conduct at issue must be indispensable or necessary. FIFA fails to consider the proportionality of a *de facto* lifetime ban, especially against the Agent that has practiced for over ten years without prior suspension. Such a sanction cannot reasonably be seen as required to achieve FIFA's objectives.

A.5) Violation of the Agent's freedom to provide services under Article 56(1) TFEU

100. Article 56 TFEU protects self-employed professionals against restrictions on their cross-border provision of services within the EU. The Agent's activities as an intermediary fall squarely within this scope.

101. FIFA's FFAR, specifically Article 5(1)(a)(iii), impose strict eligibility rules that amount to a *de facto* lifetime ban. This prevents the Agent from providing services outside Italy,

effectively excluding him from the EU market.

102. Given the international nature of football transfers, such restrictions significantly impede cross-border services. Rather than regulating conditions of practice, FIFA's rules outright bar access to other EU markets.

103. While FIFA may pursue legitimate aims such as transparency and integrity, the means chosen are disproportionate. A blanket lifetime ban on agents previously suspended for 24 months or more, without the possibility of rehabilitation, is manifestly excessive and cannot be justified, even under FIFA's regulatory autonomy.

107. For all the above reasons, the Appealed Decision constitutes an unjustified and disproportionate restriction on the Agent's fundamental right to provide services under Article 56 TFEU and should be set aside on this ground as well.

B) FIFA's Submissions

103. In the FIFA Answer, FIFA submitted the following prayers and requests for relief:

"a) reject the Appellant's requests for relief;

b) confirm the Appealed Decision in its entirety;

c) order the Appellant to bear the full costs of these arbitration proceedings; and

d) order the Appellant to make a contribution to FIFA's legal costs and expenses.

(…)".

104. FIFA put forth the following arguments in support of its position:

B.1) The Agent has violated Article 5 FFAR

105. It is undisputed that the FIGC Decision against the Agent was rendered due to the violations of Articles 1 and 9 of the Italian Code of Sports Justice. As a result, the Agent's license was suspended for 3 years, and he was sanctioned with a fine of EUR 80,000. This sanction was recorded as the highest one among all the other accused individuals in the FIGC disciplinary proceedings.

106. Article 5(1)(a)(iii) FFAR reads as follows:

"An applicant must:

a) Upon submitting their license application (and subsequently thereafter, including after being granted a license) (…)

iii. never have been the subject of a suspension of two years or more, disqualification or striking off by any regulatory authority or sports governing body for failure to comply with rules relating to ethics and professional conduct (…).

(…)".

107. By virtue of having been suspended for three years by a sports governing body for ethical misconduct, the Agent did not meet this eligibility requirement at the time he was licensed or thereafter.

108. The Agent's attempt to characterize the FIGC Decision as a mere "agreement" does not change its nature: it remains a formal disciplinary suspension imposed by a sports body for ethical breaches, which is exactly the type of past conduct Article 5(1)(a)(iii) FFAR was designed to catch. The Agent chose to accept that sanction and did not challenge it, so he cannot now avoid its consequences by semantics – the fact and duration of the suspension are what matter, and they indisputably trigger the ineligibility rule.

109. Additionally, Article 17 FFAR establishes the terms of the ongoing licensing requirements, any time after obtaining the license, and reads as follows:

> *"1. If a Football Agent fails to:*
>
> *a) meet the eligibility requirements at any time;*
>
> *(…)*
>
> *their license shall automatically be provisionally suspended.*
>
> *2. The FIFA general secretariat is responsible for investigating compliance with the requirements in paragraph 1 of this article.*
>
> *3. If paragraph 1 a) of this article applies:*
>
> *a) the FIFA general secretariat will notify the Football Agent that it believes there are grounds to consider that they do not meet the eligibility requirements, and of the automatic provisional suspension; and*
>
> *b) he matter will be referred to the FIFA Disciplinary Committee for its decision. (…)".*

110. In accordance with the above-presented provision, the FIFA GS is entitled to automatically provisionally suspend a FIFA license once ineligibility under Article 5 FFAR has been established. Importantly, this measure is administrative in nature rather than disciplinary. FIFA did not "re-prosecute" or sanction the Appellant for his 2012 conduct; it merely made a factual determination regarding his current status.

111. FIFA clarifies that the Agent would and should have never received the FIFA agent license as he was manifestly ineligible *ab initio*.

B.2) No violation of the principle of non-retroactivity

112. The Agent's argument that applying Article 5(1)(a)(iii) FFAR to his 2012 conduct constitutes an impermissible retroactive sanction is unfounded. A rule is retroactive only if it implies new legal consequences on past events in a way that alters their prior legal effects. That is not the case here. Article 5 FFAR was applied to assess the Agent's eligibility for a FIFA license in 2025, not to sanction his 2012 misconduct.

113. CAS jurisprudence consistently holds that the principle of non-retroactivity *"does not generally apply to eligibility schemes"*, which may legitimately consider past conduct when determining present eligibility. As confirmed in CAS 2018/A/5785, relying on historical acts for eligibility

purposes *"has nothing to do with a retroactive sanctioning"* and is *"fully legal, appropriate, legitimate and necessary"*.

114. The Agent cannot reasonably claim immunity from evolving integrity standards simply because he served his suspension before the FFAR were introduced. The 2023 rules were enacted precisely to raise ethical standards and prevent abuses in the agent profession. Excluding prior sanctions from consideration would undermine the very objectives of the FFAR and damage their credibility.

115. FIFA's reliance on the Agent's past suspension is prospective, serving only to determine present eligibility. It does not extend or increase his past punishment. Moreover, the FIGC's 36-month ban was a binding disciplinary sanction, not a private settlement.

116. When the Agent applied for a FIFA license in 2023, he was obliged to disclose prior sanctions and meet current eligibility standards. FIFA initially granted the license based on incomplete information, but once the FIGC decision came to light, FIFA was entitled to reassess eligibility.

117. CAS jurisprudence (e.g., CAS 2008/A/1583) has recognized that an entity which engaged in past misconduct cannot prevent the application of new entry rules simply by invoking the regulatory framework in force at the time of its wrongdoing. The Agent, like any other applicant, must comply with the eligibility standards applicable at the time of his license application.

118. Accordingly, applying Article 5(1)(a)(iii) FFAR to the Agent's disciplinary record is lawful, proportionate, and fully consistent with the prohibition on retroactive sanctions.

B.3) The alleged violation of the ne bis in idem principle

119. The Agent's attempt to characterize the Appealed Decision as a disciplinary sanction is unfounded. As previously explained, the provisional suspension of his license is an administrative decision, not a sanction.

120. Since FIFA has imposed no new penalty, there can be no double sanction. The FIGC Decision and the Appealed Decision are distinct in both scope and nature. The former was a national disciplinary sanction, the latter an international administrative determination of eligibility under the FFAR.

121. FIFA did not fine, ban, or otherwise punish the Agent for his 2012 conduct. Those matters were entirely dealt with by the FIGC. The suspension of his FIFA license simply reflects his present ineligibility.

122. Accordingly, the principle of *ne bis in idem* does not apply and cannot invalidate the Appealed Decision.

B.4) The alleged violation of the Agent's personality rights

123. The Agent claims that his suspension infringes personal rights under Swiss law (Articles 27 and 28 SCC) and even violates Swiss public policy under Article 190(2)(e) PILA.

124. This argument fails. The Appealed Decision is neither excessive nor

unlawful. Any impact on the Agent's professional freedom is proportionate and justified by overriding public and private interests – namely the integrity of football.

125. Reliance on the *Matuzalem* case is misplaced. Unlike that case, where a worldwide ban destroyed a player's livelihood, the Agent is not barred from all employment or football-related work. The Agent is only prevented from performing the specific regulated functions of a licensed FIFA agent.

126. FIFA has a legitimate interest in excluding individuals who fail to meet minimum ethical standards. The Agent's prior misconduct illustrates precisely why such rules exist. Importantly, the suspension does not deprive him of a livelihood. The Agent may continue offering consulting, contractual sponsorship, or legal services that do not require a FIFA license.

127. CAS jurisprudence confirms that such limitations do not amount to impermissible personal restrictions (see CAS 2017/A/5003).

128. Under Article 28(2) SCC, any interference with personality rights may be justified by overriding private and public interests. Here, the broader football community shares a clear interest in ensuring that agents meet basic integrity standards.

129. This objective aligns with international concerns, including those of EU law, about raising professional standards to prevent abuses in the transfer system. Safeguarding the credibility of agent services is a matter of *"clearly overriding public interest"*.

130. Enforcing such standards is consistent with Swiss public policy, which favors transparent and ethical governance in sport.

131. In sum, the Appealed Decision does not breach Swiss law or public policy. Any limited restriction on the Agent's economic activity is justified, proportionate, and serves the legitimate goal of protecting the integrity of football.

B.5) Compatibility of Article 5(1)(a)(iii) FFAR with EU law

132. The Agent's argues that Article 5(1)(a)(iii) FFAR violates EU competition and internal market law by (i) constituting an abuse of dominant position under Article 102 TFEU, (ii) restricting access to the EU market contrary to Article 101 TFEU, and (iii) infringing the freedom to provide services under Article 56(1) TFEU.

133. FIFA submits that these arguments are unfounded. Article 5(1)(a)(iii) FFAR is a proportionate regulatory measure pursuing legitimate objectives, fully consistent with the principles established in *Wouters* and *Meca-Medina*. Not every sporting rule with economic effects breaches EU law. Only those that go beyond what is necessary to achieve legitimate aims. CAS has confirmed this approach in the PROFAA case, noting: *"[a]s FIFA rightly points out, Wouters and Meca-Medina indicate that FIFA enjoys a certain margin of appreciation when regulating economic activities intrinsic to or peripheral to the sport of football"*. (CAS 2023/O/9370, para 223).

B.5.1) The alleged violation of Article 102 TFEU – No Abuse of Dominance

134. FIFA's licensing and regulatory activity is not an exercise of market power for commercial gain, but an exercise of legitimate regulatory authority. The Agent has not identified a relevant market that FIFA exploits from a dominant position. In particular, FIFA itself is not active in the football agents market and merely regulates it to the benefit of the entire market, including football agents who were consulted in the development of the FFAR and who were in explicit consent with raising the ethical eligibility standards. Even assuming dominance, the rule is not abusive: it is justified by the need to safeguard ethical standards in the agent market. Excluding agents with a record of serious misconduct enhances competition and consumer trust rather than harming it. There is no evidence of foreclosure or economic advantage to FIFA.

135. Article 5(1)(a)(iii) FFAR does not violate Article 102 TFEU.

B.5.2) The alleged violation of Article 101 TFEU – No Restrictive Agreements

136. Even if FIFA were viewed as an "association of undertakings", the FFAR do not have an anti-competitive object or effect. Its purpose is integrity, not price-fixing or market-sharing. No evidence shows reduced consumer choice or higher costs. On the contrary, the rule improves efficiency and service quality by ensuring trustworthy agents. It would satisfy the Article 101(3) TFEU exemption criteria: it promotes efficiency, benefits consumers, is indispensable, and does not eliminate competition.

137. Article 5(1)(a)(iii) FFAR does not violate Article 101 TFEU.

B.5.3) The alleged violation of Article 56 TFEU – No Freedom Restriction to Provide Services

138. Although Article 56 TFEU applies primarily to state actions, CAS jurisprudence accepts its potential relevance to private sports rules. Article 5(1)(a)(iii) FFAR may restrict market access but does so for legitimate objectives: protecting consumers and preserving the integrity of the football transfer system. The measure is proportionate, narrowly excluding only agents suspended for two years or more due to serious ethical misconduct. Less restrictive alternatives would be ineffective or inconsistent. CAS jurisprudence explicitly notes that protecting the integrity of transactions and consumers in the players' agent market is a legitimate aim in the context of Article 56 (CAS 2023/O/9370).

139. Article 5(1)(a)(iii) FFAR does not violate Article 56 TFEU.

B.6) Conclusion

140. The Agent's three-year suspension by the FIGC, well within the FFAR's two-year threshold under Article 5(1)(a)(iii), is undisputed. The Agent's conduct (abusing his position to defraud a club through fictitious invoices)

fundamentally violates the ethical standards required of Football Agents.

141. The FFAR safeguard the integrity of the transfer system by ensuring that only licensed agents who meet strict ethical and professional standards can operate. This benefits clubs, players, and agents alike by fostering confidence and trust in the system.

142. Article 5(1)(a)(iii) FFAR is narrowly tailored to address only the most serious misconduct. Such rules necessarily exclude the possibility of "rehabilitation": once an agent has shown a proven risk to the integrity of the market, allowing them to continue would undermine the very objectives of the FFAR.

143. The Agent's reliance on EU competition law (Articles 101, 102, and even 56 TFEU) is wholly unfounded, as he failed to present a substantive case or supporting evidence. There is no breach of EU law. The Agent has not demonstrated any breach of EU competition or internal market law. Article 5(1)(a)(iii) FFAR is a proportionate, objective-driven rule that strengthens, rather than weakens, the functioning of the football agent market. It neither abuses dominance nor restricts competition unlawfully, nor does it violate freedom of services.

V. JURISDICTION

144. In accordance with Article 186 of the Swiss Private International Law Act (the "PILA"), the CAS has the power to decide upon its own jurisdiction.

145. Pursuant to Article R47(1) of the CAS Code:

"An appeal against the decision of a federation, association or sports-related body may be filed with 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 it prior to the appeal, in accordance with the statutes or regulations of that body".

146. 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 sports-related body for whose decision the appeal is being made must expressly recognize the CAS as an arbitral body of appeal.

147. Pursuant to Article 50(1) of the FIFA Statutes:

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

148. FIFA in turn, does not contest the jurisdiction of CAS to hear this dispute and the Appealed Decision clearly confirms the jurisdiction of the CAS in para. 35 that *"(…) to ensure the possibility for the Agent to obtain an effective and impartial judicial review, the FIFA general secretariat hereby clarifies that this decision is a final decision in the meaning of art. 50 paragraphs 1 and 2 of the FIFA Statutes. Accordingly, it can be appealed before the Court of Arbitration for Sport (CAS) with seat in Lausanne, Switzerland, for CAS to render a definitive decision on whether the Agent complies with the eligibility requirements of art. 5 par. 1 a) lit. iii FFAR".*

149. The Order of Procedures have been duly signed by the Parties, confirming the jurisdiction of the CAS.

150. Therefore, it expressly follows that the CAS has jurisdiction to hear this matter.

VI. ADMISSIBILITY

151. Pursuant to Article R49 of the CAS Code:

> *"[i]n the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against".*

152. In accordance with Article 50(1) of the FIFA Statutes, the Appealed Decision can be challenged before the CAS within twenty-one days of its receipt. The Appealed Decision was notified to the Agent on 16 January 2025, and the Statement of Appeal was filed on 5 February 2025. Furthermore, FIFA has not contested the admissibility of the Appeal.

153. In light of the foregoing, the Appeal is admissible.

VII. APPLICABLE LAW

154. Pursuant to Article R58 of the CAS Code, in an appeal arbitration procedure before the CAS:

> *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in absence of such 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".*

155. Article 49(2) of the FIFA Statutes provides as follows:

> *"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".*

156. The Parties do not dispute the applicability of the FIFA regulations as the "applicable regulations" within the meaning of Article R58 of the CAS Code, with Swiss law being applied on a subsidiary basis, in the event that it is necessary to fill any gap or omission in the FIFA regulations. Consequently, the Panel will primarily apply the relevant FIFA regulations and Swiss law on a subsidiary basis. The Appellant further submits that, in addition to the various FIFA regulations and Swiss law, the general principles of law, namely the principle of non-retroactivity and the principle of *ne bis in idem*, as well as European Union law ("EU Law"), in particular EU competition rules (Article 101 and Article 102 of the Treaty on the Functioning of the European Union (the "TFEU") and the rules on the free movement of services (such as Article 56 TFEU), are also applicable to this dispute as foreign mandatory rules (*"dispositions imperatives du droit étranger"*) within the meaning of Article 19 of the PILA. (see paras. 74 to 106 above).

VIII. MERITS OF THE APPEAL

A. The Scope of the Appeal

157. The Panel deems it useful to clarify the scope of the Appeal.

158. The object of the Appeal is confined to the review of the Appealed Decision, by which the provisional suspension of the license held by and issued to the Agent on 2 September 2023 was determined.

159. For the purpose of adjudicating the Appeal, the Agent has raised several legal issues which this Panel is called upon to examine and decide (see paras. 39 to 106 above). However, the resolution of all such issues ultimately depends upon the prior determination of whether the FIFA GS was competent to render the Appealed Decision.

160. Accordingly, and before entering into a detailed analysis of the arguments advanced by the Agent in support of the declaration that the Appealed Decision is null and void or, in the alternative, should be set aside, this Panel must first determine whether the FIFA GS possessed the requisite authority and competence to render such decision. Consequently, the Panel shall address this preliminary issue as a matter of priority and shall only proceed to examine the remaining legal arguments if it is concluded that the FIFA GS has competence in this regard.

B. The Relevant Provisions Applicable under the FFAR

161. The regulatory provisions of the FFAR that are relevant for the adjudication of the Appeal are, in essence, the following:

"Article 5: Eligibility requirements

1. An applicant must:
   a) Upon submitting their licence application (and subsequently thereafter, including after being granted a licence):
      i. (…)
      ii. Never have been convicted of a criminal charge, including any related settlements, regarding matters related to: organized crime, drug trafficking, corruption, bribery, money laundering, tax evasion, fraud, match manipulation, misappropriation of funds, conversion, breach of fiduciary duty, forgery, legal malpractice, sexual abuse, violent crimes, harassment, exploitation or child or vulnerable young adult trafficking.
      iii. Never have been the subject of a suspension of two years or more, disqualification or striking off by any regulatory authority or sports governing body for failure to comply with rules relating to ethics and professional conduct;
      iv. (…)
      v. (…)
   b) (…)
   c) (…)
   d) (…)
2. An applicant must satisfy the eligibility requirements:
   a) At the time of their application, in order to take the exam; and
   b) At all times after obtaining a license, in accordance with article 17.
3. The FIFA general secretariat is responsible for investigating compliance with the eligibility requirements".

"Article 17: Compliance with ongoing licensing requirements
1. If a Football Agent fails to:

a) Meet the eligibility requirements at any time;
b) (…)
c) (…)
d) (…)

2. *The FIFA general secretariat is responsible for investigating compliance with the requirements in paragraph 1 of this article.*
3. *If paragraph 1 a) of this article applies:*
   a) The FIFA general secretariat will notify the Football Agent that it believes there are grounds to consider that they do not meet the eligibility requirements, and of the automatic provisional suspension; and
   b) The matter will be referred to the FIFA Disciplinary Committee for its decision.
4. *(…)".*

"Article 21: Competence and enforcement

1. *The FIFA Disciplinary Committee and, where relevant, the independent Ethics Committee are competent to impose sanctions on any Football Agent or Client that violates these Regulations, the FIFA Statutes or any other FIFA regulations, in accordance with these Regulations, the FIFA Disciplinary Code and the FIFA Code of Ethics. FIFA has jurisdiction regarding: (…)*
2. *(…)*
3. *The FIFA general secretariat shall monitor compliance with these Regulations. In particular:*
   a) Any party that receives a notice requesting information shall cooperate in full by complying, upon reasonable notice, with requests for any documents, information or any other material of any nature held by it, as well as with requests to procure and provide any documents, information or any other material of any nature not held by the party but which the party is entitled to obtain. Failure to comply with these requests from the FIFA general secretariat may lead to sanctions being imposed by the FIFA Disciplinary Committee. If requested by the FIFA general secretariat, a document (or an excerpt) shall be provided in English, French or Spanish.
   b) (…)
   c) Following an investigation, the FIFA general secretariat may refer cases of non-compliance with these Regulations to the FIFA Disciplinary Committee in accordance with the FIFA Disciplinary Code.
   d) Following an investigation, the FIFA general secretariat may refer cases of ethical misconduct in relation to those Regulations to the independent Ethics Committee in accordance with the FIFA Code of Ethics".

C. Main Arguments Advanced by the Parties in Relation to the Competence of the FIFA GS

162. As indicated above, the first issue that requires examination and determination concerns the competence of the FIFA GS to issue the Appealed Decision. The analysis, discussion, and resolution of this matter is of relevance, given that recently – subsequent to the filing of the Appeal Brief – an appeal raising certain comparable aspects was decided, in which the CAS held that the FIFA GS lacked competence (CAS 2024/A/10918).

162. In light of the foregoing circumstances, and at the outset of the hearing, the Panel invited the Parties to comment upon and elaborate on the relevance of the case CAS 2024/A/10918 to the Appeal, in which the annulment of a decision issued by the FIFA GS was ordered on the grounds of lack of competence: (i) to determine whether the agent concerned had provided football agent services without a license; and (ii) to impose a *de facto* definitive suspension against that agent.

163. The Panel observes that this line of argument was raised by the Agent in the Appeal Brief, albeit in a very summarized manner, in paragraph 29, where it was stated that *"[i]rrespective of whether the Secretariat General has the power to declare a decision final simply because the otherwise applicable dispute resolution process had been suspended by the FIFA Council (…)"*. FIFA, however, did not submit any comments in reply.

164. It is therefore essential that the Parties be afforded an opportunity to develop their positions on this issue and to address the practical implications that the reasoning in the aforementioned CAS decision may have to the present proceedings.

165. In essence, and in a necessarily concise manner, the Agent addressed the arguments advanced by the appellant in the case CAS 2024/A/10918, from which the Panel highlights the following:

- The Agent submits that the Appealed Decision is inadmissible as it was rendered by an organ manifestly lacking jurisdiction. In its view, the FIFA GS had no legal authority to determine the matter or to impose any sanction. The Agent stresses that the Appealed Decision itself does not identify any statutory or regulatory basis underpinning the FIFA GS's competence.

- Neither Article 17 FFAR, not any other provision therein, grants the FIFA GS the power to adjudicate cases of alleged infringements. Neither Article 17 FFAR nor any other provision grants the FIFA GS the power to adjudicate alleged infringements. On the contrary, Article 17(3) FFAR, where applicable, expressly assigns such cases to the FIFA DC. However, since the FIFA DC has been formally suspended, Article 17(3) cannot serve as a jurisdictional basis. By assuming decision-making powers in this context, the FIFA GS effectively usurped the competence reserved to the FIFA DC.

- On this basis, the Agent maintains that the FIFA GS acted *ultra vires*, and that the Appealed Decision is void due to lack of competence and jurisdiction.

166. In turn, FIFA submits, in essence, the following arguments:

- FIFA maintains that the Appealed Decision was rendered fully within the scope of the FIFA GS's competence under the FFAR. It points out that Article 5(1)(a)(iii) FFAR, read together with Article 17, expressly empowers the FIFA GS to investigate, at any time,

whether licensed agents continue to satisfy the eligibility requirements. This investigative mandate is not conferred on any other body within the FIFA structure. Consequently, the FIFA GS bears responsibility for conducting compliance reviews, notifying an agent where it considers that the eligibility criteria are no longer met, and applying the automatic provisional suspension that follows by operation of the FFAR.

- In the present case, FIFA stresses that the FIFA GS acted precisely in accordance with this framework: it conducted the investigation, notified the Agent of the issues identified, and imposed a provisional suspension, while refraining from any determination of permanent consequences. The latter step, FIFA explains, would normally fall to the FIFA DC under Article 21 FFAR, but that provision is currently suspended. Far from usurping the role of the FIFA DC, the FIFA GS merely discharged its own obligations as the competent authority under the FFAR, leaving to the FIFA DC the exclusive task of imposing definitive sanctions once its mandate is reinstated.

D. The Proceedings Before the FIFA GS

167. In keeping with the case CAS 2024/A/10918, this Panel concludes that Articles 5, 17 and 21 of the FFAR, when read in conjunction, contemplate the following procedural steps:

- Step I – Investigation Phase: The FIFA GS is empowered to open and conduct an investigation when it forms the belief that there are grounds to consider that a football agent does not meet the eligibility requirements.

- Step II – Adversarial Phase (The Right to be Heard): The FIFA GS must inform the football agent of that belief and grant the agent an opportunity to be heard;

- Step III – Provisional Suspension Phase: The FIFA GS is authorized to impose an automatic provisional suspension if it considers that the agent does not meet the eligibility requirements; and

- Step IV – Final Decision Phase: the FIFA GS must refer the matter to the FIFA Disciplinary Committee for a final determination.

168. As also emphasized in the case CAS 2024/A/10918, this Panel observes that the formation of a *belief* is not tantamount to a *finding*, a *decision*, or a *determination*. The distinction between these concepts is not, as FIFA contends, an artificial construct devised by the Agent. Rather, the Panel considers that the formation of a *belief* constitutes no more than a *prima facie* assessment, without a thorough analysis or full discussion of the underlying matter. In the Panel's view, this stage is a purely administrative process and cannot be regarded or characterized as a disciplinary proceeding.

169. Such a *belief* serves merely as the trigger for the next procedural step, namely the initiation of further proceedings before the FIFA DC. Those proceedings may culminate either in the revocation of the agent's license or in the lifting of the provisional suspension imposed by the FIFA GS. Within that process, it is expected and required that a more comprehensive analysis and discussion of the issues giving rise to the provisional suspension will take place.

170. By contrast, the competence of the FIFA DC extends to rendering a definitive determination both as to whether the eligibility requirements are met and, if not, what consequences should follow. Moreover, should the FIFA DC conclude that the eligibility requirements are in fact satisfied, it retains the authority to lift the provisional suspension imposed by the FIFA GS.

171. In the present case, the Panel finds that, while the FIFA GS, in principle, acted legitimately in carrying out the first three steps of the process – namely: (i) forming a *belief* that the Agent did not meet the eligibility requirements, (ii) informing the Agent of such *belief*, and (iii) imposing an automatic provisional suspension – it was unable, due to the suspension of Article 21 FFAR, to take the fourth step, *i.e.*, it was unable to refer the matter to the FIFA Disciplinary Committee for a final decision.

E. The Suspension of Article 21 FFAR

172. As expressly stated in the Appealed Decision, the temporary suspension of Article 21 FFAR prevented the FIFA GS from referring matters governed by the FFAR to the FIFA Disciplinary Committee.

173. At the hearing, FIFA itself acknowledged that the jurisdiction of the FIFA Disciplinary Committee under Article 17(3)(b) FFAR was suspended as a consequence of the suspension of Article 21 FFAR.

174. Furthermore, when questioned during the hearing, FIFA conceded that there is no clarity as to when the suspension of Article 21 FFAR may be lifted.

F. The Nature of the Automatic Provisional Suspension

175. With respect to the nature of the automatic provisional suspension, FIFA argued that such suspension cannot be characterized as definitive, since Article 21 FFAR may eventually be reinstated. However, FIFA admitted at the hearing that there is no clarity as to when, or indeed whether, such reinstatement will occur. FIFA further submitted that the suspension remains provisional because, once Article 21 FFAR is reinstated, the FIFA DC could then render a decision on the merits.

176. The Panel takes a different view. The essence of a "provisional" measure lies in its temporary and short-term nature. By definition, it presupposes a limited duration and a clear prospect of subsequent review or replacement by a final decision of the competent body – in this case, the FIFA DC. Even assuming that Article 21 FFAR may eventually be reinstated, the absence of clarity or foreseeability as to when this might occur transforms the suspension

into one of indefinite duration. A suspension that is indefinite in duration cannot properly be considered provisional; rather, it assumes the nature of a definitive measure.

177. The Panel further notes with concern that, in the present regulatory vacuum, no FIFA body is competent either to determine whether the eligibility requirements are satisfied or to lift the provisional suspension imposed by the FIFA GS. This institutional impasse alters the legal nature of the measure. Although formally described as *provisional*, in practice the suspension imposed by the FIFA GS constitutes a *de facto definitive* suspension of the Agent's license.

178. In other words, the FIFA GS conflated its investigative functions with the adjudicative authority that, but for the suspension of Article 21 FFAR, would lie exclusively with the FIFA DC. In so doing, it effectively imposed a final sanction – namely, the withdrawal of the Agent's license – without affording the due process that must be conducted before the competent disciplinary body.

179. Accordingly, the Panel concludes that the implementation of a *de facto definitive* suspension of the Agent's license by the FIFA GS – a body lacking competence to impose final sanctions – is without legal basis and must therefore be annulled.

G. The Panel's De Novo Review in Light of the FIFA GS's Lack of Competence

180. Having determined that the FIFA GS lacked competence to decide on the provisional suspension of the Agent's license, the question arises whether this Panel, in the exercise of its *de novo* adjudicatory powers, could substitute itself for the FIFA Disciplinary Committee and rule on whether the Agent currently satisfies the eligibility requirements to hold a football agent license.

181. The Panel considers that, in the particular circumstances of this case, such substitution would not be legally correct, for the reasons set out below.

182. First, the Appellant has not submitted any such request and, as highlighted by MAVROMATI/REEB, The Code of the Court of Arbitration for Sport: Commentary, Cases and Materials (2nd edn, Kluwer Law International 2025), p. 576:

> *"54. Logically, the panel's power of review does not permit to go beyond the parties' motions and submissions, even though it can adjudicate on implicit requests, i.e., other than the ones expressly submitted but considered to be contained in the parties' submissions. (TAS 2024/A/10578; CAS 2021/A/8334)".*

183. Second, it is important to emphasize that the present case does not concern a typical situation in which the FIFA GS is called upon to assess an agent's ongoing compliance with eligibility requirements on the basis of facts arising after the issuance of a license. Rather, it involves a re-evaluation of eligibility requirements based on facts that predated the issuance of the Agent's license in September 2023.

184. In September 2023, as explained by FIFA at the hearing, both the

competent FIFA department and the FIGC – expressly consulted by FIFA for this purpose – confirmed that the Agent satisfied all eligibility requirements. Neither FIFA nor the FIGC raised any concerns regarding the sanction imposed on the Agent by the FIGC between 2012 and 2015 when the license was applied for and duly granted.

185. This is of particular relevance because it demonstrates that, at the time of issuance, FIFA itself concluded that the Agent satisfied the eligibility requirements. The Panel has not, however, been able to ascertain the precise level of scrutiny undertaken in 2023, nor whether the specific issue now raised by the FIFA GS was considered at that time, either through FIFA's internal verification processes or by the FIGC when validating the Agent's application.

186. Against this factual background, the investigation conducted by the FIFA GS cannot be equated with a typical assessment of ongoing eligibility requirement based on events occurring after the issuance of the license. Rather, it constitutes a re-evaluation of a license already validly issued, on the basis of facts predating its issuance that may already have been within FIFA's knowledge at that time. The Panel stresses *"may already have been"* because these proceedings contain no evidence of what documents or information were submitted or reviewed during FIFA's internal checks in 2023.

187. Nevertheless, the FIFA GS's decision neither identifies any deficiencies in the 2023 application review nor explains why no concerns were raised at the time the license was granted. Instead, and in light of the grounds stated in the Appealed Decision, it appears to rely on a superficial re-interpretation of the facts underlying the issuance of the license, undertaken without the diligence required to justify the suspension of a license that had been validly issued.

188. In the Panel's view and having regard to the particular circumstances of this case, the investigative competence of the FIFA GS under Article 17 FFAR must be construed with caution. While Article 17 FFAR empowers the FIFA GS to investigate compliance with ongoing licensing requirements, its ordinary scope of application is intended for situations arising after the issuance of a license.

189. By contrast, facts predating issuance – even if discovered only at a later stage – require a more thorough investigative procedure, since such an inquiry must also take into account the reasons why the competent FIFA department initially decided to issue the license. Moreover, the outcome of such an investigation may necessarily contradict FIFA's prior evaluation and could ultimately lead to the revocation of the license on grounds of error, omission of relevant information, or false statements by the Agent or the FIGC. None of these grounds, however, were invoked or established by the FIFA GS in its investigation.

190. The Panel further observes that the FIFA GS failed to consider, with the detail and caution required, the relevance of the 36-month sanction served by the Agent pursuant to a settlement agreement with the FIGC

prosecutor (Article 23 SGS), and whether such a settlement properly falls within the scope of Article 5(1)(a)(iii) FFAR. The wording of Article 5(1)(a)(ii) FFAR expressly refers to *"… including any related settlements …",* whereas the subsequent provision, Article 5(1)(a)(iii) FFAR, which is relied upon in this case, contains no such reference. A systematic interpretation could therefore support the conclusion that sanctions imposed pursuant to a settlement exceeding 24 months are not captured by Article 5(1)(a)(iii) FFAR.

191. In the Panel's view, the interpretation of regulatory provisions must, in the first instance, be clarified by the very body that drafted and enacted them, as it is best placed to provide such explanation. The FIFA GS should have expressly addressed this interpretative issue, which is of material significance that could operate in favor of the Agent.

192. Furthermore, the FIFA GS failed to take into account the principle of proportionality, particularly given that the Agent served the 36-month sanction between 2012 and 2015, and has not been subjected to any sanction of any kind since. The lapse of such a significant period of time ought to have been weighed in the assessment, yet it was not.

193. Equally, the FIFA GS overlooked a material element in the interpretation and application of Article 5(1)(a)(iii) FFAR: the fact that the Agent was acquitted of the criminal charges underlying the FIGC Sanction. This circumstance further weakens the reliance on that sanction as a ground to question the Agent's eligibility. A proper and systematic interpretation of the provision should therefore have considered not only the settlement character of the FIGC proceedings but also the fact that the Agent was ultimately cleared of the criminal allegations that gave rise to them. These elements are directly relevant both to the proportionality of the measure and to the scope of Article 5(1)(a)(iii) FFAR and should have been addressed expressly in the Appealed Decision.

194. For these reasons, the Panel concludes that it is not possible to substitute itself for the FIFA DC, either in reviewing the manner in which the Agent's license was granted or in determining the proper interpretation of the applicable provisions. The Panel does not have before it sufficient elements to exercise its *de novo* powers in this respect.

195. Accordingly, the Panel finds that the FIFA GS's decision resulted from a thorough application of Article 17 FFAR, which however for a *de* facto permanent decision only foresees a superficial and overly simplistic investigation, lacking the thoroughness and diligence required, in the circumstances of this case, to justify a measure as severe as the indefinite suspension of a validly issued license. In so acting, the FIFA GS effectively encroached upon the prerogatives of the FIFA DC. This reinforces the Panel's previous conclusion that the Appealed Decision is unsupported by, and inconsistent with, the regulatory framework of the FFAR.

H. CONCLUSION

196. The Panel acknowledges the regulatory difficulties faced by FIFA in ensuring compliance with the FFAR in light of the suspension of several of its provisions. Nevertheless, in the absence of a regulatory framework expressly conferring upon the FIFA GS the authority to render definitive determinations, such powers cannot be assumed **ex officio**.

197. Accordingly, the Panel holds that the Appealed Decision must be set aside, as the FIFA GS lacked competence to: (i) determine that the Agent had failed to comply with the eligibility requirements; and (ii) impose what, in effect, constitutes a definitive suspension of the Agent's license.

198. As a result, the Panel orders FIFA to reinstate the Agent's license No. 202309-3517, as requested by the Agent in his prayers for relief.

199. All other and further claims or prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Tullio Tinti on 5 February 2025 with respect to the decision of the FIFA General Secretariat, rendered and communicated on 16 January 2025, is upheld.

2. The decision of the FIFA General Secretariat, issued and communicated on 16 January 2025 is set aside.

3. *Fédération Internationale de Football Association* is ordered to reinstate Mr Tullio Tinti's license No. 202309-3517.

4. (…).

5. (…).

6. All other and further motions or prayers for relief are dismissed.

TAS 2025/A/11191
Moctar Mahamoud Hamid c. Fédération Tchadienne de Football (FTFA) & Tahir Oloy Hassan
sentence du 30 octobre 2025

Football; Gouvernance; Fardeau de la preuve; Effet dévolutif de l'appel; Exigence d'une expérience avérée dans le domaine du football; Recevabilité de l'appel; Intérêt à agir d'une personne dont la candidature à un organe ou une commission a été valablement écartée

Formation
Me Patrick Grandjean (Suisse), Arbitre unique

1. **Conformément à la règle ordinaire régissant le fardeau de la preuve, c'est à la partie de prouver l'existence des faits, dont elle entend déduire des droits. Il ne lui suffit pas d'alléguer un fait pour que la formation arbitrale l'accepte comme étant établi.**

2. **L'article R57 du Code TAS confère à la formation arbitrale un plein pouvoir d'examen des faits et du droit (*"de novo"*). Ainsi, et conformément à une jurisprudence bien établie du TAS, toute irrégularité procédurale susceptible d'être survenue en première instance peut être réparée devant le TAS. Une quelconque violation du droit d'être entendu est guérie du fait de l'effet dévolutif de l'appel par devant le TAS, qui offre la possibilité à l'appelant de présenter son cas une nouvelle fois, avec tous les arguments et offres de preuves qu'il estime nécessaires.**

3. **La disposition statutaire exigeant des candidats au Conseil de la FTFA qu'ils disposent d'une expérience avérée dans le domaine du football n'est ni accessoire ni secondaire. Elle constitue un critère capital visant à garantir que l'organe dirigeant de la fédération soit composé de personnes qualifiées, disposant de la compétence, de la connaissance du milieu et de la légitimité nécessaires pour exercer les fonctions de gouvernance du football national. Cette exigence, expressément prévue par deux articles des Statuts de la FTFA, s'inscrit dans une logique de bonne administration du sport. Elle vise à éviter que des personnes sans lien réel avec le football, ou sans expérience suffisante, ne prennent part à des décisions stratégiques engageant l'avenir de la fédération.**

4. **La recevabilité de l'appel doit être examinée d'office sachant que l'appel doit être déclaré irrecevable s'il devait s'avérer que les requêtes de l'appelant ne sont pas susceptibles de servir son prétendu intérêt. Une requête est en principe irrecevable si elle est dépourvue d'intérêt juridique par rapport à la décision entreprise. Un tel intérêt juridique n'existe pas s'il n'y a aucun avantage quel qu'il soit pour la partie requérante à obtenir un jugement en sa faveur. Il appartient à l'appelant d'apporter les éléments permettant de conclure à l'existence d'un intérêt suffisant, et ce selon les règles procédurales applicables en matière de présentation des faits et preuves. L'intérêt pour agir doit exister non seulement lorsque l'appel est interjeté, mais également au moment où la décision est rendue.**

5. **S'il est indiscutable qu'un candidat à un poste au sein d'un organe ou d'une**

commission d'une organisation sportive possède un intérêt direct et personnel à agir contre une décision susceptible de compromettre ses chances d'être élu au poste convoité, cet intérêt est intrinsèquement lié à l'existence et à la validité de sa candidature. Si sa candidature est écartée pour une raison valable, le candidat perd le lien juridique qui justifiait son intérêt à contester les décisions internes de l'organisation sportive. Il ne prend plus part, même potentiellement, au processus électoral, et son statut de candidat cesse de produire des effets. À partir du moment où il n'a plus vocation à devenir membre de l'organe ou de la commission convoitée, il n'a plus la qualité requise pour s'immiscer dans le fonctionnement interne de l'organisation sportive dont il ne fait pas partie et dont il ne peut plus espérer faire partie. Sa position devient alors comparable à celle d'un tiers à l'organisation, dont les droits et intérêts ne sont pas directement affectés par les décisions en cause. En conséquence, son intérêt légitime à agir contre des décisions prises dans un cadre auquel il n'est plus partie prenante disparaît. Son action devient ainsi irrecevable pour défaut de qualité ou d'intérêt à agir, conformément aux principes généraux du droit procédural.

I. LES PARTIES

1. M. Moctar Mahamoud Hamid ("M. Mahamoud Hamid" ou l'"Appelant"), citoyen tchadien né le 24 septembre 1964, a été tête d'une des listes de candidats à l'élection du nouveau conseil de la Fédération Tchadienne de Football Association, qui a eu lieu en 2025.

2. La Fédération Tchadienne de Football Association est la fédération nationale de football au Tchad ("FTFA" ou conjointement avec M. Tahir Oloy Hassan, les "Intimés"). Elle a son siège à N'Djamena, au Tchad, et est affiliée à la Fédération Internationale de Football Association ("FIFA"). Elle a notamment pour but d'améliorer, de promouvoir, de contrôler et de réglementer le football sur l'ensemble du territoire de la FTFA.

3. M. Tahir Oloy Hassan, citoyen tchadien né le 17 janvier 1977, a été élu Président du conseil de la FTFA au cours de l'assemblée générale élective de la FTFA qui s'est tenue le 1er mars 2025 ("M. Oloy Hassan" ou, conjointement avec la FTFA, les "Intimés").

4. L'Appelant et les Intimés sont dénommés ensemble les "Parties".

II. LES FAITS

A. Généralité

5. Cette section comprend un résumé des faits pertinents à l'origine du litige, établi sur la base des pièces de procédure écrite déposées par les Parties ainsi que de leurs plaidoiries. D'autres faits et allégations peuvent également y être mentionnés dans la mesure de leur pertinence en vue de la discussion sur le fond dans la présente sentence arbitrale. Si l'Arbitre unique a pris en compte l'ensemble des faits de la cause, assertions, arguments de droit et éléments de preuve avancés par les Parties dans la présente procédure, il se réfère dans sa sentence aux seuls éléments de fait et de droit qui lui sont nécessaires pour l'exposé de son raisonnement.

B. La procédure devant la FTFA

6. Depuis un certain nombre d'années, la FTFA a traversé une crise institutionnelle, que la FIFA, la Confédération Africaine de Football (la "CAF") et le gouvernement tchadien se sont efforcés de résoudre. Dans ce contexte et à la fin de l'année 2021, le Bureau du Conseil de la FIFA a décidé de nommer un comité de normalisation pour la FTFA ("CONOR"), qui avait notamment pour mission de gérer les affaires courantes de la fédération et de mettre en œuvre les élections d'un nouveau comité exécutif (le "Conseil de la FTFA").

7. Le 25 octobre 2023 et sous l'égide du CONOR, de nouveaux Statuts et un code électoral ont été adoptés par la FTFA.

8. Entre le 26 octobre et le 20 novembre 2023, le CONOR a engagé une procédure en vue de nommer le président ainsi que les membres du Conseil de la FTFA. A cette occasion, M. Oloy Hassan a déposé sa candidature, appuyée par une liste composée de douze membres supplémentaires, comme l'exigent les Statuts de la fédération. Lors du dépouillement des dossiers de candidature, il s'est avéré que celui de M. Oloy Hassan était incomplet dans la mesure où il ne contenait pas les pièces justificatives attestant de l'expérience en matière de football des personnes composant sa liste. Un délai a été accordé à M. Oloy Hassan pour compléter son dossier, ce qu'il a fait en temps utile.

9. En date du 20 novembre 2023, le CONOR a examiné les deux seules listes de candidatures retenues en vue de la composition du Conseil de la FTFA, à savoir celle conduite par M. Oloy Hassan et celle menée par M. Ibrahim Wanglaouna Foullah. Le CONOR a écarté la première liste au profit de la seconde, au motif que "[les] *pièces justificatives des expériences du candidat tête de liste, Tahir OLOY HASSAN sont manifestement falsifiées et ne permettent pas de justifier les deux années d'expériences requises pour être éligible"*. Les élections liées à la liste de M. Ibrahim Wanglaouna Foullah devaient avoir lieu au cours d'une assemblée générale extraordinaire de la FTFA agendée au 30 novembre 2023.

10. Le 24 novembre 2023 et suite à une requête urgente déposée par M. Oloy Hassan, le Tribunal de Grande Instance de N'Djamena a ordonné la suspension de l'assemblée générale extraordinaire de la FTFA prévue le 30 novembre 2023 en vue de procéder à l'élection du nouveau Conseil de la FTFA.

11. Le 30 novembre 2023, le Tribunal de Grande Instance de N'Djamena a rétracté son ordonnance du 24 novembre 2023. Le même jour, le mandat du CONOR a pris fin, sans que les membres du Conseil de la FTFA ne soient nommés.

12. Ce n'est qu'à la fin 2024 et au début 2025, que la crise institutionnelle de la FTFA a trouvé son dénouement, notamment à travers la convocation d'assemblées générales extraordinaires chargées de reconstituer ses organes et instances dirigeantes.

13. Ainsi et en date du 14 décembre 2024, une assemblée générale extraordinaire de la FTFA s'est tenue avec pour ordre du jour l'élection des membres composant les commissions a) électorale, b) d'éthique et de discipline ainsi que c) de recours.

14. Il ressort du procès-verbal de cette assemblée générale du 14 décembre 2024 ce qui suit:

- L'assemblée générale a été ouverte par M. le Ministre Abakar Djermah Aumi *"qui a mis un accent particulier sur le respect des textes statutaires et la mise en avant de l'intérêt général afin de permettre au football de sortir de la crise et redorer son blason"*.

- Il est mis en évidence que *"toutes les activités de cette Assemblée Générale Extraordinaire se sont déroulées sous la supervision de la Direction Générale des Sports et des Loisirs du Ministère de la Jeunesse et des Sports et d'un Cabinet d'Huissiers"*.

- Il a été constaté que l'assemblée générale avait été valablement constituée, les formalités de convocation ayant été respectées et le quorum exigé ayant été atteint.

- Après le dépouillement des suffrages, les membres de la commission électorale, de la commission d'éthique et de discipline ainsi que de la commission de recours ont été élus.

15. Par décision N°4/FTFA/SGI/2025 du 3 janvier 2025, se référant notamment aux Statuts de la FTFA ainsi qu'au procès-verbal de l'assemblée générale extraordinaire du 14 décembre 2024, le secrétaire général par intérim de la FTFA, M. Baba Ahmat Baba, a arrêté les modalités liées aux postulations *"des candidat(e)s intéressé(e)s par le Conseil de la FTFA"*. Les dispositions pertinentes de ce document sont les suivantes:

"<u>Article 2</u>: Les candidat(e)s intéressé(e)s par le Conseil de la FTFA doivent remplir les conditions suivantes conformément à l'Article 32 des Statuts de la FTFA:

- *Être de nationalité tchadienne;*
- *Être âgé d'au moins 30 ans à la date des élections et au plus 70 ans;*
- *Justifier d'une période active continue dans le domaine du football d'au moins deux (02) ans au cours des 5 (cinq) dernières années;*
- *Ne pas avoir été reconnu coupable ou condamné judiciairement à une peine infamante;*
- *Jouir pleinement de ses facultés mentales;*
- *Jouir de ses droits civiques;*
- *N'avoir jamais été reconnu coupable ou s'être reconnu comme tel dans une affaire de détournement de denier public;*
- *Ne pas être en exercice dans une haute fonction notamment membre de cabinet de la présidence ou de la Primature, membre du gouvernement, Gouverneur de province, maire, et toute fonction conférant une immunité;*
- *N'avoir pas été reconnu coupable cire violation du Code d'éthique de la FIFA, de la CAF, ou par la Commission de Recours de la FTFA dans les cinq (05) années précédant la date des élections.*

<u>Article 3</u>: Conformément à l'Article 39 des Statuts de la FTFA, chaque liste candidate doit être composée de treize (13) membres dont la ligue du football féminin, à savoir:

- *Un Président;*
- *Deux vice-président(s) dont une femme;*
- *Dix (10) membres, dont au moins une femme.*

[…]

<u>Article 5</u>: Conformément à l'Article 8 du Code

électoral de la FTFA, les dossiers de candidature doivent comprendre les pièces suivantes:

- *Déclaration de candidature;*
- *Programme de développement du football;*
- *Curriculum vitae détaillé;*
- *Copie légalisée de la pièce d'identité en cours de validité;*
- *Copie d'acte de naissance légalisée;*
- *Certificat de nationalité tchadienne;*
- *Certificat médical datant de moins de trois mois;*
- *Casier judiciaire datant de moins de trois mois;*
- *Trois lettres de parrainage du candidat".*

16. Le 14 janvier 2025 était la date ultime pour le dépôt des candidatures à l'élection du Conseil de la FTFA. Dans ce délai, deux listes ont été présentées, celle de M. Oloy Hassan et celle de M. Mahamoud Hamid. Ces listes ont été analysées par la commission d'éthique et de discipline de la FTFA.

17. En ce qui concerne la liste présentée par M. Mahamoud Hamid, la commission d'éthique et de discipline de la FTFA a constaté que cette dernière ne respectait pas les *"dispositions des article 32 des statuts de la FTFA et l'article 8 du code électorat pour des raisons suivantes:*

1. Moctar Mahmoud Hamid
Le Candidat tête de liste Moctar président, les noms des candidats varient ainsi que les dates de naissances et les lieux de naissance d'une pièce à une autre, et les noms mentionnés sur les actes de naissances (pièce de base), manque de signature sur certains documents, une absence de justif (sic) du football.

Le nom porté sur le casier judiciaire ne correspond pas à celui sur l'acte de naissance, au lieu de MOCTAR MAHMOUD HAMID, il est mentionné MACTAR MAHMOUD.

2. Nanguermadji Mounro

La déclaration est mal libellée;
Le certificat médical ne porte pas le nom du candidat;
Il n'a pas justifié d'une période active continue dans le domaine du football d'au moins deux (2) ans au cours de cinq (5) dernières années (article 32 des statuts de la FTFA).

3. Djindjim Charlotte

Sur son acte de naissance, elle est née le 26 juillet 1975 à Moissala
Sur sa carte d'identité Nationale, elle est née le 26 juin 1975 à Moissala
Sur son certificat de nationalité, elle est née le 24 juillet 1975 à Moissala
Sur son certificat médical, elle née le 26 juillet à N'Djamena
Sur son casier judiciaire, la date de naissance est illisible (surchargée)
Le CV n'est pas signé;
Elle n'a pas justifié d'une période active continue dans le domaine du football d'au moins deux (2) ans au cours de cinq (5) dernières années (article 32 des statuts de la FTFA).

4. Mog-nan Djimounta

Les noms des parents ne sont pas mentionnés sur le certificat de nationalité;
Il n'a pas justifié d'une période active continue dans le domaine du football d'au moins deux (2) ans au cours de cinq (5) dernières années (article 32 des statuts de la FTFA).

5. Issakha Siboro Djougourou

Les noms des parents ne sont pas mentionnés sur le certificat de nationalité;
Il n'a pas justifié d'une période active continue

dans le domaine du football d'au moins deux (2) ans au cours de cinq (5) dernières années (article 32 des statuts de la FTFA).

6. Mahamat Adoum Abdelmadjid

Il n'a pas justifié d'une période active continue dans le domaine du football d'au moins deux (2) ans au cours de cinq (5) dernières années (article 32 des statuts de la FTFA).

7. Saleh Korme Wossy

Il n'a pas justifié d'une période active continue dans le domaine du football d'au moins deux (2) ans au cours de cinq (5) dernières années (article 32 des statuts de la FTFA).

8. Abakar Abdallah Mahamat

Le nom mentionné sur sa déclaration n'est pas identique à celui sur son acte de naissance;
Son CV n'est pas signé;
Il n'a pas justifié d'une période active continue dans le domaine du football d'au moins deux (2) ans au cours de cinq (5) dernières années (article 32 des statuts de la FTFA).

9. Rahma Zakaria Rahma

Il n'a pas justifié d'une période active continue dans le domaine du football d'au moins deux (2) ans au cours de cinq (5) dernières années (article 32 des statuts de la FTFA).

10. Baba Ousman Aladji

Le nom mentionné sur son cv ne correspond pas à celui de son acte de naissance;
Il n'a pas justifié d'une période active continue dans le domaine du football d'au moins deux (2) ans au cours de cinq (5) dernières années (article 32 des statuts de la FTFA).

11. Abdoulaye Mahamat Abdoulaye

Sa carte d'identité nationale et son casiers judiciaires comportent deux noms au lieu de 3 noms figurant sur son acte de naissance;
Il n'a pas justifié d'une période active continue dans le domaine du football d'au moins deux (2) ans au cours de cinq (5) dernières années (article 32 des statuts de la FTFA).

12. Asdel–Gisel-Naor

Sur son acte de naissance, il est mentionné ASDEL-GISELE – NAOR, or sur tous ses documents fournis, il est mentionné ASDE-EL GISELE NAOR;
Elle n'a pas justifié d'une période active continue dans le domaine du football d'au moins deux (2) ans au cours de cinq (5) dernières années (article 32 des statuts de la FTFA)".

18. Par décision N°001/FTFA/CED/2025 du 20 janvier 2025, la commission d'éthique et de discipline a validé la liste présentée par M. Oloy Hassan pour l'élection aux postes de Président et de membres du Conseil de la FTFA, tout en rejetant celle déposée par M. Mahamoud Hamid. Ce document, signé le 20 janvier 2025, par M. Ngarougta Ndangue, Président élu de la commission d'éthique et de discipline, a la teneur suivante:

"Commission Ethique et Discipline
Décision N°001/FTFA/CED/2025 portant délibération des résultats de candidatures au Conseil Exécutif de la FTFA

- *Vu les statuts et le Code électoral de la* [FTFA]*;*
- *Vu le procès-Verbal de l'Assemblée Générale Extraordinaire du 14 décembre 2024;*
- *Vu le procès-Verbal de la réunion de ladite délibération de la Commission Ethique et Discipline du 20 janvier 2025;*

Décide

Article 1: la liste du candidat pour l'élection au Conseil Exécutif de la [FTFA]*, candidat tête de liste* [M. Oloy Hassan] *(Président) est*

retenue.

Article 2: la liste du candidat pour l'élection au Conseil Exécutif de la [FTFA] *candidat tête de liste* [M. Mahamoud Hamid] *(Président) est rejetée".*

19. La décision N°001/FTFA/CED/2025 précitée a été notifiée à M. Mahamoud Hamid en date du 1er février 2025. Un délai de 72 heures lui a été imparti pour faire appel.

20. En date du 3 février 2025, Me Victorien Mouo Houloulou, intervenant en qualité d'huissier-commissaire de justice, a notifié à la FTFA un courrier intitulé *"Observations relatives à la décision de la commission électorale portant rejet de la liste présidée par M. Moctar Mahamoud Hamid"*, lesquelles faisaient toutefois expressément référence à la décision N°001/FTFA/CED/2025. Dans son *"procès-verbal de remise d'un courrier sous pli non fermé avec notification"*, Me Victorien Mouo Houloulou a déclaré avoir agi à *"la requête de Monsieur MOCTAR MAHAMOUD HAMIB et 12 AUTRES, tous citoyens de nationalité tchadienne et Candidats aux élections au Conseil de la Fédération Tchadienne de Football Association (FTFA), demeurants à N'Djamena, lesquels élisent domicile en mon Etude aux fins du présent exploit"*.

21. Dans ces *"Observations relatives à la décision de la commission électorale portant rejet de la liste présidée par M. Moctar Mahamoud Hamid"*, il était reproché à la "commission électorale":

- d'avoir écarté la liste de M. Mahamoud Hamid sur la base d'un excès de formalisme, alors que les dossiers des candidats ne présentaient que des omissions ou erreurs mineures, sans aucune intention frauduleuse;
- de ne pas avoir autorisé les membres de la liste en question à corriger ou compléter leur dossier, comme cela avait été fait par le CONOR en 2023, lors de la première candidature de M. Oloy Hassan à la présidence du Conseil de la FTFA dans des circonstances similaires;
- d'avoir rejeté la liste de M. Mahamoud Hamid alors que seul le dossier de la candidate Charlotte Djindin *"pose problème en raison de la fluctuation de la date de sa naissance sur trois (03) pièces différentes et la surcharge de son casier judiciaire"* et d'avoir omis que *"de jurisprudence établi (sic), la disqualification de Charlotte DJINDIN ne saurait disqualifier toute la liste conduite par le concluant"*;
- d'avoir admis sans réserve la conformité des pièces présentées à l'appui de la liste présidée par M. Oloy Hassan, sans réelle vérification;
- de ne pas avoir écarté la candidature de M. Oloy Hassan, qui aurait dû être déclaré inéligible en raison de la fonction qu'il exerce au sein de l'Agence Nationale de Gestion des Élections ("ANGE"), inconciliable avec les exigences posées à l'article 32 al. 9 des Statuts de la FTFA, en vertu duquel un candidat ne peut pas *"être en exercice dans une haute fonction politique notamment membre de cabinet de la présidence ou de la Primature, membre du gouvernement, gouverneur de province, maire, et toute fonction conférant une immunité"*;

- de ne pas avoir tenu compte a) des nombreuses collusions entre M. Oloy Hassan et les membres des commissions de la FTFA, b) du fait qu'il avait *"joué de ses relations pour bloquer les élections au sein de la Fédération"* en 2023 et c) du fait que la candidature de M. Oloy Hassan avait déjà été écartée lorsqu'il avait présenté une liste en 2023, en raison de pièces non crédibles et falsifiées pour justifier de son expérience dans le domaine du football.

22. Par décision n°001/FTFA/CR/2025 du 7 février 2025, la commissions de recours de la FTFA s'est penchée sur les *"Observations relatives à la décision de la commission électorale portant rejet de la liste présidée par M. Moctar Mahamoud Hamid"* et les a écartées pour les motifs suivants:

    - La fonction occupée par M. Oloy Hassan au sein de l'ANGE n'est pas incompatible avec l'article 32 al. 9 des Statuts de la FTFA. En effet, l'ANGE est *"une structure indépendante et permanente* [qui] *n'entretient aucun lien hiérarchique avec les autres institutions de l'Etat. Elle jouit de l'autonomie de gestion administrative et financière"*. Le fait que les membres de l'ANGE soient nommés par décret présidentiel ne confère pas pour autant une nature politique à l'activité déployé par M. Oloy Hassan dans ce cadre. Il en va de même de l'immunité dont jouit ce dernier au sein de l'ANGE qui est limitée à la mission déployée dans cet organisme et ne peut s'étendre à celle exercée au sein de la FTFA.

    - Les allégations de collusions entre M. Oloy Hassan et les membres des commissions de la FTFA n'ont pas été démontrées. En outre, les membres ont été élus régulièrement par l'assemblée générale de la fédération, conformément aux dispositions statutaires en la matière.

    - Les éléments versés au dossier démontrent que M. Oloy Hassan est actif dans le domaine du football depuis 2020, rendant ainsi sans objet un réexamen des motifs ayant fondé le rejet de sa candidature en 2023.

    - Enfin, le dossier de candidature de M. Mahamoud Hamid ne pouvait être qu'écarté au vu des irrégularités qui l'affectaient. Ces dernières auraient dû être corrigées en amont de sorte que la commission d'éthique et de discipline de la FTFA soit en mesure de se déterminer sur la base d'un dossier complet et conforme aux conditions applicables en la matière. *"Qu'étant tête de liste,* [la] *disqualification* [de M. Mahamoud Hamid] *entraine naturellement celle de toute son équipe"*. Dans ces circonstances, *"il n'y a donc pas lieu d'examiner les pièces produites par les autres candidats de sa liste"*.

23. A la lumière de ce qui précède et en date du 7 février 2025, la commission de recours a rendu la décision suivante:

    "EN LA FORME: Reçoit le recours introduit par M. MOCTAR MAHAMOUD HAMID;

    AU FOND: L'y dit mal fondé et le rejette;

- *Confirme la décision n°001/FTFA/CED/2025 du 31 janvier 2025 de la Commission d'éthique et de discipline;*
- *Ordonne la publication de la présente décision conformément à la réglementation en vigueur".*

24. La décision du 7 février 2025 de la commission de recours de la FTFA a été notifiée à M. Mahamoud Hamid en date du 10 février 2025 (la "Décision Litigieuse").

25. Lors de l'audience devant le TAS, M. Mahamoud Hamid a confirmé que la Décision Litigieuse, qui lui avait été notifiée, était accompagnée d'un courrier, daté du 7 février 2025 et signé par M. Patrick Besme Oueina, en sa qualité de *"président de la Commission électorale"*. La teneur de ce document est la suivante:

"Objet: rejet du recours

J'ai l'honneur de porter à votre connaissance que faisant suite au rejet de votre dossier de candidature par la Commission électorale au poste de Conseiller et, suite à votre Recours exercé auprès de la Commission recours électoral de la Fédération Tchadienne de Football Association (FTFA), la Commission Recours électorale, réunie ce jour 07 février 2025, après examen approfondie (sic) de votre recours, à rejeter (sic) une fois de plus votre dossier de candidature.

Par conséquent, votre candidature au poste de Conseiller à la Fédération Tchadienne de Football Association (FTFA) est définitivement rejeté (sic) et ce, avec effet immédiat.

En vous souhaitant bonne réception, je vous prie de croire à l'assurance de ma considération distinguée".

26. Le 1er mars 2025, la FTFA a tenu une nouvelle assemblée générale extraordinaire, dans le cadre de laquelle M. Oloy Hassan a été élu Président du Conseil de la FTFA par 58 voix sur 59, dont un bulletin nul.

III. LA PROCEDURE DEVANT LE TRIBUNAL ARBITRAL DU SPORT

27. Le 16 février 2025, M. Mahamoud Hamid a déposé devant le Tribunal Arbitral du Sport ("TAS"), une requête d'effet suspensif de la Décision Litigieuse, qui, après réception des déterminations des Intimés, a été rejetée par ordonnance rendue par la Présidente suppléante de la Chambre arbitrale d'appel du TAS en date du 25 février 2025.

28. Le 24 février 2025, M. Mahamoud Hamid a déposé une déclaration d'appel auprès du TAS contre la Décision Litigieuse, en application des articles R47 et suivants du Code de l'arbitrage en matière de sport (le "Code").

29. Le 25 février 2025, le Greffe du TAS a accusé réception de la déclaration d'appel. De même, il a accordé aux Intimés un délai a) de trois jours pour indiquer s'ils consentaient à ce que la langue de l'arbitrage soit le français et b) de cinq jours pour confirmer s'ils acceptaient que la présente procédure soit soumise à un arbitre unique comme requis par M. Mahamoud Hamid.

30. Le 7 mars 2025 et en l'absence de déterminations de la part des Intimés sur son courrier du 25 février 2025, le Greffe

du TAS a informé les Parties qu'il appartiendrait à la Présidente de la Chambre arbitrale d'appel du TAS ou à sa suppléante de décider du nombre d'arbitre.

31. Le 7 mars 2025 et en dehors du délai qui leur avait été imparti à cet effet, les Intimés ont demandé à ce que la présente procédure soit soumise à une formation composée de trois arbitres.

32. Le 11 mars 2025 et en raison de la tardiveté du courrier du 7 mars 2025 des Intimés, le Greffe du TAS a demandé à M. Mahamoud Hamid de lui indiquer s'il acceptait que le litige soit soumis à une formation composée de trois arbitres, ce qu'il a refusé dans le délai imparti.

33. Le 13 mars 2025, le Greffe du TAS a accusé réception du mémoire d'appel déposé par M. Mahamoud Hamid le 10 mars 2025, conformément aux dispositions de l'article R51 du Code. Il a invité les Intimés à déposer leur réponse dans les 20 jours.

34. Le 14 mars 2025, les Intimés ont demandé à ce que le délai pour le dépôt de leur réponse soit fixé après le paiement par M. Mahamoud Hamid de la totalité de l'avance de frais.

35. Le 18 mars 2025, le Greffe du TAS a confirmé qu'un nouveau délai de vingt jours serait imparti aux Intimés pour le dépôt de leur réponse après réception du paiement par M. Mahamoud Hamid de sa part de l'avance de frais.

36. Le 20 mars 2025, le Greffe du TAS a informé les Parties que la Présidente suppléante de la Chambre arbitrale d'appel du TAS avait décidé de soumettre le présent litige à un arbitre unique.

37. Le 23 avril 2025, le Greffe du TAS a accusé réception du paiement par M. Mahamoud Hamid de sa part de l'avance de frais et a invité les Intimés à déposer leur réponse dans les 20 jours.

38. Le 6 mai 2025, le Greffe du TAS a informé les Parties du fait que la Présidente de la Chambre arbitrale d'appel du TAS avait désigné Me Patrick Grandjean, en qualité d'Arbitre unique dans la présente affaire, et a soumis aux Parties une copie de la déclaration d'acceptation et d'indépendance remplie par ce dernier, attirant leur attention sur les remarques de Me Grandjean ainsi que sur l'article R34 du Code relatif aux demandes de récusation.

39. Le 12 mai 2025, les Intimés ont déposé leur réponse conformément à l'article R55 du Code, laquelle était assortie d'une exception d'irrecevabilité de certaines des conclusions de M. Mahamoud Hamid.

40. Le 16 mai 2025, le Greffe du TAS a relevé qu'aucune demande de récusation n'avait été déposée quant à la désignation de Me Grandjean en qualité d'Arbitre unique.

41. Le 26 mai 2025, le Greffe du TAS a adressé aux Parties un courrier à la teneur suivante:

"L'arbitre unique a […] *décidé, au vu des articles R44.3, R56 et R57 du Code, d'inviter l'appelant à s'exprimer sur la recevabilité de certaines des conclusions de l'appelant et à déposer par email et d'ici au 3 juin 2025:*

- *En ce qui concerne la conclusion: "En conséquence, Annuler, à défaut, infirmer la Décision n°001/FTFA/CR/2025 du 07 février 2025 du Comité de Recours de la Fédération Tchadienne de*

Football Association" (la "Décision Litigieuse"): En substance par cette conclusion, l'appelant cherche à obtenir a) l'invalidation de la décision n°001/FTFA/CED/2025 du 31/01/2025 de la Commission d'Ethique et de Discipline, retenant le dossier de candidature de M. Tahir Oloy Hassan et de sa liste et b) la validation de sa candidature et de sa liste, ainsi que la conclusion "Annuler les élections du 1er mars 2025 au Bureau Exécutif de la FTFA pour n'avoir pas satisfait aux exigences légales des statuts de la FTFA": En substance par cette conclusion, l'appelant cherche à obtenir l'annulation de l'élection de M. Tahir Oloy Hassan. Dès lors qu'il représente non seulement ses intérêts mais aussi ceux des personnes figurant sur sa liste (qui doit impérativement être composées de 13 membres), l'appelant est invité à donner les bases légales tchadiennes lui permettant d'agir seul devant le TAS à son nom ainsi qu'au nom de celui des membres de sa liste. En particulier, il est invité à justifier juridiquement les raisons pour lesquelles il n'existe pas de consorité nécessaire entre lui et les membres de sa liste, nécessitant qu'ils attaquent en commun la Décision Litigieuse.

En outre, dès lors que l'appelant conteste non seulement la candidature de M. Tahir Oloy Hassan mais également celle des membres de sa liste, il apparaît que les intérêts de ces derniers sont directement affectés par les concluions prises dans le mémoire d'appel. L'appelant est invité à expliquer les raisons pour lesquelles il n'était pas nécessaire de diriger l'appel également contre les membres de la liste de M. Tahir Oloy Hassan, qui n'auraient donc pas la légitimation passive.

Les questions soulevées ci-dessus s'appliquent également par analogie à la conclusion prise dans le mémoire d'appel (et l'appelant est invité à y répondre) en vertu de laquelle il est demandé au TAS "[i]nfirmer en toutes ses dispositions la Décision n°001/FTFA/CED/2025 du 31 janvier 2025 de la Commission d'Éthique et de Discipline portant délibération des résultats de candidature au Conseil Exécutif de la fédération Tchadienne de Football association".

- *En ce qui concerne la conclusion d'"Annuler l'élection des membres des organes juridictionnels: Commission électorale, Commission d'Ethique et de Discipline et la Commission de recours", "Statuer à nouveau" et "Dire et juger que le processus d'élection au Bureau Exécutif de la FTFA sera repris dans tel délai qu'il plaira de fixer" prises dans le mémoire d'appel par l'appelant et dès lors qu'il n'est pas membre de la FTFA, l'appelant est invité à exposer quelle est la base statutaire de la FTFA lui donnant le droit de remettre en question les décisions prises par les organes de la FTFA.*

  A réception des observations de l'appelant sur ces questions, un délai similaire sera imparti aux intimés pour y répondre".

42. Le 2 juin 2025, M. Mahamoud Hamid a demandé une prolongation de sept jours du délai imparti pour répondre au courrier du Greffe du TAS du 26 mai 2025, qui lui a été accordée en vertu de l'article R32 al. 2 du Code.

43. Le 10 juin 2025, M. Mahamoud Hamid a adressé au Greffe du TAS ses déterminations relatives aux questions qui lui avaient été adressées le 26 mai 2025 ainsi que sur une partie des

arguments soulevés par les Intimés dans leur réponse.

44. Le 13 juin 2025, le Greffe du TAS a accusé réception du courrier du 10 juin 2025 de M. Mahamoud Hamid et a adressé le courrier suivant aux Parties:

"Au nom de l'arbitre unique, je relève toutefois que les observations et les annexes déposées par l'appelant excèdent la portée des questions de l'arbitre unique et que l'appelant ne répond que très partiellement à ces dernières, ne fournissant notamment aucune disposition de droit tchadien ou de la FTFA traitant de la question de la consorité.

Au vu de ce qui précède et en application de l'article R44.3 du Code de l'arbitrage en matière de sport, l'arbitre unique a décidé:

- *d'inviter les Parties à soumettre d'ici au 19 juin 2025 tout élément de droit tchadien (disposition de droit tchadien, des règlements de la FTFA, doctrine ou jurisprudence) traitant de la consorité, à défaut de quoi, et sauf éventuelle objection qui serait adressée au Greffe du TAS dans le même délai, il sera considéré que les parties acceptent que le droit suisse et les principes de la jurisprudence du TAS s'appliquent à ses questions;*

- *sauf éventuelle objection qui serait adressée au Greffe du TAS également d'ici au 19 juin 2025, de remplacer la tenue d'une audience par l'acceptation des observations de l'appelant du 10 juin 2025 et ses annexes au dossier et le dépôt par les intimés d'une duplique strictement limitée aux observations du 10 juin 2025".*

45. Le 16 juin 2025, les Intimés ont adressé au Greffe du TAS leurs déterminations sur les demandes adressées par ce dernier en date du 13 juin 2025, en précisant qu'ils ne s'opposaient pas à une procédure sans audience. Ne citant aucune disposition du droit tchadien, les Intimés ont déclaré que le droit suisse devait être appliqué *"pour trancher la question de la consorité"* et que les douze autres membres de la liste de M. Mahamoud Hamid auraient dû être partie à la procédure, tout comme les douze autres membres de la liste de M. Oloy Hassan. Dans ce contexte, ils ont conclu que *"au regard des exigences liées à la légitimation active et passive ainsi qu'aux règles applicables en matière de consorité nécessaire, l'appel introduit par Monsieur Moctar MAHAMOUD HAMID seul, sans les autres membres de sa liste en qualité de co-appelants, et dirigé uniquement contre Monsieur Tahir OLOY HASSAN, à l'exclusion des autres membres de sa liste en tant que co-intimés, doit être rejeté sur le fond".*

46. Le 19 juin 2025, M. Mahamoud Hamid a donné suite au courrier du Greffe du TAS du 13 juin 2025, sans toutefois soumettre quelque élément de droit tchadien traitant de la consorité. En tout et pour tout, il s'est prévalu du procès-verbal de la séance du CONOR du 20 novembre 2023 ainsi que du fait que les décisions le concernant et prises par les organes de la FTFA n'avaient été notifiées qu'à lui et que personne n'avait remis en cause le fait qu'il pouvait agir seul dans ce contexte. Il a demandé la tenue d'une audience.

47. Le 26 juin 2025, le Greffe du TAS a pris bonne note du fait que les Intimés avaient accepté que soient admises au dossier les déterminations déposées par M. Mahamoud Hamid respectivement les 10 et 16 juin 2025.

48. Le 4 juillet 2025, le Greffe du TAS a convoqué les Partie à une audience fixée d'entente entre elles au 18 juillet 2025.

49. Le 10 et le 15 juillet 2025, les Intimés, respectivement M. Mahamoud Hamid, ont signé et retourné l'Ordonnance de procédure.

50. Le 18 juillet 2025, l'audience a été tenue par vidéo-conférence.

51. En plus de l'Arbitre unique, assisté par Me Pauline Pellaux, Conseillère auprès du TAS, les personnes suivantes ont participé à l'audience:

- M. Mahamoud Hamid n'a pas assisté à l'audience mais était représenté par son conseil, Me Josué Ngadjadoum.

- Les Intimés étaient représentés par leurs conseils, Me Makarem Hajaji et Me Moustapha Kamara.

52. A l'ouverture de l'audience, les Parties ont expressément confirmé qu'elles n'avaient pas d'objection à formuler quant à la nomination de l'Arbitre unique et qu'elles n'avaient pas de remarque à formuler quant au déroulement de la procédure.

53. Au cours des débats, les Parties ont notamment confirmé ce qui suit:

<u>En ce qui concerne la date de la décision N°001/FTFA/CED/2025</u>

- Les Parties ont attesté que la décision N°001/FTFA/CED/2025 avait été émise par la commission d'éthique et de discipline en date du 20 janvier 2025 et non en date du 31 janvier 2025, comme cela ressort à tort de la Décision Litigieuse ainsi que d'autres pièces au dossier.

<u>En ce qui concerne l'existence d'une commission de recours électoral</u>

- Selon M. Mahamoud Hamid, parmi les organes de la FTFA, il devrait y avoir une "commission de recours électoral", distincte de la commission de recours prévue à l'article 62 des Statuts de la FTFA. En l'absence d'une telle commission de recours électoral, la Décision Litigieuse doit être considérée comme nulle, l'Appelant ayant été privé d'une double instance au sein de la FTFA. Pour la même raison, la décision N°001/FTFA/CED/2025 du 20 janvier 2025 de la commission d'éthique et de discipline ne pouvait faire l'objet d'un appel direct devant le TAS.

- Les Intimés affirment qu'il n'existe qu'une seule commission de recours. Selon eux, il n'y a pas de "commission de recours électoral", distincte de la commission de recours. Si la commission de recours n'avait pas été compétente pour se saisir d'un appel déposé à l'encontre de la décision N°001/FTFA/CED/2025 du 20 janvier 2025 de la commission d'éthique et de discipline, M. Mahamoud Hamid aurait dû saisir le TAS, les voies de droit internes de la FTFA ayant été épuisées.

<u>En ce qui concerne le courrier du 7 février 2025 émis par la FTFA, dont une copie a été remise par M. Mahamoud Hamid à l'appui de ses déterminations du 10 juin 2025</u>

Le conseil de M. Mahamoud Hamid a affirmé, sans que cela ne soit remis en question par les Intimés, que ce courrier

est une lettre d'accompagnement de la Décision Litigieuse.

Le dossier de Mme Charlotte Djindin, membre de la liste de candidatures de M. Mahamoud Hamid

- Le conseil de M. Mahamoud Hamid a admis que le dossier de Mme Charlotte Djindin souffrait de défauts qui ne pouvaient être corrigés et ne pouvait par conséquent être retenu dans le cadre des élections au Conseil de la FTFA. Cependant et en vertu de la "jurisprudence" en la matière, il a soutenu que la disqualification de la candidature de Mme Charlotte Djindin ne devait pas emporter celle de la liste de M. Mahamoud Hamid.

- Les Intimés ont relevé que l'invalidation du dossier de Mme Charlotte Djindin rendait la liste de M. Mahamoud Hamid non conforme aux exigences statutaires, lesquelles imposent un minimum de treize candidats.

Les irrégularités dont souffrent les autres candidatures de la liste de M. Mahamoud Hamid

- Le conseil de M. Mahamoud Hamid a indiqué que le Tchad, marqué par des années de guerre et de pauvreté, fait face à un fort taux d'analphabétisme et à des faiblesses administratives importantes, en particulier concernant les registres civils et les casiers judiciaires, qui ne sont pas encore entièrement informatisés. Cela expliquerait les imprécisions relevées dans les dates de naissance et les noms de famille des candidats de la liste de M. Mahamoud Hamid. A la question de savoir pour quels motifs il n'avait pas apporté devant la commission de recours et le TAS la preuve que les candidats de sa liste pouvaient *"justifier d'une période active continue dans le domaine du football d'au moins deux (02) ans au cours des 5 (cinq) dernières années"*, le conseil de M. Mahamoud Hamid a confirmé avoir hésité à le faire avant d'y renoncer.

- Les Intimés relèvent que M. Oloy Hassan a pu présenter une liste de candidats, dont le dossier ne souffrait d'aucune irrégularité, tant en ce qui concerne les noms, que les dates de naissance et les extraits de casier judiciaire. Dans ces circonstances, ils ont estimé extraordinaire que M. Mahamoud Hamid n'ait pas pu faire de même. Ils maintiennent que les carences observées dans les candidatures présentées par M. Mahamoud Hamid sont incompatibles avec les exigences en la matière.

En ce qui concerne la requête d'annulation des assemblées générales du 14 décembre 2024 et du 1er mars 2025

- Le conseil de M. Mahamoud Hamid concède que la demande d'annulation intervient après le délai de 21 jours en ce qui concerne l'assemblée générale du 14 décembre 2024 et qu'il n'a pas attaqué devant le TAS celle du 1er mars 2025.

- Les Intimés estiment que le TAS n'est pas compétent pour examiner ces requêtes, déposées hors délai.

Sur la question de savoir si M. Mahamoud Hamid pouvait, dans son

mémoire d'appel, formuler des conclusions supplémentaires à celles mentionnées dans sa déclaration d'appel

Les Intimés ont admis qu'il y avait lieu de répondre par l'affirmative à cette question.

En ce qui concerne le droit tchadien relativement à la question de la consorité

Le conseil de M. Mahamoud Hamid a précisé que le concept de consorité ne fait pas partie des institutions connues par le droit tchadien ou, à tout le moins, qu'il y est très marginal. Selon lui, le droit suisse ne peut pas s'appliquer à titre supplétif, la question de la consorité devant être analysée à la lumière de ce que le CONOR a fait en 2023 ainsi que du fait que la commission de recours a notifié la Décision Litigieuse exclusivement à M. Mahamoud Hamid.

54. Au terme des plaidoiries, les Parties ont expressément reconnu que leur droit d'être entendues avait été respecté par le TAS et qu'elles étaient satisfaites de la manière dont elles avaient été traitées au cours de la procédure arbitrale les concernant. L'Arbitre unique a clôturé les débats et communiqué que sa décision serait rendue en temps et en heure.

IV. LES POSITIONS DES PARTIES

A. M. Mahamoud Hamid

55. Dans sa déclaration d'appel, M. Mahamoud Hamid a pris les conclusions suivantes:

"En la Forme, […]*;*

Déclarer recevable l'appel de M MOCTAR MAHAMOUD HAMID contre la Décision n°001/FTFA/CR/2025 du 07 février 2025 du Comité de Recours de la Fédération Tchadienne de Football Association;

Au Fond, l'y dire fondée,

En conséquence, Annuler, à défaut, infirmer la Décision n°001/FTFA/CR/2025 du 07 février 2025 du Comité de Recours de la Fédération Tchadienne de Football Association;

Évoquer,

Infirmer en toutes ses dispositions la Décision n°001/FTFA/CED/2025 du 31 janvier 2025 [recte 20 janvier 2025] *de la Commission d'Éthique et de Discipline portant délibération des résultats de candidatures au Conseil Exécutif de la Fédération Tchadienne de Football Association;*

Statuer à nouveau,

Dire et juger que le processus d'élection au Bureau Exécutif de la FTFA sera repris dans tel délai qu'il plaira de fixer;

Condamner solidairement la FTFA et M TAHIR OLOY HASSAN aux entiers dépens".

56. Dans son mémoire d'appel, M. Mahamoud Hamid a repris les mêmes conclusions et a en outre demandé au TAS:

"[…]*;*

Annuler l'élection des membres des organes juridictionnels: Commission électorale, Commission d'Éthique et de Discipline et la Commission de recours);

Annuler les élections du 1er mars 2025 au Bureau Exécutif de la FTFA pour n'avoir pas satisfait aux exigences légales des statuts de la FTFA".

57. En substance, les arguments de M. Mahamoud Hamid peuvent être résumés de la manière suivante:

- Le TAS est compétent pour statuer sur l'appel en vertu de l'article 62 al. 3 des Statuts de la FTFA.

- Les Statuts de la FTFA n'ayant pas prévu un autre délai, celui de 21 jours fixé à l'article R49 du Code est donc applicable. En l'espèce, l'appel a été déposé le 24 février 2025 à l'encontre de la Décision Litigieuse du 7 février 2025. Il est donc recevable.

- Les conclusions prises dans la déclaration d'appel peuvent parfaitement être amendées dans le mémoire d'appel, sans que cela ne viole l'article R56 du Code.

- Lors de l'élection des membres des commissions a) électorale, b) d'éthique et de discipline ainsi que c) de recours, le processus de sélection des candidats ne s'est pas fait en conformité des Statuts de la FTFA. Ces derniers ont été choisis par *"le Secrétaire Général par intérim, nommé par un arrêté du Ministre des Sports en violation des statuts de la FTFA" "sans mettre en place une Commission ad hoc comme l'exige* [l'article 59 des Statuts de la FTFA]*". "Parmi les candidats retenus, figure le nom de Maitre NGARTA ELEAZAR, qui est l'avocat-conseil de M Tahir OLOY HASSAN (ayant introduit et obtenu pour lui l'Ordonnance N°846/2023 du 24/11/2023 de suspension de la tenue de l'AGE de la FTFA du 30/11/2024), élu lors de l'Assemblée Générale à la Commission Électorale en qualité de Rapporteur"*. Le secrétaire général par intérim a sciemment enfreint les dispositions statutaires de la FTFA afin *"de placer dans les commissions de personnes favorables au candidat Tahir OLOY HASSAN"*.

- Me Eléazar Ngarta est l'avocat conseil de M. Oloy Hassan et est membre de la commission électorale de la FTFA. En cette qualité et conformément à l'article 3 du Code électoral de la FTFA, il aurait dû se retirer des discussions et de la prise de décision relatives à l'élection de M. Oloy Hassan et des membres de sa liste. *"De connivence avec le candidat Tahir OLOY HASSAN, son avocat Maitre NGARTA a passé sous silence et volontairement dissimulé ce lien, afin de "manœuvrer" au sein de la Commission électorale, en faveur de son "client" et candidat, se rendant ainsi coupable d'un conflit d'intérêts, alors même qu'"il doit agir de bonne foi en toute circonstance et observer la plus grande impartialité"*. [Ce] *mélange de conflit d'intérêts apparent, d'absence de bonne foi et de partialité du membre de la Commission électorale, Maître NGARTA, avocat de M Tahir OLOY HASSAN, constitue une violation grave du Code électoral et, par voie de conséquence, l'annulation de la Décision déférée ainsi que l'élection du 1er Mars 2025 de son "client" au Bureau Exécutif de la FTFA"*.

- Comme cela est prévu à l'article 9 du Code électoral de la FTFA, parmi les organes de la FTFA, il devrait y avoir une "commission de recours électoral", distincte de la commission de recours prévue à l'article 62 des Statuts de la FTFA. Or, cette commission de recours

électoral n'a pas été constituée lors de l'assemblée générale extraordinaire du 14 décembre 2024. *"Il s'ensuit que le recours exercé devant la commission de recours, en l'absence de la commission électorale de recours dont les décisions sont définitives et exécutoires, ne pouvant être "attaquées que devant le Tribunal Arbitral du Sport (T.A.S)" conformément à l'alinéa 6 de l'article 9 susvisé, viole les dispositions précitées et devrait emporter l'annulation de la Décision attaquée et par voie de conséquence les élections au Bureau Exécutif de la FTFA du 1er mars 2025"*.

- En vertu de la réglementation applicable, la commission d'éthique et de discipline n'est compétente que pour prononcer des sanctions disciplinaires ou pour *"relever des manquements Éthiques"*. Dans une procédure de candidature à l'élection au Conseil de la FTFA, *"la Commission de Discipline et d'Éthique en matière électorale ne disposait pas de pouvoir de décision en tant que tel, mais plutôt un pouvoir de contrôle et de recommandation comme clairement disposé à l'article 8 du code électoral"*. En retenant la candidature de M. Oloy Hassan et en rejetant celle de M. Mahamoud Hamid, la commission d'éthique et de discipline *"a outrepassé ses compétences et a statué en matière électorale ultra petita et non en matière disciplinaire comme en disposent les statuts de la FTFA, vidant ainsi les prérogatives de la Commission électorale"*.

- La candidature de M. Oloy Hassan aurait dû être écartée en raison de la fonction qu'il exerce au sein de l'ANGE, qui est inconciliable avec les exigences posées à l'article 32 al. 9 des Statuts de la FTFA, en vertu duquel un candidat ne peut pas *"être en exercice dans une haute fonction politique notamment membre de cabinet de la présidence ou de la Primature, membre du gouvernement, gouverneur de province, maire, et toute fonction conférant une immunité"*. La nature politique de l'activité de M. Oloy Hassan découle du fait qu'il a été nommé rapporteur général de l'ANGE par décret présidentiel n°0054/PT/2024 du 30 janvier 2024 et qu'il jouit d'une immunité liée à ses fonctions. Tenant compte du fait que M. Oloy Hassan n'a pas démissionné de ce poste avant de présenter sa candidature au Conseil de la FTFA, cette dernière doit être écartée dès lors qu'elle contrevient a) à l'article 32 des Statuts de la FTFA, qui interdit expressément à tout candidat d'occuper une fonction conférant une immunité, sans distinguer la nature ou la portée d'une telle immunité et b) des articles 15 et 16 de la Loi organique n°002/CNT/2024 du 26 janvier 2024 portant attribution, organisation et fonctionnement de l'ANGE, qui établit l'incompatibilité entre les fonctions de membre de l'ANGE et l'exercice de tout mandat électif ou d'activité politique. La violation de ces dispositions justifie l'annulation de la Décision Litigieuse.

- Par décision du 20 novembre 2023, le CONOR avait écarté la candidature présentée par M. Oloy Hassan en raison de pièces non

crédibles et falsifiées pour justifier les deux années d'expérience footballistique exigées par les Statuts. Cette décision n'a pas fait l'objet d'un appel et est donc entrée en force. M. Oloy Hassan ne peut pas présenter une nouvelle liste. *"Dès lors, la Commission de Recours de la FTFA, ne peut pas, sans se contredire ni violé (sic) le "procès-verbal d'examen et de délibération des dossiers de candidature au Conseil de la Fédération Tchadienne de Football Association" du 20 novembre 2023 du CONOR, décider de la recevabilité et du maintien de la candidature de M T AHIR OLOY HASSAN".*

- Si le dossier de candidature de M. Mahamoud Hamid souffrait d'erreurs ou d'omissions, celles-ci étaient mineures et ne justifiaient pas son rejet. D'ailleurs et comme l'avait fait le CONOR pour M. Oloy Hassan en novembre 2023, M. Mahamoud Hamid aurait dû être invité à compléter son dossier de candidature. *"La Commission de Recours en confirmant la décision de la Commission de Discipline et d'Éthique sur l'invalidation de la candidature de l'appelant a délibérément pris parti pour M TAHIR OLOY HASSAN au moyen d'une motivation erronée et infondée, alors même qu'elle aurait dû demander à M MOCTAR MAHAMOUD HAMID de "compléter les dossiers de sa liste" comme de pratique en pareil cas pour l'examen des dossiers de candidatures au Bureau Exécutif de la FTFA;* […]. *Par conséquent, la décision attaquée mérite d'être annulée sinon infirmée sur ce point".*

- La candidature de M. Mahamoud Hamid a été écartée sur la base de prétendues irrégularités, sans que ce dernier n'ait préalablement pu s'exprimer à ce sujet. Le droit d'être entendu de M. Mahamoud Hamid a été violé, ce qui doit entrainer l'annulation de la décision N°001/FTFA/CED/2025.

- Il n'y a pas de consorité nécessaire entre M. Mahamoud Hamid et les autres membres de sa liste. Cela résulte du fait que:

  - La Décision Litigieuse est intitulée *"Affaire Moctar Mahamoud Hamid c/ Fédération Tchadienne de Football Association (recours contre la décision n°001/FTFA/CED/2025 du 31 janvier 2025* [recte 20 janvier 2025] *de la commission d'éthique et de discipline".*

  - La décision n°001/FTFA/CED/2025 du 20 janvier 2025 de la commission d'éthique et de discipline est fondée sur ses propres travaux, consignés dans un document intitulé *"Rapport détaillé du candidat tête de liste Moctar Mahamoud Hamid (Président)".*

  - La Décision Litigieuse a été notifiée exclusivement à M. Mahamoud Hamid.

  - En date du 7 février 2025, le président de la commission électorale de recours de la FTFA a confirmé à M. Mahamoud Hamid le rejet

définitif de sa *"candidature au poste de Conseiller de la* [FTFA]*"*.

- *"En droit, l'action est ouverte à celui qui a un intérêt personnel et direct pour agir; La Décision Litigieuse n'ayant été prise que contre Monsieur MOCTAR MAHAMOUD HAMID et notifié à lui seul et personnellement pour faire courir les délais et voies de recours; c'est à bon droit que l'appelant a exercé en son nom personnel les voies de recours contre une décision lui faisant grief"*.

- D'après le procès-verbal du 20 novembre 2023 établi par le CONOR, il apparaît que cet organe a disqualifié la liste présentée par M. Oloy Hassan, car la candidature de ce dernier présentait des irrégularités. *"Étant tête de liste, sa disqualification entraine celle de toute son équipe"*. Toutefois, le CONOR a validé la liste de M. Ibrahim Wanglaouna Foullah, tout en précisant que la disqualification de sa colistière, Mme Outman Haoua, candidate à la vice-présidence sur cette même liste, ne saurait entraîner la disqualification de l'ensemble de la liste, dans la mesure où tous les autres candidats, en particulier la tête de liste, remplissent les critères d'éligibilité. *"Cette jurisprudence solidement établie dans la mesure où elle a été appliquée à la présente affaire par une notification strictement limitée aux candidats tête de liste lors des dernières élections du 1er Mars 2025, et non aux consorts membres des deux listes prouve à suffisance qu'aussi bien la Commission Electorale mise en place lors des élections organisées par le CONOR, que la Commission de Discipline et d'Éthique de la FTFA ont estimé, que la notion de consorité dans l'entendement des statuts et règlements de la FTFA ne pouvait être interprétée à l'aune des principes juridiques généralement usités qui s'appliquent lorsque plusieurs parties sont liées par un rapport juridique qui ne peut faire l'objet que d'une seule décision, doivent agir ou être actionnées ensemble* […]. *Il ressort de l'analyse des deux cas contenus dans la délibération* [du CONOR] *que le sort des consorts dépend de la situation juridique des candidats têtes de liste et ne procède de l'existence d'un droit personnel individualisable"*.

- Même s'il n'est pas membre de la FTFA, M. Mahamoud Hamid a qualité pour attaquer les décisions prises par l'assemblée générale extraordinaire du 14 décembre 2024. *"En ce qui concerne la demande d'annulation de l'élection des membres des organes juridictionnels "commission d'Ethique et de Discipline et la Commission de recours", "Statuer à nouveau" et "dire et juger que le processus d'élection au Bureau Exécutif de la FTFA sera repris dans tel délai qu'il plaira de fixer"; s'agissant d'une violation du Code électoral et des Statuts de la FTFA, l'appelant n'a pas à justifier de sa qualité de membre de la FTFA pour soulever ces demandes"*. "*En effet, en sa qualité de candidat, tête de liste, aux élections du Bureau Exécutif de la FTFA, la violation du Code électoral et des Statuts de la FTFA par la même Fédération, lui font grief, puisque cette violation a conduit au rejet*

de sa candidature; par conséquent, l'appelant est fondé du seul fait que ces décisions prise par les organes de la FTFA préjudicient à ses intérêts et l'affectent particulièrement".

L'annulation de la Décision Litigieuse *"doit emporter annulation des élections du 1er mars 2025 au Bureau Exécutif de la FTFA, et a minima en ce qui concerne Tahir OLOY HASSAN".*

B. La position des Intimés

58. Dans leur réponse commune, les Intimés ont pris les conclusions suivantes:

"Compte tenu de ce qui précède, [les Intimés] *demandent au Tribunal Arbitral du Sport de:*

- ***REJETER*** *l'appel déposé par Monsieur Moctar MAHAMOUD HAMID en date du 24 février 2025 en toutes ses conclusions*
- ***REJETER*** *toutes autres conclusions de l'Appelant*
- ***METTRE A LA CHARGE*** *de Monsieur Moctar MAHAMOUD HAMID l'intégralité des frais d'arbitrage de la présente procédure*
- ***CONDAMNER*** *Monsieur Moctar MAHAMOUD HAMID au versement d'une contribution aux frais d'avocats* [des Intimés] *ainsi qu'aux frais encourus par cette dernière pour les besoins de ladite procédure".*

59. Dans leurs observations du 16 juin 2025, les intimés ont en outre conclu à l'irrecevabilité de l'appel et de l'intégralité des demandes de l'appelant.

60. En substance, les arguments des Intimés peuvent être résumés de la manière suivante:

- Dans son mémoire d'appel, M. Mahamoud Hamid a pris des conclusions nouvelles qui ne figuraient pas dans sa déclaration d'appel, en violation de l'article R56 du Code. En l'absence de circonstances exceptionnelles et d'accord des Intimés, *"les nouvelles demandes* [formulées] *dans le mémoire du 10 mars 2025 doivent être déclarées irrecevables. Plus largement, en raison de l'irrecevabilité manifeste des ces (sic) prétentions additionnelles et des irrégularités procédurales qui en découlent, il y a lieu de rejeter l'intégralité des demandes de l'Appelant"*.. Au cours de l'audience devant le TAS, les Intimés sont revenus sur cet argumentaire en admettant que les conclusions prises dans la déclaration d'appel pouvaient être amendées dans le mémoire d'appel.
- Le contexte dans lequel était plongé la FTFA était exceptionnel et s'inscrit dans une crise institutionnelle qui existait depuis 2017. A la fin du mandat du CONOR, la FTFA se trouvait dans un vide juridique, faute d'organes et de possibilité d'appliquer les Statuts de la fédération.
- Le mandat du CONOR était limité dans le temps et a pris fin le 30 novembre 2023. À compter de cette date, toutes les décisions prises par le CONOR ne peuvent plus être considérées comme valides ou exécutoires. Cela vaut

pour les listes électorales qui avaient été présentées au CONOR avant le 30 novembre 2023.

- L'assemblée générale extraordinaire du 14 décembre 2024 s'est tenue en présence de représentants du gouvernement tchadien, de la FIFA et *"de plusieurs autres observateurs nationaux et internationaux"*. Elle s'est déroulée dans des conditions régulières, conformément aux dispositions statutaires et réglementaires applicables. En conséquence, les membres de la commission électorale, d'éthique et de discipline ainsi que de recours ont été valablement élus. Ils n'ont fait l'objet d'aucune récusation.

- M. Oloy Hassan a été confirmé dans la fonction de président du Conseil de la FTFA lors de l'assemblée générale du 1er mars 2025 *"avec 58 voix sur 59, un bulletin ayant été déclaré nul"*, en présence du ministre tchadien chargé des sports, de trois représentants de la FIFA, du maire adjoint de N'Djamena ainsi que d'un représentant de la CAF. *"Il en ressort que l'élection de Monsieur Tahir OLOY HASSAN s'impose comme régulière, incontestable et pleinement légitime"*.

- Contrairement aux affirmations de M. Mahamoud Hamid, Me Eléazar Ngarta n'a jamais été l'avocat conseil de M. Oloy Hassan. Il l'a d'ailleurs formellement attesté par écrit au moyen d'une déclaration sur l'honneur. Il n'y a pas de conflit d'intérêts ni de collusion entre M. Oloy Hassan et les membres des organes de la FTFA.

- Faisant preuve d'une mauvaise foi manifeste, M. Mahamoud Hamid conteste la compétence de la commission de recours à statuer sur son propre recours déposé devant la FTFA, tout en entretenant une confusion entre, d'une part, la commission d'éthique et de discipline, et, d'autre part, la commission électorale. Or, il convient de rappeler que la décision querellée, n°001/FTFA/CED/2025 du 20 janvier 2025, a été rendue par la commission d'éthique et de discipline et non par la commission électorale. Dès lors, le recours introduit en première instance contre ladite décision relève bien de la compétence de la commission de recours, conformément à l'article 62 alinéa 2 des Statuts de la FTFA.

- M. Oloy Hassan n'occupe pas une haute fonction politique conférant une immunité, incompatible avec une position au sein du Conseil de la FTFA, comme l'exclut expressément l'article 32 des Statuts de la FTFA. L'immunité dont il bénéficie en sa qualité de membre de l'ANGE est limitée aux actes accomplis dans l'exercice de sa mission au sein de cet organisme. *"En conséquence, l'immunité ne concerne aucunement les élections des fédérations sportives et en l'occurrence les élections du Comité exécutif de la FTFA, de sorte que si sa responsabilité devait être mise en cause pour quelque motif que ce soit au sein de la FTFA, Monsieur Tahir OLOY HASSAN ne bénéficierait d'aucune immunité en sa qualité de membre de l'ANGE"*. En outre, la candidature

de M. Oloy Hassan à la présidence de la FTFA est compatible avec ses fonctions au sein de l'ANGE, dès lors qu'il n'y a aucun conflit d'intérêts entre les deux fonctions, ce que cherche précisément à éviter tant l'article 32 des Statuts de la FTFA que l'article 15 alinéa 16 de la Loi organique n°002/CNT/2024 du 26 janvier 2024 portant attribution, organisation et fonctionnement de l'ANGE. *"Il en ressort que la qualité de membre de l'ANGE est parfaitement compatible avec le poste de Président de fédération de football"*.

- Les irrégularités dont souffre la liste de candidats au Conseil de la FTFA présentée par M. Mahamoud Hamid ne relèvent pas de "simples erreurs matérielles". "[Elles] *pourraient être qualifiées de fausse déclaration, faux et usage de faux, usurpation d'identité ou altération frauduleuse, autant de délits passibles de sanctions.* […] *La Commission de recours a donc légitimement souligné dans sa décision que les informations erronées et incohérentes "ne favorisaient pas l'examen et l'appréciation du dossier". Au regard de ces éléments, il apparaît que l'appel n'a aucune chance d'aboutir"*.

- Pour être valable, l'appel à l'encontre de la Décision Litigieuse aurait dû être formé non seulement par M. Mahamoud Hamid mais également par les douze autres membres de sa liste. De même, il aurait dû être dirigé contre les colistiers de M. Oloy Hassan. En effet, toutes ces personnes sont directement concernées et leurs intérêts sont directement affectés par l'issue de la présente procédure arbitrale. *"En conséquence, et au regard des exigences liées à la légitimation active et passive ainsi qu'aux règles applicables en matière de consorité nécessaire, l'appel introduit par Monsieur Moctar MAHAMOUD HAMID seul, sans les autres membres de sa liste en qualité de co-appelants, et dirigé uniquement contre Monsieur Tahir OLOY HASSAN, à l'exclusion des autres membres de sa liste en tant que co-intimés, doit être rejeté sur le fond"*.

V. COMPETENCE DU TAS

61. L'article R47 du Code prévoit ce qui suit:

"Un appel contre une décision d'une fédération, association ou autre organisme sportif peut être déposé au TAS si les statuts ou règlements dudit organisme sportif le prévoient ou si les parties ont conclu une convention d'arbitrage particulière et dans la mesure aussi où la partie appelante a épuisé les voies de droit préalables à l'appel dont elle dispose en vertu des statuts ou règlements dudit organisme sportif".

62. La Décision Litigieuse a été émise en date du 7 février 2025. M. Mahamoud Hamid fonde la compétence du TAS sur l'article 62 al. 3 des Statuts de la FTFA qui prévoit ce qui suit:

"Les décisions prononcées par la Commission de Recours peuvent uniquement faire l'objet d'un pourvoi devant le Tribunal Arbitral du Sport (TAS)".

63. La compétence du TAS n'a pas été contestée par les Intimés et a par ailleurs été confirmée par la signature de l'ordonnance de procédure.

64. Il résulte de ce qui précède que le TAS est compétent pour décider du présent litige.

VI. RECEVABILITE

65. L'article R49, première phrase, du Code prévoit ce qui suit:

> *"En l'absence de délai d'appel fixé par les statuts ou règlements de la fédération, de l'association ou de l'organisme sportif concerné ou par une convention préalablement conclue, le délai d'appel est de vingt-et-un jours dès la réception de la décision faisant l'objet de l'appel".*

66. Les Statuts de la FTFA n'ayant pas prévu un autre délai, celui de 21 jours mentionné à l'article R49 du Code est donc applicable.

67. La déclaration d'appel a été adressée au TAS le 24 février 2025, soit moins de 21 jours après la notification à M. Mahamoud Hamid de la Décision Litigieuse, qui a eu lieu le 7 février 2025. En outre, elle répond aux conditions fixées par l'article R48 du Code.

68. Partant, l'appel est recevable, du moins dans la mesure où il vise la partie de la Décision Litigieuse ayant écarté la liste de candidatures de M. Mahamoud Hamid au Conseil de la FTFA. En revanche, pour les raisons exposées au chiffre VIII.C ci-dessous, l'appel est irrecevable en tant qu'il conteste la validation de la liste de candidatures de M. Oloy Hassan ainsi que les décisions adoptées lors des assemblées générales extraordinaires de la FTFA tenues les 14 décembre 2024 et 1er mars 2025. Ces aspects ne sont pas traités dans le présent chapitre pour des raisons de clarté et de lisibilité de l'argumentation de l'Arbitre unique.

VII. DROIT APPLICABLE

69. L'article R58 du Code a la teneur suivante:

> *"La Formation statue selon les règlements applicables et, subsidiairement, selon les règles de droit choisies par les parties, ou à défaut de choix, selon le droit du pays dans lequel la fédération, association ou autre organisme sportif ayant rendu la décision attaquée a son domicile ou selon les règles de droit que la Formation estime appropriées. Dans ce dernier cas, la décision de la Formation doit être motivée".*

70. Le présent litige concerne un appel interjeté à l'encontre d'une décision rendue au nom et pour le compte de la FTFA. Il s'ensuit qu'en l'espèce, l'appel doit être examiné en premier lieu en vertu des Statuts et règlements de la FTFA.

71. Par ailleurs, l'Arbitre unique considère que le droit tchadien est applicable à titre supplétif du moment que la FTFA a son siège au Tchad.

VIII. LE FOND

72. Les questions qui se posent à l'Arbitre unique sont les suivantes:

A. La Décision Litigieuse a-t-elle été attaquée devant la bonne autorité?

B. La candidature de M. Mahamoud Hamid et des membres de sa liste a-t-elle été valablement écartée?

C. Si la candidature de M. Mahamoud Hamid et des membres de sa liste a été valablement écartée, quelles en sont les conséquences?

A. La Décision Litigieuse a-t-elle été attaquée devant la bonne autorité?

73. M. Mahamoud Hamid a contesté la compétence de la commission de recours à se déterminer sur les *"Observations*

relatives à la décision de la commission électorale portant rejet de la liste présidée par M. Moctar Mahamoud Hamid" déposées à son nom. Selon lui, il appartenait à la commission de recours électoral de trancher son appel. Cette dernière autorité n'ayant jamais été formellement constituée, il soutient que la Décision Litigieuse est nulle, tout comme *"les élections au Bureau Exécutif de la FTFA du 1er mars 2025"*.

74. Il y a lieu de relever que les pièces versées au dossier par les Parties sont soit lacunaires, soit entachées d'imprécisions, de sorte qu'il n'est pas possible de retracer avec exactitude l'ensemble des étapes de la procédure ayant conduit au rejet de la liste de candidatures de M. Mahamoud Hamid au Conseil de la FTFA.

- L'article 8 al. 1 à 3, du Code électoral de la FTFA, intitulé *"Soumission et examen des candidatures au Conseil"* a la teneur suivante:

  "Les dossiers de candidature pour les différents postes à pourvoir au sein du Conseil doivent être envoyés par courrier ou courriel avec accusé de réception, ou déposés au secrétariat exécutif contre décharge au moins quarante-cinq (45) jours avant l'Assemblée Générale Elective. Les dossiers reçus par le secrétariat exécutif sont immédiatement transmis à la Commission de Discipline et d'Ethique en vue du contrôle d'éligibilité et d'habilitation conformément à l'annexe A des Statuts de la FTFA. Ces dossiers sont ensuite transmis à la commission électorale après contrôle.

  Les dossiers de candidature au Conseil sont examinés par la Commission électorale dans les dix (10) jours à compter de la date de réception desdits dossiers.

  La publication de la liste des candidats retenus doit intervenir dans les 24h après l'expiration de ce délai".

  En l'espèce, les listes de candidatures de M. Oloy Hassan et de M. Mahamoud Hamid ont fait l'objet d'un rapport écrit dressé par la commission d'éthique et de discipline de la FTFA. Les pièces versées au dossier par les Parties ne permettent pas de déterminer quand ce rapport a été établi et à qui il a été remis. Aucune des Parties n'a fait état d'une quelque publication, comme cela est prévu à l'article 8 al. 3 du Code électorale de la FTFA.

- L'article 9 al. 1, 2, 3, 4 et 6 du Code électoral de la FTFA, intitulé *"Procédure de recours pour les candidats au Conseil"* prévoit ce qui suit:

  "Les recours contre les décisions de la Commission électorale ne peuvent être exercés qu'auprès de la Commission de Recours électoral.

  Tout appel, dûment motivé, doit être interjeté par courrier remis contre décharge établit (sic) par le secrétariat exécutif, dans un délai de 72 […] *heures à compter de la publication de la décision de la Commission électorale. Les recours reçus par le secrétariat exécutif sont transmis dans les 24h de sa réception à la Commission de Recours électoral.*

  Les dossiers d'appels sont examinés par la Commission de Recours électoral dans un délai de quatre jours à compter de leur réception.

La décision de la Commission de Recours électoral est publiée au plus tard 24h après l'expiration de ce délai. […]

Les décisions de la Commission de Recours électoral sont définitives et exécutoires. Elles ne peuvent être attaquées que devant le Tribunal Arbitral de Sports (T.A.S)".

En l'espèce, la décision N°001/FTFA/CED/2025 du 20 janvier 2025 a été rendue par la commission d'éthique et de discipline de la FTFA qui a validé la liste présentée par M. Oloy Hassan pour l'élection aux postes de Président et de membres du Conseil de la FTFA, tout en rejetant celle déposée par M. Mahamoud Hamid.
Les pièces versées au dossier par les Parties ne permettent pas de déterminer si la commission électorale a rendu sa propre décision. Dans son recours devant la première instance de la FTFA, M. Mahamoud Hamid a confirmé que la décision N°001/FTFA/CED/2025 était accompagnée d'un courrier lui impartissant un délai de 72 heures pour exercer son droit de recours auprès de la commission électorale. Cette lettre d'accompagnement n'a pas été produite, raison pour laquelle son auteur, son contenu, sa nature et sa portée ne sont pas identifiables.

- En date du 1er février 2025, la décision N°001/FTFA/CED/2025 a été notifiée à M. Mahamoud Hamid qui disposait d'un délai de 72 heures pour faire appel, ce qu'il fit le 3 février 2025. Son mémoire était intitulé *"Observations relatives à la décision de la commission électorale portant rejet de la liste présidée par M. Moctar Mahamoud Hamid"* (le soulignement a été ajouté).

  Le contenu de ce document vise toutefois sans équivoque la décision N°001/FTFA/CED/2025, à laquelle M. Mahamoud Hamid fait expressément référence tout en l'attribuant à la commission électorale.

- Par décision n°001/FTFA/CR/2025 du 7 février 2025, la commissions de recours de la FTFA a écarté les *"Observations relatives à la décision de la commission électorale portant rejet de la liste présidée par M. Moctar Mahamoud Hamid"*. Pourtant cette décision a été notifiée le même jour à M. Mahamoud Hamid au moyen d'un courrier d'accompagnement daté du 7 février 2025, a) signé par M. Patrick Besme Oueina, en sa qualité de *"président de la Commission électorale",* b) qui précise que le dossier de candidature de M. Mahamoud Hamid a été rejeté par la commission électorale, et c) que le recours de ce dernier *"exercé auprès de la Commission recours électoral de la Fédération Tchadienne de Football Association (FTFA)"* a été rejeté par cette même commission de recours électoral.

  Ce courrier suggère que la procédure décrite aux articles 8 et 9 du Code électoral a été appliquée correctement. Il peut être observé qu'aucune des Parties n'a versé au dossier la publication de la

décision de la commission de recours électoral prévue à l'article 9 al. 4 du Code électoral.

75. Compte tenu des éléments qui précèdent et en l'état du dossier, il ne peut être établi de façon manifeste que la procédure prescrite par le Code électoral de la FTFA n'a pas été respectée. De nombreux indices permettent de penser que la décision rendue par la commission d'éthique et de discipline a été, sinon formellement adoptée, du moins ratifiée ou entérinée par la commission électorale. Par ailleurs, il ressort des pièces du dossier qu'il ne peut pas être exclu que c'est bien la commission de recours électoral qui a statué sur le recours introduit par M. Mahamoud Hamid. Ce dernier affirme, sans étayer ses dires par des éléments concrets, que la commission de recours électoral n'aurait jamais été mise en place. Or, cette affirmation est contredite par les pièces qu'il a lui-même produites, en particulier la lettre d'accompagnement du 7 février 2025 signée par M. Patrick Besme Oueina, président de la commission électorale.

76. Il est le lieu de rappeler que conformément à la règle ordinaire régissant le fardeau de la preuve, c'est à la partie de prouver l'existence des faits, dont elle entend déduire des droits. Il ne lui suffit pas d'alléguer un fait pour que l'Arbitre unique l'accepte comme étant établi. Contrairement aux allégations de M. Mahamoud Hamid, il apparaît que la commission électorale a examiné sa liste de candidatures ainsi que celle de M. Oloy Hassan et que la commission de recours électoral est intervenue dans la procédure, conformément aux dispositions des Statuts et du Code électoral de la FTFA. M. Mahamoud Hamid n'a pas démontré le contraire. Dans ces circonstances, les considérations de M. Mahamoud Hamid relatives au fait que la commission d'éthique et de discipline aurait outrepassé ses prérogatives doivent être écartées sans plus amples considérations.

77. De même, il apparaît clairement que M. Mahamoud Hamid a pu pleinement exercer son droit d'être entendu devant la FTFA puis devant le TAS. En particulier et devant ces deux instances, il a pu exprimer les raisons pour lesquelles, à son avis, il aurait dû être autorisé à corriger les vices affectant sa candidature avant que cette dernière ne soit écartée. Ce point est d'ailleurs abordé dans le détail dans le chapitre suivant. A cet égard, l'Arbitre unique relève qu'en vertu de l'article R57 du Code, il dispose d'un plein pouvoir d'examen des faits et du droit (*"de novo"*). Ainsi, et conformément à une jurisprudence bien établie du TAS, toute irrégularité procédurale susceptible d'être survenue en première instance peut être réparée devant le TAS (voir notamment CAS 2020/A/7567 consid. 62, CAS 2016/A/4704). Une quelconque violation du droit d'être entendu est guérie du fait de l'effet dévolutif de l'appel par devant le TAS, qui offre la possibilité à l'appelant de présenter son cas une nouvelle fois, avec tous les arguments et offres de preuves qu'il estime nécessaires (TAS 2021/A/7723 consid. 133).

78. Par surabondance, à supposer que M. Mahamoud Hamid ait raison et que la commission de recours électoral (instaurée à l'article 9 du Code électoral de la FTFA) a) est un organe distinct de la commission de recours (instaurée par l'article 62 des Statuts de la FTFA) et b) n'a jamais été constituée, il aurait dû

recourir contre la décision N°001/FTFA/CED/2025 directement devant le TAS, les voies de droit internes à la FTFA étant alors épuisées. Dès lors que cette décision lui a été notifiée le 1er février 2025, son appel devant le TAS déposé le lundi 24 février 2025 serait recevable, le délai de 21 jours fixé par l'article R49 du Code ayant été respecté.

79. Compte tenu de ce qui précède, l'Arbitre unique retient que la procédure prescrite par le Code électoral de la FTFA a été respectée et qu'aucune violation des droits procéduraux de M. Mahamoud Hamid par les instances de la FTFA n'a été démontrée et, à supposer qu'il en ait été autrement, toute irrégularité éventuelle a été corrigée dans le cadre de la présente procédure arbitrale.

B. La candidature de M. Mahamoud Hamid et des membres de sa liste a-t-elle été valablement écartée?

80. M. Mahamoud Hamid n'a pas remis en question les défauts relevés par la commission d'éthique et de discipline de la FTFA en ce qui concerne sa liste de candidatures. En particulier, il n'a pas contesté a) les imprécisions relatives aux noms et aux dates de naissances des membres de sa liste, b) le fait que plusieurs d'entre eux n'avaient pas démontré qu'ils remplissaient la condition posée par les Statuts de la FTFA selon laquelle il fallait justifier *"d'une période active continue dans le domaine du football d'au moins deux (2) ans au cours de cinq (5) dernières années"* (la "Condition des deux années d'expérience dans le domaine du football") et que le dossier de Mme Charlotte Djindin ne pouvait être retenu en raison des vices trop importants qui l'affectent.

81. M. Mahamoud Hamid estime que les erreurs et omissions de son dossier étaient mineures et auraient pu être facilement corrigées s'il lui en avait été donné l'occasion, comme cela avait été fait par le CONOR lorsque M. Oloy Hassan avait présenté sa candidature pour la présidence de la FTFA en 2023. En outre, selon lui, et en vertu de la "jurisprudence" en la matière, le fait que la candidature de Mme Charlotte Djindin doit être écartée, ne doit pas emporter la disqualification de la liste de M. Mahamoud Hamid.

82. La "jurisprudence" dont se prévaut M. Mahamoud Hamid n'est pas issue d'un ensemble de décisions rendues par les juridictions civiles tchadiennes mais est le résultat du seul procès-verbal d'examen et de délibération des dossiers de candidature au conseil de la FTFA émis par le CONOR en date du 20 novembre 2023 (le "Procès-Verbal du CONOR"). Cela a été confirmé par le conseil de M. Mahamoud Hamid au cours de l'audience devant le TAS.

83. Pour rappel et en date du 25 novembre 2021, le CONOR avait été nommé notamment pour mettre en œuvre les élections d'un nouveau Conseil de la FTFA. Le mandat du CONOR devait prendre fin au 30 novembre 2023. A cette date, devait avoir lieu une assemblée générale extraordinaire de la FTFA, chargée d'élire le nouveau président et les membres du Conseil de la FTFA. Cette assemblée générale n'aura finalement pas lieu et le mandat du CONOR a pris fin sans que les organes juridictionnels et le Conseil de la FTFA ne soient élus.

84. Il ressort du Procès-Verbal du CONOR que le processus électoral devant aboutir

à l'élection des membres du Conseil de la FTFA s'était déroulé en plusieurs phases:

- lancement officiel du processus électoral le 26 octobre 2023;

- réception et enregistrement des candidatures entre le 26 octobre et le 10 novembre 2023;

- dépouillement des dossiers entre le 13 et 15 novembre 2023 étant entendu qu'au cours de cette phase, M. Oloy Hassan avait été invité à compléter sa liste, ce qu'il a fait dans les délais impartis. A cet égard, et selon le Procès-Verbal du CONOR, "[la] *Commission trouve conforme le rappel aux candidats de compléter leurs dossiers car il est prévu dans le calendrier électoral qui a été adopté à l'Assemblée Générale Extraordinaire du 25 octobre 2023"*;

- examen de l'ensemble des dossiers entre les 18 et 19 novembre 2023;

- délibérations desquelles il ressort ce qui suit:

  - *"La liste présentée par le candidat Tahir OLOY HASSAN est disqualifiée pour insuffisance d'expériences avérées dans le football et présentation d'un document non authentique pour justifier ses années d'expériences dans le football".*

    La justification est que M. Oloy Hassan a *"présenté un document manifestement non authentique, voire falsifié pour justifier ses années d'expériences dans le football. Il n'a pas d'autres documents valables pour justifier ses années d'expériences dans le football. En tant que tête de liste, les deux années d'activités consécutives durant les cinq dernières années dans le football constituent l'un des critères essentiels pour accéder à la Présidence de la FTFA. En outre, la présentation d'un document manifestement falsifié pourrait être considérée comme une faute morale incompatible avec la fonction de Président du Conseil de la FTFA. Etant tête de liste, sa disqualification entraine celle de toute son équipe".*

  - *"La liste présentée par le candidat Ibrahim WANG LAOUNA FOULLAH Norbert est retenue pour la suite du processus électoral à l'exception de la candidate à la vice-présidence Mme OUTMAN HAOUA qui est disqualifiée".*

    Il s'avère que Mme Outman Haoua n'avait pas offert de preuve valable pour justifier ses années d'expérience dans le domaine du football. Toutefois, il ressort du Procès-Verbal du CONOR que "[la] *disqualification de la candidate à la vice-présidence Mme OUTMAN HAOUA de la liste conduite par Ibrahim WANG LAOUNA FOULLAH Norbert ne pourrait disqualifier toute la liste, étant donné que tous les autres candidats remplissent les critères d'éligibilité, en particulier la tête de liste Ibrahim WANG*

LAOUNA FOULLAH Norbert".

85. L'Arbitre unique constate que la "jurisprudence", dont se prévaut M. Mahamoud Hamid a été rendue dans des circonstances extraordinaires et très différentes de celles qui ont entouré la Décision Litigieuse.

86. Premièrement, ladite "jurisprudence" est le fruit d'une décision rendue par un comité de normalisation, qui est un organe provisoire mis en place par la FIFA pour gérer temporairement une fédération nationale lorsque celle-ci fait face à de graves dysfonctionnements ou à une crise institutionnelle. En l'espèce, les délibérations du CONOR sont intervenues le 20 novembre 2023, soit dix jours avant l'expiration de son mandat et la tenue de l'assemblée générale élective chargée de désigner les nouveaux membres du Conseil de la FTFA. Dans un tel contexte, il semble raisonnable de considérer que le CONOR s'est trouvé dans une situation de contrainte temporelle, ne lui laissant guère d'autre choix que de valider la candidature qui apparaissait la moins sujette à contestation. L'urgence de la situation était manifeste puisque le mandat du CONOR, en place depuis près de deux ans, touchait à sa fin, et sa décision représentait sans doute sa dernière opportunité d'accomplir sa mission principale, à savoir mettre en œuvre un nouveau Conseil de la FTFA. Écarter les deux listes de candidatures aurait plongé la FTFA dans une impasse institutionnelle, comparable à celle qui avait justifié la mise en place du CONOR au départ. Dès lors, valider au moins une liste, bien que perfectible, apparaissait comme un choix pragmatique pour tenter d'éviter un vide électoral et une nouvelle crise de gouvernance.

87. Deuxièmement, le CONOR ne fournit aucune justification quant aux conséquences différenciées du non-respect de la Condition des deux années d'expérience dans le domaine du football: sans plus amples explications, le CONOR écarte une liste entière lorsque sa tête ne remplit pas cette exigence (liste de M. Oloy Hassan), mais maintient l'autre liste pourtant affectée d'un manquement identique chez un membre non tête de liste (liste de M. Ibrahim Wanglaouna Foullah). En particulier, le CONOR ne justifie nullement comment la liste retenue, désormais composée de douze candidats (ensuite de l'éviction de Mme Outman Haoua) satisfait à l'exigence statutaire selon laquelle une liste doit être composée de treize membres, dont un Président, deux vice-président(s) dont une femme, dix membres, dont au moins une femme (article 39 des Statuts de la FTFA).

88. Troisièmement, il ressort de manière non équivoque du Procès-Verbal du CONOR que l'absence de justification d'une activité continue dans le domaine du football durant au moins deux années au cours des cinq dernières constitue un motif de disqualification. C'est précisément sur ce fondement que les candidatures de M. Oloy Hassan et de Mme Outman Haoua ont été écartées. L'analyse des listes soumises au CONOR a révélé que chacune de ces listes ne comportait qu'un seul candidat ne satisfaisant pas à cette exigence. Dans la liste présentée par M. Mahamoud Hamid, onze des treize candidats n'ont pas démontré remplir la Condition des deux années d'expérience dans le domaine du football. Il s'agit là d'une

exigence si fondamentale, que les statuts de la FTFA la consacrent dans deux de leurs dispositions (articles 32 et 39 al. 4). Elle était d'ailleurs clairement stipulée dans la décision N°4/FTFA/SGI/2025 du 3 janvier 2025 arrêtant les modalités liées aux postulations *"des candidat(e)s intéressé(e)s par le Conseil de la FTFA"*.

89. En d'autres termes et en appliquant la "jurisprudence" du CONOR, sur les treize candidats composant la liste de M. Mahamoud Hamid, onze doivent être disqualifiés. M. Mahamoud Hamid a reproché à la commission d'éthique et de discipline de la FTFA de ne pas lui avoir donné la possibilité de compléter les candidatures de sa liste, contrairement à ce que le CONOR avait accepté de faire en 2023 pour le dossier de M. Oloy Hassan. A cet égard, il convient de relever que, comme cela ressort du Procès-Verbal du CONOR, la possibilité de corriger le dossier de candidature était expressément *"prévu*[e] *dans le calendrier électoral qui a été adopté à l'Assemblée Générale Extraordinaire du 25 octobre 2023"*. Rien de tel ne figure dans la décision N°4/FTFA/SGI/2025 du 3 janvier 2025, qui fixait les modalités liées aux postulations des candidatures au Conseil de la FTFA. En outre, à aucun moment devant la commission de recours ou devant le TAS, M. Mahamoud Hamid n'a produit la preuve que tous les membres de sa liste remplissaient la Condition des deux années d'expérience dans le domaine du football. Il en avait largement l'occasion et a renoncé à le faire. A ce jour, rien dans le dossier de la cause ne permet de constater que tous les membres de la liste de M. Mahamoud Hamid remplissent la Condition des deux années d'expérience dans le domaine du football.

90. Il résulte de ce qui précède que si l'on écarte les membres, qui n'ont pas pu *"[j]ustifier d'une période active continue dans le domaine du football d'au moins deux (02) ans au cours des 5 (cinq) dernières années"* (article 32 des Statuts de la FTFA), la liste de M. Mahamoud Hamid est réduite à deux personnes, à savoir lui-même et M. Mahamat Saleh Adoum. Cette situation est très différente de celle visée par la "jurisprudence" du CONOR, où seule une personne par liste avait été disqualifiée faute d'expérience dans le domaine du football.

91. Composée de seulement deux personnes, la liste présentée par M. Mahamoud Hamid ne satisfait pas aux exigences statutaires relatives au quorum nécessaire pour les délibérations et décisions du Conseil de la FTFA (article 42), ni à celles concernant la composition du Conseil, qui doit comprendre deux vice-présidents, dont une femme, ainsi que dix membres, dont au moins une femme (article 39).

92. La disposition statutaire exigeant des candidats au Conseil de la FTFA qu'ils disposent d'une expérience avérée dans le domaine du football n'est ni accessoire ni secondaire. Elle constitue un critère capital visant à garantir que l'organe dirigeant de la fédération soit composé de personnes qualifiées, disposant de la compétence, de la connaissance du milieu et de la légitimité nécessaires pour exercer les fonctions de gouvernance du football national. Cette exigence, expressément prévue par deux articles des Statuts de la FTFA, s'inscrit dans une logique de bonne administration du sport. Elle vise à éviter que des personnes sans lien réel avec le football, ou sans expérience suffisante, ne prennent part à des décisions

stratégiques engageant l'avenir de la fédération.

93. En l'espèce, il ressort de manière claire que onze des treize membres de la liste présentée par M. Mahamoud Hamid n'ont pas été en mesure d'apporter la preuve de leur expérience footballistique, comme exigé par les Statuts. Cette incapacité à justifier du respect du critère de l'expérience dans le domaine du football ne saurait être considérée comme une irrégularité mineure ou formelle, comme le soutient M. Mahamoud Hamid dans la présente procédure arbitrale. Elle affecte substantiellement la régularité de la candidature collective. En effet, la liste dans son ensemble ne répond pas aux conditions minimales requises pour que ses membres puissent prétendre exercer les fonctions de gouvernance au sein du Conseil.

94. Dans ces conditions, le rejet de la liste de M. Mahamoud Hamid s'impose. L'absence de l'expérience des deux années d'expérience dans le domaine du football pour une majorité écrasante des membres de la liste (plus de 84 %) rend impossible son acceptation, indépendamment d'autres considérations.

95. Dès lors, la décision de la commission de recours de la FTFA d'écarter la liste de M. Mahamoud Hamid ne peut être que confirmée.

C. Si la candidature de M. Mahamoud Hamid et des membres de sa liste a été valablement écartée, quelles en sont les conséquences?

96. Dans les conclusions qu'il a prises dans son mémoire d'appel, M. Mahamoud Hamid demande au TAS notamment d'annuler les décisions prises par les assemblées générales extraordinaires de la FTFA du 14 décembre 2024 et du 1er mars 2025. A l'audience devant le TAS, il a admis ne pas avoir interjeté appel de ces décisions devant le TAS dans le délai de 21 jours. Il demande également que la liste de M. Oloy Hassan soit écartée. Par courrier du 26 mai 2025, le Greffe du TAS a invité M. Mahamoud Hamid *"à exposer quelle est la base statutaire de la FTFA lui donnant le droit de remettre en question les décisions prises par les organes de la FTFA"*, dès lors qu'il n'avait pas la qualité de membre de la FTFA. En date du 10 juin 2025, M. Mahamoud Hamid a répondu que *"s'agissant d'une violation du Code électoral et des Statuts de la FTFA, l'appelant n'a pas à justifier de sa qualité de membre de la FTFA pour soulever ces demandes". "En effet, en sa qualité de candidat, tête de liste, aux élections du Bureau Exécutif de la FTFA, la violation du Code électoral et des Statuts de la FTFA par la même Fédération, lui font grief, puisque cette violation a conduit au rejet de sa candidature; par conséquent, l'appelant est fondé du seul fait que ces décisions prise par les organes de la FTFA préjudicient à ses intérêts et l'affectent particulièrement".*

97. La recevabilité de l'appel doit être examinée d'office sachant que l'appel doit être déclaré irrecevable s'il devait s'avérer que les requêtes de l'appelant ne sont pas susceptibles de servir son prétendu intérêt (TAS 2019/A/6132 & 6146). Selon une jurisprudence constante du TAS, une requête est en principe irrecevable si elle est dépourvue d'intérêt juridique par rapport à la décision entreprise (CAS 2019/A/6086, consid. 47; CAS 2016/A/4602, consid. 48; CAS 2016/A/4784, consid. 107; CAS 2015/A/3880, consid. 46; CAS 2008/A/1674, consid. 11). Un tel intérêt

juridique n'existe pas s'il n'y a aucun avantage quel qu'il soit pour la partie requérante à obtenir un jugement en sa faveur (CAS 2017/A/5054). Il convient d'ajouter qu'il appartient à l'appelant d'apporter les éléments permettant de conclure à l'existence d'un intérêt suffisant, et ce selon les règles procédurales applicables en matière de présentation des faits et preuves (TAS/2022/A/9032 consid. 59). L'intérêt pour agir doit exister non seulement lorsque l'appel est interjeté, mais également au moment où la décision est rendue (cf. entre autres CAS 2016/A/4903, consid. 79).

98. M. Mahamoud Hamid ne remet pas en question le fait qu'il ne détient pas la qualité de membre de la FTFA mais fonde sa légitimité à contester les décisions prises au nom de la fédération sur le seul fait qu'il s'est porté candidat à la présidence du Conseil de la FTFA. Il est indiscutable que ce statut particulier lui confère un intérêt direct et personnel à agir contre toute décision susceptible de compromettre ses chances d'être élu au poste convoité.

99. Toutefois, cette légitimité est intrinsèquement liée à l'existence et la validité de sa candidature. L'intérêt à agir suppose la présence d'un lien concret et actuel entre la situation personnelle de M. Mahamoud Hamid et l'objet du litige. Or, une fois sa candidature écartée, M. Mahamoud Hamid perd le lien juridique qui justifiait son intérêt à contester les décisions internes de la FTFA. Il ne prend plus part, même potentiellement, au processus électoral, et son statut de candidat cesse de produire des effets.

100. À partir du moment où il n'a plus vocation à devenir membre du Conseil de la FTFA, il n'a plus la qualité requise pour s'immiscer dans le fonctionnement interne de la FTFA dont il ne fait pas partie et dont il ne peut plus espérer faire partie. Sa position devient alors comparable à celle d'un tiers à l'organisation, dont les droits et intérêts ne sont pas directement affectés par les décisions en cause.

101. En conséquence, lorsque la candidature de Mahamoud Hamid est écartée de manière régulière et définitive, son lien juridique avec le processus électoral disparaît, de même que l'intérêt légitime à agir contre des décisions prises dans un cadre auquel il n'est plus partie prenante. Son action devient ainsi irrecevable pour défaut de qualité ou d'intérêt à agir, conformément aux principes généraux du droit procédural.

102. En d'autres termes, M. Mahamoud Hamid avait un intérêt à agir contre la Décision Litigieuse dans la mesure où elle écarte sa liste de candidatures au Conseil de la FTFA. Une fois cette liste valablement écartée, il a perdu tout intérêt digne de protection à contester tant la Décision Litigieuse en ce qu'elle retient la liste de M. Oloy Hassan que les décisions des assemblées générales extraordinaires du 14 décembre 2024, contre lesquelles le délai n'aurait en tout état de cause pas été respecté, et du 1er mars 2025. Il n'a pas apporté d'éléments permettant de conclure à l'existence d'un intérêt personnel suffisant et légitime à remettre en cause ces décisions. Dès lors, les conclusions qu'il a prises contre ces dernières sont irrecevables et l'Arbitre unique n'a pas à en vérifier le bien-fondé.

103. A la lumière de ce qui précède, il n'y a pas lieu de traiter toutes autres requêtes et

conclusions des Parties, lesquelles sont écartées.

PAR CES MOTIFS

Le Tribunal Arbitral du Sport décide:

1. L'appel formé par M. Moctar Mahamoud Hamid contre la décision n°001/FTFA/CR/2025 du 7 février 2025 est rejeté, dans la mesure de sa recevabilité.

2. (…).

3. (…).

4. Toutes les autres conclusions des Parties sont rejetées.

CAS 2025/A/11254
Riza Kayaalp v. United World Wrestling (UWW)
award of 28 October 2025

Wrestling; Doping (Trimetazidine (TMZ)); Applicable standard for intent; Assessment of the athlete's intent; Assessment of the athlete's fault

Panel
Mr Vladimir Novak (Slovakia), President
Mr Jeffrey Benz (USA)
Mrs Carine Dupeyron (France)

1. **The notion "intentional" under Article 10.2 of the UWW Anti-Doping Rules (ADR) encompasses an athlete engaging in (i) conduct knowing that it constitutes a violation (i.e., direct intent), but also (ii) conduct knowing that there is a significant risk that it might constitute or result in an Anti-Doping Rule Violation (ADRV) (i.e., recklessness or indirect intent).**

2. **Whilst under the anti-doping rules, athletes have a personal duty to ensure no prohibited substances enter their bodies, reliance on doctors in certain circumstances can exclude intent, though not necessarily fault. An athlete's attempt to verify prescribed medication through consultations with several doctors demonstrates an awareness of the proverbial anti-doping "minefield" and excludes any manifest disregard of the risk of committing an ADRV. Contemporaneous evidence is critical in establishing the absence of intent. In this respect, the submission by the athlete of detailed evidence of undertaking genuine (albeit ineffective) checks during and in the aftermath of a medical episode, confirmed by cross-examination and the CAS panel examination at the hearing, is crucial in establishing the absence of intent.**

3. **Even where intent is not established, athletes may still be sanctioned based on their degree of fault or negligence. For presence of a non-specified substance, the sanction can range from one-half to the full period of the otherwise applicable ineligibility period, depending on objective and subjective factors. Almost all ADRVs relating to the consumption of a medicine containing a prohibited substance could be prevented since the athlete could always (i) read the label or leaflet of the medicine used (or otherwise ascertain the ingredients); (ii) cross-check all the ingredients on the label/leaflet with the list of prohibited substances; (iii) carry out an online search of the medicine; (iv) ensure the medicine is reliably sourced; and (v) consult appropriate experts in these matters prior to usage of the medicine. By entirely relying on his/her doctor(s), an athlete fails to undertake many of these checks and in doing so, fails to fully discharge his/her duty, even if the athlete demonstrates on the balance of probabilities a genuine willingness to check compliance with anti-doping rules. Medical context also matters: evidence of a serious medical incident around the time of the prescription ought to be considered in evaluating the surrounding circumstances and**

assessing fault.

I. PARTIES

1. Mr. Riza Kayaalp (the "Athlete" or the "Appellant") is a recently retired elite Greco-Roman wrestler from Turkey, with five World Championships, twelve European Championships, and three Olympic medals.

1. United World Wrestling ("UWW" or the "Respondent") is the international sports federation for the sport of wrestling recognized as such by the International Olympic Committee. UWW has its registered seat in Corsier-sur-Vevey, Switzerland. The UWW is represented in these proceedings by International Testing Agency ("ITA"), which is the agency that handles anti-doping testing and results management for the UWW.

2. The Appellant and the Respondent are collectively referred to as the "Parties".

II. FACTUAL BACKGROUND

3. Below is a summary of the relevant facts and allegations based on the Parties' written submissions and evidence adduced. Additional facts and allegations found in the Parties' submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, the Award refers only to the submissions and evidence, which the Panel considers necessary to explain its reasoning.

4. The Athlete has competed in international wrestling events since 2007. At the time of the Anti-Doping Rule Violation ("ADRV"), the Athlete was an International-Level Athlete within the meaning of the UWW Anti-Doping Rules ("UWW ADR"). Based on his Anti-Doping Administration & Management System testing history, the Athlete has been subject to more than 55 sample collection sessions since 2014, under the testing authority of both the Turkish Anti-Doping Commission ("TADC") and UWW. The Athlete has also been included in the UWW's Registered Testing Pool since December 2022.

5. On 28 May 2024, the Athlete was subject to an out-of-competition doping control test, where two urine samples (the "A-sample" and the "B-sample" and together, the "Urine Samples") and a blood sample were collected.

6. In the 'Declaration of Medication/Supplements' section of the Doping Control Form ("DCF") associated with the Urine Samples, the Athlete was asked to provide a *"List of any prescription/non-prescription medications or supplements, including vitamins and minerals, taken over the past 7 days (include substance, dosage and when last taken)"*. The Athlete declared he had taken *"Multivitamin"*.

7. On 27 June 2024, the laboratory accredited by the World Anti-Doping Agency ("WADA") in Lausanne, Switzerland, informed the ITA of an Adverse Analytical Finding ("AAF") for Trimetazidine ("TMZ") in the A-sample. TMZ is a prohibited substance listed in Section S4 ('Hormone and

metabolic modulators') of the WADA Prohibited List 2024, and its presence in the A-sample is an ADRV under Articles 2.1 and 2.2 of the UWW ADR.

8. Following receipt of the AAF, the ITA conducted an initial review of the results under Article 7.2 of the UWW ADR and Article 5.1.1 of the International Standard for Results Management ("ISRM"). The ITA found that no applicable Therapeutic Use Exemption ("TUE") for TMZ had been or was in the process of being granted to the Athlete by UWW or the TADC.

9. On 1 July 2024, the ITA, on behalf of UWW, notified the Athlete of the AAF and imposed a mandatory Provisional Suspension under Article 7.4.1 of the UWW ADR (the "AAF Notification"). The Athlete was advised of the consequences of the ADRV and invited to provide his explanations as to the circumstances that led to the presence of TMZ in his sample.

10. On 5 July 2024, the Athlete responded to the AAF Notification denying the ADRV. The Athlete did not request for the analysis of the B-sample within the given deadline. He requested that the ITA "revoke" the mandatory Provisional Suspension and confirm that no period of ineligibility be imposed on him under Article 10.5 of the UWW ADR.

11. On 12 July 2024, the ITA, on behalf of UWW, issued a Notice of Charge to the Athlete, informing him that, since he had not requested for the opening and analysis of the B-sample, it was undisputed under Article 2.1.2 of the UWW ADR that he had committed an ADRV under Articles 2.1 and/or 2.2 of the UWW ADR. The Athlete was also informed that after analysing the case file and the Athlete's preliminary explanations, the ITA considered that the Athlete had not established that his ADRV was unintentional and that his conduct displayed, at the very least, indirect intent. The ITA did not find any basis for mitigation under Articles 10.2.3, 10.5, or 10.6 of the UWW ADR. On this basis, the Athlete was subject to the period of ineligibility of four years.

12. On 25 July 2024, the Athlete requested the Laboratory Documentation Package related to his A-sample, which the ITA provided on 30 July 2024.

13. On 1 August 2024, the Athlete responded to the ITA, maintaining his position that his Provisional Suspension should be revoked and that no period of ineligibility should be imposed on him based on Article 10.5 of the UWW ADR. The Athlete requested that the case be referred for adjudication to the Court of Arbitration for Sport in Lausanne, Switzerland ("CAS") Anti-Doping Division ("CAS ADD").

14. On 2 August 2024, the ITA informed the Athlete that the case would be referred to the CAS ADD.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

A. The proceedings before the CAS ADD

15. On 17 September 2024, the ITA, on behalf of UWW, referred the matter to the CAS ADD for adjudication.

16. On 7 October 2024, the Athlete filed his Statement of Defence.

17. On 21 October 2024, the Parties were informed that Dr. Petra Pocrnic Perica, Arbitrator in Gingins, Switzerland, had been appointed to act as the Single Judge in this procedure.

18. On 16 December 2024, the Parties were informed that the Single Judge deemed herself sufficiently informed to render a decision based solely on the Parties' written submissions, without holding a hearing.

19. On 24 February 2025, the Appellant received a notice of the decision from the CAS ADD under the UWW ADR in the matter of proceedings *CAS 2023/ADD/110* (the "Appealed Decision"), finding as follows:

> *1) "The Request for Disciplinary Proceedings filed by International Testing Authority (ITA) on behalf of the United World Wrestling (UWW) on 17 September 2024 against Mr Riza Kayaalp is upheld.*
>
> *2) Mr Riza Kayaalp committed an Anti-Doping Rule Violation in accordance with the Articles 2.1/2.2 of the UWW Anti-Doping Rules (UWW ADR).*
>
> *3) In accordance with the Articles 10.2 UWW ADR, Mr Riza Kayaalp is sanctioned with a period of ineligibility of 4 (four) years starting from the date of notification of the present Decision.*
>
> *4) Mr Riza Kayaalp shall receive credit for period of Provisional Suspension served from 1 July 2024 against the period of ineligibility imposed by this Decision.*
>
> *5) All competitive results obtained by Mr Riza Kayaalp from 28 May 2024 until 1 July 2024 are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).*
>
> *6) The cost of the procedure, to be served to the Parties separately, shall be determined in accordance with Article A24 of the ADD Rules, if necessary.*
>
> *7) Each party shall bear their own legal costs and other expenses incurred in connection with these proceedings.*
>
> *8) All other motions or prayers for relief are dismissed".*

B. The proceedings before the CAS Appeals Division

20. On 13 March 2025, the Appellant filed, pursuant to Articles R47 and R48 of the Code of Sports-related Arbitration (the "Code"), the Statement of Appeal at the CAS, against the Appealed Decision (the "Appeal"). The Appellant nominated Mr. Jeffrey G. Benz as an arbitrator.

21. On 14 March 2025, the CAS Court Office requested that the Respondent nominate an arbitrator within ten days.

22. On 17 March 2025, the ITA informed the CAS Court Office that the ITA would be acting on behalf of UWW in the matter.

23. On 24 March 2025, the Respondent nominated Ms. Carine Dupeyron as arbitrator.

24. On 31 March 2025, the CAS Court Office shared a copy of the "Arbitrator's Acceptance and

Statement of Independence" form completed by Ms. Carine Dupeyron with the Parties, and drew the Parties' attention to an annex in which Ms. Dupeyron listed CAS cases in which she was acting as arbitrator, in which counsel for the Appellant and counsel for the Respondent were representing the parties. The CAS Court Office further noted that an arbitrator may be challenged under Article R34 of the Code if the circumstances give rise to legitimate doubts over her/his independence or impartiality.

25. On 4 April 2025, the Parties informed the CAS Court Office that they had conferred and agreed on a procedural schedule for the Appeal, pursuant to which the Appellant should file the Appeal Brief by 25 April 2025, the Respondent should file the Answer by 6 June 2025, and the hearing should take place between 16-26 June 2025 and not last more than a day and a half.

26. On 4 April 2025, the CAS Court Office noted the procedural schedule agreed by the Parties.

27. On 8 April 2025, the CAS Court Office noted that no challenge had been filed against the nomination of Ms. Carine Dupeyron as arbitrator within the deadline prescribed by Article R34 of the Code.

28. On 16 April 2025, the CAS Court Office informed the Parties that the Panel appointed to decide the Appeal was constituted as follows:

President:
Mr. Vladimir Novak, Attorney-at-law in Brussels, Belgium

Arbitrators:
Mr. Jeffrey G. Benz, Attorney-at-law and Barrister in London, United Kingdom
Ms. Carine Dupeyron, Attorney-at-law in Paris, France

29. On 17 April 2025, the CAS Court Office informed the Parties that the hearing would be held on 17 June 2025 at the CAS Court Office in Lausanne, Switzerland.

30. On 25 April 2025, the Appellant filed its Appeal Brief.

31. On 6 June 2025, the Respondent filed its Answer.

32. On 12 June 2025, the CAS Court Office shared a provisional hearing schedule with the Parties and informed them that Mr. Jeffrey G. Benz would attend the hearing remotely, subject to any objections of the Parties. The Parties were also invited to sign and return to the CAS Court Office an Order of Procedure for the present matter.

33. On 13 June 2025, the Parties returned a signed Order of Procedure.

34. On 17 June 2025, a hearing took place at the CAS Court Office in Lausanne, Switzerland. The Panel was assisted by Ms Lia Yokomizo and Ms Shanaize Yahiaoui, both CAS Counsel, and joined by the following participants:

- For the Appellant:
  - Mr. Claude Ramoni, Counsel
  - Ms. Hacer Nurdan Yildiz, Counsel
  - Mr. Emre Bas, Counsel
  - Mr. Kaya Arda, Counsel

- Mr. Riza Kayaalp, Appellant
- Dr. A., Expert (joining remotely)
- Ms. B., Witness
- Dr. C., Witness (joining remotely)
- Dr. D., Witness (joining remotely)
- Dr. F., Witness (joining remotely)
- Mr. Gün Arun, Interpreter

- For the Respondent:
  - Ms. Ayesha Talpade, Counsel
  - Mr. Anton Sotir, Counsel

35. At the hearing, the Parties agreed to the following schedule of witness examination:

- Mr. Riza Kayaalp, the Appellant
- Dr. A., the Appellant's Expert
- Dr. C., the Appellant's Witness
- Ms. B., the Appellant's Witness
- Dr. D., the Appellant's Witness
- Dr. F., the Appellant's Witness

36. The witness testimonies and arguments raised by the Parties during the hearing are, where relevant, discussed in the corresponding Merits section of the Award.

37. At the outset of the Hearing, the Parties confirmed that they had no procedural issues or objections (including in relation to the remote participation of Mr. Jeffrey Benz).

38. During the hearing, the Parties had ample opportunity to present their case, submit their arguments and answer the Panel's questions.

39. At the end of the hearing, the Parties stated that they had no objections as to the procedure adopted by the Panel and confirmed that their right to be heard had been respected.

IV. SUBMISSIONS OF THE PARTIES

40. The Appellant's Appeal Brief contained the following requests for relief:

"The athlete Riza Kayaalp applies for the Court of Arbitration for Sport to rule as follows:

I. The appeal is upheld.

II. The decision issued by the Anti-Doping Division of the Court of Arbitration for Sport on 24 February 2025 in the case CAS 2023/ADD/110 United World Wrestling (UWW) v. Riza Kayaalp is set aside.

III. Mr Riza Kayaalp is sanctioned for an antidoping rule violation with a period of ineligibility of a maximum duration of one year, with the period of Provisional Suspension served from 1 July 2024 being credited against such period of ineligibility.

IV. United World Wrestling shall be ordered to bear all arbitration costs (if any) and to reimburse Mr Riza Kayaalp the minimum CAS Court Office fee of CHF 1,000.

V. United World Wrestling shall be ordered to pay Mr Riza Kayaalp a

contribution towards his legal and miscellaneous costs incurred within the framework of these proceedings in an amount that will be specified at a later stage".

41. In support of its relief, the Appellant relied on the following principal arguments:

- The ADRV was not intentional pursuant to Articles 10.2.1 to 10.2.3 of the UWW ADR; the maximum period of ineligibility that can be imposed on the Athlete is two years:
  - The source of the AAF has been established by the Athlete. The Athlete took Vastarel in order to treat the symptoms of tinnitus, dizziness, and vertigo, following the recommendation of Dr. F., who treated the Athlete at the emergency department of A Life Hospital in Ankara following a serious incident that occurred during a training session on 13 May 2024. Before taking Vastarel, the Athlete also obtained advice from his personal otorhinolaryngologist (also referred to as an ENT specialist), Dr. C., and his club doctor, Dr. D.
  - The Athlete did not act with "indirect intent" within the meaning of Article 10.2.3 of the UWW ADR. "Indirect intent" can only be established if an athlete manifestly disregards what they know to be a significant risk that their conduct might result in an ADRV. While the Athlete was aware of the risk that medication in general could contain a prohibited substance, he did not manifestly disregard that risk but carefully sought advice from several doctors, including his personal doctor and his club doctor, to ensure that Vastarel was safe to use in terms of doping. In particular, the Athlete's exchange of text messages with Dr. D. in which he asked whether Vastarel could "harm" him constituted a question as to whether Vastarel could contain a prohibited substance.
  - CAS case-law demonstrates that the use of a product after obtaining confirmation by a sports doctor or another specialist that it was safe to use is not intentional as per Article 10.2.3 of the UWW ADR. CAS case-law has even recognised that athletes who used medication without any medical supervision or performing any checks were not acting with intent. By contrast, indirect intent has only been found in dubious cases where the athlete relies on alleged advice from a doctor without providing supporting evidence, and/or in circumstances in which it appears doubtful that a doctor would have prescribed such a treatment, and/or in circumstances in which the athlete could clearly derive a sporting advantage from the treatment. None of these

factors are present in the current proceedings.

- In Turkey, athletes receive a limited anti-doping education and place far greater trust in their physicians than they do in online research as a source of information about doping, therefore, confirming that the Athlete's enquiry with a specialist doctor cannot be considered manifest disregard of his duty of care.

- The Athlete bears No Significant Fault or Negligence pursuant to Article 10.6.2 of the UWW ADR, meaning that the period of ineligibility should be reduced to one year:

  - The level of care shown by the Athlete, as well as his serious health condition which was aggravated by an incident that occurred during training, are relevant factors to assess his level of fault when viewed in the totality of circumstances, particularly when considered against previous CAS findings of No Significant Fault or Negligence.

42. The Respondent's Answer contained the following requests for relief:

"The ITA, on behalf of United World Wrestling, hereby respectfully requests the Panel to rule as follows:

1) The appeal of Riza Kayaalp is dismissed.

2) The decision rendered by the Anti-Doping Division of the Court of Arbitration for Sport on 24 February 2025 (case 2023/ADD/110 United World Wrestling (UWW) v. Riza Kayaalp) is confirmed.

3) Riza Kayaalp is found to have committed an Anti-Doping Rule Violation pursuant to Article 2.1/2.2 of the UWW ADR.

4) Riza Kayaalp is sanctioned with a period of ineligibility of four years from 1 July 2024 until 30 June 2028.

5) All competitive results of Riza Kayaalp from 28 May 2024 until 1 July 2024 are disqualified with all resulting consequences, including forfeiture of medals, points and prizes.

6) The arbitration costs, if any, shall be borne by Riza Kayaalp.

7) United World Wrestling is granted a contribution to its legal and other costs".

43. In support of its relief, the Respondent relied on the following principal arguments:

- It is undisputed that the Athlete committed an ADRV as per Articles 2.1 and/or 2.2 of the UWW ADR.

- The Athlete fails to establish on the balance of probabilities that the ADRV was not indirectly intentional within the meaning of Article 10.2.3 of the UWW ADR (*i.e.*, that the Athlete *"knew that there was a significant risk that* [his] *conduct might constitute or result in an anti-doping rule violation and*

manifestly disregarded that risk"). On the contrary, the Athlete did not take any precautionary measures when taking Vastarel:

- The Athlete is a highly experienced international-level athlete who, at the time of the ADRV, was preparing for the 2024 Paris Olympic Games and was fully aware of his anti-doping obligations.

- According to CAS case-law, athletes' duty of care is heightened when using medication due to the significant risk that it may contain a prohibited substance.

- The Athlete took Vastarel without exercising basic diligence, such as an internet search. In addition, the Athlete ignored clear warnings (i) on the packaging of Vastarel that it contained TMZ, and (ii) in the accompanying patient leaflet that it *"contains an active substance that may give a positive result in anti-doping tests"*.

- As per the certified translation submitted by the Athlete in the first instance to the CAS ADD, he consulted his club doctor only as to the effectiveness and potential harmful effects of Vastarel, with no reference to anti-doping.

- In any event, CAS case-law is clear that athletes cannot satisfy their duty of care by relying entirely on their doctor. Therefore, even if the Athlete had consulted his doctor as to whether Vastarel was safe to use in terms of doping, his conduct nevertheless demonstrated a wilful disregard of his anti-doping obligations and a high degree of recklessness.

- As the Athlete fails to establish that the ADRV was not intentional, the provisions on No Significant Fault or Negligence under Article 10.6.2 of the UWW ADR are not applicable. In any event, even if the Panel finds that the ADRV was not intentional, leading to a maximum period of ineligibility of two years, the Athlete is not entitled to a further reduction of such period, as objective (failing to read the medicine's leaflet or cross-check its ingredients) and subjective (the Athlete's experience and the fact that the medicine's leaflet was in his native language) elements indicate a significant degree of fault.

V. JURISDICTION

44. The Appellant submitted that the CAS has jurisdiction under Article 13.2.1 of the UWW ADR, which is confirmed by Article A21 of the Arbitration Rules of the CAS ADD ("AR ADD").

45. Article A21 of the AR ADD provides as follows:

"Unless Article A15 (1) applies, the final decision may be appealed to the CAS Appeals

Arbitration Division within 21 days from receipt of the notification of the final decision with reasons by mail or courier in accordance with Articles R47 et seq. of the Code of Sports-Related Arbitration, applicable to appeals procedures. In the absence of appeal, the final decision of the CAS ADD is binding and enforceable".

46. As the Appealed Decision was rendered by a Single Judge, Article A15 (1) does not apply.

47. Article R47 of the Code provides as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with 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 it prior to the appeal, in accordance with the statutes or regulations of that body.

An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned".

48. Article 13.2.1 of the UWW ADR provides as follows:

"In cases arising from participation in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS".

49. The Scope section of the UWW ADR provides as follows:

"Within the overall pool of Athletes set out above who are bound by and required to comply with these Anti-Doping Rules, the following Athletes shall be considered to be International-Level Athletes for the purposes of these Anti-Doping Rules, and, therefore, the specific provisions in these Anti-Doping Rules applicable to International-Level Athletes (e.g., Testing, TUEs, whereabouts, and Results Management) shall apply to such Athletes:

a) Athletes holding the annual international license issued by UWW;

b) Athletes included in the UWW Registered Testing Pool (or Testing Pool if applicable)".

50. The Appellant confirms that the Athlete is an *"International-Level athlete under the UWW ADR"*, an assertion that has not been challenged by the Respondent.

51. No Party contested the jurisdiction of the CAS and all Parties fully participated in the proceeding.

52. The Panel notes that Article 13.2 of the UWW ADR (applicable to the Appealed Decision), read in conjunction with Article 13.2.1 of the UWW ADR (applicable to the Appellant as an *International-Level Athlete*), and Article A21 of the AR ADD, provide for an appeal to the CAS.

53. The Panel therefore concludes that the CAS has jurisdiction to entertain the present Appeal.

VI. ADMISSIBILITY

54. Article R49 of the 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

in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties".

55. Article R51 of the Code provides as follows:

"Within ten days following the expiry of the time limit for the appeal, the Appellant shall file with the CAS Court Office a brief stating the facts and legal arguments giving rise to the appeal, together with all exhibits and specification of other evidence upon which it intends to rely. Alternatively, the Appellant shall inform the CAS Court Office in writing within the same time limit that the statement of appeal shall be considered as the appeal brief. The appeal shall be deemed to have been withdrawn if the Appellant fails to meet such time limit".

56. Article 13.6.1 of the UWW ADR provides as follows:

"The time to file an appeal to CAS shall be twenty-one (21) days from the date of receipt of the decision by the appealing party".

57. The Panel notes that the Appealed Decision was notified to the Appellant on 24 February 2025. The Appellant filed the Statement of Appeal on 13 March 2025, and therefore within the 21-day time limit prescribed by the UWW ADR.

58. Pursuant to the procedural schedule agreed by the Parties on 4 April 2025, and approved by the CAS Court office, the Appellant filed the Appeal Brief on 25 April 2025 and thus timely.

59. The admissibility was not contested by the Respondent.

60. Accordingly, the present Appeal is admissible.

VII. APPLICABLE LAW

61. Article R58 of the Code provides as follows:

"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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".

62. The Appealed Decision was issued under the UWW ADR, which is not disputed. Accordingly, pursuant to Article R58 of the Code and CAS jurisprudence, the Panel concludes that the UWW ADR (and the WADA Code) should apply as the primary applicable law to the present case.

63. The Panel notes that the facts giving rise to the case at hand took place in May 2024. The WADA Code and UWW ADR in force at that time (and currently) were the 2021 editions. In accordance with the principle of *tempus regit actum*, therefore, the UWW ADR

(2021) and the WADA Code (2021) are applicable. The Panel may apply subsequent editions of the WADA Code and UWW ADR with accordance with the principle of *lex mitior* if appropriate.

64. In accordance with Article R58 of the Code, and given that the Respondent is domiciled in Switzerland, Swiss law will apply on a subsidiary basis.

VIII. MERITS

A. Scope of review (*de novo*)

65. According to Article R57 of the Code, *"[t]he Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance".*

66. The Panel is mindful that the Appealed Decision was rendered by CAS ADD, by a CAS arbitrator and colleague. That said, the Panel will exercise its duty to conduct a *de novo* review of the present dispute within the scope set out above of the Appellant's appeal, not least because the CAS ADD proceeding was undertaken without a hearing.

B. Analysis of the Panel

67. Articles 2.1 and 2.2 of the UWW ADR read as follows:

"The following constitute anti-doping rule violations:

2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample

2.1.1 It is the Athletes' personal duty to ensure that no Prohibited Substance enters their bodies. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, Negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.

2.1.2 Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample; or where the Athlete's A or B Sample is split into two (2) parts and the analysis of the confirmation part of the split Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first part of the split Sample or the Athlete waives analysis of the confirmation part of the split Sample.

2.1.3 Excepting those substances for which a Decision Limit is specifically identified in the Prohibited List or a Technical Document, the presence of any reported quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample shall constitute an anti-doping rule violation.

2.1.4 As an exception to the general rule of Article 2.1, the Prohibited List, International Standards or Technical Documents may establish special criteria for reporting or the evaluation of certain Prohibited Substances.

2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method

2.2.1 It is the Athletes' personal duty to ensure that no Prohibited Substance enters their bodies and that no Prohibited Method is Used. Accordingly, it is not necessary that intent, Fault, Negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.

2.2.2 The success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used or Attempted to be Used for an anti-doping rule violation to be committed".

68. Articles 10.2 and 10.6 of the UWW ADR read as follows:

"10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method

The period of Ineligibility for a violation of Article 2.1, 2.2 or 2.6 shall be as follows, subject to potential elimination, reduction or suspension pursuant to Article 10.5, 10.6 or 10.7:

10.2.1 The period of Ineligibility, subject to Article 10.2.4, shall be four (4) years where:

10.2.1.1 The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.

10.2.1.2 The anti-doping rule violation involves a Specified Substance or a Specified Method and UWW can establish that the anti-doping rule violation was intentional.

10.2.2 If Article 10.2.1 does not apply, subject to Article 10.2.4.1, the period of Ineligibility shall be two (2) years.

10.2.3 As used in Article 10.2, the term "intentional" is meant to identify those Athletes or other Persons who engage in conduct which they knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not "intentional" if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered "intentional" if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.

[…]

10.6 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence

[…]

10.6.2 Application of No Significant Fault or Negligence beyond the Application of Article 10.6.1

If an Athlete or other Person establishes in an individual case where Article 10.6.1 is not applicable that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.7, the otherwise applicable period of Ineligibility may be reduced based on the Athlete or other Person's degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable.

[…]".

69. The Athlete does not dispute that TMZ, a prohibited substance, was present in the A-sample that he provided on 28 May 2024 and therefore that he committed an ADRV under Article 2.1 and/or 2.2 of the UWW ADR.

70. The Athlete has not submitted that the presence of the prohibited substance in the A-sample is consistent with either a TUE or a retroactive TUE granted in accordance with Article 4.4 of the UWW ADR.

71. The Athlete has limited his case to arguing that (i) the ADRV was not intentional pursuant to Articles 10.2.1 to 10.2.3 of the UWW ADR (the "No Intent Defence") and (ii) he bears No Significant Fault or Negligence for the ADRV pursuant to Article 10.6.2 of the UWW ADR (the "No Significant Fault or Negligence Defence").

72. Pursuant to Article 10.2.1 of the UWW ADR, in the case of an ADRV under Article 2.1 or 2.2 of the UWW ADR, *"[t]he period of Ineligibility […] shall be four (4) years"*.

73. Pursuant to Article 2.1.1 of the UWW ADR, *"it is not necessary that intent, Fault, Negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1"*. Equally, pursuant to Article 2.2.1 of the UWW ADR, *"it is not necessary that intent, Fault, Negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation* [under Article 2.2]*"*.

74. However, where the Athlete demonstrates the absence of intent, or No Significant Fault or Negligence, the period of ineligibility will be reduced. Pursuant to Articles 10.2.1 and 10.2.2 of the UWW ADR, where *"the Athlete or other Person can establish that the anti-doping rule violation was not intentional* […] *the period of Ineligibility shall be two (2) years"*. Pursuant to Article 10.6.2 of the UWW ADR, *"if an Athlete or other Person establishes* […] *that he or she bears No Significant Fault or Negligence, then* […] *the otherwise applicable period of Ineligibility may be reduced based on the Athlete or other Person's degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable"*.

75. Accordingly, the Panel's review will focus on whether the Athlete demonstrated to the requisite standard the absence of intent, or No Significant Fault or Negligence, in committing the ADRV and, therefore, whether and to what extent the corresponding period of ineligibility of four years should be reduced.

1. The 'No Intent' Defence

76. **Legal framework**. According to Article 10.2.3 of the UWW ADR, *"[a]s*

used in Article 10.2, the term 'intentional' is meant to identify those Athletes or other Persons who engage in conduct which they knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk". Therefore, the notion "intentional" under Article 10.2 of the UWW ADR encompasses an athlete engaging in (i) conduct knowing that it constitutes a violation (*i.e.*, direct intent), but also (ii) conduct knowing that there is a significant risk that it might constitute or result in an ADRV (*i.e.*, recklessness or indirect intent) (*see*, *e.g.*, *CAS 2023/A/9525*, para. 73).

77. CAS case-law has also defined 'indirect intent' as follows:

> *"[…] the Athlete took the risk of ingesting a Specified Substance when taking the Supplement and therefore of enhancing his athletic performance. In other words, whether with full intent or per 'dolus eventualis', the Panel finds that the Appellant's approach indicates an intent on the part of the Appellant to enhance his athletic performance" (CAS 2011/A/2677, para. 26).*
>
> *"[…] the term 'intent' should be interpreted in a broad sense. Intent is established – of course – if the athlete knowingly ingests a prohibited substance. However, it suffices to qualify the athlete's behaviour as intentional, if the latter acts with indirect intent only, i.e. if the athlete's behaviour is primarily focused on one result, but in case a collateral result materializes, the latter would equally be accepted by the athlete. If – figuratively speaking – an athlete runs into a 'minefield' unharmed. However, an athlete acting in such (reckless) manner somehow accepts that a certain result (i.e. adverse analytical finding) may materialize and therefore acts with (indirect) intent". (CAS 2012/A/2822, para. 8.14).*
>
> *"To stay within the well-known 'minefield'-metaphor adopted by various CAS panels to describe the concept of indirect intent (e.g. CAS 2012/A/2822, para. 8.14; also quoted in CAS 2016/A/4609, para. 63): A professional athlete alleging that he or she does not know that pharmaceuticals or medications may contain prohibited substances would just be the same as alleging that one does not know that a minefield contains mines" (CAS 2023/A/9525, para. 86*).

78. **Factual circumstances**. The Athlete submits that he acted without intent (either direct or indirect) to violate the UWW ADR when he used Vastarel repeatedly over the course of approximately one week. The Athlete details the circumstances surrounding this period as follows:

- Since 2020, the Athlete has suffered from tinnitus, dizziness, and vertigo. On 13 May 2024, while training for the 2024 Paris Olympic Games, he suffered an injury in training that exacerbated these symptoms.
- On the evening of 13 May 2024, the Athlete sought treatment at the emergency department of A Life Hospital in Ankara, where he was prescribed a short-term treatment consisting of Vastarel 20 mg, Betaserc 24 mg, and Dramamine 50 mg.
- On the next day, 14 May 2024, the Athlete contacted his long-term personal doctor, Dr. C., who was familiar with his

medical condition. During a telephone call, the Athlete explained the prescribed medication to Dr. C., who confirmed the effectiveness of Vastarel. Dr. C. then confirmed that the prescribed medication to take was *"Vastarel tb 2*1"* by WhatsApp message.

- The Athlete then exchanged WhatsApp messages with his club doctor, Dr. D. According to the certified translation submitted by the Athlete in the first instance to the CAS ADD, the exchange was as follows:

  [Athlete]: *Vastarel tb 2*1*
  Ear specialist prescribed for tinnitus
  I wanted to consult you about its effectiveness,
  and whether it has any harmful effects
  [Dr. D.]: *It is effective, no harmful effects*

- On appeal the Athlete claimed that the certified translation departed from the *"literal translation"* of the exchange, and provided a *"Free English Translation"*:

  [Athlete]: *Vastarel tb 2*1*
  Doctor, this is for my tinnitus
  The ear doctor recommended it, so I would like your opinion
  And will it do me any harm?
  [Dr. D.]: *It works and cannot do you any harm*

- The Athlete proceeded to purchase Vastarel MR 35 mg (rather than, as subsequently pointed out by Dr. C., the prescribed Vastarel 20 mg) from a pharmacy in Ankara and commence the treatment, which he then discontinued on or around 22 May 2024.

79. The Athlete's principal statements at the hearing on the factual circumstances surrounding the ADRV may be summarized as follows:

- Direct examination:
  - On 13 May 2024, the Athlete received a strong blow to his ear from his training partner which caused him to feel unwell. After this incident, he stopped training and returned to his home. His condition did not improve at home, causing him to travel to hospital with his wife that evening.
  - At the hospital, the Athlete explained to the emergency doctor that he was suffering from severe tinnitus, vertigo, and dizziness. The emergency doctor recommended three separate medicines to the Athlete, and advised him to check these medicines with his sports doctor on learning that the Athlete was an athlete. The Athlete returned home.
  - On 14 May 2024, the Athlete contacted Dr. C., a doctor for the Athlete's family who specialises in otorhinolaryngology and had advised the Athlete on his tinnitus in the past. The Athlete informed Dr. C. of the three medicines that he

had been prescribed and asked him which would be the most suitable to take, and whether the chosen medicine was safe to use in terms of doping. Dr. C. advised the Athlete that Vastarel would be the most appropriate medication to treat his tinnitus.

- The Athlete made a further inquiry with Dr. D., the doctor at the Athlete's sports club who knew the Athlete well. The Athlete asserted that would never take medication without the validation of Dr. D. The Athlete explained that Dr. C. had recommended Vastarel, and Dr. D. confirmed that this medication would not harm him and that he could use it.

- Cross-examination:
  - The Athlete was generally aware that medication may contain prohibited substances, and he had always exhibited care around the use of medication.
  - Once the Athlete returned to training, he experienced severe headaches when his heart rate exceeded a certain level. Seven or eight days after first taking the medicine, the Athlete then consulted with Dr. D., who advised him to stop taking it. The Athlete did not list Vastarel on his DCF because he had stopped taking it, and from his perspective it was *"clean"* medication that he had taken following the advice of three separate doctors.
  - The Athlete reiterated that he had asked both the emergency doctor and Dr. C. whether Vastarel contained a prohibited substance, in response to which both doctors advised him orally that it should not cause him any trouble, but that he should confirm this with his sports doctor.
  - The Athlete slept for much of the period between him visiting the hospital (the evening of 13 May) and him consulting Dr. C. (the evening of 14 May). He consulted Dr. C. when the severity of his tinnitus had not improved upon waking up.
- Panel's questions:
  - The Athlete confirmed that, although he had suffered from tinnitus and dizziness since 2020 and discussed these conditions with Dr. C., he had never previously taken medication for them. The Athlete explained that these conditions had never previously caused so much discomfort as they had following the training incident, and that previously he had waited for episodes of discomfort to resolve themselves.

80. The Athlete's argument is, in essence, twofold. First, the Athlete claims that he consulted both his personal and club doctor as to whether Vastarel contained a prohibited substance. Second the Athlete argues that, as per CAS case-law, such consultations are sufficient to demonstrate that he did not manifestly disregard the risk of an ADRV and, therefore, satisfy his duty of care such that he acted without indirect intent.

81. **Medical consultation**. In respect of the first claim, the Athlete asserts that he *"indeed exercised care before starting using a drug to treat his tinnitus. He did not rely on the first prescription of Dr F., but contacted his family otorhinolaryngologist and ensured, before purchasing the product and starting using it, that it was safe by making a direct specific enquiry with Dr D., club doctor specialising in sports medicine"*.

82. The Athlete claims that his personal doctor, Dr. C., *"verbally confirmed that the prescribed treatment, including Vastarel, was standard for inner ear issues and reassured him that there would be no issue in taking it"*, something which is supported by Dr. C., who states in his witness statement that "[the Athlete] *also asked me if this medicine would cause any problems in terms of doping, and I told him that it would not cause any problems in terms of doping"*. The Athlete then messaged his club doctor, Dr. D., on WhatsApp to ask him whether the medication *"has any harmful effects"* (as per the certified translation of the exchange submitted by the Athlete in the first instance to the CAS ADD) or *"will* […] *do me any harm"* (as per the *"Free English Translation"* submitted by the Athlete within his Appeal Brief).

83. The Athlete claims that these interactions, particularly the later exchange of messages with Dr. D., are *"specific inquiries seeking confirmation that the substance posed no harm or risk in terms of anti-doping"*, and provides various machine translations and subsequent ChatGPT interpretations to demonstrate how the reference to "harm" relates specifically to *"whether the product was forbidden"*. In their witness statements, both Dr. C. and Dr. D. also assert this to be the case, and that they were negligent by not reporting to the Athlete that Vastarel contains a prohibited substance:

- Dr. C. states that *"I wrongly recommended this drug without verifying whether it was an authorized product under anti-doping regulations. When* [the Athlete] *sent me a picture of the product box, I did not carry out any checks either"*.

- Dr. D. states that *"[o]n 14 May 2024, when* [the Athlete] *sent me an SMS, I made a quick decision as I was working intensively. I did not thoroughly check the product 'Vastarel' and did not realise at that time that this product contained a banned substance Trimetazidine. I must say that I was not with the athlete and I replied to him very quickly, without making the necessary checks"*.

84. Dr C.'s principal statements at the hearing may be summarized as follows:

- Direct examination:

    - On 14 May 2024, Dr C. received a telephone call from the Athlete. During this call, the Athlete explained that during training he had had an

incident, following which he visited an emergency doctor due to symptoms of tinnitus and dizziness. The Athlete explained that the emergency doctor had prescribed Vastarel, Betaserc, and Dramamine, and asked the Athlete to take further advice from an ENT specialist. Based on Dr C.'s experience of treating tinnitus, he recommended Vastarel as the appropriate medication.

- The Athlete asked Dr C. whether the medication was safe to use in terms of doping, and Dr C. assured him that he could use it. The Athlete relies on Dr C. not to recommend a prohibited substance, and Dr C. made a mistake in not checking whether Vastarel contained a prohibited substance.

- Cross-examination:

  - Dr C. did not check the medication, at the time of or after his call with the Athlete, because he had mentally classified it as a clean medicine, and was focused on the Athlete's symptoms.

  - Vastarel was the first medication that Dr C. had prescribed to the Athlete. Dr C. had not previously prescribed medicine to the Athlete because his symptoms were not sufficiently severe.

  - Dr. C. knew that the Athlete had taken Vastarel as a result of his advice, but had not been aware that the Athlete had stopped taking Vastarel after a few days. He would have advised the Athlete to continue to take the medication for at least three months.

- Panel's questions:

  - Dr. C. does not treat any other professional athletes. He has previously checked for the Athlete whether medications contained prohibited substances by researching their active components on the internet.

  - Dr. C. does not keep a patient file on the Athlete, but does remember the existence of hearing tests and the results of an MRI scan, which suggested that the Athlete was suffering from a loss of hearing.

  - The Athlete had not previously asked Dr. C. any questions with respect to anti-doping matters.

85. Dr. D.'s principal statements at the hearing may be summarized as follows:

- Direct examination:

  - Dr. D. is in charge of the health of the athletes of the ASKİ Sports Club. He works at the club for two and a half hours each week. He consults athletes on matters of both

anti-doping and physical complaints. In matters of anti-doping, he gives athletes who consult him information and advice about the products that they are taking.

- The Athlete contacted Dr. D. via WhatsApp, explained that another doctor had advised him to take Vastarel, and asked whether that medicine would benefit or harm him. Dr. D. explained to the Athlete that Vastarel was commonly used to treat tinnitus and dizziness, and that because it would not affect his performance by increasing his stimulation or strength, he could use it without any doubt.

- The Athlete had previously consulted Dr. D. as to his opinion on medication, including two days before the day on which he had asked about Vastarel. Dr. D. stressed that he considered the Athlete to be very meticulous, and to have never ingested a medicine without consulting between three and five doctors beforehand.

- Six or seven days after starting the treatment, the Athlete told Dr. D., that he was suffering from strong headaches. Dr. D. advised the Athlete to stop using Vastarel and make further checks regarding next steps.

- Cross-examination:

  - Alongside his work at the ASKİ Sports Club, Dr. D. is a doctor at a family health institution. He is responsible for providing anti-doping advice to roughly 400-450 athletes at the sports club, although he stressed that many of these athletes also consult their own doctors.

  - To verify that a medicine is safe to use, Dr. D. typically checks its active compounds against the publications and website of the TADC.

  - In the context of the Athlete's status as a professional athlete, Dr. D. interpreted his question *"Ve bana zararı olurmu"* as a reference to the potential anti-doping implications of taking the medicine. Dr. D. replied to this message quickly, stating that Vastarel would cause the Athlete no harm as he believed it to be an efficient medicine that had been prescribed by a specialist with respect to tinnitus, and was not aware of its active compound. Dr. D. then forgot to check the medicine following this conversation.

  - Dr. D. had previously worked closely with the Athlete, and had investigated other products that the Athlete had asked him about.

- Panel's questions:

  - Dr. D. clarified that when checking medication on

behalf of an athlete, he first focused on its effectiveness in treating the athlete's specific complaint, and then checked whether it contained any prohibited substances.

- Dr. D. did not find out that Vastarel contained a prohibited substance until the Athlete informed him on 1 July 2024.

- Dr. D. would have checked the active compounds of Vastarel if the Athlete had not mentioned that an ENT specialist had already prescribed the medicine to him. In his capacity as a club doctor, Dr. D. frequently refers athletes to specialists, who know that they are athletes and adapt their recommendations and advice accordingly.

86. The Panel finds that, taken in its entirety, the evidence adduced by the Athlete demonstrates a genuine attempt of the Athlete to consult his personal and club doctor respectively as to whether Vastarel was safe to use in terms of doping. The Respondent does not dispute that the Athlete contacted both of these doctors prior to ingesting Vastarel. The reference via WhatsApp message to "harm" contains a degree of ambiguity. However, the testimony of Dr. D. as to his interpretation of the message, alongside his role in advising athletes at the ASKİ Sports Club on anti-doping matters, suggests on the balance of probabilities that the Athlete intended to ask him if there were any anti-doping concerns vis-à-vis Vastarel, and relied on his answer. This is further evidenced by the fact that the Athlete (i) contacted Dr. D. having already consulted with two doctors and (ii) has a track record of strong opposition to doping. That Dr. D. did not carry out even the most basic research on Vastarel before confirming that it was safe for the Athlete to use represents a serious professional failure.

87. **The 'manifest disregard' test**. The question as to whether the Athlete's medical prescription and attempts to consult multiple doctors are sufficient to demonstrate that he did not *"manifestly disregard"* the risk that he might commit an ADRV is more complex.

88. The Appellant quotes CAS case-law *"where panels have ruled that the use of a product after obtaining a confirmation by a sport doctor or another specialist that the substance was safe to use was not intentional"* (original emphasis) to argue that *"'indirect intent' has been admitted only in 'dubious cases' showing a lack of truthfulness by athletes relying on an alleged advice by a doctor without providing supporting evidence, and/or in circumstances where it appears highly doubtful that a doctor would have prescribed such a treatment, and/or in circumstances where the athletes could clearly derive a sporting advantage from the treatment allegedly recommended by a doctor"*.

89. The Appellant's additional arguments at the hearing on the question of manifest disregard may be summarized as follows:

- The Athlete knew that there was a significant risk that his conduct might constitute an ADRV, but exercised care in checking with

his doctors that it was safe to take Vastarel. In this respect, the Athlete was extremely poorly served by Dr. C. and Dr. D., not in the least because the emergency doctor prescribed him two alternatives to Vastarel (Betaserc and Dramamine) to treat his tinnitus, neither of which contains a prohibited substance. This fact prevented the Athlete from applying for a retroactive TUE due to Article 4.2(c) of the International Standard for TUEs.

- The CAS case-law quoted by the Respondent to establish that athletes have ultimate responsibility for what they ingest and cannot delegate this responsibility to their doctors is only applicable in respect of the degree of athletes' *fault*, rather than their *intent*.

- Applying the rule that an athlete can never rely on their doctor for the purposes of intent would eliminate all cases in which an ADRV is unintentionally committed in respect of the ingestion of medicine. A genuine medicine would always be accompanied by packaging and/or a leaflet allowing the athlete to personally verify the ingredients.

- A finding that the Athlete did not display manifest disregard as he relied on his doctors would not open the floodgates to athletes who could claim, *a posteriori*, that they did the same and therefore acted without intent. The Athlete has adduced contemporaneous evidence that he consulted his doctors specifically on whether Vastarel was safe to take vis-à-vis anti-doping.

90. On the contrary, the Respondent submits that even if the Athlete had genuinely attempted to contact his doctors on the issue of anti-doping with respect to Vastarel, *"assurances from a club doctor do not relieve athletes of their duty to conduct at least the most basic checks. CAS case law is abundantly clear that athletes cannot hide behind their doctor's mistakes"*.

91. The Respondent then asserts that the Athlete failed to carry out *"the most basic and obvious steps"* with respect to the medicine that he ingested, and that the failure to take any of these steps demonstrated "staggering" recklessness qualifying as indirect intent within the meaning of Article 10.2.3 of the UWW ADR:

- A simple internet search would have allowed the Athlete to identify that Vastarel contains the prohibited substance TMZ.

- The packaging of Vastarel expressly stated that it contains TMZ.

- Based on open sources, the leaflet for Vastarel, which is available in Turkish (*i.e.*, the Athlete's native language), expressly warned athletes that it *"contains an active substance that may give a positive result in anti-doping tests"*.

92. The Respondent's additional arguments at the hearing on the

question of manifest disregard may be summarized as follows:

- The ADRV committed by the Athlete is a textbook example of an experienced international athlete who did not carry out basic and essential checks which are of paramount importance in the context of anti-doping. The relevant provisions on intent in the UWW ADR refer only to athletes who demonstrate knowledge of a significant risk and manifestly disregard that risk, and not to doctors or other third parties.

- CAS case-law is clear that an athlete's duty of care is heightened when using prescribed medicine because of the inherent risk that it might contain a prohibited substance. There is no need for the Athlete to have had an extensive anti-doping education to be aware of this risk — it was manifestly obvious to the Athlete that he should check medicines prescribed to him. CAS case-law is consistent that athletes have a personal obligation to satisfy the duty of care required when taking medicine, but the Athlete's testimony established that he does not personally verify any substance that he takes, instead relying entirely on his doctors and therefore displaying manifest disregard as to this risk.

- A finding that the Athlete did not display manifest disregard as he relied on his doctors would open the floodgates for athletes to hide behind their doctors, giving them "carte blanche" to take any medication which they are prescribed without carrying out any further checks.

93. **CAS case law**. Over the course of their written submissions and pleadings on the question of manifest disregard, the Appellant and the Respondent have referred to factual similarities between the present matter and the following CAS awards involving the ingestion of medication, which the Panel summarizes below for ease of reference:

#	Case	Date	Prohibited Substance/Method	Athlete's Checks	Court's Findings on Intent	Final Sanction
1.	*CAS 2023/A/9482 & 9564 & 9592*	18 March 2025	Clostebol (non-specified substance); the athlete purchased a cream from a pharmacy to treat a cut on her hand	The athlete carried out no checks whatsoever when taking the medication. She did not read the label, check the ingredients, consult a doctor, or conduct any internet research on the cream, despite using it on two separate occasions	The athlete acted with intent, more likely indirect intent (*dolus eventualis*) rather than direct intent, though the distinction was immaterial for determining the consequences of her anti-doping rule violation	Four-year period of ineligibility
2.	*CAS 2022/A/9286*	October 2023	Plasmapheresis (prohibited method); the procedure was recommended to the athlete by a doctor, for pain management following a biopsy	The athlete did not carry out sufficient checks regarding plasmapheresis. She did not check if it was prohibited, did not specifically ask her doctors about anti-doping implications, and failed to contact RUSADA about plasmapheresis despite contacting them about other medications on the same day of the procedure	No intent (agreed upon by the parties)	Twelve-month period of ineligibility (reduced as the athlete voluntarily admitted the violation)
3.	*CAS 2023/A/9525*	29 September 2023	Furosemide (specified substance); the athlete was prescribed pills with weight-loss properties by her doctor for issues with bloating. Eight months later, she ingested one pill on the day before a competition, allegedly to treat a urinary tract infection	The athlete carried out no checks. She did not research the ingredients at any time between receiving the prescription and the competition, and completely relied on her doctor's recommendation without verifying whether the medication contained prohibited substances	There were strong indications of direct intent, but even if direct intent was not established, the prerequisites for indirect intent were "clearly fulfilled"	Four-year period of ineligibility
4.	*CAS 2021/A/8458*	31 March 2023	Drostanolone metabolite (non-specified substance); the athlete received an injection, administered by an orthopaedic doctor, to treat a serious knee injury	The athlete carried out no checks whatsoever when taking the medication. She did not ask what was being injected, did not read the ingredients, did not cross-check against the Prohibited List, did not conduct any internet research, and did not ask the doctor to verify if the substance was prohibited	Indirect intent	Four-year period of ineligibility

#	Case	Date	Prohibited Substance/Method	Athlete's Checks	Court's Findings on Intent	Final Sanction
				(only warning the doctor that she was an athlete)		
5.	*CAS 2021/A/7760*	4 October 2021	Furosemide (specified substance); the athlete inadvertently ingested a pill prescribed to his wife, which she had returned to the wrong medicine box compartment. The athlete believed he was taking a Litacold pill to treat a headache	The athlete did not perform any meaningful checks. He did not read the label on the medicine strip before taking the pill and took it from a loose strip rather than the original box	No intent (agreed upon by the parties as UEFA could not prove intent to the standard of comfortable satisfaction)	Nine-month period of ineligibility
6.	*CAS 2020/A/7536*	15 June 2021	Growth Hormone-Releasing Peptide 6 (non-specified substance); a local coach at a competition gave the athlete an unlabelled bottle of cream to treat severe blistering on her feet	The athlete carried out no checks when taking the cream. She did not verify its contents, did not confirm the credentials of the person who gave it to her, did not consult any medical professionals about it, and continued using the unlabelled cream for months without investigation	Indirect intent	Four-year period of ineligibility
7.	*CAS 2018/A/5739*	20 February 2019	Furosemide (specified substance); the athlete inadvertently ingested a pill prescribed to his roommate (mixed up in his medicine basket by the housekeeper), which he mistook for an over-the-counter painkiller to treat a headache	The athlete performed no checks when taking the medication. He removed what he thought was paracetamol/panadol from a blister pack without verifying its identity, despite the fact that product information would have been visible on the packaging	No intent (no evidence presented that the athlete acted in an intentional manner)	Twenty-month period of ineligibility
8.	*CAS OG AD 18/004*	9 August 2018	Fenoterol (specified substance); the athlete ingested the prohibited substance via an asthma inhaler prescribed to him by his national team doctor	The athlete asked the national team doctor if the inhaler would cause a doping problem, received confirmation it wouldn't if used as prescribed, informed his club doctor about using inhalers, and checked multiple times about any additional obligations. However, he didn't personally verify the ingredients	No intent (agreed upon by the parties)	Eight-month period of ineligibility
9.	*CAS 2017/A/5301 & 5302*	8 June 2018	Letrozole (specified substance); the athlete contended that her mother's anti-cancer medication (which	The athlete entrusted her mother to prepare the meal she ate, and so her mother's fault is imputed to the athlete. The athlete's	No intent (not claimed by the parties)	Ten-month period of ineligibility

#	Case	Date	Prohibited Substance/Method	Athlete's Checks	Court's Findings on Intent	Final Sanction
			contains the prohibited substance) was mistakenly mixed into a family meal during food preparation	mother, a pharmacist by profession, must have been aware of the doping warning on the back of the box of her medication, and knew that her daughter was a high-profile tennis player. The athlete could and should have known that the box of her mother's medication was stored in the kitchen close to the spot where her mother was cooking, and should have suggested basic actions to avoid contamination		
10	*CAS 2017/A/5015* & *5110*	21 August 2017	Clostebol (non-specified substance); the athlete was given cream to apply to a sunburned lip by her team doctor, who had purchased it from a pharmacy near their training camp	The athlete only asked the team doctor if the medication was safe to use. She did not examine the packaging (which had a doping warning), check the ingredients, or conduct any internet search about the substance	No intent (not claimed by the parties)	Eighteen-month period of ineligibility
11	*CAS 2016/A/4716*	9 March 2017	Methylhexaneamine (specified substance); the athlete had been taking various pre-workouts and supplements given to him by clients of his gym. It was concluded that one of these must have contained the prohibited substance	The athlete did not make any checks as to what he was ingesting or keep any record of the supplements that he was taking. He relied upon his lack of knowledge of what he could or could not lawfully take or ingest, but without making any enquiries at all with anyone	Indirect intent	Four-year period of ineligibility
12	*CAS 2016/A/4609*	19 January 2017	Nandrolone metabolite (non-specified substance); following a cycling accident, the athlete received an intramuscular injection from a doctor	The athlete claimed to have asked his doctor and team doctor (primarily the team massager) about the medication (uncorroborated by any evidence except for his own testimony), but did not verify this information himself, did not conduct any internet search, and made no other attempt to check if the medication contained a prohibited substance	Indirect intent	Four-year period of ineligibility
13	*CAS 2016/A/4512*	21 November 2016	Clomiphene (specified substance); the athlete ingested prohibited	The athlete applied for a TUE for medication to treat his infertility. The	Indirect intent	Four-year period of ineligibility

#	Case	Date	Prohibited Substance/Method	Athlete's Checks	Court's Findings on Intent	Final Sanction
			drugs for the purpose of treating his infertility	TUE was declined, but the athlete continued to take the medication		
14	*CAS 2016/A/4643*	30 September 2016	Meldonium (non-specified substance); the athlete was prescribed the prohibited substance by her former doctor (many years before it became prohibited) as a cardio-protector and anti-diabetic	The athlete relied on her doctor (2006-2012) and then her agent to check her medication against the Prohibited List. The athlete did not give her agent instructions as to how this task had to be performed or establish any procedure to supervise and control his actions	No intent (no question of intent was before the panel)	Fifteen-month period of ineligibility
15	*CAS 2015/A/4233*	11 July 2016	Salbutamol (specified substance); the athlete ingested the substance via a nebuliser on his team doctor's advice to alleviate asthma-related airway obstruction	The athlete conducted minimal independent checks, primarily relying on his doctor's prescription and medical advice	No intent (agreed upon by the parties)	Two-month period of ineligibility
16	*CAS 2013/A/3327* & *3335*	11 April 2014	Nikethamide (specified substance); the athlete's mother purchased over-the-counter glucose tablets containing the prohibited substance from a pharmacy on his behalf	The athlete relied on the fact that his mother had told him that the pharmacist had confirmed the tablets were not prohibited for competing athletes. He looked at the packaging but mistakenly assumed "nikethamide" was the French for "nikotinamid" (an ingredient in his regular glucose powder), and did not check this further, or read the enclosed leaflet. The athlete did consult his trainer about the medication, but sought nutritional rather than anti-doping advice. He did not consult anti-doping resources	No intent (agreed upon by the parties)	Four-month period of ineligibility (reduced from two years due to No Significant Fault or Negligence under 2009 World Anti-Doping Code)
17	*CAS 2011/A/2582*	29 May 2012	Methandienone (non-specified substance); the athlete was prescribed pills by a doctor to prevent growth slowdown	The young and inexperienced athlete carried out no checks on the medication - he simply trusted his father and doctor without verifying whether it contained prohibited substances	N/A (not applicable under 2009 World Anti-Doping Code)	Twelve-month period of ineligibility (reduced from two years due to No Significant Fault or Negligence under 2009

#	Case	Date	Prohibited Substance/Method	Athlete's Checks	Court's Findings on Intent	Final Sanction
						World Anti-Doping Code)
18	*CAS 2008/A/1488*	22 August 2008	Hydrocholorthiazide and Amiloride (both non-specified substances); the athlete was prescribed medication by her doctor for pre-menstrual symptoms, hypertension, and oedemas	The athlete only asked her doctor (not a specialist in sports medicine) if the medication would improve her performance, and instructed her mother to ask at the pharmacy if any ingredients would cause a positive test. She did not check the Prohibited List or consult anti-doping resources	N/A (not applicable under 2003 World Anti-Doping Code)	Two-year period of ineligibility (not reduced due to No Significant Fault or Negligence under 2003 World Anti-Doping Code)

94. **Analysis and findings**. Against this background, the Panel finds as follows.

95. First, the Panel accepts that it is an established principle in CAS jurisprudence that "[…] *[i]n consideration of the fact that athletes are under a constant duty to personally manage and make certain that any medication being administered is permitted under the anti-doping rules, the prescription of a particular medicinal product by the athlete's doctor does not excuse the athlete from investigating to their fullest extent that the medication does not contain prohibited substances"* (*CAS 2008/A/1488*, para. 12; *see also CAS 2016/A/4609*, para. 76).

96. It follows that fact that the Athlete consulted his doctors regarding medication does not provide a "carte blanche" for him to take such medication, but is a relevant factor that can be taken into consideration when determining whether the athlete manifestly disregarded the risk of an ADRV. The Panel notes that, as rightly highlighted by the Appellant, of the three CAS awards cited by the Respondent in its Answer to support the proposition that athletes cannot hide behind their doctor's mistakes, two (*CAS 2017/A/5301 & 5302*, and *CAS OG AD 18/004*) concerned athletes who were considered by the CAS to have acted without intent, while the third (*CAS 2008/A/1488*) did not consider the question of intent, which was not a relevant consideration under the then-applicable 2003 World Anti-Doping Code. Put simply, reliance on doctors could in certain circumstances exclude intent, but not necessarily fault.

97. Second, from the comprehensive survey of CAS jurisprudence above, it is clear that to act with manifest disregard, an athlete must show an *utmost* lack of care as to the risk of committing an ADRV. In each of the seven awards listed above in which the full four-year period of ineligibility was imposed, the relevant athlete failed to prove on the balance of probabilities that they had carried out any active checks whatsoever on the medication

or other substance that they had ingested.[1]

98. Notably, of the awards in which a period of ineligibility of two years or less was imposed, the question of intent was not subject to extended consideration by the relevant sole arbitrator/panel, being expressly or implicitly undisputed by the relevant parties.[2] These are all self-evidently cases in which the relevant athlete failed to carry out appropriate checks (appropriate checks would, *ipso facto*, have prevented the ADRV), but this did not – at least in the eyes of the relevant parties – equate to a level of recklessness constituting a manifest disregard of the risk of committing an ADRV.

99. Third, the Respondent argues in its Answer that the *"most basic and obvious checks would have alerted the Athlete as to the prohibited nature of the product and averted the ADRV"*. While this may well be correct, imposing this standard on each of the cases listed above would in essence eliminate the possibility of committing an ADRV without intent in all but the most extreme and unlikely circumstances. It has previously been noted by CAS case-law (albeit in the context of fault rather than intent) that:

> *"[i]t is important to recognise that, in theory, almost all anti-doping rule violations relating to the taking of a product containing a prohibited substance could be prevented. The athlete could always (i) read the label of the product used (or otherwise ascertain the ingredients), (ii) cross-check all the ingredients on the label with the list of prohibited substances, (iii) make an internet search of the product, (iv) ensure the product is reliably sourced and (v) consult appropriate experts in these matters and instruct them diligently before consuming the product"*. (*CAS 2013/A/3327 & 3335*, para. 74).

100. This is a helpful lens through which the present question of manifest disregard can be viewed. Carrying out all five of the checks listed above would invariably eliminate almost all ADRVs. Carrying out none of these checks would constitute manifest disregard and thus, at the very least, indirect intent. There must, however, be a middle ground, where if the athlete can demonstrate on the balance of probabilities that they genuinely attempted to carry some of these checks, then the degree of fault or negligence displayed might not be sufficient to constitute manifest disregard. This is inevitably a case-by-case assessment.

101. Fourth, as the Respondent highlighted in its Answer, CAS' case-law has repeatedly adopted the "minefield" metaphor in respect of indirect intent:

> *"*[…] *the term 'intent' should be interpreted in a broad sense. Intent is established – of*

[1] *CAS 2023/A/9482 & 9564 & 9592*; *CAS 2023/A/9525*; *CAS 2021/A/8458*; *CAS 2020/A/7536*; *CAS 2016/A/4716*; *CAS 2016/A/4609*; and *CAS 2016/A/4512*. While the relevant athletes in *CAS 2023/A/9525*, *CAS 2016/A/4609*, and *CAS 2021/A/8458* claimed to have consulted a doctor, the circumstances in which they did so in each matter cast significant doubt on the legitimacy of this claim, while in any case there is no indication that they attempted to independently verify the status of their medication vis-à-vis anti-doping from three (or even two) separate medical professionals.

[2] *CAS 2022/A/9286*; *CAS 2021/A/7760*; *CAS 2018/A/5739*; *CAS OG AD 18/004*; *CAS 2017/A/5301 & 5302*; *CAS 2017/A/5015 & 5110*; *CAS 2016/A/4643*; and *CAS 2015/A/4233*.

course – if the athlete knowingly ingests a prohibited substance. However, it suffices to qualify the athlete's behaviour as intentional, if the latter acts with indirect intent only, i.e. if the athlete's behaviour is primarily focused on one result, but in case a collateral result materializes, the latter would equally be accepted by the athlete. If – figuratively speaking – an athlete runs into a 'minefield' unharmed. However, an athlete acting in such (reckless) manner somehow accepts that a certain result (i.e. adverse analytical finding) may materialize and therefore acts with (indirect) intent" (*CAS 2012/A/2822*, para. 8.14).

"To stay within the well-known 'minefield'-metaphor adopted by various CAS panels to describe the concept of indirect intent (e.g. CAS 2012/A/2822, para. 8.14; also quoted in CAS 2016/A/4609, para. 63): A professional athlete alleging that he or she does not know that pharmaceuticals or medications may contain prohibited substances would just be the same as alleging that one does not know that a minefield contains mines". (*CAS 2023/A/9525*, para. 86).

102. This metaphor can helpfully be extended in respect of the current proceedings. The Athlete's attempt to verify prescribed medication through consultations with several doctors, demonstrates an awareness of the proverbial "minefield". His attempts to navigate said minefield were clumsy and ineffective, but nevertheless do not constitute a manifest disregard of the minefield's existence, particularly in the context of a genuine medical issue which was confirmed with written evidence and oral testimony at the hearing.

103. Finally, the Panel rejects the point of policy raised by the Respondent during the hearing that a finding of no intent would open the floodgates for athletes to hide behind their doctors. This is manifestly not the case:

- The Athlete at hand is not 'hiding' behind his doctors *ex post* with a self-serving and questionable defence. He has submitted detailed contemporaneous evidence of undertaking genuine (albeit ineffective) checks during and in the aftermath of a medical episode, which were confirmed by cross- and Panel-examination at the hearing.

- The finding of no intent in relation to reliance on doctors would not be unprecedented, as shown by the comprehensive analysis of the CAS case law above.

- A finding of intent under the UWW ADR is not required to provide an appropriate deterrent against future displays of fault or negligence by athletes.

- The finding of no intent does not result in no sanction – the Athlete was already prevented from competing in the 2024 Paris Olympic Games and would still be subject to a sanction of ineligibility, albeit not more than 2 years.

104. Accordingly, the Panel finds that the Athlete has discharged his burden of proof to the requisite legal standard in establishing the absence of intent for the ADRV pursuant to Article 10.2.3 of the UWW ADR. The Athlete, therefore, can benefit from the

reduction of the period of ineligibility set out in Articles 10.2.1 and 10.2.2 of the UWW ADR.

2. The No Significant Fault or Negligence Defence

105. According to Article 10.6.2 of the UWW ADR, the applicable period of ineligibility may be reduced based on the Athlete's degree of fault, but the reduced period of ineligibility may not be less than one-half of the period of ineligibility otherwise applicable. As the period of ineligibility otherwise applicable is two years, the final period of ineligibility may not be less than one year.

106. In deciding a sanction between 12 to 24 months, the Panel notes the following objective and subjective factors (taking inspiration from the case *CAS 2013/A/3327* & *3335)*. The objective element describes the standard of care that could be expected from a reasonable person in the Athlete's situation. The subjective element describes what could be expected from that particular athlete, in light of his/her personal capacities.

- As discussed above in the context of intent, almost all ADRVs relating to the consumption of a medicine containing a prohibited substance could be prevented. The athlete could always (i) read the label or leaflet of the medicine used (or otherwise ascertain the ingredients); (ii) cross-check all the ingredients on the label/leaflet with the list of prohibited substances; (iii) carry out an online search of the medicine; (iv) ensure the medicine is reliably sourced; and (v) consult appropriate experts in these matters prior to usage of the medicine. The Athlete failed to undertake many of these checks, instead entirely relying on his doctors. In doing so, the Athlete certainly failed to fully discharge his duty. That said, the Athlete did demonstrate on the balance of probabilities a genuine willingness to check compliance with anti-doping rules, even though such checks ultimately proved ineffective.

- The Athlete furnished evidence that shows on the balance of probabilities that he suffered from a serious medical incident around the time he was prescribed the prohibited substance at issue, which ought to be taken into account in evaluating the surrounding circumstances.

- The Athlete is an elite international athlete who has participated in numerous sporting events and undergone doping controls on multiple occasions. The Athlete himself testified that he is seen as a sporting and anti-doping role model in Turkey. From a subjective standpoint, he should know better.

- The Athlete was prescribed medication by Turkish doctors in his native language and was thus not subject to any compelling language or environmental challenges.

107. Based on a weighing of the above factors, the Panel considers that a sanction of 18 months is appropriate and proportionate.

108. Pursuant to Article 10.13.2 of the UWW ADR, if a provisional suspension is respected by the Athlete, then they shall receive credit for such period of provisional suspension against any period of ineligibility which may ultimately be imposed. In addition, the Athlete shall receive credit for a period of ineligibility served pursuant to an appealed decision against any period of ineligibility which may ultimately be imposed on appeal.

109. The Athlete has been provisionally suspended from 1 July 2024 to 24 February 2025 and is currently serving the period of ineligibility imposed by the Appealed Decision from 24 February 2025. There is no evidence that the Athlete – who has retired from professional sports – has not respected the provisional suspension or the period of ineligibility imposed by the Appealed Decision. As a consequence, the 18-month period of ineligibility imposed by this Award also runs from 24 February 2025. In accordance with Article 10.10 of the UWW ADR, the Panel also upholds the disqualification with all associated consequences, including the forfeiture of any medals, prizes, and points, of all competitive results obtained by the Athlete between 28 May 2024 (the date the positive sample was collected from the Athlete) and 1 July 2024 (the commencement date of the Athlete's provisional suspension).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr. Riza Kayaalp on 13 March 2025 against United World Wrestling with respect to the decision of the Anti-Doping Division of the Court of Arbitration for Sport under the United World Wrestling Anti-Doping Rules in the matter of proceedings *2023/ADD/110 United World Wrestling (UWW) v. Riza Kayaalp* is partially upheld.

2. The decision of 24 February 2025 by the Single Judge in the Anti-Doping Division of the Court of Arbitration for Sport in the matter of proceedings *2023/ADD/110 United World Wrestling (UWW) v. Riza Kayaalp* is partially set aside.

3. Mr. Riza Kayaalp is sanctioned with a period of ineligibility of 18 months, starting from 24 February 2025, with credit given for the period of provisional suspension from 1 July 2024 until 23 February 2025. All competitive results of Riza Kayaalp from 28 May 2024 until 1 July 2024 are disqualified with all resulting consequences, including forfeiture of medals, points and prizes.

4. (…).

5. (…).

6. All other motions or prayers for relief are dismissed.

CAS 2025/A/11604
Crystal Palace Football Club v. Union des Associations Européennes de Football (UEFA) & Nottingham Forest Football Club (NFFC) & Olympique Lyonnais (OL)
award of 31 October 2025 (operative part of 11 August 2025)

Football; Eligibility – Multi-club ownership; UEFA regulations and reporting obligations regarding MCOs; Purposes behind MCOs regulations; Categories of MCOs; Interpretation of International Sports Federation's Regulations; Involvement in the sense of Article 5.01(b) of the UEL Regulations; Concept of control or influence under article 5.01(c) of UEL Regulations; Concept of decisive influence; Factors of decisive influence - shareholders' or members' rights; Factors of decisive influence - financial support; Factors of decisive influence – governance; Factors of decisive influence - players' transfers

Panel
Prof. Luigi Fumagalli (Italy), President
Mr Manfred Nan (The Netherlands)
Mr Olivier Carrard (Switzerland)

1. **According to the UEFA Club Licensing and Financial Sustainability Regulations (edition 2024) (UEFA CLFSR), clubs must submit information, including their legal group structure, as well as a document containing information on their ultimate controlling party, ultimate beneficiary and any party with a significant or decisive influence over the clubs (Multi-Club Ownership [MCO] declaration) to the UEFA administration and the UEFA Club Financial Control Body (CFCB).**

2. **The issue of the potential threat to the integrity of sporting competitions in terms of collusion, undue influence and public perception caused by the existence of MCO structures in European football came to the attention of UEFA in the late 1990s and became the object of specific provisions in the regulations governing the UEFA Club Competitions (UCC), in order to ensure their integrity. The MCO is addressed at Article 5.01 of the UEFA Europa League Regulations (UEL Regulations).**

3. **Article 5.01 of the UEL Regulations describes the situation in which the existence of a MCO could be found. It provides for three categories of MCO criteria. The first case in which a relevant MCO may be found concerns the situation of clubs participating in a UCC, and which either directly or indirectly, (i) hold or deal in the securities or shares, or (ii) are a member, or (iii) are involved in any capacity whatsoever in the management, administration and/or sporting performance, or (iv) have any power whatsoever in the management, administration and/or sporting performance, of any other club participating in a UCC. The second case concerns the situation of anybody ("no one") being simultaneously involved, either directly or indirectly, in any capacity whatsoever in the management, administration and/or sporting performance of more than one club participating in a UCC. The third case concerns the situation of any**

individual or legal entity having control or influence over more than one club participating in a UCC, where "control or influence" is defined in this context as (i) holding a majority of the shareholders' voting rights; (ii) having the right to appoint or remove a majority of the members of the administrative, management or supervisory body of the club; (iii) being a shareholder and alone controlling a majority of the shareholders' voting rights pursuant to an agreement entered into with other shareholders of the club; or (iv) being able to exercise by any means a decisive influence in the decision-making of the club. The occurrence of each of the three situations mentioned at Article 5.01 of the UEL Regulations is sufficient to establish the existence of a MCO situation and to trigger the consequences contemplated to ensure the integrity of the UEFA club competitions.

4. It is generally admitted that rules and regulations of international sports federations are subject to the methods of interpretation applicable to statutory provisions rather than contracts. Consequently, any interpretation of the UEL Regulations must follow the principles of regulatory interpretation under Swiss law. There are four methods of interpretation, the grammatical, the systematic, the historical and the teleological. Additionally, it has been recognized that while there is no hierarchy between all four methods, there is no reason to depart from the plain text, unless there are objective reasons to think that it does not reflect the core meaning of the provision under review.

5. Holding a position of director and principal partner in the companies which constitute the governing bodies of the relevant club, with voting rights allowing said director to participate in decisions crucial for the club (such as the club's strategy, financial planning, players' transfers, appointment of the coach, etc.), is sufficient to constitute involvement in the sense of Article 5.01(b) of the UEL Regulations. Additionally, in the case that the same director is also the ultimate controlling party, the ultimate beneficiary, and the president of a second club, this would mean that the relevant club would be in breach of Article 5.01(b) of the UEL Regulations.

6. Under Article 5.01(c)(iv) of the UEL Regulations, an individual or legal entity has "control or influence" over a club when such individual or legal entity is able to exercise by any means a decisive influence in the decision-making of the club. There is no need for the relevant individual or legal entity to effectively exercise a decisive influence. The fact that an individual or legal entity is in a position (or has the ability) to exercise a decisive influence is sufficient to trigger Article 5.01(c)(iv).

7. The idea of "decisive influence" could manifest itself through shareholders' or members' rights, financial support, governance, and player transfers.

8. An individual or a legal entity is able to exercise decisive influence

through shareholders' or members' rights, either if a party holds 30% or more of the club's total shares, the shareholders' or members' voting or economic rights, or if a party holds 10% or more of the club's total shares, the shareholders' or members' voting or economic rights and is also the largest shareholder of the club.

9. A party (an individual or a legal entity) is able to exercise decisive influence through financial support (either alone or in aggregate together with a related party, directly or indirectly) if it: a) accounts to 30% or more of the club's total operating revenue; b) lends to the club an amount equivalent to 30% or more of the club's total borrowings from related parties (as defined in the UEFA CLFSR), including accounts payables to related parties, shareholder loans, convertible loans; c) provides financial support to the club in the form of additional paid-in capital, through share premium reserves, up to an amount equivalent to 30% or more of the premium reserve; d) provides financial security over the club's borrowings; e) provides financing to the club which is secured through a pledge of the club's shares, an assignment of the club's receivables or change over the club's assets.

10. An individual or a legal entity is able to exercise decisive influence through governance when a party (either alone or in aggregate together with a related party, directly or indirectly): a) holds any position in the club's governing bodies or a club's key executive position; b) has the ability to appoint or remove 30% or more of the members, or holds 30% or more of voting or economic rights, in the club's governing bodies; c) has the ability to appoint or remove the club's key executives or the first squad's head coach; d) has the ability to influence key executive decisions (such as player transfers, budget approval, key commercial contracts), or benefits from specific contractual or statutory privileged rights with respect to the club's governance, through veto rights or any other privileged rights.

11. A decisive influence may be assumed to exist if a club has transferred, permanently or temporarily, three or more players with the other club during the season.

I. PARTIES

1. Crystal Palace Football Club (the "Appellant" or "CPFC") is a professional football club based in London, United Kingdom. CPFC competes in the top-tier English football league competition (the "Premier League"). It is registered with The Football Association ("The FA"), which in turn is affiliated to the Union des Associations Européennes de Football (UEFA) and the Fédération Internationale de Football Association, the world governing body for football ("FIFA").

2. Union des Associations Européennes de Football (the "First Respondent" or "UEFA") is the football governing body of European Football affiliated to FIFA. It is headquartered in Nyon, Switzerland. UEFA organises international football competitions at the European level,

which include the UEFA Champions League ("UCL"), the UEFA Europa League (the "UEL") and the UEFA Conference League ("UECL").

3. Nottingham Forest Football Club (the "Second Respondent" or "NFFC") is a professional football club based in Nottingham, United Kingdom. The club competes in the Premier League. It is registered with The FA.

4. Olympique Lyonnais (the "Third Respondent" or "OL") is a professional football club based in Lyon, France. The club competes in the top tier French football league competition ("Ligue 1"). It is registered with the Fédération Française de Football ("FFF"), which in turn is affiliated to UEFA and FIFA.

5. The First Respondent, the Second Respondent and the Third Respondent are hereinafter jointly referred to as the "Respondents".

6. The Appellant and the Respondents are hereinafter jointly referred to as the "Parties".

II. OVERVIEW AND FACTUAL BACKGROUND

7. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced in the course of the present proceedings. 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 Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

8. The dispute before this Panel concerns the application to CPFC and OL of Article 5.01 of the UEFA Club Competitions Regulations (the "UCC Regulations") for the 2025/26 season, addressing, under the heading *"Integrity of the Competition/multi-club ownership"*, the issue of Multi Club Ownership ("MCO"). More specifically, the dispute arises from a decision issued by a body of the First Respondent finding CPFC and OL to be in a MCO situation and deciding that for the 2025/26 season, OL would be admitted to the UEL, while CPFC would compete in the UECL.

A. UEFA Circulars

9. On 14 May 2024, the UEFA Club Financial Control Body ("CFCB") sent a letter (the "May 2024 Circular") signed by the President of its First Chamber (the "First Chamber") to member associations with regard to the UCC Regulations for the 2024/25 season:

   i. reminding them that, in order to participate in UEFA Club Competitions ("UCC"), all clubs had to prove that *"as at 3 June 2024"* they complied with the *"rules aimed at ensuring the integrity of competitions"* set at Article 5 of the UCC Regulations (the "MCO Rule"), under which no individual or legal entity may have *"control"* or *"decisive influence"* over more than one club participating in UCC;

   ii. providing guidance regarding the interpretation of *"decisive influence"* contained in Article 5.01(c) of the

UCC Regulations, by reference also to the assessment made by the CFCB, since its creation in July 2021, to decide whether a party has the capacity to exercise a decisive influence in the decision-making of a club, as follows:

"a. Decisive influence through shareholders' or members' rights

i. If a party [either alone or in aggregate together with a related party, directly or indirectly] holds 30% or more of the club's total shares, the shareholders' or members' voting or economic rights.

ii. If a party [either alone or in aggregate together with a related party, directly or indirectly] holds 10% or more of the club's total shares, the shareholders' or members' voting or economic rights and is also the largest shareholder of the club.

b. Decisive influence through financial support

i. If a party [either alone or in aggregate together with a related party, directly or indirectly] accounts to 30% or more of the club's total operating revenue.

ii. If a party [either alone or in aggregate together with a related party, directly or indirectly] lends to the club an amount equivalent to 30% or more of the club's total borrowings from related parties [as defined in the UEFA Club Licensing and Financial Sustainability Regulations] (including accounts payables to related parties, shareholder loans, convertible loans).

iii. If a party [either alone or in aggregate together with a related party, directly or indirectly] provides financial support to the club in the form of additional paid-in capital, through share premium reserves, up to an amount equivalent to 30% or more of the premium reserve.

iv. If a party [either alone or in aggregate together with a related party, directly or indirectly] provides financial security over the club's borrowings.

v. If a party [either alone or in aggregate together with a related party, directly or indirectly] (excluding banks) provides financing to the club which is secured through a pledge of the club's shares, an assignment of the club's receivables or change over the club's assets.

c. Decisive influence through governance

i. If a party [either alone or in aggregate together with a related party, directly or indirectly] holds any position in the club's governing bodies (i.e. any administrative executive, management and supervisory bodies of the club) or a club's key executive position (such as President, CEO/general director, CFO/finance director, sporting/football director).

ii. If a party [either alone or in aggregate together with a related party, directly or indirectly] has

the ability to appoint or remove 30% or more of the members, or holds 30% or more of voting or economic rights, in the club's governing bodies.

iii. If a party [either alone or in aggregate together with a related party, directly or indirectly] has the ability to appoint or remove the club's key executives or the first squad's head coach.

iv. If a party [either alone or in aggregate together with a related party, directly or indirectly] has the ability to influence key executive decisions (such as player transfers, budget approval, key commercial contracts), or benefits from specific contractual or statutory privileged rights with respect to the club's governance, through veto rights or any other privileged rights.

d. Decisive influence through player transfers

i. If a club has transferred, permanently or temporarily, 3 or more players with the other club, directly or indirectly via related parties [as defined in the UEFA Club Licensing and Financial Sustainability Regulations], during the season.

For the avoidance of doubt, clubs subject to MCO proceedings before the CFCB First Chamber will not be entitled to transfer, permanently or temporarily, any new players between each other, directly or indirectly via related parties [as defined in the UEFA Club Licensing and Financial Sustainability Regulations], during the competition season nor during the first transfer window immediately thereafter.

ii. If a party [either alone or in aggregate together with a related party, directly or indirectly] enters into a contract, such as player scouting or software/database arrangements, with the club by which it acquires the ability to influence the decision-making of the club in player-employment and transfer-related matters.

If one or more of the above-mentioned indicators are triggered, the CFCB First Chamber considers that a party has the capacity to exercise a decisive influence in the decision-making of a club.

In situations where the above-mentioned indicators are not triggered, a detailed multi-criteria assessment will still be performed to determine whether or not a party has the capacity to exercise a decisive influence, taking into account the substance and not merely the form. The development of new forms of cooperation and influence between clubs and third parties suggests a broad interpretation of the concept; indeed, even if a club, individual or legal entity does not have de jure decisive influence over a club, it may still be able to exercise de facto decisive influence over such a club";

iii. stating that *"the short time between the approval of the Competition Regulations on 20*

March 2024 and the deadline of 3 June 2024 may prove difficult for certain clubs to comply with the MCO rule considering the above-mentioned indicators" and that it therefore may *"prove difficult for certain clubs to comply with the MCO rule"*;

iv. declaring that:

"[t]he CFCB First Chamber is aware that compliance with the MCO rule may necessitate the sale of shares in a club which may not be feasible considering the short timeframe laid down in the new Competition Regulations.

For this reason and provided that (i) as at 20 March 2024, the clubs already faced potential non-compliance with the MCO rule and (ii) as at 3 June 2024, the clubs do not trigger any of the indicators listed in points (b), (c) and (d) above, the CFCB First Chamber considers it appropriate to provide the concerned party with a temporary alternative.

Such alternative shall consist in the transfer or the assignment of all its shares in a club to an independent third party, such as a blind trust, whereby all the decision-making of the club will solely rest under the control of the third party/trustee who will be bound by the fiduciary duty to act in the best interest of the club exclusively. It is understood that, in such cases, the CFCB First Chamber will oversee the set-up of the independent structure to ensure it satisfies the MCO rule.

For the avoidance of doubt, this temporary alternative is granted by the CFCB First Chamber on an exceptional basis for the 2024/25 UEFA competitions. As such, the CFCB First Chamber will not be bound by this alternative when assessing clubs' compliance with the MCO rule for participation in UEFA competitions in subsequent seasons".

10. On 7 October 2024, UEFA published a Circular informing its member associations of the following (the "October 2024 Circular"):

"The UEFA Executive Committee has approved a change to Article 5.01 of the UEFA club competition regulations that will come into effect in the 2025/26 season. This change concerns the assessment date for multi-club ownership criteria, i.e. the deadline by which clubs must comply with the rules against multi-club ownership. The new assessment date will be included in the 2025/26 UEFA club competition regulations that will be submitted for approval in full at a later date.

It is of fundamental importance that the sporting integrity of UEFA club competitions be protected and that their perceived sporting integrity be undisputable. To that end, Article 5 of the club competition regulations contains specific provisions preventing one party from controlling or being able to exercise a decisive influence in the decision-making of more than one club participating in the same UEFA club competition.

For the 2024/25 season, the assessment date was 3 June 2024 for the men's club competitions and 1 July 2024 for the women's club competitions.

The amendment approved by the UEFA Executive Committee ***brings the assessment date forward to 1 March for all club competitions****. This change was deemed necessary considering the complexity of the cases investigated by the Club Financial Control Body (CFCB), which is charged with*

dealing with multi-club ownership issues. The newly approved assessment date is intended to provide sufficient time for completion of the decision-making process and ensure the smooth running of UEFA's club competitions.

The change has been approved and communicated early to enable clubs to prepare and ensure their compliance with the multi-club ownership criteria stipulated in Article 5.01 ahead of the new deadline for the 2025/26 season. […]".

B. Club information and MCO declarations

11. According to the UEFA Club Licensing and Financial Sustainability Regulations (edition 2024) (the "UEFA CLFSR"), clubs must submit information, including their legal group structure, as well as a document containing information on their ultimate controlling party, ultimate beneficiary and any party with a significant or decisive influence over the clubs (the "MCO declaration") to the UEFA administration and the UEFA Club Financial Control Body (the "CFCB").

12. Within the applicable deadline of 13 March 2025, both CPFC and OL submitted such documents.

13. In its MCO declaration, CPFC stated that its structure on 1 March 2025 was as follows:

    i. Palace Holdco UK Limited ("Palace Holdco") was the ultimate controlling party of CPFC and Palace Manageco LLP (Delaware) ("Palace Manageco") was the ultimate beneficiary;

    ii. the board of directors was composed of Mr Stephen Parish (*"minority shareholder or representative"* and CPFC's Executive Chairman), Mr John Textor (*"majority shareholder or representative"*), Mr David Blitzer (*"minority shareholder or representative"*) and Mr Josh Harris (*"minority shareholder or representative"*);

    iii. both Mr Textor and Mr Blitzer had an ownership interest, voting rights or membership or any other involvement or influence whatsoever in the management, administration or sporting performance in any other football clubs, namely:

        a. Mr Textor held shares in Eagle Football Holdings (65.4% of the total shares), which owned 93.95% of Olympic Lyon Group, 90% of S.A.F. Botafogo, 10% of Botafogo de Futebol e Regatas, 80% of Racing White Daring Molenbeek Future SA, and 100% of FC Florida;

        b. Mr Blitzer owned the company GFH, which owned 51% of Brondby, 92% of GD Estoril, 98% of SK Beveren, and 15% of AD Alcorcon;

        c. Mr Blitzer, through GFH and with other investors, owned 45% of FC Augsburg;

        d. Mr Blitzer individually owned 9% of Brondby, 8% of Estoril Praia, 8% of FC Augsburg, 100% of ADO Den Haag, 18% of SK Beveren, 30% of Real Salt Lake, 3% of AD Alcorcon, and 30% of Utah Royals;

iv. Harris Blitzer Sports & Entertainment, a company of Messrs David Blitzer and Joshua Harris ("HBSE"), and Eagle Football Holdings Bidco Ltd were indicated to have control or decisive influence over CPFC and other clubs.

14. In its MCO declaration, OL stated that its structure on 1 March 2025 was as follows:

i. Mr Textor was OL's ultimate controlling party and ultimate beneficiary. He was also the President of OL;

ii. Mr Textor had an ownership interest, voting rights or membership or other involvement or influence in the management, administration or sporting performance in other clubs, namely Botafogo, Molenbeek and CPFC. In particular, Mr Textor had control over Botafogo and Molenbeek and could exercise influence on CPFC;

iii. Eagle Football Holding was simultaneously involved directly or indirectly in the management, administration and/or sporting performance, as well as to have control or decisive influence over CPFC, Botafogo, Molenbeek and FC Florida.

C. Sporting results of CPFC and OL

15. On 17 May 2025, CPFC won the English Cup competition (FA Cup), thereby qualifying for the 2025/26 UEL.

16. In parallel, CPFC finished 12th in the Premier League in the 2024/2025 season.

17. OL finished 6th in Ligue 1 in the 2024/2025 season, thereby qualifying for the 2025/2026 UECL. On 24 May 2025, Paris Saint-Germain ("PSG") won the 2024/25 edition of the French Cup competition (*Coupe de France*). As a result, since PSG had already qualified for the 2025/26 UCL as the winner of Ligue 1, a place in the 2025/26 UEL was allocated to OL, being the next highest ranked team in Ligue 1 which had not qualified for the UEL based on the final ranking of Ligue 1.

18. On 24 June 2025, the Federal Club Control Commission of the FFF (the "DNCG") decided the administrative relegation of OL from Ligue 1 to the second-tier French football league competition (Ligue 2) at the end of the 2024/2025 season.

19. On 9 July 2025, following the appeal lodged by OL, the Appeal Board of the DNCG decided to invalidate the decision of 24 June 2025 relegating OL to Ligue 2. Instead, it decided to *"control of the wage bill and transfer allowances on the proposed Ligue 1 2025/2026 budget"*.

D. The Proceedings before the UEFA CFCB

20. On 26 May 2025, CPFC and OL were notified of the opening of proceedings before the First Chamber pursuant to Article 12.01 of the UEFA CFCB Procedural Rules. They were also informed of the appointment of Mr Helmut Schwärzler as the CFCB's reporting member (the "CFCB Reporting Member").

21. On 28 May 2025, upon request from the

CFCB Reporting Member, CPFC provided additional documentation with regard to its structure as at 1 March 2025. In particular, CPFC submitted the following information:

i. the detailed shareholding structure of Palace Holdco, indicating namely that:

   a. 44.09% of share capital was held by Eagle Football Holdings Bidco Limited;

   b. 37.98% of share capital was held by Palace Holdco LP, which included HBSE as one of it partners;

   c. 17.24% of share capital was held by other investors, including Mr Parish;

   d. 0.69% of share capital was held by Palace Parallel Holdco LLC.

ii. the indication that CPFC was managed through Palace Manageco, which was controlled by four directors, Messrs Stephen Parish, John Textor, David Blitzer and Joshua Harris, with 25% of voting rights each;

iii. a table listing the directorship of the entities within the CPFC's structure.

22. On 29 May 2025, the CFCB Reporting Member submitted his conclusions in accordance with Article 13.03 of the UEFA CFCB Procedural Rules (the "Report"). The Report established that, as at 1 March 2025, CPFC and OL failed to comply with Articles 5.01(b) and 5.01(c) of the UCC Regulations, due to Mr Textor's involvement in both clubs, as well as to *"the control (in case of OL) and decisive influence (in case of Crystal Palace) exercised by Eagle Football Holdings Bidco Limited and by John Textor over both Clubs"*.

23. On 2 June 2025, CPFC submitted its observations to the CFCB Reporting Member. In particular, CPFC detailed its structure prior and following Mr Textor's investment in Palace Holdco, stated that it was not part of a MCO model, and requested the reconsideration of the CFCB Reporting Member's conclusions. In particular, CPFC argued the following:

i. the deadline of 1 March 2025 could not apply, as the October 2024 Circular and December Letter only communicated regulations' proposals, which were in no case approved or adopted. Said regulations' amendments were only approved by the UEFA Executive Committee (the "UEFA ExCo") on 26 February 2025, date on which they became binding on clubs. If clubs were expected to comply with the rule before its entry into force, UEFA had to take extraordinary measures to ensure that all clubs were properly notified of the change to the assessment date and its effects. In that regard, the December Letter was insufficient, as it was sent to a generic email address of CPFC, and it was not sent to all clubs potentially affected. The change of date was a disproportionate measure, considering that it required clubs to act at a point in time when the qualification for a UCC was still only hypothetical;

ii. alternatively, it should be considered that a strict application of this deadline would be *"unfair and constitute excessive formalism"*, taking into account that CPFC had a legitimate expectation that it would be able to cure any breach of the MCO after 1 March 2025. Moreover, the fact that the proceedings before the CFCB were only initiated in May 2025 is an indication that clubs were in a position to remedy breaches of the MCO rules after 1 March 2025. In this respect, Mr Textor had initiated the sale of his shares in CPFC during the summer of 2024. Finally, other clubs were given the opportunity to set up blind trusts until 30 April 2025 in order to become compliant with the MCO rules;

iii. the conclusion of the CFCB Reporting Member that Eagle Football Holdings Bidco Limited has decisive influence on Palace Holdco was flawed. The CFCB Reporting Member should have analysed Mr Textor's indirect interest in Palace Holdco through Eagle Football Holdings Bidco Limited, which was 28.84%, i.e. below the 30% threshold set out in the May 2024 Circular. Mr Textor had no involvement in the management and administration of the club. The day-to-day management of CPFC was only dealt with by Mr Parish.

24. On 3 June 2025, a hearing took place before the First Chamber of the CFCB in Nyon at UEFA's headquarters (the "CFCB Hearing").

25. On 5 June 2025, CPFC sent an unsolicited communication to the First Chamber.

26. On 10 June 2025, the First Chamber requested CPFC to provide additional information and documents, pertaining mainly to equity injections and loans made to Palace Holdco by Mr Textor and Eagle Football Holdings Bidco Limited since 2021, the player transfers between CPFC and clubs related to Eagle Football Holdings Bidco Limited, the agreements regulating the responsibilities of Mr Parish, and the difference between Class A and Class B shares in Palace Holdco on 1 March 2025.

27. On 16 June 2025, CPFC provided the requested information and documents to the First Chamber. In essence, the information provided can be summarised as follows:

i. the total subscription price for the shares purchased by Mr Textor on 18 August 2021, corresponding to 39.87% of the total shares of Palace Holdco, was GBP 80,000,000;

ii. Eagle Football Holdings Bidco Limited paid GBP 30,000,000 for the additional 169,728 non-voting shares in Palace Holdco;

iii. in January 2024, Palace Manageco decided to make a capital call of GBP 45,000,000, pursuant to Articles 11 and 12 of the Articles of Association of Palace Holdco;

iv. according to this capital call:

- Palace Holdco LP subscribed for 93,210 shares in Palace

Holdco (A2 shares), for a total amount of GBP 16,475,145

- Palace Parallel Holdco LLC subscribed for 1,727 shares in Palace Holdco (A2 shares), for a total amount of GBP 305,187

- Mr Parish subscribed for 665 shares in Palace Holdco (A2 shares), through Palace Holdco LP, and 24,864 shares in his personal capacity, for a total amount of GBP 4,512,260

- Eagle Football Holdings Bidco Limited subscribed for 73,286 shares in Palace Holdco (A2 shares), for a total amount of GBP 12,953,571

- other investors subscribed for the remaining shares in Palace Holdco;

v. the following transfers of players took place between the summer of 2021 and the end of the 2023/24 season:

- one player was transferred from CPFC to Botafogo

- seven players were loaned from CPFC to Molenbeek

- one player was transferred from CPFC to OL;

vi. pursuant to the Articles of Association of Palace Holdco,

a. the company's shareholding comprises:

- A1 and B1 ordinary shares: voting shares, which entitle the holders to (i) a single vote on a show of hands, and (ii) one vote held on a poll or a written resolution

- A2 and B2 ordinary shares: non-voting shares and no-voting rights

b. any resolution of the A1 and B1 shareholders to appoint or remove a director of Palace Holdco, *"the holders of the A1 shares were in aggregate entitled to such number of votes as equal to 51% of the total votes available to be cast on such resolution (…)"*;

vii. further information related to loans made to Palace Holdco, minutes of Board meetings, agreements relating to Mr Parish's responsibilities, and Mr Textor's purchase of OL.

28. On 17 June 2025, the First Chamber and CPFC held a meeting, during which the clarifications provided by CPFC on 16 June 2025 were discussed.

29. On the same day, upon request from the First Chamber, Mr Blitzer provided some additional information, namely (i) that he holds an indirect interest of 8.73% in CPFC, through the company HBSE and has 25% of voting rights in Palace Manageco as one of four directors, and (ii) that he holds an indirect interest of 8.9% in Brondby, through the company GFH, of which he holds 17.7%.

30. On 19 June 2025, Mr Textor provided the First Chamber with an engagement letter dated 4 June 2024, by means of which Eagle Football Holdings Bidco Limited engaged the company Raine

Advisors Limited for advice and assistance for a potential sale of Mr Textor's shares in CPFC.

31. On 25 June 2025, CPFC informed the First Chamber that Eagle Football Holdings Bidco Limited had agreed to sell the entirety of its shares in Palace Holdco to Mr Robert Wood Johnson IV and that a share and purchase agreement (SPA) had been concluded in that regard. Furthermore, CPFC stated that discussions between Eagle Football Holdings Bidco Limited and Mr Wood Johnson IV had started in November 2024, hence before 1 March 2025. In this respect, CPFC argued that it should not be considered to be in breach of the UEFA MCO rules.

32. On 30 June 2025, UEFA published a statement on its website indicating that *"[t]he CFCB First Chamber has decided to postpone its assessment of the multi-ownership case involving Olympique Lyonnais and Crystal Palace. This postponement relates to Olympique Lyonnais' compliance with the settlement agreement concluded with the CFCB First Chamber for its breach of the financial sustainability requirements. As part of this settlement, Olympique Lyonnais agreed on an exclusion from the 2025/26 UEFA club competitions should the French authority (DNCG) confirm the club's relegation to Ligue 2".*

33. On 10 July 2025, CPFC sent two unsolicited communications to the First Chamber.

34. On 11 July 2025, the First Chamber informed CPFC that its submission was late.

35. On the same day, the First Chamber rendered the operative part of a decision (the "Appealed Decision"), ruling that:

"Based on the foregoing and in accordance with Article 14.06 b) of the Procedural Rules 2025 and Articles 5.02, 5.03 and 5.04 of the 2025/26 UEL Regulations, the CFCB First Chamber ***decides****:*

- *To accept Olympique Lyonnais' admission to the 2025/26 UEFA Europa League; and*

- *To reject Crystal Palace's admission to the 2025/26 UEFA Europa League and to accept Crystal Palace's admission to the 2025/26 UEFA Conference League".*

36. On 14 July 2025, the grounds of the Appealed Decision were notified to the parties concerned.

37. In particular, the First Chamber considered the following:

"155. Considering the above findings, the CFCB First Chamber decides that the Clubs did not comply with the MCO rule as at 1 March 2025, the date by which clubs had to comply with Article 5.01 2025/26 UEL Regulations to be admitted to 2025/26 UCC.

156. Pursuant to Article 5.02 UEL Regulations, "if two or more clubs fail to meet the criteria aimed at ensuring the integrity of the competition, only one of them may be admitted to a UEFA club competition, in accordance with the following criteria (applicable in descending order) with the exception of the scenarios set out in Paragraph 5.04 and Paragraph 5.05:

a. the club which qualifies on sporting merit for the most prestigious UEFA club competition (i.e., in descending order: UEFA Champions League, UEFA

Europa League or UEFA Conference League);

b. the club which was ranked highest in the domestic championship giving access to the relevant UEFA club competition;

c. the club whose association is ranked highest in the access list (see Annex A)".

157. Olympique Lyonnais and Crystal Palace both qualified for the 2025/26 UEL on sporting merit. Olympique Lyonnais finished 6th in the French Ligue 1 in the 2024/25 season. Crystal Palace finished 12th in the English Premier League in the 2024/25 season.

158. Consequently, the CFCB First Chamber finds that only Olympique Lyonnais may be admitted to the 2025/26 UEL. Crystal Palace may not be admitted to the 2025/26 UEL.

159. Article 5.04 UEL Regulations foresees that, "exceptionally, provided that the relevant principles of Paragraph 5.01 are respected throughout, a club that was not admitted in application of Paragraph 5.02, and which is replaced in the competition in application of Paragraph 4.10, may still be admitted to another UEFA club competition (i.e. in descending order: UEFA Europa League or UEFA Conference League) to which the relevant national association has access, respecting the scenarios foreseen by Paragraph 5.05. The access of the respective association is adjusted accordingly".

160. The CFCB First Chamber therefore needs to determine whether Crystal Palace could still be admitted to the 2025/26 UECL in accordance with Article 5.04 UEL Regulations.

161. According to Article 5.04 UEL Regulations, a club that is not admitted in application of Article 5.02, may still be admitted to another UEFA club competition, i.e. relegated to another competition, only if Article 5.01 is complied with. In other words, the relegation to another competition is only possible if it does not cause the concerned club to further breach the MCO rule because of an MCO conflict with another club admitted to the said competition.

162. In the present case, the CFCB First Chamber is comfortably satisfied that there is no other conflict that would prevent CPFC's admission to the 2025/26 UECL.

163. Accordingly, the CFCB First Chamber confirms its decision to accept Olympique Lyonnais' admission to the 2025/26 UEL and decides to accept Crystal Palace's admission to the 2025/26 UECL".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

38. On 21 July 2025, the Appellant filed its Statement of Appeal with the Court of Arbitration for Sport ("CAS") to challenge the Appealed Decision in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (2025 edition) (the "CAS Code"), naming UEFA, NFFC and OL as Respondents.

39. In its Statement of Appeal, the Appellant:

i. nominated Mr Manfred Nan, Attorney-at-Law in Amsterdam, the Netherlands, as arbitrator;

ii. indicated that the procedure before the CAS would be conducted in an expedited manner pursuant to Article 4.01(f) of the 2025/26 UEFA Europa League Regulations (the "UEL Regulations") and that it had conferred with UEFA, but that no procedural timetable could be agreed. Therefore, it proposed a procedural timetable, with the holding of a hearing (in person) on 7 August 2025, taking into account the wish of UEFA that the operative part of the award be issued by 11 August 2025;

iii. requested that the CAS Panel order the Respondents to produce a number of documents pursuant to Article R44.3 of the CAS Code, namely:

"Communications and agreements relating to blind trusts

*(i) documents recording and/or evidencing communications dated between 1 January 2025 and 12 June 2025 exchanged between Nottingham Forest and UEFA or between Nottingham Forest and NFFI relating to the establishment and/or termination of a trust (whether termed a 'blind trust' or otherwise) over Evangelos Marinakis' shares in NF Football investments Limited ("**NFFI**") and/or the sufficiency of the same for the purposes of Article 5.01 of the MCO Regulations contained in any UEFA club competition regulations;*

(ii) documents recording and/or evidencing communications dated between 1 January 2025 and 12 June 2025 exchanged between NFFI and UEFA relating to the establishment and/or termination of a trust (whether termed a 'blind trust' or otherwise) over Mr Marinakis' shares in NFFI and/or the sufficiency of the same for the purposes of Article 5.01 of the MCO Regulations contained in any UEFA club competition regulations;

*(iii) documents recording and/or evidencing internal UEFA communications dated between 1 January 2025 and 12 June 2025 relating to the establishment and/or termination of a trust (whether termed a 'blind trust' or otherwise) over Mr Marinakis' shares in NFFI and/or the sufficiency of the same for the purposes of Article 5.01 of the MCO Regulations contained in any UEFA club competition regulations (cumulatively with the documents sought at (i)-(ii) above the "**Blind Trust Communications**"); and*

*(iv) documents recording and/or evidencing any agreement concluded at any point between 1 January 2025 and 25 May 2025 between: (i) on the one hand Nottingham Forest or NFFI; and (ii) on the other hand UEFA, relating to the establishment of a trust (whether termed a 'blind trust' or otherwise) over Mr Marinakis' shares in NFFI, including, for the avoidance of doubt, any agreement relating to the acceptability (for the purposes of Article 5.01 of the MCO Regulations contained in any UEFA club competition regulations) of putting in place a trust by any date after 1 March 2025 (the "**Blind Trust Agreements**");*

and

Transcript and/or recording of the UEFA Club Competition Committee Meeting

*(v) any and all documents evidencing the conduct of, and what was discussed in, any UEFA Club Competition Committee meeting(s) during which the proposed change to the assessment date for compliance with the MCO Regulations (from 3 June to 1 March) was discussed and/or approved by the UEFA Club Competition Committee (including, for the avoidance of doubt, any transcript and/or recording (audio and/or video) of such meeting(s)) (the "**UCCC Meeting Records**")".*

40. On 22 July 2025, UEFA informed the CAS Court Office that it did not agree with the timetable proposed by the Appellant. In this respect, UEFA referred to prior correspondence with the Appellant and provided a timetable which had allegedly been agreed upon, with a hearing to be held on 8 August 2025. Moreover, UEFA confirmed that it requested that the operative part of the award be rendered as soon as possible after the hearing, but at the latest by 11 August 2025.

41. On the same day:

i. the Appellant provided the CAS Court Office with a reply to UEFA's correspondence, requesting (a) that the President of the Appeals Arbitration Division confirms the timetable proposed by the Appellant, and (b) that the hearing take place on 7 August 2025;

ii. NFFC informed the CAS Court Office that it did not agree with the timetable proposed by the Appellant, but that it approved the timetable proposed by UEFA. Moreover, NFFC stated that it was available for a hearing on 8 August 2025;

iii. OL informed the CAS Court Office that it did not object to the expedited procedure and that it agreed with the timetable proposed by UEFA;

iv. the CAS Court Office informed the Parties that, in light of their disagreement, the Deputy President of the Appeals Arbitration Division had decided, in accordance with Article 52(4) of the CAS Code, to establish the following expedited procedure:

a. the Appellant would file its Appeal Brief by 25 July 2025;

b. the Respondents would file their Answers by 5 August 2025;

c. the hearing would take place either on 7 or 8 August 2025, subject to the availability and confirmation of the Panel;

d. the operative part of the award would be rendered by 11 August 2025.

42. On 23 July 2025, the Respondents nominated Mr Olivier Carrard, Attorney-at-Law in Geneva, Switzerland, as arbitrator.

43. On 24 July 2025, upon request from the CAS Court Office, the First Respondent

and the Second Respondent contested the request for the production of documents made by the Appellant in its Statement of Appeal and asked the Panel to reject it.

44. On 25 July 2025, the Appellant filed its Appeal Brief with the CAS in accordance with Article R51 of the CAS Code.

45. On the same day, the Appellant submitted an unsolicited correspondence *"to correct obvious and objectively wrong misstatements made by both UEFA and NFFC in their replies"* on the request for the production of documents.

46. On the same day, the CAS Court Office informed the Parties that, pursuant to Article R54 of the CAS Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the Panel appointed to decide on the present case would be constituted as follows:

    President:

    Prof. Luigi Fumagalli, Professor and Attorney-at-Law in Milan, Italy;

    Arbitrators:

    Mr Manfred Nan, Attorney-at-Law in Amsterdam, the Netherlands

    Mr Olivier Carrard, Attorney-at-Law in Geneva, Switzerland.

47. The CAS Court Office also informed the Parties that Mr Alec Drion, Clerk with the CAS, would assist the Panel in the present proceedings.

48. On 27 and 28 July 2025, upon request from the CAS Court Office, the First Respondent and the Second Respondent respectively submitted comments on the Appellant's unsolicited correspondence of 25 July 2025.

49. On 29 July 2025, the CAS Court Office informed the Parties of the Panel's decision to deny the Appellant's request for production of documents. The Panel considered that the Appellant's request lacked sufficient details to identify the relevant documents and that some documents were covered by confidentiality regarding third parties. The Panel also observed that the Appellant was not able to establish the existence of such documents and that the First Respondent contested their existence, and argued the absence of any advice or assistance. Finally, the Panel took into account the limited time available due to the expedited procedure and the proximity of the disclosure request to the hearing.

50. On 1 August 2025, the Second Respondent submitted an unsolicited correspondence to the CAS Court Office, noting that 29 exhibits filed by the Appellant as part of its Appeal Brief were missing a translation in English. Referring to Article R29 of the CAS Code, the Second Respondent reserved its right to request the Appellant to provide the relevant translations and to argue that the Appellant could not rely on exhibits not accompanied by an English translation.

51. On 4 August 2025, the Appellant submitted the translations in English of the relevant exhibits.

52. On 5 August 2025, the First Respondent, the Second Respondent and the Third Respondent filed their respective Answers with the CAS Court Office, in accordance with Article R55 of

the CAS Code.

53. On 6 August 2025, the CAS Court Office provided the Parties with the Order of Procedure, which was signed by each of the Parties on the same day.

54. On the same day, the Parties were informed of the Panel's decision to deny the Appellant's request to hear Mr Sunil Gulati, Chair of the CFCB, and to grant the Appellant's request to hear Mr Andrea Traverso, UEFA's Director of Financial Sustainability and Research. Moreover, the Appellant was invited to inform the CAS Court office whether it wished Prof. Sylvain Marchand, whose report was filed as part of the Appellant's Appeal Brief, to attend and be heard at the hearing.

55. On 7 August 2025, the CAS Court Office provided the Parties with the Hearing Schedule.

56. On the same day, UEFA transmitted to the CAS Court Office a witness statement signed by Mr Andrea Traverso.

57. On 8 August 2025, a hearing was held at the headquarters of the CAS in Lausanne, Switzerland (the "Hearing"). In addition to the members of the Panel, Mr Antonio De Quesada, CAS Head of Arbitration, and Mr Alec Drion, Clerk with the CAS, the following persons attended:

For CPFC:

Mr Stephen Parish, Executive Chairman of CPFC

Ms Louise Reilly SC, counsel

Mr David Baker, counsel

Mr Ian Mill, counsel

Mr Dominic Howells, counsel

Mr David Hinchcliffe, counsel

Ms Shaney Stevens-Neale, counsel

Mr Edgar Philippin, counsel

For UEFA:

Ms Alice Williams, UEFA representative
Mr William McAuliffe, UEFA representative (by videoconference)

Mr Antonio Rigozzi, counsel

Mr Patrick Pithon, counsel

Mr David Anderson, counsel

Mr Benoît Keane, counsel

For NFFC:

Mr George Pennington, NFFC representative
Mr Andrew Hunter, counsel

Mr Luka Krsljanin, counsel

Mr Richard Bush, counsel

Mr Tiran Gunawardena, counsel

For OL: Mr Lukas Stocker, counsel

58. At the outset of the Hearing, the Parties confirmed that they had no objection to the constitution of the Panel.

59. The Panel first addressed some preliminary matters. In this respect, the Respondents did not object to the presence of Mr Edgar Philippin as counsel for the Appellant, but considered that whatever he would say would be considered as submissions by the Appellant and subject to the acceptance of the Panel. The Parties also agreed that Prof. Sylvain Marchand and Prof. Thomas Probst would not be

called as experts during the hearing. Furthermore, the Parties agreed to admit to the file Mr Andrea Traverso's witness statement. Finally, upon request from the First Respondent, the Appellant agreed that Messrs David Blitzer and Joshua Harris would not be present by videoconference during the witness examination of Mr Stephen Parish.

60. The Panel heard opening and closing submissions from the legal representatives of the Parties. The President of the Panel instructed the witnesses to tell the truth, subject to the sanctions of perjury under Swiss criminal law. The Panel heard oral evidence from the following witnesses, who were subjected to examination and cross-examination, as well as questions from the Panel:

- Mr Stephen Parish, Chairman of CPFC Limited (in person)
- Mr David Blitzer, Director of Palace Holdco and member of Palace Manageco (by videoconference)
- Mr Douglas Freedman, Sporting Director of CPFC Limited from 2017 to 2025 (by videoconference)
- Mr Sean O'Loughlin, Chief Financial Officer of CPFC Limited from August 2018 to May 2025 (by videoconference)
- Mr Joshua Harris, Director of Palace Holdco and member of Palace Manageco (by videoconference)
- Mr Oliver Glasner, Head Coach of CPFC (by videoconference)
- Mr Christopher Hooper, Junior Financial Accountant of CPFC Limited (by videoconference)
- Mr Andrea Traverso, UEFA's Director of Financial Sustainability and Research (by videoconference).

61. The Parties were given a full opportunity to present their cases, submit their arguments and answer questions posed by members of the Panel. After their closing submissions and before the end of the Hearing, all Parties confirmed that their right to be heard had been respected. There were no objections raised as to the manner in which the Panel had conducted the Hearing, and no procedural objections were made.

IV. SUBMISSIONS OF THE PARTIES

62. The Parties' arguments, developed both in their respective written submissions and at the Hearing, are summarised below. However, this section of the award does not contain an exhaustive list of the Parties' contentions, its aim being to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this award, the Panel has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the award or in the discussion of the claims below.

A. The Appellant

63. In its Appeal Brief, the Appellant requested the following relief:

"(1) The appeal of Crystal Palace is

admissible.

Principally

(2) The decision rendered by the First Chamber of the UEFA Club Financial Control Body dated 11 July 2025 is annulled to the extent that it rejects Crystal Palace's admission to the 2025/26 UEFA Europa League.

(3) UEFA shall admit Crystal Palace to the 2025/26 UEFA Europa League, shall reject Nottingham Forest's admission to the UEFA Europa League, and shall admit Nottingham Forest to the 2025/26 UEFA Conference League.

Alternatively

(4) The decision rendered by the First Chamber of the UEFA Club Financial Control Body dated 11 July 2025 is annulled.

(5) UEFA shall admit Crystal Palace to the 2025/26 UEFA Europa League, shall reject Lyon's admission to the 2025/26 UEFA Europa League, and shall admit Lyon to the 2025/26 UEFA Conference League.

In all circumstances

(6) UEFA shall pay the entire costs of this arbitration.

(7) UEFA shall pay a contribution towards Crystal Palace's legal costs and other related expenses".

64. In support of its claims, the Appellant submits three grounds: (1) the findings of breach of Articles 5.01(b) and (c) of the UEL Regulations were and are wrong in law and in fact; (2) if CPFC and OL were in breach of Article 5.01, it is CPFC which should have been selected for the 2025/26 UEL, rather than OL; (3) CPFC cannot lawfully be excluded from the UEL on the grounds that it breached Article 5.01(b) or (c) as at 1 March 2025.

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

1. Ground 1: No breach of Article 5.01 of the UEL Regulations as at 1 March 2025

i. Purposive interpretation of Article 5.01

- The purpose of Article 5.01 of the UEL Regulations is to protect the integrity of UEFA competitions.

- It is a principle of Swiss law that one must consider not only the words used and their literal meaning, but also the purpose of the instrument. In this respect, taking into account the requirements of Article 5.01 imposed on clubs, namely to undertake major corporate reorganisations at the risk of disqualification from UEFA competitions, the Panel should reject any interpretation of Article 5.01 which imposes this burden on clubs, in particular in situations that do not affect competition integrity.

- Article 5.01(c) of the UEL Regulations applies when a person has or is able to exercise the majority of voting rights or appoint the majority of directors, whether that person actually does it or not. The majority of voting rights or board seats are set at a level that *"would allow the person in question, if he so chose, to prevail on most ordinary issues in the club's management*

decision-making, i.e. all issues which do not require some kind of super-majority support". The use of the word *"decisive"* in Article 5.01(c)(iv) implies that a similar level of influence is required, even when it occurs outside of the scope of Article 5.01(c)(i) to (iii). This is consistent with the purpose of Article 5.01 to protect competition integrity.

- Article 5.01(b) of the UEL Regulations defines its scope of application through the use of words such as *"involved"*, *"directly or indirectly"* or *"in any capacity whatsoever"*. If applied literally, it would apply to people whose involvement with two clubs posed no risk whatsoever to sporting integrity and it would give limb (b) a meaning far wider than limb (c) of Article 5.01 for no logical reason. Accordingly, Article 5.01(b) must only apply where the involvement of a particular person with a particular club is *"of the character and to the degree intended by the scheme and overall purpose of Article 5.01"*. As a result, when deciding whether a conduct constitutes "involvement" as per the wording of Article 5.01(b), it should be considered that the provision is not applicable unless the *"involvement of a nature reasonably capable of risking the integrity of a UEFA club competition and to an extent making it akin to control or an ability to exercise decisive influence over more than one club in the same competition"*.

- In this respect, reference must be made to the decision of the CFCB in the case of *Rasenballsport Leipzig and FC Red Bull Salzburg (AC-01/2017)* (the "Red Bull Case"). Although an earlier version of Article 5.01 of the UEL Regulations was in force at the time of this decision, the principles and language of the provision were the same. Namely, in the Red Bull Case, the CFCB decided that:

  - the denial of a club to a UEFA competition is a serious outcome, both financially and competitively (paragraph 33 of the decision);

  - the purpose of the provision is to ensure the protection of competitions' integrity with regard to the decision-making of clubs. In these circumstances, the nature of the decision-making being assessed must be limited to *"decisions that impact the integrity of the competition"* (paragraph 37 of the decision);

  - the words of the provision must be interpreted in a way that they are not intended to *"regulate the commercial transactions or financing of clubs"* (paragraph 37 of the decision);

  - the different paragraphs of Article 5.01 must be read consistently in order to give coherence to the full provision. As a matter of fact, paragraphs (i) to (iii) set out a *"formal legal control"* through *"majority control of the decision making organs of a club"*. This is a strict test which should also apply when interpreting Article 5.01(iv)

(paragraph 38 of the decision);

- the language of "decisive influence" is different from references to other similar terms used in UEFA regulations, such as the "significant influence" test in Financial Fair Play matters. The test of Article 5.01(c)(iv) sets a stricter standard (paragraphs 40 and 41 of the decision).

ii. The May 2024 Circular

- The May 2024 Circular states that the First Chamber wished *"to provide clarifications on the interpretation of 'decisive influence'"*. In this regard, the May 2024 Circular listed four indicators of influence, namely through shareholders' or members' rights, financial support, governance, and player transfers.

- The May 2024 Circular was guidance for the First Chamber, but in no way was it intended to amend the meaning of Article 5.01 of the UEL Regulations. The indicators set out in the May 2024 Circular are not determinative of the outcome of a case. They should rather be used by the First Chamber in support of its assessment as to whether Article 5.01(c)(iv) is established on the facts.

- A different interpretation would contradict the description of the indicators' role and constitute a clear departure from the meaning of Article 5.01 itself. Only the UEFA ExCo has the authority to amend the content of regulatory provisions. In addition, when implementing regulations, sports' governing bodies must respect the relevant hierarchy of norms. Accordingly, circular letters cannot take precedence over the wording of approved and adopted regulations (CAS 2008/A/1705; CAS 2015/A/4153; CAS 2023/A/9501).

iii. Article 5.01(b) of the UEL Regulations

a. Misdirection on matters of law by the First Chamber

- In the Appealed Decision, the First Chamber made two errors of law with regard to the meaning and effect of Article 5.01(b).

- The First Chamber interpreted Article 5.01(b) based on literal, dictionary definitions of the words "involved", "involvement", "management" and "administration". As such, the First Chamber failed to follow its own earlier decision in the Red Bull Case, which correctly interpreted Article 5.01.

- Moreover, the First Chamber declared that it *"does not agree that Article 5.01(b) UEL Regulations requires an 'actual' involvement in the management, administration and/or sporting performance of a club. If that had been the intention, the word 'actual' would have been specified in the provision. It was not, because the MCO aims at preventing both actual involvement or influence and the risk or appearance of involvement or influence in more than one club"*. When considering the language and the

purpose of Article 5.01, the words *"be involved"* denote actual involvement and not *"the risk or appearance of involvement"*. In addition, the purpose of Article 5.01 is achieved by addressing the actual involvement of a relevant person and not the public perception of that involvement.

b. Errors in the findings on breach of the First Chamber

- The First Chamber made additional errors when determining whether a breach had actually occurred.

- The reality is that Mr Textor first wished to purchase a majority stake in CPFC, but that Messrs Parish, Harris and Blitzer agreed that he could only purchase a minority stake, on the condition that he would not have the ability to make any decisions. The corporate structure implemented reflects this.

- The First Chamber wrongly rejected the explanation offered to it. However, there is nothing unreasonable about a person interested in sports to take a minority stake without decision-making rights in a sports club. The First Chamber also refused to make relevant factual findings about actual involvement in management, deeming such matters as *"substantially irrelevant"*.

- The conclusion of the First Chamber that Mr Textor was actually involved in the management of Palace Manageco, as opposed to having a legal entitlement to a vote, is unsupported by any evidence. The factual reality is that CPFC is run by Mr Parish and that Mr Textor played no role in managing the club.

- Finally, the First Chamber's reliance on the MCO declaration of CPFC *"was legally impermissible (either Article 5.01(b) was engaged on the facts or it was not) and in any event misconceived in circumstances where the employee of Crystal Palace who filled out the MCO declaration was unaware of the true factual position"*.

iv. Article 5.01(c)(iv) of the UEL Regulations

a. Misdirection by the First Chamber on matters of law

- In the Appealed Decision, the First Chamber made two errors of law with regard to the meaning and effect of Article 5.01(c)(iv).

- The First Chamber rejected CPFC's argument, according to which Article 5.01(c)(iv) requires that the relevant person *"must actually have and be able to exercise a decisive influence"*. This reasoning was wrong as the First Chamber confused the concepts of power (*"being able to"*) with that of *"possibility"* and *"risk"*.

- Whilst Article 5.01(b) focuses on whether a person is involved in the management of two clubs, Article 5.01(c) is only concerned with what a relevant person has the power to do. Article 5.01(c)(iv) in fact only requires that a person actually has the ability to direct the

decision-making of two clubs, by whatever means. In this respect, the First Chamber should have followed its own earlier decision in the Red Bull Case.

- Furthermore, the First Chamber disregarded CPFC's submission that the May 2024 Circular merely set out indicators, which were not decisive and could not be interpreted as replacing the application of the language of the provision itself. Instead, the First Chamber decided that the indicators *"determined whether a party is able to exercise decisive influence"*.

b. Errors in the findings on breach of the First Chamber

- The First Chamber made multiple substantive errors when determining whether breaches had occurred.

- The First Chamber wrongly decided that Eagle Football Holdings Bidco Limited had decisive influence on the decision-making of CPFC through shareholders' or members' rights. It treated Eagle Football Holdings Bidco's 44% indirect economic interest in CPFC Limited as sufficient to meet one of the indicators, and therefore as decisive of a breach of Article 5.01(c)(iv).

- *However*, the shareholders' agreement and Articles of Association of Palace Holdco clearly establish that Eagle Football Holdings Bidco Limited was to have no management involvement in CPFC, despite its 44% economic interest. The management power was vested in Palace Manageco, an entity in which Eagle Football Holdings Bidco Limited *"had no economic interest and over which it had no right or power"*.

- The First Chamber also wrongly concluded that Eagle Football Holdings Bidco Limited and Mr Textor had decisive influence in the decision-making of CPFC through financial support. However, the financial support of Eagle Football Holdings Bidco Limited and Mr Textor had no consequences on the parties' rights and powers within the corporate structure.

- The First Chamber also erred in concluding that Eagle Football Holdings Bidco Limited and Mr Textor had decisive influence through governance. The First Chamber wrongly decided that Mr Textor's single vote within Palace Manageco, combined with his statutory directorships, gave him any ability to direct CPFC's decision-making.

- The First Chamber also considered that Mr Textor had the ability to exercise decisive influence on CPFC with regard to the loans of seven players from CPFC to Molenbeek, a club in which he is involved. This is, however, untrue. These loans represent only a small fraction of the total number of transfers in the relevant period and were decisions made by Mr Parish that in no way constitute a demonstration of Mr

Textor's decisive influence or power.

v. Application of Article 5.01(b) and (c) to the true facts of the case

- The First Chamber committed substantial errors in its interpretation of the law, which led to a superficial analysis of the facts.

- In these circumstances, the decision of the First Chamber is unsustainable and must be annulled. Consequently, CPFC must be admitted to the 2025/26 UEL.

2. Ground 2: CPFC should play in the 2025/26 UEL under Article 5.02 of the UEL Regulations

- The First Chamber considered that OL and CPFC both qualified for the 2025/26 UEL on sporting merit. However, OL did not qualify on sporting merit.

- In fact, it is through the operation of Article 3.03(c) of the UEL Regulations that OL, which had not qualified for the UEL on sporting merit, was nevertheless admitted to that competition. On the basis of its final ranking in Ligue 1, OL had qualified for the UECL, and only because PSG won the *Coupe de France* and also qualified for the UCL, was OL able to fill the vacancy left by PSG in the UEL.

- In this context, Article 5.02 of the UEL Regulations applies. As per Article 5.02(a), preference is first given to *"the club which qualifies on sporting merit for the most prestigious UEFA club competition (i.e., in descending order: UEFA Champions League, UEFA Europa League or UEFA Conference League)"*. If both clubs have qualified on sporting merit for the same UCC, Articles 5.02(b) stipulates that preference is given to *"the club which was ranked highest in its domestic competition"*.

- The only reasonable explanation for the application of Article 5.02(a) is to read it together with Article 3.03, and consider that some clubs qualify directly, and other clubs qualify indirectly to the UCC. By applying Article 3.03, adaptations to the access list of Annex A may be made, thus establishing which clubs qualify for which UCC. Only in this event, Article 5.02(a) may apply and establish *"the club which qualifies on sporting merit for the most prestigious UEFA club competition"*, by distinguishing between a club that qualified directly and a club that qualified indirectly to the UCC.

- Moreover, the application of Article 5.02(a), in conjunction with the deadline of 1 March 2025, is inexplicable. This provision deals with situations where two clubs qualify for the UCC. However, it is impossible for clubs to know until May of a relevant season, for which UCC they will qualify and if they will qualify for the same UCC as another club. In these circumstances, it is difficult to understand how the deadline of 1 March can be strictly applied. This means that UEFA must have

some kind of discretion to apply flexibility to the assessment date.

- Pursuant to Article 5.02(a), preference should be given to CPFC, which qualified for the UEL on sporting merit, over OL that only qualified for the UECL on sporting merit. As a result, even if the Panel should consider that there was a breach of Article 5.01, the decision of the First Chamber must be annulled, resulting in CPFC's admission to the 2025/26 UEL.

3. Ground 3: CPFC cannot lawfully be excluded on the grounds that it breached Article 5.01(b) or (c) as at 1 March 2025

i. The sale of Eagle Football Holdings Bidco Limited and Mr Textor's shares in CPFC

- Mr Textor and Eagle Football Holdings Bidco Limited have disposed of their interest in CPFC. Moreover, Mr Textor has resigned from all his assignments within the companies of the CPFC Group (Palace Midco UK Limited, CPFC 2010 Limited, CPFC Limited and CPFC (Women) Limited, as well as CPFC Selhurst Park Limited: the "CPFC Group"), thereby constituting a cure in the event of any breach of Article 5.01(b) and/or (c).

- In June 2024, Mr Textor appointed an investment bank, Raine Advisors Limited, to sell the shares of Eagle Football Holdings Bidco Limited in Palace Holdco.

- On 7 November 2024, Mr Robert Wood Johnson contacted Eagle Football Holdings Bidco Limited with regard to a potential purchase of its shares in CPFC. The discussions and negotiations that took place led to a visit of Mr Johnson to CPFC on 5 May 2025.

- On 17 June 2025, Mr Textor was removed as a partner in Palace Manageco. On the same day, Palace Holdco and Palace Parallel Holdco LLC requested the immediate removal of Mr Textor as a director.

- On 18 June 2025, Mr Textor was removed as a director of CPFC Limited and the other companies within the CPFC Group.

- On 22 June 2025, Eagle Football Holdings Bidco Limited and Mr Johnson concluded a sale and purchase agreement (the "SPA"), whereby the former agreed to sell to the latter all of its shareholding in Palace Holdco.

- On 25 June 2025, the stock transfer documentation was executed and the transaction fully funded.

- On 12 and 16 July 2025, the Premier League and the Women's Super League respectively approved the sale.

- On 24 July 2025, the sale was completed.

ii. UEFA's discretionary practice and policy in relation to post-deadline cures

- UEFA has a practice of permitting

clubs, that are not compliant with the MCO Rule as at the deadline date, to participate in the relevant competition if it considers that the breach has been appropriately cured within an appropriate time. This practice is at the sole discretion of UEFA.

- In 2025, ahead of the deadline of 1 March, UEFA approached certain clubs regarding the use of blind trusts and directed the clubs, which expressed an interest to an English law firm, Wiggin Osborne Fullerlove. The firm had prepared, in collaboration with UEFA, a set of template trust documents. According to these template trust documents, club owners were required to transfer their shares in a relevant club into a trust structure and to complete the associated governance changes, by 30 April 2025.

- In this regard, based on *prima facie* evidence, NFFC's owner, Mr Marinakis, used the template trust documents to place his shares in NFFC into a trust structure, with the arrangements being put in place on 29 April 2025. On 6 June 2025, when there was no longer a risk that NFFC and Olympiacos FC would qualify for the same UCC, Mr Marinakis reversed the trust structure. It can only be inferred that Mr Marinakis obtained assurances from UEFA that this structure would be seen as compliant with Article 5.01, despite being put in place after 1 March 2025.

- It is also understood that Chelsea FC was prepared to constitute trust arrangements prior to 1 March 2025, if necessary, to remove any potential conflicts after said date.

- In 2024, UEFA permitted similar flexibility with regard to the implementation of blind trusts after the set deadline of 3 June. For instance, Manchester City FC and Girona FC, which are both owned by City Football Group, qualified for the UCL at the end of the 2023/24 season. Also, Manchester United FC and OGC Nice, in which INEOS has ownership interests, qualified for the UEL at the end of the 2023/24 season. On 5 July 2024, UEFA released a decision, confirming that it had approved arrangements whereby shares had been placed into blind trusts as from 1 July 2024.

- On 25 October 2024, the European Clubs Association (the "ECA") sent an email to its member clubs, which read as follows:

  "We are writing to inform you of a recent change regarding the Multi-Club Ownership (MCO) rules in relation to the UEFA Clubs Competitions.

  This change, approved by the UEFA Executive Committee ("UEFA ExCo"), will ***come into effect for the 2025/26 season*** *and concerns* ***the assessment date*** *by which clubs must comply with the multi-club ownership criteria outlined in Article 5.01 of the UEFA club competition regulations.*

*The revised Article 5.01 moves the assessment forward from 3 June to **1 March** for all UEFA men's and women's club competitions.*

When explaining the need to move the assessment date forward, UEFA, both prior to the meeting of the UEFA Club Competitions Committee ("UEFA CCC") and the UEFA ExCo, indicated that this change was necessary to allow for sufficient time for the UEFA CFCB to thoroughly carry out its assessment related to multi-club ownership, ensuring the smooth and transparent operation of UEFA's competitions.

For further information, please find attached the relevant UEFA Circular Letter […]".

- Later on the same day, the ECA sent a second email to some of its members, as follows:

"With reference to the below communication, we are sending you this separate email given that we understand that the existing MCO rules laid down in the UEFA Club Competitions Regulations may concern your club.

Therefore, we wanted to provide you some additional information in relation to this latest change to the MCO rules.

More specifically, when explaining the need to move the assessment date forward, UEFA, both prior to the UEFA CCC and the UEFA Executive Committee meetings, also "indicated" that pursuant to the discretion granted to it in article 4.07 of the UEFA Club Competition Regulations, the UEFA administration would not refer any cases to the UEFA CFCB in the event clubs would have become compliant with the MCO rules between 1 March and that moment in time when they would qualify for the European club competitions.

This "indication" together with the mentioned topics in the communication below as well as the perceived need to have a better understanding in the applicable rulebook as to what measures clubs can take in order to become compliant with the MCO criteria (cfr. the attached UEFA CFCB Letter dd. 14 May 2024 shared earlier-- and the therein mentioned concept of blind trusts), means that in the near future we will engage separately with clubs that are part of an MCO structure and once we have taken direction from ECA's Executive Board […]".

- The email sent by the ECA shows that UEFA had discretion to extend the deadline to become compliant with Article 5.01 beyond 1 March 2025, and at least until the date on which the relevant club qualified for the UCC. The fact that the ECA sent this email to its members entails that it obtained the information contained therein from a reliable source. The possibility that the information provided by the ECA was not correct is unconceivable.

- During the CFCB hearing on 3 June 2025, the Chairman of the First Chamber, Mr Sunil Gulati, *"expressly confirmed that UEFA did not apply the deadline of 1 March strictly*". Moreover, after the hearing, Mr Gulati met with Messrs Parish and Blitzer and was asked by the latter how CPFC

could solve any MCO issue. According to Mr Gulati, it was too late for a dilution of Mr Textor's shareholding or a blind trust, however the sale by Mr Textor of his shares in CPFC *"would be more palatable to the CFCB"*. Mr Gulati *"did not say at any point say that a total sale would have no impact on the outcome of the decision of the CFCB because such process was completed after 1 March 2025"*.

- In the Red Bull Case, it was established that the date to take into account for the compliance with Article 5.01 was *"the situation that exists as at the date when all of the evidence and facts in the case have finally been submitted"*, which was *"in the present case, on the close of the oral hearing"*.

iii. The Appealed Decision and/or the UEL Regulations are contrary to EU competition law

- The Appealed Decision constitutes a restriction of competition *"by object"* contrary to Article 101 of the Treaty on the Functioning of the European Union ("TFEU") and/or an abuse of UEFA's dominant position contrary to Article 102 of the TFEU. In fact, EU competition law is applicable to the present case insofar as admission to UEFA club competitions affects trade between EU Member States.

a. Article 101 of the TFEU

- The Appealed Decision and/or the UEL Regulations, combined with UEFA's discretion to extend time for complying with Article 5.01, constitute a restriction or distortion of competition *"by object"* within the meaning of Article 101 of the TFEU.

- As decided by the Court of Justice of the European Union (the "CJEU") in the case *C-333/21 European Superleague Company* (the "ESL Case"), a decision by an association of undertakings or an agreement practice infringes competition *"by object"* if it reveals *"a sufficient degree of harm to competition for the view to be taken that it is not necessary to assess their effects"* (para. 162). In the same decision, whilst the CJEU also confirmed that it is allowed to adopt rules governing the access to competitions such as the UEL, the exercise of any discretion determining such access must be carried out on the basis of a *"framework… providing for substantive criteria and detailed procedural rules suitable for ensuring that [decisions] are transparent, objective, non-discriminatory and proportionate"* (paras. 175-179).

- In light of the above, UEFA has failed to comply with the criteria set out by the CJEU in the ESL Case, as the Appealed Decision was not taken pursuant to the substantive criteria and procedural requirements designed to guarantee that decisions remain transparent, objective, non-discriminatory and proportionate:

  - UEFA informed clubs that it had discretionary powers to extend the deadline for compliance with the UEL

Regulations beyond 1 March 2025. However, UEFA failed to publish any substantive criteria applicable to its discretion to extend the deadline. Therefore, there is no criteria to ensure that UEFA decisions are objective, non-discriminatory and proportionate.

- The exercise of UEFA's discretionary power to extend time has effects on the competition, namely the denial for CPFC to enter the UEL and as a consequence forego significant revenues which distorts competition between the club and its competitors.

- The failure by UEFA to publish substantive criteria outlining the exercise of its discretion has led to a discriminatory decision, as CPFC has been afforded less favourable treatment than other clubs, and disproportionate insofar as CPFC has become compliant with the UEL Regulations before the commencement of the UEL.

- Moreover, the Appealed Decision discriminates against CPFC in favour of OL and in that regard constitutes a restriction of competition contrary to Article 101 of the TFEU. If the means used to implement rules make it more difficult for a club to qualify to a UEFA club competition, this may distort competition between clubs, even if the measure itself pursues a legitimate objective.

- In addition, the treatment by UEFA is unjustifiably discriminatory insofar as it showed lenience towards OL's breaches of the UEFA CLFSR, while insisting on strict compliance by CPFC with Article 5.01. Also, whilst Lyon was effectively given until early July 2025 to satisfy eligibility requirements, UEFA insisted on strict compliance with the deadline of 1 March 2025 for CPFC.

- This discriminatory treatment is also contrary to the obligation of UEFA under Article 3.02 of the UEFA CLFSR, whereby it must ensure *"equal treatment of all licensors, licence applicants and licensees"*.

b. Article 102 of the TFEU

- Further or alternatively, the Appealed Decision and/or the UEL Regulations, combined with UEFA's discretion to extend time for complying with Article 5.01, also constitute an abuse by UEFA of its dominant position.

- UEFA occupies a *"dominant position, even a monopoly position"* (ESL Case, paras. 115, 139). A dominant undertaking *"has a special responsibility not to allow its behaviour to impair genuine, undistorted competition on the internal market"* (ESL Case, para. 128) and that if it *"has regulatory and review powers and the power to impose sanction, enabling it to authorize or control [access to a given market]"*, it would be abusing its dominant position unless those powers are *"placed within a framework of substantive criteria which*

are transparent, clear and precise… Those criteria must be suitable for ensuring that such a power is exercised in a non-discriminatory manner and enabling effective review".

- UEFA has not complied with the aforementioned requirements and therefore abused its dominant position.

c. The deadline of 1 March 2025 discriminates against smaller clubs

- The deadline of 1 March 2025 constitutes both a restriction *"by object"* contrary to Article 101 of the TFEU and/or an abuse of UEFA's dominant position in violation of Article 102 of the TFEU.

- According to the ESL Case, UEFA must ensure that its regulations governing access to competitions comply with non-discrimination, transparency and proportionality requirements under Articles 101 and 102 of the TFEU.

- The 1 March 2025 deadline is inherently discriminatory as it systematically disadvantaged smaller clubs lacking UEFA competition experience, compared to larger clubs with established participation histories. Those larger clubs could more readily anticipate the application of Article 5.01 before the deadline and implement pre-emptive compliance strategies. In these circumstances, it was straightforward for the owners of bigger clubs to foresee restructuring and to liaise with UEFA in that regard to comply with rules already before the deadline of 1 March 2025.

- The 1 March deadline is unnecessarily premature, given that clubs can effectively restructure their arrangements after confirming UEL qualification, but before the competition commences. The MCO rules' legitimate objectives can be accomplished without imposing the 1 March 2025 deadline, making this timing requirement contrary to Articles 101 and 102 of the TFEU.

- The deadline of 1 March 2025 does not comply with the principle of transparency, considering that UEFA exercises discretion in practice by granting extensions to certain clubs. Therefore, it is contrary to Articles 101 and 102 of the TFEU.

d. Principles governing the exercise of the discretion in relation to CPFC

- Alternatively, having demonstrated that a discretionary practice exists, it must be applied consistently, rationally and proportionately in all cases.

- The legal standards governing the exercise of discretion must be particularly stringent, given that CPFC's sporting and commercial interests are significantly impacted.

- When discretion is exercised, three competing interests must be

balanced:

i. Protecting the integrity of competitions;

ii. Ensuring sporting fairness by allowing clubs that qualify on merit to participate in relevant competitions; and

iii. Considerations of practicality and convenience.

- Under the Swiss doctrine prohibiting excessive formalism, interests (1) and (3) are worthy of protection, but must be weighed against interest (2), which entirely supports CPFC's position. Additionally, all three factors must be considered in accordance with EU competition law requirements for transparent, objective, non-discriminatory and proportionate decision-making.

- A late cure is as good as a timely cure, provided it occurs before the start of the competition. It has never been suggested that allowing a later assessment date for breaches cured after 1 March 2025 would compromise the sporting integrity that Article 5.01 of the UEL Regulations ultimately seeks to protect.

- The deadline was moved earlier from 3 June to 1 March to facilitate UEFA's timely decision-making before the UCC start, but UEFA apparently did not even consider CPFC's compliance with Article 5.01 of the UEL Regulations until 26 May 2025, namely nine days after the club qualified for the UEL on sporting merit. Therefore, UEFA's previous use of a deadline on 3 June and the late commencement of investigation in this case demonstrate that the 1 March deadline is disconnected from practical requirements for such determinations, rendering it arbitrary, unreasonably early, and unnecessary for any genuine practical need.

- *No practical difficulties would have resulted for UEFA or other clubs if it had accepted CPFC's cure and permitted its participation in the UEL, whether when the SPA was concluded on 22 June 2025, or when the Appealed Decision was notified on 11 July 2025, or when the* CAS hearing took place.

- The confirmation by UEFA of OL's position in the UEL on 9 July 2025, following the club's successful appeal against French league relegation and with UEFA itself having settled OL's disqualifying financial circumstances as late as 26 June 2025, demonstrate that late changes can be managed without excessive administrative burden.

- The proper exercise of the discretion clearly favours accepting CPFC's late cure as sufficient for its participation in the 2025/26 UEL, as any alternative outcome would breach the principle of equal treatment. This is all the more relevant, taking into account that as at 1 March 2025, CPFC had never won a cup competition in its 164-year history,

won its fifth-round FA Cup match on that day, thus advancing to quarter-finals, and that UEFA only recognised a potential risk of Article 5.01 being engaged on 26 May, namely nine days after CPFC won the FA Cup.

B. The First Respondent

66. In its Answer, the First Respondent requested the following relief:

> *"(i) The Appeal filed by Crystal Palace Football Club and all of its prayers for relief are dismissed.*
>
> *(ii) The UEFA Club Financial Control Body First Chamber decision of 11 July 2025 is upheld.*
>
> *(iii) Crystal Palace Football Club shall bear all arbitration costs incurred with the present proceedings and pay a contribution towards the legal costs incurred by UEFA in connection with these proceedings.*
>
> *(iv) UEFA reserves the right to amend and/or expand upon the above prayers for relief in its ensuing submissions".*

67. In essence, according to the First Respondent, all grounds of appeal must be dismissed because they have no merit.

68. The First Respondent's submissions may be summarised as follows:

The First Chamber rightly found that CPFC was not compliant with Article 5.01 of the UEL Regulations

- As at 1 March 2025, the Appellant was not complying with Article 5.01(b) and Article 5.01(c) of the UEL Regulations. Each of these violations constitutes a sufficient basis to establish the existence of a MCO situation involving the Appellant, as correctly found by the First Chamber.

i. Non-compliance with Article 5.01(b) of the UEL Regulations

- Article 5.01(b) is unambiguous and does not create interpretative uncertainty, with a plain reading clearly establishing the prohibition of any simultaneous, direct or indirect involvement in the management, administration and/or sporting performance of more than one club.

- Holding a director position inherently makes someone part of a club's management and administration, as such position automatically confers responsibilities and powers, regardless of whether they are "actually" exercised. Being appointed as director of two clubs constitutes "involvement" and therefore breaches Article 5.01(b) of the UEL Regulations. The reference to *"in any capacity whatsoever"* reinforces the broad scope of restrictions, encompassing even nominal or formal roles.

- Limiting Article 5.01(b) to instances of actual involvement would defeat the purpose of the MCO Rule. This interpretation would require UEFA to continuously monitor across jurisdictions whether individuals holding formal roles in two clubs

become actively involved in both, which would be *"clearly unworkable"*.

- CPFC argues that Article 5.01(b) should be interpreted with guidance from Article 5.01(c). This reasoning lacks support in Swiss law or in the wording of Article 5.01(b), considering that Articles 5.01(b) and 5.01(c) are clearly independent and self-standing alternatives.

- The reliance of CPFC on the Red Bull Case is misplaced, considering that this decision concerned Article 5.01(c), not Article 5.01(b), making it wholly irrelevant to the current interpretation.

- The MCO Rule aims not only at ensuring the integrity of the UCC, but also at safeguarding the appearance of integrity and impartiality in the UCC. This is supported by the jurisprudence of the CAS (CAS 98/200: the "ENIC Award"). In this respect, the website of the Eagle Football Group (formerly known as "OL Groupe") makes a reference to a *"family"* of clubs, including CPFC and OL, therefore creating a link between the two clubs in the public perception.

- It is undisputed that as at 1 March 2025, Mr Textor simultaneously held different positions, namely serving as Chairman and CEO of OL and Director at CPFC. It is also undisputed that as at 1 March 2025, Mr Textor was simultaneously and directly involved in the management, administration and/or sporting performance of both OL and CPFC. Mr Textor was, as a director, responsible for the management of the company, had rights to participate in directors' meetings, had voting rights equal to the three other directors and could block decisions when unanimous votes of principal partners were required, propose resolutions, cast votes, and had access to confidential information on CPFC's administration and management, regardless of whether these rights were previously exercised.

- Mr Textor was therefore directly and indirectly involved in both clubs as at 1 March 2025. As a matter of fact, Mr Textor served (i) as a director of Palace Holdco, (ii) as Chairman of Eagle Football Holdings Bidco Limited, and (iii) as a principal partner in Palace Manageco.

- This aligns with the own submissions of CPFC and OL, as both clubs declared in their Club Information and MCO declarations that Mr Textor was simultaneously involved in the management, administration and/or sporting performance of both clubs. This demonstrates that CPFC previously acknowledged that Mr Textor's dual involvement fell within the scope of Article 5.01(b) and confirmed such involvement existed as at 1 March 2025.

- If Mr Textor's simultaneous roles

were unproblematic, then CPFC would not have removed Mr Textor from all his director and partner positions in the CPFC group companies for cause, which occurred before Mr Textor allegedly sold his shares in Palace Holdco.

- The non-compliant situation did not change when Mr Textor resigned, or was removed, from CPFC, on 17 June 2025 at the earliest. Even if UEFA had a practice of allowing clubs to cure non-compliance with the MCO Rule until qualification, which is contested, CPFC qualified for the UEL on 17 May 2025, and OL's qualification materialised on 24 May 2025, meaning CPFC's non-compliance was not cured within any relevant timeframe.

- In view of the above, it is clear that CPFC and OL failed to comply with Article 5.01(b) of the UEL Regulations, and for this reason alone, CPFC's first ground for challenge must be dismissed and the Appealed Decision on this issue must be upheld.

ii. Non-compliance with Article 5.01(c) of the UEL Regulations

- It is an uncontested fact that as at 1 March 2025, Mr Textor and Eagle Football Holdings Bidco Limited were able to exercise control over OL. As mentioned, this is supported by OL's own declarations in its Club Information Package and MCO Declaration.

- The core dispute in these proceedings is whether Mr Textor or Eagle Football Holdings Bidco Limited were positioned to exercise decisive influence over CPFC as at 1 March 2025 within the meaning of Article 5.01(c)(iv) of the UEL Regulations.

- Article 5.01(c)(iv) does not require that decisive influence be actually or effectively exercised, it is sufficient that a person is able to exercise such influence by any means, as expressly stated in the provision's reference to *"being able to exercise by any means a decisive influence in the decision-making of the club"*. If the intention had been to prevent "actual" or "effective" exercise of decisive influence, the wording *"being able to"* would not have been necessary.

- The concept of *"decisive influence"* is an undefined legal concept under Swiss law, which grants the competent body, in this case the CFCB, discretion to determine its meaning in specific situations. To enhance predictability, the CFCB issued the May 2024 Circular, which provides clarifications on what constitutes *"decisive influence"* under Article 5.01(c)(iv).

- By setting up indicators, the CFCB did not extend or amend the scope of Article 5.01(c)(iv) but merely aimed at clarifying its case-law with regard to the interpretation of the concept of *"being able to exercise a decisive influence"* as set out in the MCO Rule. The purpose of the indicators is to give effect to the existing standard and provide guidance to clubs on how the rule

is applied in practice.

- The First Chamber determined in the Appealed Decision that CPFC (and OL) triggered indicators related to shareholding and economic rights, financial support, and governance, which resulted in a breach of Article 5.01(c)(iv).

a. Decisive influence through shareholdings rights

- Pursuant to the May 2024 Circular, a party is able to exercise decisive influence within the meaning of Article 5.01(c)(iv) of the 2025/26 UEL Regulations through shareholders' or memberships' rights in the following cases:

"i. If a party holds 30% or more of the club's total shares, the shareholders' or members' voting or economic rights

ii. If a party holds 10% or more of the club's total shares, the shareholders' or members' voting or economic rights and is also the largest shareholder of the club".

- As at 1 March 2025, Eagle Football Holdings Bidco Limited held 87.78% of economic rights and 95.74% of voting rights in OL, while simultaneously holding 44.09% of economic rights and 39.87% of voting rights in CPFC. This shareholding structure meant Eagle Football Holdings Bidco Limited held more than 30% of CPFC's total voting and economic rights and was CPFC's largest shareholder, thereby triggering both indicators.

- Contrary to the submission of CPFC that Eagle Football Holdings Bidco Limited only held B shares, it must be emphasised that these shares carried voting rights, as confirmed by Article 19.3 of Palace Holdco's Articles of Association.

- *The simultaneous holding of more than 30% of economic rights in both clubs creates a significant financial interest that inevitably provides leverage to exercise decisive influence over the clubs' decision-making.* Therefore, *this shareholding analysis alone establishes non-compliance with Article 5.01(c)(iv), given that the three indicators are alternative rather than cumulative requirements.*

b. Decisive influence through financial support

- According to the May 2024 Circular, a party exercises decisive influence within the meaning of Article 5.01(c)(iv) of the UEL Regulations through financial support in the following cases:

"i. If a party accounts to 30% or more of the club's total operating revenue.

ii. If a party lends to the club an amount equivalent to 30% or more of the club's total borrowings from related parties (including accounts payables to related parties, shareholder loans, convertible loans).

iii. If a party provides financial support to the club in the form of additional paid-in capital, through share premium reserves, up to an amount equivalent to

30% or more of the premium reserve.

iv. If a party provides financial security over the club's borrowings.

v. If a party (excluding banks) provides financing to the club which is secured through a pledge of the club's shares, an assignment of the club's receivables or charge over the club's assets".

- *Since August 2021, Eagle Football Holdings Bidco Limited and Mr Textor collectively injected GBP 123 million into Palace Holdco as paid-in capital. Given that Palace Holdco's total share premium amounted to GBP 252 million as of June 2024, this injection represented 49% of the premium reserve.*

- *This financial contribution, exceeding the 30% threshold for premium reserve, constitutes a second independent basis for finding non-compliance with Article 5.01(c)(iv).*

c. Decisive influence through governance

- Pursuant to the May 2024 Circular, a party exercises decisive influence within the meaning of Article 5.01(c)(iv) of the UEL Regulations through governance in the following cases:

"i. If a party holds any position in the club's governing bodies (i.e. any administrative, executive, management and supervisory bodies of the club) or a club's key executive position (such as President, CEO/general director, CFO/finance director, sporting/football director).

ii. If a party has the ability to appoint or remove 30% or more of the members, or holds 30% or more of voting or economic rights, in the club's governing bodies.

iii. If a party has the ability to appoint or remove the club's key executives or the first squad's head coach.

iv. If a party has the ability to influence key executive decisions (such as player transfers, budget approval, key commercial contracts), or benefits from specific contractual or statutory privileged rights with respect to the club's governance, through veto rights or any other privileged rights".

- As at 1 March 2025, Mr Textor held the following positions:

  - Director of CPFC with one vote and a seat on CPFC's executive governing body;

  - Director of Palace Holdco, with voting rights, as well as other entities within the CPFC group; and

  - One of the four principal partners of Palace Manageco.

- *CPFC's contention that Mr Textor's single vote prevented him from directing CPFC's decision-making must be rejected, considering that Article 5.01(c)(iv) focuses on the ability to exercise decisive influence by any means.*

- *This governance analysis constitutes a third independent ground for establishing non-compliance with Article 5.01(c)(iv).*

d. Actual ability to exercise decisive influence

- Even disregarding the May 2024 Circular indicators and applying a direct assessment, Mr Textor had actual decisive influence over CPFC.

- The pattern of player transfers and loans between CPFC and Molenbeek is compelling evidence of Mr Textor's decisive influence, in particular taking into account that, during the proceedings before the First Chamber, Mr Parish admitted that these transactions would not have occurred without Mr Textor's involvement. The timing is significant as no transfers occurred between CPFC and Molenbeek before Mr Textor's company acquired Molenbeek in December 2021, but transfers took place immediately afterwards, demonstrating coordinated strategic planning facilitated by Mr Textor.

- Moreover, Mr Parish stated that Mr *Textor had no involvement in hiring CPFC's manager, Mr Oliver Glasner. Mr Parish affirmed that while Mr Textor had communicated with Mr Glasner, this was solely regarding OL and that Mr Textor had no involvement in discussions about the role at CPFC. The insistence of CPFC on having Mr Parish expressly deny Mr Textor's involvement is intriguing, particularly since this point was not considered in the decision of the* First Chamber. Mr Textor *himself stated, before this issue arose in the arbitration, that he "helped to establish and build a relationship with our impressive new coach". According to Mr Parish's own evidence, the board meeting discussing the hiring of the new manager was one of the "very rare" meetings attended by Mr Textor, suggesting the matter was of interest to him.*

- The executive position and responsibilities of Mr Parish remained under the oversight of Palace Manageco, in which Mr Textor was one of four principal partners, insofar as terms of the partnership agreement precluded Mr Parish from voting on his own employment contract matters and required prior written approval from Palace Manageco for transactions exceeding GBP 100,000. Such decisions required unanimous approval from Palace Manageco, without Mr Parish's participation, meaning Mr Textor was one of only three voting principal partners regarding such matters.

- Irrespective of the indicators set out in the May 2024 Circular, the elements above clearly fall within the "governance" indicator and establish that Mr Textor exercised decisive influence in CPFC's decision-making under Article 5.01(c)(iv) of the UEL Regulations.

The First Chamber rightly found that OL should be admitted to the UEL and CPFC to the UECL

- Contrary to CPFC's assertion, OL

did qualify for the 2025/26 UEL on sporting merit.

- Article 3 of the 2025/26 UEL Regulations establishes the entries for the 2025/26 UEL, with Articles 3.01 and 3.02 allowing UEFA member associations to enter the winner of their national cup and, depending on the association's coefficient ranking, the club ranked immediately below the last club qualifying for the 2025/26 UCL. Annex A of the UEL 2025/26 UEL Regulations, also known as the "access list", specifies the number of clubs each association may enter and their stage of entry into the competition.

- PSG qualified for the 2025/26 UCL by finishing first in the 2024/25 Ligue 1, and won the 2024/25 *Coupe de France*, thereby also qualifying for the 2025/26 UEL. Therefore, in accordance with Article 3.03(a), the spot reserved for the national cup winner, namely PSG, was attributed to the highest-ranked club in Ligue 1 among the FFF's association clubs qualified for the UEL, which, pursuant to the access list, is the club finishing in 5th position, in this case Lille. Under Article 3.03(b), Lille, having taken PSG's original UEL place, was replaced by the club ranked immediately below it in Ligue 1, which was the club that finished in 6th position, in this case OL. Pursuant to Article 3.03(c), for associations ranked 1 to 12 in the access list, including the FFF, the vacancy created in the UEL by virtue of Article 3.03(a) is filled by a club that had not previously qualified for the UCL or UEL, resulting in OL filling the vacancy created in the UEL due to PSG's qualification to UCL and Lille's shift to the cup winner's spot in UEL.

- Both CPFC and OL failed to comply with Article 5.01, meaning only one of them may be admitted to the 2025/26 UEL pursuant to Article 5.02.

- Article 5.02(a) does not imply a preference for a club that initially qualified for a more prestigious competition, as suggested by CPFC. This interpretation was confirmed by CAS jurisprudence (CAS 2025/A/11495).

- The prior version of Article 5 prohibited two clubs under the same ownership structure from participating in all UCC. In the current version of Article 5.02(a), the prohibition applies only where clubs qualify for the same competition, and it does not give preference based on a hypothetical qualification before the adaptation of the access list. The new rule constitutes an offer from UEFA for clubs to still be able to play in different UCC.

- It cannot be maintained that Article 5.02(a) has no meaning at all in the context of the UCC Regulations applicable to the 2025/26 season and that it represents a sort of "left-over" from previous editions of the same UCC Regulations. In that

regard, reference is to be made to the hypothetical situation of two clubs being part of the same MCO structure, where one club plays in the preliminary rounds of the UCL and could thus be relegated to the UEL at a later stage, whilst the other club has qualified for the UEL. In this hypothetical situation, both clubs could potentially participate in the same UCC at some point. As a result, the club participating in the preliminary round of the UCL would remain in said competition (and possibly be moved to the UEL depending on the stage of elimination from the UCL), while the other club that qualified for the UEL would be relegated to the UECL, to avoid any possibility of the two clubs participating in the same UCC, should the first club be relegated to the UEL. In continuation, Article 5.04 provides that a club that was not admitted to a UCC in application of Article 5.02, may still be admitted to another UCC, in descending order, to which the relevant national association has access. In the present case, it was decided that CPFC could, on the basis of this provision, be admitted to the UECL.

- Finally, Article 5.05 provides the limited scenarios where there is no possibility that clubs will ever participate in the same UCC and there is thus no need to apply Article 5 to check compliance with the MCO Rule.

- Considering that both CPFC and OL qualified on sporting merit for the same competition, Article 5.02(a) does not apply. However, pursuant to Article 5.02(b) and considering that OL finished 6th in the 2024/25 Ligue 1, while CPFC finished 12th in the 2024/25 Premier League, OL is the club that must be admitted to the 2025/26 UEL.

- CPFC's argument that OL's qualification for the 2025/26 UEL is inferior as it resulted from a cascade mechanism *"ignores both the structure and purpose of the UEFA's qualification system"*.

- In view of the above, the decision of the First Chamber correctly established that OL should be admitted to the 2025/26 UEL and CPFC to the 2025-26 UECL.

The sale by Eagle Football Holding Bidco and Mr Textor's shares in CPFC does not change the outcome of this case

i. No practice of allowing a "cure" after the assessment date

- The allegations of CPFC, whereby UEFA maintains a practice and policy of permitting clubs to participate in competitions if it considers that their position has been appropriately remedied within a suitable timeframe, are unsubstantiated and without foundation. In fact, UEFA has never applied the 1 March assessment date in a differential manner towards certain clubs.

- The reference to alleged blind trusts that NFFC and Chelsea FC

would have implemented is misplaced. No investigation or proceedings were ever initiated by the First Chamber to assess the ownership structure of NFFC or Olympiacos FC for the 2025/26 season, with the same applying to Chelsea FC and RC Strasbourg. The MCO Rule only prohibits participation of clubs under common control in the same UCC, and no such situation occurred for the 2025/26 season regarding NFFC and Olympiacos FC or Chelsea FC and RC Strasbourg, as these clubs are participating in different competitions.

- As stated in *the May 2024 Circular, the CFCB exceptionally permitted certain arrangements after the assessment date solely for the 2024/25 season, due to "the short time between the approval of the Competition Regulations on 20 March 2024 and the deadline of 3 June 2024" and the fact that "compliance with the MCO rule may necessitate the sale of shares in a club which may not be feasible considering the short timeframe laid down in the new Competition Regulations"*. The May 2024 Circular also mentioned that *blind trusts could be used after 3 June 2024, solely as "a temporary alternative […] on an exceptional basis for the 2024/25 UEFA competitions" and that "the CFCB First Chamber will not be bound by this alternative when assessing clubs' compliance with the MCO rule for participation in UEFA competitions in subsequent seasons"*. Therefore, this is clearly not a consistent practice of the CFCB.

- The First Chamber has strictly applied the 1 March 2025 deadline in all three cases analysed for the 2025/26 season, with two already confirmed by the CAS.

- With regard to the ECA's email of 25 October 2025, *UEFA categorically denies having ever indicated to the ECA that it would not refer any cases to the CFCB if clubs became compliant with the MCO rules between 1 March 2025 and when they would qualify for the UCC. With the decision of UEFA to bring the assessment date forward to 1 March 2025 for the 2025/26 season of the UCC, it would be counterintuitive for the UEFA administration to provide such informal indication to the ECA. Moreover, the ECA is not UEFA and its communications cannot evidence UEFA's practices, in particular when such communication contradict UEFA's own correspondence on the application of its regulations.*

- However, even in the event the ECA's communication was accurate, it would be irrelevant, as CPFC qualified for the UEL on 17 May 2025 and was not compliant with the MCO Rule at said date. The sale of the shares of Eagle Football Holding Bidco Limited and Mr Textor was only initiated after 1 March 2025, and the finalisation of the sale only occurred after CPFC's *qualification for the 2025/26 UEL.*

- *The type of remedial action CPFC* seeks is a *de facto* special treatment. However, no other club was permitted to remedy a breach after 1 March 2025, and other clubs found in violation of Article 5.01

were not allowed to cure their breach between 1 March 2025 and the moment they qualified. To allow such special treatment would render the entire assessment process meaningless and would impact the overall organisation and operation of the UCC, as clubs in MCO situations could wait to see if they qualify for the same competition before taking action, or even wait for adverse decisions before correcting situations just before the CAS proceedings.

- CPFC also referred to a private conversation between Messrs Parish and Blitzer with Mr Gulati on 3 June 2025, during which Mr Gulati allegedly indicated that *"a sale of Mr Textor's shares would be more palatable to the CFCB"* than other measures the club might implement at that late stage. According to Mr Parish's witness statement, this discussion occurred at the hotel where CFCB members were staying, suggesting a social encounter rather than a formal meeting. However, Mr Parish himself confirmed that Mr Gulati merely refrained from indicating that Mr Textor's shareholding sale at that point would have no impact on the upcoming decision of the First Chamber. Mr Parish's interpretation of this silence as indicating that a late share sale would cure the breach is his own problem and cannot be considered as evidence of a UEFA practice allowing a curing period until the last moment before the decision of the First Chamber.

- The reliance of CFPC on the Red Bull Case is fundamentally flawed, considering that said case was decided in 2017 under the 2017/18 UCC Regulations, which lacked a specified assessment date. UEFA subsequently introduced assessment dates, specifically to prevent clubs from delaying compliance measures until the last moment, which would render assessments by the CFCB impossible and redundant. The current case is governed by Article 5.01 of the 2025/26 UEL Regulations, which explicitly requires assessment *"as at 1 March 2025"*.

ii. No violation of EU competition law

- The MCO Rule is compatible with EU competition law.

a. Article 101 of the TFEU

- *Article 101 of the TFEU prohibits "all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market".*

- *As a result, competition restrictions must be "by object" or "by effect", with these conditions being alternative, and if a conduct has an anti-competitive object, examining actual or potential effects on competition is unnecessary. The settled case-law of the CJEU establishes that the concept of an anti-competitive "object" requires a strict interpretation, which is particularly important, considering that CPFC's claim under Article 101 of the TFEU is entirely*

based on an alleged infringement "by object", without any evidence of actual or potential effects on competition. Restrictions "by object" should "reveal a sufficient degree of harm to competition" in order to make it unnecessary to assess their effects, with only hardcore restrictions (typically price fixing, market sharing, or output limitation cartels) usually fitting this categorisation.

- *The* MCO Rule aims at fostering fair competition. It does not restrict competition *"by object"*, with both the CAS in the ENIC Award and the European Commission (Case COMP/37 806 ENIC v. UEFA: the "ENIC Case") rejecting such categorisation. This is not contested by the Appellant.

- The *legal test to establish a restriction "by object" requires the analysis of three aspects, namely (i) the content of the agreement or decision; (ii) the economic and legal context of which it forms part; and (iii) its objectives.*

- *The Appellant has failed to conduct this analysis to support its allegations, insofar as nothing suggests anti-competitive nature regarding the 1 March 2025 assessment date or from the legal and economic context. In this respect, the Appellant failed to provide any market analysis. The "profound effect on competition" resulting from the entry denial to the UEL, as claimed by CPFC,* does not exist, as the MCO Rule *allows club participation in other UCC. The slot is simply replaced by the next eligible club, and the effect is only for one season. Moreover, from a legal perspective, CPFC failed to articulate UEFA's role as organiser and regulator of the UCC, insofar as UEFA is not a competitor to CPFC or other cited clubs. In this context, the reference to the ESL Case* is misplaced.

- Finally, there is no anti-competitive intention in *setting the deadline of 1 March 2025, as its purpose was to ensure predictability, legal certainty, and equal treatment, by providing a clear, uniform reference point for assessing the compliance of all clubs with the MCO Rule. In fact, continuing with a deadline on 3 June was impossible due to the complexity of MCO cases, while the 1 March deadline encourages clubs to resolve MCO conflicts in advance of qualification and avoid last-minute issues. UEFA must analyse the information provided by 700 clubs and refer potential cases to the CFCB. Allowing last-minute changes would* create systemic risks to the integrity, organisation and smooth running of the UCC, as the CFCB could not complete its assessment and decision-making process in time, and clubs would not have sufficient time to exercise their appeal rights. Therefore, the assessment *date of 1 March 2025 does not restrict competition "by object".*

- Furthermore, CPFC asserted that *its treatment, compared to OL's, constitutes a restriction "by object". In this respect, pursuant to Article 101(1)(d) of the TFEU, CPFC must establish that UEFA applied "dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage".*

- The MCO Rule was applied to OL and CPFC in a non-discriminatory

manner. This is not contested by CPFC. In addition, a *distinction must be made between the regulatory regimes of the UEFA CLFSR, to which OL was subject in 2024/25 and that seeks to "improve the economic and financial sustainability of the clubs", and the MCO Rule, which is concerned with protecting the integrity of the UCC, regardless of clubs' financial positions*. In this context, *proceedings were opened against OL in September 2024 for non-compliance with the Football Earnings Rule, leading to a settlement agreement in July 2025, pursuant to the CLFSR. OL did not benefit from any lenient treatment, as twelve clubs reached similar settlement agreements within similar timeframes. The settlement agreement included a liquidity injection of EUR 60 million, compliance with revenue targets over 4 years, restrictions on player registration, and a minimum fine of EUR 12,5 million (potentially increasing to EUR 50 million)*. Therefore, there is no discrimination, considering the difference in the two regulatory regimes.

- The argument of CPFC whereby the MCO Rule constitutes a discrimination *"by object"* against "smaller clubs" is not substantiated. The *MCO Rule makes no distinction based on the size of clubs and only* applies to MCO clubs. In any event, the characterisation of CPFC as a "smaller club" should be challenged, considering it is a long-standing Premier League club with revenues of GBP 190 million (approximately EUR 219 million) in the 2023/24 financial year and ranks 26th in the Deloitte Money League 2025.

- Finally, the CJEU confirmed, in *the ESL Case, that a conduct may be exempted if it fulfils the conditions of Article 101(3) of the TFEU. As a result,* even if any element of the MCO Rule constituted *a restriction of competition "by object", the conditions for an exemption under Article 101(3) of the TFEU would be satisfied.*

b. Article 102 of the TFEU

- The Appellant's claims under Article 102 of the TFEU are insufficiently particularised and utterly lacking in merit. In fact:
  - there is no market definition and the reference to the ESL Case is insufficient, as it related to the organisation and marketing of international football competitions, which are not relevant to the current case;
  - holding a dominant position is not contrary to Article 102 of the TFEU. The Appellant must prove that there was an abuse;
  - in the ENIC Case, the European Commission concluded that that there was no abuse of dominance in the adoption of the MCO Rule.

iii. No "discretion" to be applied in relation to CPFC

- The Appellant's position that the First Chamber erred by failing to exercise a purported "discretion"

and its request to the CAS to conduct a balancing exercise between competing interests is legally baseless and disregards the wording and purpose of the MCO Rule.

- Article 5.01 of the 2025/26 UEL Regulations does not grant discretionary power to the CFCB, and to suggest otherwise is an incorrect reading of the provision.

- The reliance of the Appellant on the prohibition of "excessive formalism" under Swiss law is misplaced and reflects fundamental misapplication of the doctrine. According to the Swiss Federal Tribunal ("SFT"), excessive formalism arises when *"procedural rules are designed or applied with a degree of strictness that is not justified by any legitimate interest worthy of protection, to the point that the procedure becomes an end in itself and hinders or unreasonably complicates the application of the law"* (SFT 4A_254/2023). This standard must be interpreted restrictively.

- The purpose of the deadline of 1 March 2025 is precisely to uphold these principles, by establishing a clear and uniform reference point for compliance with the MCO Rule. The change was adopted as it *"was necessary due to the complexity of the multi-club ownership cases investigated by the CFCB"* and that *"an earlier assessment date would ensure that any judicial processes could be concluded before the start of the UEFA club competitions"*. The deadline of 1 March 2025 is not *"an end in itself"* but allows a smooth application of the MCO Rule, which applies equally to all stakeholders regardless of the UCC or the qualification stage.

- Regarding the alleged delays in initiating an investigation between 1 March and May 2025, as asserted by the Appellant, any failure of UEFA to immediately investigate upon receiving club information in March 2025 does not relieve CPFC of its obligation to comply with Article 5.01 by 1 March 2025.

C. The Second Respondent

69. In its Answer, the Second Respondent requested the following relief:

> *"a. Rejecting CPFC's appeal in its entirety, and upholding the Appealed Decision;*
>
> *And in any event:*
>
> *b. Ordering CPFC to pay the entire costs of the arbitration; and*
>
> *c. Ordering CPFC to contribute towards NFFC's legal costs and related expenses".*

70. The Second Respondent's submissions, in essence, may be summarised as follows:

1. Answer to Ground 1 of the Appellant

- CPFC is incorrect in claiming that the First Chamber made legal errors in interpreting either Article 5.01(b) or Article 5.01(c).

- Article 5.01 must be interpreted according to the CAS jurisprudence

and Swiss legal principles.

- The interpretation of the First Chamber in the Appealed Decision aligns with Article 5.01's clear wording, insofar as Article 5.01(b) uses the broad phrase *"in any capacity whatsoever"* without referring to terms like *"actual"* that would limit its scope. Also, the words *"being able to"* in Article 5.01(c) points against the interpretation suggested by CPFC.

- In addition, the primary purpose of Article 5.01 of the UEL Regulations is to ensure at the same time both actual and perceived integrity of the UCC. Article 5.01 must provide protection against the risk that someone involved in management, administration and/or sporting performance (Article 5.01(b)), or able to exercise decisive influence (Article 5.01(c)), might exercise their involvement or abilities in the future. The fact that a person who has the ability to potentially be involved in management or to exercise decisive influence has not exercised "actual" involvement or decisive influence in the past is immaterial, as there is always a risk that they will in the future, when two clubs part of a MCO compete. Under CPFC's analysis, UEFA would be required to allow MCO clubs to participate in the same competition even though someone within the MCO structure might later exercise management powers or decisive influence in ways that create conflicts. This would lead third parties to question UEFA's sporting competition integrity and devalue it.

- The interpretation proposed by CPFC is *"uncertain, unworkable and unenforceable"*, as it breaches the principle that rules must be predictable. The meaning of Article 5.01(b) as suggested by CPFC is difficult to apply and requires subjective judgments about what constitutes risk to competition integrity. Moreover, CPFC's interpretation of Article 5.01(b) as including an ability to exercise decisive influence matches the literal wording of Article 5.01(c), rendering Article 5.01(b) redundant.

2. Answer to Ground 2 of the Appellant

- According to Article 5.02 of the UEL Regulations, when two clubs breach Article 5.01, only one club may be selected for the competition.

- OL qualified for the 2025/26 UEL based on sporting merit, by achieving 6th place in Ligue 1 during the 2024/25 season. The dual achievement of PSG of finishing first in Ligue 1 (securing UCL qualification) and winning the French domestic cup triggered the application of Article 3.03 of the UEL Regulations. This provision amended the access list, resulting in the club finishing 6th in Ligue 1 being deemed to have qualified for the UEL on sporting merit. The operation of Article 3.03 does not alter the fundamental nature of OL's qualification as being based on sporting merit.

- In addition, Article 5.02(a) has a

meaningful application in the context of the UCC Regulations applicable to the 2025/26 season with respect to the situation of two clubs being part of the same MCO structure, where one club plays in the preliminary rounds of the UCL and could thus be relegated to the UEL at a later stage, whilst the other club has qualified for the UEL. In this situation, both clubs could potentially participate in the same UCC at some point. As a result, the club participating in the preliminary round of the UCL would remain in said competition, while the other club that qualified for the UEL would be relegated to the UECL, to avoid any possibility of the two clubs participating in the same UCC, should the first club be relegated to the UEL.

3. Answer to Ground 3 of the Appellant

- To NFFC's knowledge, *no discretionary practice of UEFA exists.* This is supported by the First Chamber*, as it "has consistently decided that changes carried out after 1 March 2025 cannot 'cure' a breach of the MCO rule" (para.* 153 of the Appealed Decision).

- *CPFC has provided no actual evidence of the alleged discretionary practice, as it only relies on speculative assertions. With regard to blind trusts, the submissions of CPFC do not provide any evidence of UEFA contacting clubs, but are only assertions of "(i) clubs being contacted about potential MCO issues; and (ii) clubs being allegedly informed of 'blind trust' arrangements".*

- *Article* 101(1) of the TFEU was not violated. CPFC only alleged an infringement *"by object". There is a high bar to prove an infringement "by object", as it must be interpreted strictly. The test for determining whether there is an infringement "by object" requires the consideration of three factors: (i) the content of the agreement, decision or practice, (ii) the economic and legal context in which the measure was taken, and (iii) the measure's objectives, objectively ascertained. However, the Appellant failed to engage with the established three-part test above. Instead, CPFC applied what it calls the "ESL criteria". This approach is wrong as the supposed "ESL criteria" are not a mandatory legal test replacing the three-part test but were merely criteria addressing specific facts in that case. Imposing these criteria to every case against a sporting governing body would represent a drastic change to sport governance law. In any event, the "ESL criteria" cannot apply to the present circumstances, considering the differences between the ESL Case and the current matter.*

- *W*hen applying *the three-part test, it results that Article 5.01 of the UEL Regulations is clearly not an infringement "by object". On the contrary, the purpose of Article 5.01 is to promote fair competition and its integrity. In this respect, the CAS has already decided that MCO rules are a proportionate means of achieving a legitimate objective (the ENIC Award).*

- Alternatively, *even if the Panel would decide that the discretionary practice exists, the Appealed* Decision and/or Article 5.01, read together with such practice, do not amount to an

infringement *"by object"*.

- The argument of CPFC whereby it was discriminated against in favour of OL is factually and legally incoherent. The fact that the Appellant *breached regulations and lost qualification rights does not constitute unlawful discrimination in favour of OL. The selection for sport competitions necessarily involves lawful discrimination* and the Appellant did not provide any evidence whatsoever as to why UEFA would discriminate against it. Quite to the contrary, *it would have been discriminatory against OL if CPFC had been permitted to qualify for the UEL at OL's expense, given the latter's entitlement to compete pursuant to Article 5.02.*

- The *Appellant's argument that the 1 March 2025 deadline discriminates against smaller clubs must be rejected, considering that CPFC ranks among the top 30 clubs worldwide by revenue. Moreover, there is no evidence of unlawful discrimination. In any event, the Appellant's complaints about the 1 March 2025 deadline are misconceived as the amendment to Article 5.01 was adopted in October 2024, announced through a circular, followed by individual notifications in December 2024, with CPFC acknowledging receipt on 21 January 2025, more than five weeks before the deadline of 1 March 2025.*

- *Furthermore, the Appellant is wrong to assert that it was treated unequally compared to NFFC, as there is a clear distinction. NFFC was not assessed under Article 5.01, as it was not in a position where it could participate in the same competition as Olympiacos.*

- I*f a party seeks to argue abuse of dominance, it must properly plead and evidence the specific market definition it relies on. The Appellant has failed to plead or prove the relevant market, despite bearing the burden of proof.*

- *Article 102 of the TFEU prohibits abuse of dominance, not dominance itself. In any event,* the alleged exercise of a discretion in order to protect the integrity of a UCC does not constitute an "abuse", which could influence the structure or growth of a market or hinder the maintenance of a competition. The situation faced by CPFC, which resulted from its own breach of the regulations, cannot constitute an abuse against it or the market.

- *Finally, should the Panel accept any of the arguments presented by the Appellant, it should keep in mind that granting CPFC's relief would be detrimental to NFFC. It would be unfair, as NFFC has not breached Article 5.01 of the UEL Regulations. NFFC would suffer prejudice if prevented from participating in the UEL at this late stage, having reasonably proceeded on the belief that it would compete following CPFC's established breach of the UEL Regulations.*

D. The Third Respondent

71. In its Answer, the Third Respondent requested the Panel to grant the following relief:

> *"1. Rejecting Appellant's fourth and fifth request for relief of the Appeal and confirming that Third Respondent is*

admitted to the 2025/26 UEFA Europa League;

2. *Ordering Appellant to bear the arbitration costs in full;*

3. *Ordering Appellant to pay a contribution towards Third Respondent's legal costs".*

72. The Third Respondent's submissions, in essence, may be summarised as follows:

- The basis of CPFC's claim is that OL did not qualify for the UEL on sporting merits. Instead, CPFC maintains that OL qualified on sporting merits for the UECL and only obtained the qualification for the UEL, by inheriting the position from PSG.

- The Appellant however failed to clarify the meaning of "sporting merits" within the UEFA's regulatory framework, despite this concept being central to its argument. This omission is revealing, insofar as simply explaining the term would demonstrate that CPFC's line of reasoning is without foundation.

- The interpretative methodology for interpreting statutes and regulations of large associations, such as UEFA, is established by precedents of the SFT and the CAS. Such an interpretation begins with the literal interpretation, but it must also encompass the true meaning of the norm, through systematic interpretation (relationship with other provisions and context), teleological interpretation (the aim pursued and protected interests), and historical interpretation (legislator's will from preparatory work). A Panel may only depart from a clear legal text when the other interpretative methods demonstrate that the text does not correspond to the provision's true meaning and leads to results the legislator could not have intended, conflicting with the sense of justice or equal treatment principles. No single interpretative method takes precedence when seeking the true meaning.

- The notion of sporting merits is a fundamental principle of the European sports model, which forms the foundation of how UEFA's competitions and domestic league championships are structured and governed. It refers to open competitions, where qualification for the UCC is based purely on actual sporting performance and results of clubs and players. This means that the latter qualify for the UCC through on-pitch achievements, rather than historical prestige, guaranteed places, fixed allocated licences in closed league systems, or market considerations. The principle of sporting merits is used in various UEFA regulations, including the UEFA Statutes.

- Through its regulations, UEFA aims at affirming the European sports model, ensuring that qualification and participation are determined solely by on-pitch performance, rather than guaranteed spots or discretionary invitations. Contrary to CPFC's argument, the term "sporting

merits" cannot support an interpretation that would exclude or disadvantage a club like OL that qualified for the competition based on actual sporting results.

- The Appellant mentioned Article 3.03(c), which sets out the procedure for filling vacant position left by PSG. However, the phrase *"not qualifying for"* in Article 3.03(c) refers specifically to the allocation structure outlined in Annex A, as confirmed by the opening sentence of Article 3.03, which provides that *"the following adaptations are made to the access list of the UEFA Europa League and UEFA Conference League (see Annex A)"*. The reference to Annex A clarifies that the phrase *"not qualifying for"* in Article 3.03(c) does not concern whether a club earned its place based on sporting merit but refers to the club's position within the access list hierarchy that determines entry into the UCC. Annex A establishes a pre-defined ranking and distribution system, and Article 3.03 specifies the adjustments to be made to that system when vacancies arise, such as when a domestic cup winner already qualified for a different competition.

- In this context, *"not qualifying for"* simply refers to the situation where a club that did not initially qualify pursuant to the standard allocation of Annex A is next in line to fill a vacancy based on its domestic league position. It is thus only procedural and does not imply the absence of a qualification on sporting merit. The eligibility of the club still rests on performance within its domestic championship.

- At no point does Article 3.03 suggest that a club filling a vacated slot under this provision has not qualified on "sporting merits". Following such an interpretation would mean that the club in question would suddenly become ineligible to participate in the competition altogether, which is untenable.

- OL qualified for the UEL in application of the UEL Regulations, based on its sporting merit during the 2024/25 season in Ligue 1 and not on historical prestige, a guaranteed position, or any comparable factors.

- Both OL and CPFC qualified for the same competition, the UEL. In this context, Article 5.02(a) does not apply and the matter is governed by Article 5.02(b), which grants access to the club with the higher ranking in the domestic championship.

- Considering that OL finished 6th in Ligue 1 in the 2024/25 season, whilst CPFC finished 12th in the Premier League in the 2024/25 season, the spot in the UEL must be awarded to OL.

- Finally, in the event that Panel was to decide an alternative interpretation of the regulations, it should *"exercise a degree of restraint in reviewing how a Swiss law association, such as UEFA, interprets and applies its own rules"*, as UEFA is acting on

the principle of sporting merits, which is one of its core principles.

V. JURISDICTION

73. Article R47 of the CAS Code provides the following:

"An appeal against the decision of a federation, association or sports-related body may be filed with 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 it prior to the appeal, in accordance with the statutes or regulations of that body".

74. The Appellant relies on Article 34.01 of the Procedural rules governing the UEFA Club Financial Control Body as conferring jurisdiction on the CAS, which reads as follows:

"Appeals against final decisions by the First Chamber or Appeals Chamber may be made only to the Court of Arbitration for Sport (CAS), in accordance with Articles 62 and 63 of the UEFA Statutes".

75. The Appellant also refers to Article 62 para. 1 of the UEFA Statutes, which provides the following:

"Any decision taken by a UEFA organ may be disputed exclusively before the CAS in its capacity as an appeals arbitration body, to the exclusion of any ordinary court or any other court of arbitration".

76. The jurisdiction of the CAS is not contested by the Respondents and is confirmed by the Parties' signature of the Order of Procedure.

77. It follows that the CAS has jurisdiction to hear the present appeal procedure.

VI. ADMISSIBILITY

78. Article R49 of the CAS Code reads 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 in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against (…)".

79. In accordance with Article 62 para.3 of the UEFA Statutes, *"[t]he time limit for appeal to the CAS shall be ten days from the receipt of the decision in question".*

80. The deadline for the Appellant to lodge an appeal with the CAS in relation to the Appealed Decision was 24 July 2025.

81. The Statement of Appeal was lodged with the CAS on 21 July 2025, which is within the 10-day time limit and in accordance with the requirements of the CAS Code.

82. In addition, the Appeal Brief was filed with the CAS within the deadline, as set out in the established expedited procedure.

83. The admissibility is not contested by the Respondents. The Appeal is therefore admissible.

VII. APPLICABLE LAW

84. Article R58 of the CAS Code provides:

"The Panel shall decide the dispute according to the applicable regulations and, I, to 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".

85. Pursuant to Article 63 para. 2 of the UEFA Statutes:

"CAS shall primarily apply the UEFA Statutes, rules and regulations and, I, Swiss law. In addition, any party before CAS shall be entitled to raise mandatory provisions of foreign law in accordance with Article 19 of the Swiss Private International Law Act, which may include European Union public policy laws".

86. The present dispute shall be decided primarily according to the UEL Regulations (edition of the 2025/26 season) and the various regulations of UEFA, and subsidiarily, by Swiss Law, including the Swiss Private International Law Act ("PILA").

87. Specifically, within 2025/26 UEL Regulations the following provisions fall to be relevant in the present case:

i. Article 5 (containing the MCO Rule) in the following terms:

"5.01 To ensure the integrity of the UEFA club competitions (i.e. UEFA Champions League, UEFA Europa League and UEFA Conference League), the club must be able to prove that as at 1 March 2025 the below multi-club ownership criteria were met and the club must continue to comply with the below criteria from that date until the end of the competition season:

a. No club participating in a UEFA club competition may, either directly or indirectly:

i. hold or deal in the securities or shares of any other club participating in a UEFA club competition;

ii. be a member of any other club participating in a UEFA club competition;

iii. be involved in any capacity whatsoever in the management, administration and/or sporting performance of any other club participating in a UEFA club competition; or

iv. have any power whatsoever in the management, administration and/or sporting performance of any other club participating in a UEFA club competition.

b. No one may simultaneously be involved, either directly or indirectly, in any capacity whatsoever in the management, administration and/or sporting performance of more than one club participating in a UEFA club competition.

c. No individual or legal entity may have control or influence over more than one club participating in a UEFA club competition, such control or influence being defined in this context as:

i. holding a majority of the shareholders' voting rights;

ii. having the right to appoint or remove a majority of the members of the administrative, management or supervisory body of the club;

iii. being a shareholder and alone controlling a majority of the

shareholders' voting rights pursuant to an agreement entered into with other shareholders of the club; or

iv. being able to exercise by any means a decisive influence in the decision-making of the club.

5.02 If two or more clubs fail to meet the criteria aimed at ensuring the integrity of the competition, only one of them may be admitted to a UEFA club competition, in accordance with the following criteria (applicable in descending order) with the exception of the scenarios set out in Paragraph 5.04 and Paragraph 5.05:

a. the club which qualifies on sporting merit for the most prestigious UEFA club competition (i.e., in descending order: UEFA Champions League, UEFA Europa League or UEFA Conference League);

b. the club which was ranked highest in its domestic championship;

c. the club whose association is ranked highest in the access list (see Annex A).

5.03 Clubs that are not admitted are replaced in accordance with Paragraph 4.10.

5.04 Exceptionally, provided that the relevant principles of Paragraph 5.01 are respected throughout, a club that was not admitted in application of Paragraph 5.02, and which is replaced in the competition in application of Paragraph 4.10, may still be admitted to another UEFA club competition (i.e. in descending order: UEFA Europa League or UEFA Conference League) to which the relevant national association has access, respecting the scenarios foreseen by Paragraph 5.05. The access of the respective association is adjusted accordingly.

5.05 This article is not applicable if any of the cases listed under Paragraph 5.01 happens between:

a. a club qualifying (in accordance with Article 3) for the UEFA Champions League and entering the league phase directly and a club qualifying for the UEFA Europa League or UEFA Conference League (see Annex A);

b. a club qualifying (in accordance with Article 3) for the UEFA Champions League and entering the playoffs (champions path or league path) or the third qualifying round of the league path directly or for the UEFA Europa League and entering the league phase directly and a club qualifying for the UEFA Conference League (see Annex A)".

ii. Article 3.01, which reads as follows:

"UEFA member associations (hereinafter associations) may enter the winner of their national cup competitions (hereinafter domestic cups), as well as a certain number of other clubs for the competition through their top domestic championships, in accordance with the association coefficient rankings, drawn up in accordance with Annex D. These rankings determine the associations' positions in the access list (see Annex A), which in turn determines the stage at which each club enters the competition.

Only one single team per club may be entered".

iii. Article 3.03, providing that:

"If the winner of the domestic cup qualifies for the UEFA Champions League via the domestic championship and therefore enters the UEFA Champions League, the following adaptations are made to the access list of the UEFA Europa League and UEFA Conference League (see Annex A):

a. The access stage initially reserved for the domestic cup winner is reserved for the club that finishes the same domestic championship in the highest position of all the association's clubs that qualify for the UEFA Europa League or UEFA Conference League;

b. Each representative of the domestic championship concerned enters the UEFA Europa League or UEFA Conference League at the stage initially reserved for the domestic championship representative ranked immediately above it;

c. The highest-ranking domestic championship club not qualifying for the UEFA Champions League or UEFA Europa League enters the UEFA Europa League at the stage initially reserved for the domestic cup winner or, if applicable, for the lowest-ranking representative in the UEFA Europa League of the top domestic championship.

d. The highest-ranking domestic championship club not qualifying for the UEFA Conference League enters the UEFA Conference League at the stage initially reserved for the lowest-ranking representative in the UEFA Conference League of the top domestic championship".

VIII. MERITS

88. The object of the present arbitration is the Appealed Decision, whereby the First Chamber found that a MCO situation, as described in Articles 5.01(b) and 5.01(c) of the UEL Regulations, involving the Appellant and OL, existed on 1 March 2025, and decided to admit OL to the UEL, and CPFC to the UECL. The Appellant disputes the findings of the First Chamber, denies that a MCO under the UEL Regulations existed, submits that even if on 1 March 2025 such situation would be found, it could be (and was) subsequently cured, and finally contends that in any case it should have been admitted to the UEL, with OL taking its place in the UECL. The Respondents defend the Appealed Decision and request the Panel to dismiss the requests for relief submitted by the Appellant.

89. On the basis of the foregoing, the Panel observes that the main issues to be resolved in this arbitration are therefore the following:

i. Was the Appellant in breach of Articles 5.01(b) and/or 5.01(c) of the UEL Regulations as at 1 March 2025 (ground 1 of the appeal)?

ii. In the event that the Panel finds that the Appellant was in breach of Articles 5.01(b) or 5.01(c) of the UEL Regulations as at 1 March 2025, did UEFA have a discretionary practice to allow clubs to cure a breach to the MCO

Rule after the deadline of 1 March 2025 (ground 3 of the appeal)?

iii. In the event that the Panel finds that the Appellant was in breach of Articles 5.01(b) or 5.01(c) of the UEL Regulations as at 1 March 2025, and that UEFA did not have a discretionary practice to allow clubs to cure a breach of the MCO Rule after the deadline of 1 March 2025, should the Appellant have been admitted to the UEL pursuant to Article 5.02 of the UEL Regulations (ground 2 of the appeal)?

A. Was the Appellant in breach of Articles 5.01(b) and/or 5.01(c) of the UEL Regulations?

1. Introduction: Article 5.01 of the UEL Regulations

90. As explained by the Parties in the course of the arbitration, the issue of the potential threat to the integrity of sporting competitions in terms of collusion, undue influence and public perception caused by the existence of MCO structures in European football came to the attention of UEFA in the late 1990s and became the object of specific provisions in the regulations governing the UCC, in order to ensure their integrity. The necessity of such rules is not denied by the Appellant and was endorsed in clear terms by a CAS Panel in the ENIC Award. What is discussed in the present arbitration is the interpretation and application of the MCO Rule in force for the 2025/26 UEL season to the case of the Appellant.

91. In fact, the criteria to find a MCO situation, for instance with respect to their legality under Swiss or EU law, are not in discussion.

92. The MCO is addressed, as mentioned above, at Article 5.01 of the UEL Regulations, *"in order to ensure the integrity of the UEFA club competitions"*. Under such provision, clubs had to be able to prove that some criteria had been met as at the assessment date of 1 March 2025; in addition, the clubs were imposed the obligation to continue to comply with said criteria until the end of the competition season. In that context, Article 5.01 of the UEL Regulations describes the situation in which the existence of a MCO could be found. Should the clubs fail to prove that they meet those criteria, then the consequences described at Article 5.02 to Article 5.05 apply.

93. Article 5.01 provides for three categories of MCO criteria, from (a) to (c):

a. the first case in which a relevant MCO may be found concerns the situation of clubs participating in a UCC, and which either directly or indirectly, (i) hold or deal in the securities or shares, or (ii) are a member, or (ii) are involved in any capacity whatsoever in the management, administration and/or sporting performance, or (iv) have any power whatsoever in the management, administration and/or sporting performance, of any other club participating in a UCC: Article 5.01(a);

b. the second case in which a relevant MCO may be found concerns the situation of anybody (*"no one"*) being simultaneously involved, either directly or indirectly, in any capacity whatsoever in the

management, administration and/or sporting performance of more than one club participating in a UCC: Article 5.01(b);

c. the third case in which a relevant MCO may be found concerns the situation of any individual or legal entity having control or influence over more than one club participating in a UCC, where "control or influence" is defined in this context as (i) holding a majority of the shareholders' voting rights; (ii) having the right to appoint or remove a majority of the members of the administrative, management or supervisory body of the club; (iii) being a shareholder and alone controlling a majority of the shareholders' voting rights pursuant to an agreement entered into with other shareholders of the club; or (iv) being able to exercise by any means a decisive influence in the decision-making of the club: Article 5.01(c).

94. In the present case, the findings in the Appealed Decision and the dispute before this Panel concern the second and the third situation. Under both criteria, the First Chamber found that CPFC were part of a MCO structure.

95. The Panel notes that the occurrence of each of the three situations mentioned at Article 5.01 of the UEL Regulations is sufficient to establish the existence of a MCO situation and to trigger the consequences contemplated *"in order to ensure the integrity of the UEFA club competitions"*. As a result, the finding that the Appellant was, as at 1 March 2025, in breach of Article 5.01(b) or of Article 5.01(c) would ground the conclusion affirmed by the First Chamber.

96. The Panel, however, in consideration of the submissions of the Parties, and for the sake of clarity, will address both MCO situations described at Articles 5.01(b) and 5.01(c).

2. Was the Appellant in breach of Article 5.01(b) as at 1 March 2025?

97. The occurrence of the situation contemplated by Article 5.01(b) of the UEL Regulations is disputed by the Appellant, which submits that the rule it sets cannot be interpreted in a literal way. Therefore, according to the Appellant, the MCO criteria established therein only cover the situation of an actual involvement of the relevant person in more than one club, and not the situation in which there is only *"the risk or appearance of involvement"*. In this regard, the Appellant argues that, from the moment Mr Textor joined CPFC, it was agreed that he would have a minority stake only, which was reflected in the corporate structure of the club, that Mr Textor did not play any role in the day-to-day management of the club and he did not have the ability to make any decisions.

98. In essence, the dispute between the Parties therefore concerns the interpretation of the words *"be involved"* and what they entail.

99. Under the jurisprudence of the SFT and the CAS, *"it is generally admitted that rules and regulations of international sports federations are subject to the methods of interpretation applicable to statutory provisions rather than contracts"* (CAS 2024/A/10378, CAS 2020/A/7331,

CAS 2022/A/8915, 8918, 8919 & 89120, citing CAS 2020/A/7356; SFT Judgement 4A_314/2017, stating *"the Federal Court has interpreted the statutes of major sports associations, such as UEFA, FIFA and the IAAF, in the same way as a statute"* (free translation)).

100. Consequently, any interpretation of the UEL Regulations must follow the principles of regulatory interpretation under Swiss law, which can be summarised as follows:

> *"According to Swiss Law, there are four coequal methods of interpretation. They are the grammatical (seeks after the semantic meaning of the word or phrase), the systematical (seeks after the systematic position of an article in the legal texture of the greater whole), the historical (seeks after the original intention of the rule) and the teleological method (seeks after the spirit and purpose of the statute) of interpretation (KRAMER Ernst A., Juristische Methodenlehre, p. 57 ff., p. 85 ff.; 116 ff.; BGE 135 III 112 E. 3.3.2). While interpreting a statute, the judge has to seek for an objectively right and satisfying decision, taking account of the normative context and the ratio legis (BGE 135 III 112 E. 3.3.2). Thereby no interpretation method prevails over another. Rather, the judge has to choose those methodical arguments that allow approximating the ratio legis as close as possible (KRAMER Ernst A., Juristische Methodenlehre, p. 122)"* (CAS 2013/A/3047, see also CAS 2020/A/7331, citing CAS 2013/A/3365-3366; SFT judgement 4A_314/2017, stating that *"Any interpretation begins with the letter of the law (literal interpretation), but this is not the decisive factor: it must also convey the true scope of the provision, which also derives from its relationship with other legal provisions and its context (systematic interpretation), the aim pursued, in particular the interest protected (teleological interpretation), and the legislature's intention as it emerges in particular from the preparatory work (historical interpretation)"* (free translation) (CAS 2022/A/8915, 8918, 8919 & 89120, citing CAS 2020/A/7008 & 7009, CAS 2013/A/3365 & 3366).

101. At the same time, the Panel notes that, while there is no hierarchy between the four methods of interpretation (*i.e.*, grammatical, systematic, historical and teleological), *"[t]here is no reason to depart from the plain text, unless there are objective reasons to think that it does not reflect the core meaning of the provision under review"* (CAS 2013/A/3365 & 3366).

102. The Panel finds that the wording of Article 5.01(b) is clear and unambiguous. Article 5.01(b) does not contain any conditions to be fulfilled to characterise an involvement. Therefore, the words *"be involved"* should be understood as the mere act of being part of something.

103. In this context, the Panel is not convinced by the Appellant's position that the provision requires an actual involvement of the relevant person in a club. It is the view of the Panel that, if the legislator, in this case UEFA, had wanted the involvement of Article 5.01(b) to be actual, it would have drafted the provision in that explicit way.

104. What is more, the use of the wording *"directly or indirectly"* and *"in any capacity whatsoever"* reinforces the view that Article 5.01(b) is meant to have a wide scope of application.

105. At the same time, the Panel finds that a similar conclusion could be reached taking in consideration the context and

the purpose of the provision. In fact, Article 5.01(b) cannot be given a meaning so that it overlaps with the scope of application of other portions of Article 5.01. More specifically, the ability to exercise a decisive influence in the decision-making process of a club is mentioned at Article 5.01(c). Therefore, the involvement in the management of the club relevant for the purposes of Article 5.01(b) cannot be interpreted as requiring the same level of participation mentioned at Article 5.01(c). In addition, the Panel underlines, as it was stressed in the ENIC Award, the importance of the public perception as to the existence of a conflict of interest potentially affecting the authenticity of results, which is protected by the MCO prohibition. Such public perception is indeed engaged by the simple involvement of a person in a club, irrespective of the level of such involvement.

106. In addition, Article 5.01(b), if interpreted requiring an actual involvement, would be very difficult to implement in practice. Its application would in fact require UEFA to examine the "factual" peculiarities of the management of each and every club part of a MCO, in order to determine whether a director is actually involved or not in a club's management.

107. With the above in mind, the Panel needs to determine whether Mr Textor was involved, in any capacity whatsoever, in the management, administration and/or sporting performance of CPFC and OL.

108. As to the relevant corporate structure and organisation of the Appellant, the Panel notes that on 1 March 2025:

i. CPFC was controlled by Palace Holdco;

ii. Palace Holdco owned, through Palace Midco UK Limited and CPFC 2010 Limited, the companies CPFC Limited and CPFC (Women) Limited, as well as CPFC Selhurst Park Limited (the CPFC Group);

iii. pursuant to the Articles of Association of Palace Holdco, its share capital was composed of voting shares (A1 and B1 shares) and non-voting shares (A2 and B2 shares);

iv. Palace Manageco was the beneficiary of Palace Holdco and decided on the appointment of directors of Palace Holdco. Palace Manageco also controlled the companies Palace Holdco LP (Delaware) and Palace Parallel Holdco LLC;

v. on 18 December 2015, CPFC Limited and Mr Stephen Parish concluded an employment contract. As per the employment contract, Mr Parish acts as the Executive Chairman of CPFC Limited. According to Clause 4.2 of the employment contract, Mr Parish shall not, without the prior written authorisation of Palace Manageco:

- *"be entitled to appoint or terminate the appointment of a member of the Senior Management Team or Management, in each case with a Total Remuneration package worth over £,100,000 per annum (…)"* (Clause 4.2.1);

- *"authorise the sale, purchase, loan or transfer of an Player with a Total Remuneration package worth over*

£100,000 per annum (…)" (Clause 4.2.2);

- *"agree any contract or make any changes to the terms and conditions of any Player which contract or changes would be worth over £100,000 per annum (…)"* (Clause 4.2.3);

- *"incur any capital expenditure within the relevant Financial Year or any other liabilities worth over £100,000 per expense or liability"* (Clause 4.2.4);

- *"agree to any contract or terminate any contract or series of related contracts worth over £100,000 (whether as cost or revenue) (…)"* (Clause 4.2.5);

vi. in August 2021, Mr Textor invested in CPFC in his personal capacity, by subscribing for 39.87% (corresponding to 676,774 shares) of the total issued voting shares (B1 shares) of Palace Holdco;

vii. following his investment in CPFC, Mr Textor became a principal partner of Palace Manageco, increasing the number of partners from three to four, with one vote each. In this context, Mr Textor was entitled to a 25% voting right, with all votes to be taken on a majority basis, pursuant to Section 3.1 of the Limited Liability Partnership Agreement of Palace Manageco, dated 28 March 2023. The three other partners were Messrs David Blitzer, Joshua Harris and Stephen Parish;

viii. simultaneously, Mr Textor was appointed as one of four directors of Palace Holdco. As a result, the directors of Palace Holdco were Messrs Blitzer, Harris, Parish and Textor. Each director had one of four votes, *i.e.* 25% of the voting rights, and decisions were to be made on a three out of four votes basis;

ix. in December 2022, Mr Textor transferred his shares in Palace Holdco to Eagle Football Holdings Bidco Limited. Said company was owned by Eagle Football Holdings Midco, which itself was a subsidiary of Eagle Football Holdings Limited. Mr Textor owned 55% of the shares of Eagle Football Holdings Limited and was therefore its majority shareholder;

x. on 28 March 2023, Eagle Football Holdings Bidco Limited subscribed for 169,728 non-voting shares in Palace Holdco, raising its share percentage to 43% in the latter;

xi. on 1 March 2025, the share capital of Palace Holdco was held as follows:

a. Eagle Football Holdings Bidco Limited owned 44.,09% of the total shares (42.92% on 29 May 2025);

b. Palace Holdco LP, composed of different investors including Messrs David Blitzer and Joshua Harris, owned 37.98% of the total shares (39.57% on 29 May 2025);

c. Mr Stephen Parish and other investors owned 17.24% of the

total shares (16.79% on 29 May 2025);

d. Palace Parallel Holdco LLC owned 0.69% of the total shares (0.72% on 29 May 2025).

109. As to the involvement of Mr Textor and Eagle Football Holdings Bidco Limited in other clubs:

i. in December 2022, Eagle Football Holdings Bidco Limited purchased 80.09% of the company Eagle Football Group (formerly known as "OL Groupe"), which itself held 100% of shares in OL;

ii. the company Eagle Football Holdings Bidco Limited is also the owner of the Brazilian club, Botafogo, the Belgian club, Racing White Daring Molenbeek, and the American club, FC Florida.

110. In its MCO declaration submitted to UEFA (§13 above), the Appellant stated that Mr Textor was a majority shareholder, a director of the board of CPFC Limited, and that he had an ownership interest, voting rights or membership or any other involvement or influence whatsoever in the management, administration or sporting performance in other football clubs, including OL.

111. Furthermore, it is undisputed that Mr Textor acted as a director of Palace Holdco and as a principal partner of Palace Manageco. In these roles, Mr Textor was entitled to a 25% voting right in both companies, *i.e.* one out of four votes, with all votes being taken on a majority basis.

112. In this regard, the Panel notes that holding a position of director and principal partner in the companies which constitute the governing bodies of CPFC, with voting rights allowing Mr Textor to participate in decisions crucial for the Appellant (such as the club's strategy, financial planning, players' transfers, appointment of the coach, etc.), is sufficient to constitute involvement in the sense of Article 5.01(b) of the UEL Regulations. Therefore, the Panel concludes that on 1 March 2025, Mr Textor was involved in the management and administration of CPFC.

113. For its part, OL stated, in its MCO declaration submitted to UEFA (§14 above), that Mr Textor was the ultimate controlling party, the ultimate beneficiary, and the President of the club. In addition, OL also declared that Mr Textor had an ownership interest, voting rights or membership or any other involvement or influence whatsoever in the management, administration or sporting performance in other clubs, including CPFC, on which he could exercise influence.

114. In view of the above, the Panel finds that on 1 March 2025, the Appellant was in breach of Article 5.01(b) of the UEL Regulations.

3. Was the Appellant in breach of Article 5.01(c) as at 1 March 2025?

115. Even though the above finding, that the Appellant was in breach of Article 5.01(b) of the UEL Regulations on 1 March 2025, would be sufficient to conclude that a MCO situation involving the Appellant and OL existed on such date, the Panel notes that the Appellant

and OL were also in a MCO situation on the basis of Article 5.01(c) of the UEL Regulations.

116. As already indicated, Article 5.01(c) states that no person (individual or legal entity) may have *"control or influence"* over more than one club participating in a UCC, and defines such control or influence as (i) holding a majority of the shareholders' voting rights, (ii) having the right to appoint or remove a majority of the members of the administrative, management or supervisory body of the club, (iii) being a shareholder and alone controlling a majority of the shareholders' voting rights pursuant to an agreement entered into with other shareholders of the club; or (iv) being able to exercise by any means a decisive influence in the decision-making of the club.

117. The Panel first notes that under Article 5.01(c)(iv), an individual or legal entity has "control or influence" over a club when such individual or legal entity is *"able to exercise by any means a decisive influence in the decision-making of the club"*. According to the Panel, the use of the words *"being able to"* entails that there is no need for the relevant individual or legal entity to effectively exercise a decisive influence. The fact that an individual or legal entity is in a position (or has the ability) to exercise a decisive influence is sufficient to trigger Article 5.01(c)(iv).

118. In continuation, the Panel observes that Article 5.01(c) does not contain a definition of *"decisive influence"*. The meaning of such concept, however, was addressed in the May 2024 Circular (§9 above), which sets out four indicators in order to provide guidance as to what may constitute a *"decisive influence"*, and highlights that it could manifest itself through shareholders' or members' rights, financial support, governance, and player transfers. In this regard, according to the May 2024 Circular, a party has decisive influence if any one of those indicators is triggered.

119. The Panel agrees with the Appellant that the indications contained in the May 2024 Circular cannot modify the provisions of the UEL Regulations. The Panel, however, finds that the May 2024 Circular did not amend the UEL Regulations and constitutes only a useful interpretative tool in order to clarify, also in the interest of predictability, the approach that would be followed by the UEFA body (the First Chamber) called to apply the MCO Rule in the determination of the meaning of the provision in the UEL Regulations establishing the existence of a MCO situation when an individual or legal entity is *"able to exercise by any means a decisive influence in the decision-making"* process of more than one club. In addition, the Panel does not find any indication in the May 2024 Circular that would show that in the event any of the criteria indicated therein is satisfied, there would not be a *"decisive influence"*, and that no individual assessment (on the basis of those or other criteria) would be required. To the contrary, the Panel agrees with the criteria set out in the May 2024 Circular as sufficient to prove (at least *prima facie*) the existence of such *"decisive influence"*, being however intended that a *"decisive influence"*, which can be exercised *"by any means"*, could also be found in the event those criteria were not met.

i. First indicator: shareholders' or members' rights

120. According to the May 2024 Circular, an individual or a legal entity is able to exercise decisive influence through shareholders' or members' rights, either *"[i]f a party holds 30% or more of the club's total shares, the shareholders' or members' voting or economic rights"*, or *"[i]f a party holds 10% or more of the club's total shares, the shareholders' or members' voting or economic rights and is also the largest shareholder of the club"*.

121. The Panel first notes that, on the one hand, it is uncontested that on 1 March 2025, *Eagle Football Holdings Bidco Limited owned 44.09% of the total shares of Palace Holdco and held* 39.87% of the total issued voting shares of Palace Holdco, *i.e.* of the entity controlling CPFC. On the other hand, it has also been established that *Eagle Football Holdings Bidco Limited owned 93.95% of OL and that Mr Textor was the* controlling party, the ultimate beneficiary and the President of that club. The Panel further pointed out that *Eagle Football Holdings Bidco Limited was the majority shareholder, in terms of voting and economic rights, of both CPFC and OL.*

122. The Panel does not agree with the argument of the Appellant, whereby *Eagle Football Holdings Bidco Limited only held B shares* of Palace Holdco*, which do not have any right to take part in the management or affairs of the company. According to the Articles of Association of Palace Holdco, and as finally confirmed by the Appellant itself, B1 shares, which constitute the majority of the shares held by Eagle Football Holdings Bidco Limited in Palace Holdco, are voting shares.*

123. Therefore, the Panel finds that *Eagle Football Holdings Bidco Limited* held more than 30% of the total shares of the Appellant as at 1 March 2025, thereby triggering the first indicator set out in the May 2024 Circular. This conclusion would in itself be sufficient to find that, on 1 March 2025, a MCO situation involving the Appellant existed on the basis of Article 5.01(c) of the UEL Regulations.

ii. Second indicator: financial support

124. According to the May 2024 Circular, a party (an individual or a legal entity) is able to exercise decisive influence through financial support (either alone or in aggregate together with a related party, directly or indirectly) if it:

a. accounts to 30% or more of the club's total operating revenue;

b. lends to the club an amount equivalent to 30% or more of the club's total borrowings from related parties (as defined in the UEFA CLFSR), including accounts payables to related parties, shareholder loans, convertible loans;

c. provides financial support to the club in the form of additional paid-in capital, through share premium reserves, up to an amount equivalent to 30% or more of the premium reserve.

d. provides financial security over the club's borrowings;

e. provides financing to the club which is secured through a pledge of the club's shares, an assignment of the club's receivables or change over the club's assets.

125. *The Panel notes that Mr Textor and* Eagle Football Holdings Bidco Limited made the following investments into Palace

Holdco between August 2021 and January 2024:

(xiii) GBP 80,000,000 by Mr Textor;

(xiv) GBP 30,000,000 by Eagle Football Holdings Bidco Limited;

(xv) GBP 12,953,571 by Eagle Football Holdings Bidco Limited.

126. In total, Mr Textor and Eagle Football Holdings Bidco Limited injected a total amount close to GBP 123,000,000 into Palace Holdco between *August 2021 and January 2024, which corresponds to 49% of the paid in capital of Palace Holdco.*

127. *The Panel does not agree with the Appellant's argument whereby the financial support provided by Mr Textor and Eagle Football Holdings Bidco Limited was all in the form of equity and that said support had no consequences on their rights and powers within CPFC. As a matter of fact, it seems evident to the Panel that the aforementioned investments constitute substantial financial support for Palace Holdco.*

128. *As a result, the Panel finds that Mr Textor was able to exercise decisive influence over the Appellant on the basis of the substantive financial support provided to CPFC.*

iii. Third indicator: governance

129. According to the May 2024 Circular, an individual or a legal entity is able to exercise decisive influence through governance when a party (either alone or in aggregate together with a related party, directly or indirectly):

a. holds any position in the club's governing bodies or a club's key executive position;

b. has the ability to appoint or remove 30% or more of the members, or holds 30% or more of voting or economic rights, in the club's governing bodies;

c. has the ability to appoint or remove the club's key executives or the first squad's head coach;

d. has the ability to influence key executive decisions (such as player transfers, budget approval, key commercial contracts), or benefits from specific contractual or statutory privileged rights with respect to the club's governance, through veto rights or any other privileged rights.

130. The Panel first notes that Mr Textor held an executive position, considering that he was a director of Palace Holdco, the company controlling CPFC, and a principal partner of Palace Manageco, the beneficiary of Palace Holdco. In these positions, he was entitled to a 25% voting right, with all votes to be taken on a majority basis. Mr Textor took part in meetings of CPFC, in which he had one of four decisive votes, to make decisions on various types of matters. The position of Mr Textor also provided him with the possibility to block certain decisions, which needed unanimous votes.

131. The Panel further refers to Clause 4.2.2 of the employment contract between Mr Parish and CPFC Limited (§ 108(v) above), according to which Mr Parish cannot conclude certain acts, without the prior written authorisation of Palace Manageco, including authorising *"the sale, purchase, loan or transfer of an Player with a Total Remuneration package worth over £100,000 per annum (…)"*. Whilst Mr

Parish may be responsible for the day-to-day management of CPFC, there are certain acts, such as major transfers of players, which need a collective decision from the three directors of Palace Manageco, including Mr Textor.

132. In this respect, Mr Textor took part in decisions pertaining to the transfer of players and the appointment of CPFC's coach. In the Appealed decision, the First Chamber considered that *"had John Textor not been involved in CPFC in any way, the player transfers/loans between CPFC and EFG-related clubs, mainly Molenbeek, would most likely not have been concluded"*.

133. The Panel observes that seven players were loaned from CPFC to Molenbeek between the summer of 2021 and the end of the 2023/24 season. Considering that Mr Textor invested in CPFC in August 2021, it seems that the timing of these loans concurs with the arrival of Mr Textor.

134. With regard to the appointment of CPFC's head coach, it appears that Mr Textor had prior discussions with Mr Oliver Glasner, for a potential position of head coach at OL.

135. Having said this, the Panel recalls that the mere ability to exercise decisive influence on the club's decision-making is sufficient to trigger Article 5.01(c)(iv). Therefore, the Panel does not need to determine whether Mr Textor actually exercised influence in the aforementioned matters. Indeed, it appears that Mr Textor, because of his position as director of Palace Holdco and principal partner of Palace Manageco, had the ability to exercise decisive influence on key executive decisions of CPFC, including the transfers of players and the appointment of the head coach.

136. In view of the above, the Panel considers that Mr Textor, by holding executive positions of governing bodies of CPFC, had the ability to exercise decisive influence on the decision-making of the Appellant, as at 1 March 2025, thereby triggering the third indicator set out in the May 2024 Circular.

iv. Fourth indicator: players' transfers

137. The fourth indicator of *"decisive influence"* mentioned in the May 2024 Circular refers to the transfers of players. A decisive influence may be assumed to exist if a club has transferred, permanently or temporarily, three or more players with the other club during the season.

138. The Panel has already observed that seven players were loaned from CPFC to Molenbeek between the summer of 2021 and the end of the 2023/24 season. Mr Textor had a (controlling) interest in Molenbeek. In light of the number of players transferred to Molenbeek in a relatively short period of time, the Panel finds that these transfers show an ability of Mr Textor to exercise decisive influence over CPFC.

v. Conclusion

139. The Panel concludes that as at 1 March 2025, Mr Textor and Eagle Football Holdings Bidco Limited were able to exercise a decisive influence on the decision-making of CPFC.

140. As a result, the Panel finds that on 1 March 2025, the Appellant was in breach of Article 5.01(c) of the UEL Regulations.

B. Does UEFA have a discretionary practice allowing clubs to cure a breach to the MCO Rule after the deadline of 1 March 2025?

141. The finding above makes it necessary for the Panel to verify whether the violation of Article 5.01 of the UEL Regulations on 1 March 2025 could be (and was actually) cured by the Appellant after that date.

142. In that regard, on the one hand, the Appellant claims (a) that UEFA has a discretionary practice of permitting clubs to cure their non-compliance with the MCO Rule after the assessment date (in this case 1 March 2025), (b) that any MCO situation which could be established as at 1 March 2025 was subsequently cured, as Mr Textor sold his interest in the CPFC Group, and (c) that the Appealed Decision combined with the UEL Regulations and the UEFA's discretion to extend the deadline after the assessment date would infringe EU competition law. On the other hand, UEFA denies the existence of the practice alleged by the Appellant, affirms that it applied the assessment date of 1 March 2025 to all clubs equally and considers that the Appellant's allegations, also with respect to EU law, are unsubstantiated. For its part, NFFC claims that it is not aware of any discretionary practice.

143. The points raised by the Appellant are examined hereinafter in sequence.

1. Existence of a discretionary practice

144. On 24 September 2024, the UEFA ExCo formally approved the amendment to Article 5.01, bringing forward the assessment date to comply with said provision to 1 March 2025 for all UCC for the 2025/26 season. Member associations of UEFA were informed of this amendment through the October 2024 Circular. On 26 February 2025, the UEFA ExCo adopted the 2025/26 UEL Regulations.

145. The Appellant, in support of its claim that UEFA had allowed some flexibility in the enforcement of the date of 1 March 2025, refers to the alleged adoption of some "blind trust structures" by other clubs (including NFFC) after 1 March 2025, in order to cure violations existing on that date.

146. The Panel however notes that no investigation or proceedings were ever opened against NFFC (or other clubs) before the First Chamber, and that no violation was alleged against it, which could be cured after 1 March 2025. As a matter of fact, Article 5.01 of the UEL Regulations only prohibits participation of clubs under common control in the same UCC and the clubs of NFFC and Olympiacos FC are participating in different UCC. In these circumstances, the situation of NFFC is different to the one of the Appellant and cannot be used as a reference to justify an alleged discretionary practice by UEFA. Also for this reason, the Panel denied the Appellant's request for production of documents, that would have been in any case irrelevant.

147. The Panel further observes that the UEL Regulations do not provide any support to the Appellant's claim that UEFA has a flexibility in its application of the assessment date to non-compliant clubs. Moreover, the First Chamber strictly applied the deadline of 1 March 2025 in all cases it decided for the 2025/26

season, and no evidence exists to the contrary.

148. The May 2024 Circular stated that some exceptions would be allowed for the 2024/25 season, given *"the short time between the approval of the Competition Regulations on 20 March 2024 and the deadline of 3 June 2024"*. In this respect, the May 2024 Circular permitted clubs to use blind trusts after the deadline date of 3 June 2024, on a temporary basis and under certain conditions.

149. The Panel notes that on 5 July 2024, the CFCB confirmed that a blind trust structure had been put in place under its supervision regarding, on the one hand, the clubs of Manchester City FC and Girona FC, and on the other hand, the clubs of Manchester United and OGC Nice. The CFCB further stated that the concerned investors had transferred their shares in the clubs to independent trustees, thereby ensuring compliance with the MCO Rule.

150. However, the Panel points out that the May 2024 Circular also expressly stipulated that *"this temporary alternative is granted by the CFCB First Chamber on an exceptional basis for the 2024/25 UEFA competitions"* and that *"the CFCB First Chamber will not be bound by this alternative when assessing clubs' compliance with the MCO rule for participation in UEFA competitions in subsequent seasons"*.

151. Therefore, the Panel finds that the establishment of blind trusts by clubs after the assessment date set in the UCC Regulations was a temporary solution put in place by UEFA for the 2024/25 season only and does not constitute a consistent practice of the CFCB.

152. The Panel also takes note of the second email sent by the ECA to its members on 25 October 2024, stating that *"pursuant to the discretion granted to it in article 4.07 of the UEFA Club Competition Regulations, the UEFA administration would not refer any cases to the UEFA CFCB in the event clubs would have become compliant with the MCO rules between 1 March and that moment in time when they would qualify for the European club competitions"*. However, the Panel finds that this email was not sent by or on behalf of UEFA. Consequently, in the view of the Panel, the content of such email can only be considered as the ECA's subjective interpretation regarding the implementation of the new assessment date, with no binding effect vis-a-vis UEFA. In any event, the ECA email contained a copy of the October 2024 Circular, which was clear.

153. Finally, the Appellant invokes some declarations from Mr Gulati, Chairman of the First Chamber, in a private conversation of 4 June 2025 (the day after the hearing before the CFCB) with Mr Parish and Mr Blitzer, in which he would have mentioned the possibility for CPFC to implement, at that late stage, measures to cure the situation existing on 1 March 2025. However unclear the content and the circumstances of such conversation might be, any declaration from Mr Gulati cannot be considered as evidence of a UEFA practice allowing a curing period until the last moment before the decision of the First Chamber. In any case, it is contradicted by the fact that, in the end, the First Chamber rendered the Appealed Decision, inconsistent with the possibility of a late cure.

154. In light of the above, the Panel considers that no discretionary practice to allow

clubs to cure breaches of Article 5.01 after the assessment date of 1 March 2025 existed.

2. The sale of shares in CPFC by Mr John Textor and Eagle Football Holdings Bidco Ltd

155. In June 2024, Mr Textor appointed Raine Advisors Limited to assist him in the sale of his shares in CPFC. In June 2025, Eagle Football Holdings Bidco Limited agreed to sell the entirety of its shares in Palace Holdco to Mr Johnson, and the SPA was concluded. In these circumstances, the Appellant asserts that the discussions between Eagle Football Holdings Bidco Limited and Mr Johnson started in November 2024, hence before 1 March 2025, thereby constituting a cure in the event of any breach of Article 5.01(b) and/or (c). Contrary to such submission, the First Respondent considers that the sale of the shares by Eagle Football Holdings Bidco Limited and Mr Textor cannot cure a breach of the MCO Rule, as it was only initiated after 1 March 2025 and concluded after CPFC's qualification for the UEL.

156. The Panel first recalls that pursuant to Article 5.01 of the UEL Regulations, clubs must be able to prove that they complied with the MCO Rule as at 1 March 2025.

157. Although Eagle Football Holdings Bidco Limited sold its shares in Palace Holdco, the sale only occurred in June 2025, meaning that on the assessment date of 1 March 2025, Eagle Football Holdings Bidco Limited was in breach of Articles 5.01(b) and 5.01(c).

158. Having established that there was no flexibility or discretionary practice to extend the assessment date, changes made after 1 March 2025 do not cure a breach of the MCO Rule. Therefore, the fact that Mr Textor had appointed an investment bank to assist him in the sale in June 2024, or that Eagle Football Holdings Bidco Limited effectively sold its shares in CPFC prior to the start of the UEL, but after 1 March 2025, are irrelevant and do not constitute cures to the established breach.

159. Therefore, the Panel finds that the sale of the shares of Mr Textor and Eagle Football Holdings Bidco Limited in CPFC after 1 March 2025 does not constitute a cure to the breach of Articles 5.01(b) and 5.01(c).

3. EU competition law

160. In its Appeal Brief, the Appellant claimed that the Appealed Decision and/or the UEL Regulations, combined with UEFA's discretion to extend the time limit for complying with Article 5.01, constitutes a restriction of competition *"by object"* contrary to Article 101 of the TFEU and/or an abuse of UEFA's dominant position contrary to Article 102 of the TFEU.

161. At the Hearing, the Appellant reiterated that its submission relating to a breach of EU competition law was only based on the existence of a discretionary practice of UEFA to allow clubs to cure their non-compliance with the MCO Rule after the assessment date of 1 March 2025, clearly indicating (i) that *"if there is no discretion, the argument fails"* and (ii) that no argument was made on the basis of EU competition law regarding the setting of 1 March 2025 as the assessment date for any MCO situation.

162. Taking into account that such a discretionary practice by UEFA has not been established, the Panel considers that it does not need to enter into the matter of potential breaches to EU competition law. In any case, the Panel remarks that the issue of the compatibility of regulations governing the impact of MCO on UCC with EU competition law was extensively and accurately dealt with in the ENIC Award. The reasoning and the findings of the ENIC Award are fully endorsed by this Panel.

C. Should CPFC have been admitted to the UEL pursuant to Article 5.02 of the UEL Regulations?

163. In light of the foregoing, since the Panel found that the Appellant was in breach of Articles 5.01(b) and 5.01(c) of the UEL Regulations as at 1 March 2025, and that UEFA did not have a discretionary practice to allow clubs to cure a breach to the MCO Rule after the deadline of 1 March 2025, the question before this Panel concerns the consequences of such finding, *i.e.* whether CPFC or OL should be admitted to the UEL, with the other competing in the UECL.

1. The regulatory process pursuant to the UEL Regulations: the qualification of CPFC and OL to the UEL

164. The Panel notes that each UEFA member association has a coefficient ranking, which is drawn up in accordance with Annex D of the UEL Regulations. Based on this coefficient ranking, Annex A of the UEL Regulations, also known as the access list, determines the positions of UEFA member associations, which in turn establishes the stage at which each club may enter a relevant competition.

165. According to Article 3.01 of the UEL Regulations, UEFA member associations may enter the winner of their national cup competitions, as well as *"a certain number of other clubs for the competition through their top domestic championships (…)"*.

166. The Panel notes that for The FA, Annex A provides that the club winning the English national Championship, the Premier League, as well as the clubs in second, third and fourth positions all qualify for the UCL. The club in fifth position, as well as the winner of the national cup competition, the FA Cup, both qualify for the UEL. Finally, the club in sixth position of the Premier League qualifies for the UECL.

167. On 17 May 2025, CPFC won the FA Cup, thereby qualifying for the UEL. In parallel, CPFC finished 12th of the Premier League in the 2024/25 season.

168. As for the FFF, Annex A provides that the club winning the French national Championship, Ligue 1, as well as the clubs in second and third positions all qualify for the UCL. The club in fourth position qualifies for the UCL qualifiers. The club in fifth position, as well as the winner of the national cup competition, *Coupe de France*, both qualify for the UEL. Finally, the club in sixth position of Ligue 1 qualifies for the UECL.

169. On 17 May 2025, at the end of the 2024/25 season of Ligue 1, PSG was champion in first position and OL finished in sixth position, thereby qualifying for the UECL.

170. On 25 May 2025, PSG won the *Coupe de France*, which is a qualifier for the UEL.

171. Considering that PSG qualified both for the UCL and the UEL, Article 3.03(a) of the UEL Regulations applies. On its basis, PSG's qualifying spot for the UEL was attributed to the club in the highest position among the FFF's clubs which qualified for the UEL. According to Annex A, this is the club in fifth position in Ligue 1. For the 2024/25 season, Lille finished in fifth position and therefore took PSG's original place in the UEL.

172. Then, pursuant to Article 3.03(b) and (c), the vacancy in the UEL created from the operations above, is filled by the highest-ranking club which did not qualify for the UCL or the UEL, which in this case is OL.

173. Therefore, both CPFC and OL qualified for the UEL.

174. As a result of this situation, Article 5.02 of the UEL Regulations applies, insofar as it has been established that CPFC and OL were in breach of Articles 5.01(b) and 5.01(c).

2. Sporting merit and the application of Article 5.02(b) of the UEL Regulations

175. The Parties, however, are in dispute over the application of Article 5.02 of the UEL Regulations. As a matter of fact, CPFC argues that OL did not qualify for the UEL on sporting merit, which should result in CPFC's admission to the UEL in application of Article 5.02(a). More specifically, on one hand, the Appellant considers that OL qualified for the UEL merely due to the sporting performances of PSG, which won the *Coupe de France*, in addition to finishing in first position of Ligue 1 in the 2024/25 season: as a result, while the Appellant qualified for the UEL directly, by winning the FA Cup, it considers that OL qualified directly for the UECL and only indirectly for the UEL. Therefore, in application of Article 5.02(a), the Appellant claims that it qualified on sporting merit for the most prestigious UCC, and should therefore be admitted to the UEL, in place of OL. On the other hand, the Respondents insist that OL qualified for the UEL on sporting merit and was correctly admitted to said competition in application of Article 5.02(b).

176. The Panel notes that the UEL Regulations do not define the concept of "sporting merit" and the majority of the Panel finds that Article 5.02(a) does not allow for any distinction between direct or indirect sporting merit. The Panel observes that, although the qualification of OL for the UEL is based on the application of the various provisions stated above, the sporting achievements of OL in Ligue 1 allowed it to be in a position to take advantage of the situation of PSG. The majority of the Panel finds that this difference is not decisive for the purposes of Article 5.02(a).

177. In light of the above, the majority of the Panel finds that OL qualified for the UEL on equal footing with CPFC in terms of sporting merit.

178. Based on discussions held during the Hearing, the Panel understands that Article 5.02(a) applies mainly to cases of clubs under the same control, where one club plays for instance in the preliminary rounds of the UCL and could thus be

relegated to the UEL at a later stage, whilst the other club has qualified for the UEL. In such a situation, the application of Article 5.02(a) may give preference to the club which qualified for the most prestigious UCL. The majority of the Panel finds that, taking into account that CPFC and OL both qualified for the same UCC on sporting merit, Article 5.02(a) is not decisive in the present case, as a consequence of which one must resort to Article 5.02(b).

179. Article 5.02(b) provides that preference shall be given to *"the club which was ranked highest in its domestic championship"*. For the 2024/25 season, OL was ranked 6th in Ligue 1, whilst CPFC finished 12th in Premier League.

180. Since OL was ranked higher in its respective domestic championship than CPFC was, OL was correctly admitted to the UEL.

3. The application of Article 5.04 of the UEL Regulations.

181. Finally, the Panel takes note of Article 5.04 of the UEL Regulations, which provides that *"[e]xceptionally, provided that the relevant principles of Paragraph 5.01 are respected throughout, a club that was not admitted in application of Paragraph 5.02, and which is replaced in the competition in application of Paragraph 4.10, may still be admitted to another UEFA club competition (i.e. in descending order: UEFA Europa League or UEFA Conference League) to which the relevant national association has access, respecting the scenarios foreseen by Paragraph 5.05 (…)"*.

182. On the basis of such provision, it is concluded that CPFC was validly admitted to the UECL.

IX. CONCLUSION

183. Based on the foregoing, the Panel finds that:

- on 1 March 2025, the Appellant was in breach of Articles 5.01(b) and 5.01(c) of the UEL Regulations;
- no discretionary practice may allow a cure for a breach after the assessment date of 1 March 2025;
- OL was correctly admitted to the UEL pursuant to Article 5.02(b) of the UEL Regulations.

184. All other requests submitted by the Parties are to be rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Crystal Palace Football Club against the decision rendered on 11 July 2025 by the First Chamber of the UEFA Club Financial Control Body is dismissed.

2. The decision rendered on 11 July 2025 by the First Chamber of the UEFA Club Financial Control Body is confirmed.

3. (…).

4. (…).

5. All other and further motions or prayers for relief are dismissed.

Jugements du Tribunal fédéral*
Judgements of the Federal Tribunal
Sentencias del Tribunal federal

* Résumés de jugements du Tribunal Fédéral suisse relatifs à la jurisprudence du TAS
Summaries of some Judgements of the Swiss Federal Tribunal related to CAS jurisprudence
Resúmenes de algunas sentencias del Tribunal Federal Suizo relacionadas con la jurisprudencia del TAS

4A_474/2024
A. *gegen* Nationale Anti-Doping Agentur Deutschland (NADA) & World Anti-Doping Agency (WADA) & Deutscher Fussball-Bund e.V. (DFB)
6 Februar 2025

Beschwerde gegen den Schiedsspruch des Tribunal Arbitral du Sport (TAS) vom 27. August 2024 (CAS 2023/A/9550, CAS 2023/A/9586 und CAS 2023/A/9607)

Confirmation of the SFT's restrictive understanding of the right to be heard in international sports arbitration and the direct inapplicability of criminal law principles to sports disciplinary proceedings

Sachverhalt

A.

A.a. A._____ (Beschwerdeführer) ist ein professioneller Fussballspieler kroatischer Staatsangehörigkeit. Er stand beim Sport Verein B._____ unter Vertrag.

Die Nationale Anti-Doping Agentur Deutschland (NADA, Beschwerdegegnerin 1) mit Sitz in Bonn ist die oberste nationale Behörde für die Doping-Bekämpfung in Deutschland.

Die World Anti-Doping Agency (WADA, Beschwerdegegnerin 2) ist eine Stiftung schweizerischen Rechts mit Sitz in Lausanne; ihre Hauptniederlassung befindet sich in Montreal, Kanada. Ihr Zweck ist der weltweite Kampf gegen Doping im Sport.

Der Deutsche Fussball-Bund (DFB) ist der nationale Fussballverband von Deutschland.

A.b. Am 16. September 2022 wurde der Beschwerdeführer auf dem Trainingsgelände des Sport Vereins B._____ einer Out-of-Competition Urin-Dopingkontrolle unterzogen.

Die Analyse der A-Probe durch das bei der WADA akkreditierte Institut für Dopinganalytik und Sportbiochemie Dresden in Kreischa, Deutschland (IDAS) ergab das Vorhandensein von rekombinantem Erythropoietin (rEPO). EPO gehört zu den Proteinhormonen (peptide hormones), welche unter den nach S2 von der WADA verbotenen Substanzen gelistet sind. Am 9. November 2022 bestätigte die Zweitmeinung von Dr. C._____ des von der WADA akkreditierten Labors in Oslo die Existenz von rEPO in der A-Probe.

A.c. Am 10. November 2022 informierte die NADA die DFB-Anti-Doping Kommission über das positive Analyseergebnis (Adverse Analytical Finding, "AAF"), was diese am Folgetag u.a. dem Beschwerdeführer mitteilte.

Am 15. November 2022 suspendierte der Präsident des DFB-Sportgerichts den Beschwerdeführer ab sofort bis zum Entscheid des DFB Sportgerichts.

A.d. Am 12. Dezember 2022 wurde die B-Probe am IDAS im Beisein eines Vertreters des Beschwerdeführers geöffnet. Die Analyse der B-Probe bestätigte das Vorhandensein von rEPO. Diesem Resultat pflichtete die Zweitgutachterin, Dr. C._____, am 14. Dezember 2022 bei.

B.
Am 16. Dezember 2022 eröffnete das DFB-Kontrollkomitee ein Disziplinarverfahren

gegen den Beschwerdeführer und zog den Fall am 19. Januar 2023 vor das DFB-Sportgericht.

Mit Entscheid vom 30. März 2023 sperrte das DFB-Sportgericht den Beschwerdeführer wegen Dopingvergehens (Verstoss gegen § 6 Nr. 2a der *legal and procedural rules* des DFB) für zwei Jahre ab dem 15. November 2022 (Wettkampf- und Trainingsverbot).

Gegen diesen Entscheid erhob der Beschwerdeführer Berufung (Appeal) beim Tribunal Arbitral du Sport (TAS). Er bestritt einen Dopingverstoss und beantragte die Aufhebung des Wettkampf- und Trainingsverbots. Mit separaten Berufungen fochten auch die NADA und die WADA den Entscheid des DFB-Sportgerichts beim TAS an und beantragten die Erhöhung des Verbots auf vier Jahre. Der DFB ersuchte um Abweisung aller drei Berufungen und um Bestätigung des Entscheids seines Sportgerichts.

Das TAS vereinigte die drei Berufungsverfahren. Es führte ein umfangreiches Beweisverfahren durch. Am 14./15. Mai 2024 hielt es in Lausanne eine mündliche Verhandlung.

Mit Schiedsentscheid vom 27. August 2024 wies das TAS die Berufung des Beschwerdeführers ab, hiess die Berufungen der NADA und der WADA gut und änderte den Entscheid des DFB-Sportgerichts dahingehend ab, dass der Beschwerdeführer statt für zwei Jahre für vier Jahre wegen Verletzung von § 6 der FIFA Anti-Doping Regulations mit einem umfassenden Wettkampf- und Trainingsverbot belegt wurde. Alle anderen und weiteren Begehren wies es ab.

C.
Der Beschwerdeführer beantragt dem Bundesgericht mit Beschwerde in Zivilsachen, den Schiedsentscheid vom 27. August 2024 aufzuheben.

Die Beschwerdegegnerinnen beantragen in separaten Eingaben, die Beschwerde abzuweisen, soweit darauf einzutreten sei.

Das TAS verzichtete angesichts der weitgehend appellatorischen Natur der Beschwerde und des Umstands, dass alle gerügten Punkte im Entscheid abgehandelt worden seien, auf eine Vernehmlassung.

Der Beschwerdeführer replizierte, worauf die Beschwerdegegnerinnen eine Duplik einreichten.

D.
Mit Präsidialverfügung vom 31. Oktober 2024 wurde der DFB antragsgemäss als weiterer Verfahrensbeteiligter in das bundesgerichtliche Verfahren aufgenommen. In der Folge verzichtete er auf eine Stellungnahme zur Beschwerde.

Auszug aus den Erwägungsgründen

(…)

5.
Der Beschwerdeführer rügt eine Verletzung des materiellen und des formellen Ordre public (Art. 190 Abs. 2 lit. e IPRG).

5.1. Die materiellrechtliche Überprüfung eines internationalen Schiedsentscheids durch das Bundesgericht ist auf die Frage beschränkt, ob der Schiedsspruch mit dem Ordre public vereinbar ist (**BGE 121 III 331** E. 3a; Urteil 4A_268/2024 vom 11. Oktober 2024 E. 5.1). Gegen den Ordre public verstösst die materielle Beurteilung eines streitigen Anspruchs nur, wenn sie fundamentale Rechtsgrundsätze verkennt und daher mit der wesentlichen, weitgehend anerkannten Wertordnung schlechthin unvereinbar ist, die nach in der Schweiz herrschender Auffassung Grundlage jeder Rechtsordnung bilden sollte (**BGE 144 III 120** E. 5.1). Zu diesen Grundsätzen gehören

namentlich die Vertragstreue (pacta sunt servanda), das Rechtsmissbrauchsverbot, der Grundsatz von Treu und Glauben, das Verbot der entschädigungslosen Enteignung, das Diskriminierungsverbot, der Schutz von Handlungsunfähigen und das Verbot übermässiger Bindung (vgl. Art. 27 Abs. 2 ZGB), wenn diese eine offensichtliche und schwerwiegende Persönlichkeitsverletzung darstellt (**BGE 144 III 120** E. 5.1; **138 III 322** E. 4.1; je mit Hinweisen).

Ein Verstoss gegen den verfahrensrechtlichen Ordre public liegt vor bei einer Verletzung von fundamentalen und allgemein anerkannten Verfahrensgrundsätzen, deren Nichtbeachtung zum Rechtsempfinden in einem unerträglichen Widerspruch steht, so dass die Entscheidung als mit der in einem Rechtsstaat geltenden Rechts- und Wertordnung schlechterdings unvereinbar erscheint (**BGE 147 III 379** E. 4.1; **141 III 229** E. 3.2.1; **140 III 278** E. 3.1; **136 III 345** E. 2.1). Diese Verfahrensgarantie ist subsidiär zu den weiteren Beschwerdegründen nach Art. 190 Abs. 2 IPRG (**BGE 138 III 270** E. 2.3). Eine falsche oder gar willkürliche Anwendung von Prozessvorschriften bedeutet für sich allein noch keine Verletzung des formellen Ordre public. Vielmehr kommt einzig ein Verstoss gegen eine Regel in Betracht, die zur Gewährleistung der Fairness des Verfahrens unerlässlich ist (**BGE 150 III 238** E. 3.1 mit zahlreichen Hinweisen).

Zur Aufhebung des angefochtenen Schiedsentscheids kommt es nur, wenn dieser nicht nur in der Begründung, sondern auch im Ergebnis dem Ordre public widerspricht (**BGE 144 III 120** E. 5.1; **138 III 322** E. 4.1 und E. 4.3.1/4.3.2; je mit Hinweisen).

5.2. Der Beschwerdeführer erblickt eine Verletzung des Verbots übermässiger Bindung (Art. 27 Abs. 2 ZGB) und damit des materiellen Ordre public darin, dass er gezwungen sei, sich der SAR-PAGE Methode zu unterwerfen, mit welcher ermittelt wird, ob eine Urinprobe eines Athleten als positiv oder negativ für rEPO zu bewerten ist. Er kritisiert diese Methode und bemängelt namentlich, dass das TAS, bestehend aus medizinischen Laien, aufgrund von Bildbetrachtung über derart gravierende Sanktionen wie ein vierjähriges Wettkampf- und Trainingsverbot entscheidet. Verschärfend komme hinzu, dass er im Fall eines positiven Befunds seine Unschuld beweisen müsse, was die WADA aber dadurch verunmögliche, dass sie den acht Experten ihrer EPO Working Group verbiete, einen Athleten zu unterstützen. Einem Athleten sei es daher unmöglich, Unterstützung durch einen Experten zu erhalten, der für die WADA akzeptabel sei. Dadurch werde ihm der Unschuldsbeweis durch eine Partei (hier die Beschwerdegegnerinnen) "vorsätzlich und systematisch vereitelt". All das komme einer schwerwiegenden Persönlichkeitsverletzung des Beschwerdeführers gleich.

Der Vorwurf ist unbegründet. Nach bundesgerichtlicher Rechtsprechung verstösst es nicht gegen den Ordre public und namentlich gegen die Persönlichkeitsrechte eines Athleten, dass ein Schiedsgericht, konkret das TAS, über die Verhängung weitreichender Sanktionen gegenüber einem Athleten entscheidet und dabei über einen grossen Beurteilungsspielraum verfügt (etwa Urteil 4A_318/2018 vom 4. März 2019 E. 4.5.2 und 4.5.4). Die Sanktionierung von Dopingverstössen setzt die Prüfung voraus, ob ein solcher Verstoss vorliegt, was wiederum die Interpretation der Proben bedingt. Das ist nicht unvereinbar mit dem Ordre public. Daran ändert nichts, dass das TAS bei der Beurteilung von rEPO-Proben auch Beweismittel in Form von Analysebildern der anwendbaren Testmethode bewerten muss.

Sodann zeigt der Beschwerdeführer auch mit seinen Behauptungen zur angeblichen Verunmöglichung des Unschuldsbeweises keine Verletzung des Ordre public auf. Die namentlich im Dienst einer effizienten Dopingbekämpfung stehende disziplinarrechtliche Regel im Sport, wonach bei einem positiven Befund verbotener Substanzen ohne Weiteres Doping vermutet wird (sog. "strict-liability-Prinzip") und dem Sportler der Entlastungsnachweis offensteht, verstösst nicht gegen den Ordre public (**BGE 134 III 193** E. 4.6.2.3; Urteil 4A_528/2022 vom 13. März 2023 E. 4.3.1 mit Hinweisen). Die Behauptung, der Unschuldsbeweis werde ihm wegen der WADA EPO Working Group verunmöglicht, ist haltlos und durch das Schiedsverfahren widerlegt. Wie die Beschwerdegegnerin 2 zutreffend ausführt, hat der Beschwerdeführer zur umstrittenen Analyse der Urinprobe insgesamt neun Stellungnahmen von drei Experten eingereicht. Ohnehin geht er mit seinem (haltlosen) Vorwurf, der Unschuldsbeweis werde ihm durch eine Partei (die WADA) "vorsätzlich und systematisch vereitelt", am Thema vorbei, müsste er doch aufzeigen, dass das TAS und nicht eine Partei ihm im schiedsgerichtlichen Verfahren den Beweis verunmöglicht habe. Davon kann keine Rede sein.

Die Folgefrage, ob dem Beschwerdeführer der Entlastungsbeweis gelungen ist, gehört zur Beweiswürdigung, die der bundesgerichtlichen Ordre public-Kontrolle nicht zugänglich ist (**BGE 144 III 120** E. 5.1).

5.3. Den formellen Ordre public sieht der Beschwerdeführer durch einen Verstoss gegen die Grundsätze *in dubio pro reo* und der *lex mitior* verletzt.

Beides trifft nicht zu. Disziplinarmassnahmen privater Sportverbände bei Dopingbefunden sind nicht an strafrechtlichen Prinzipien wie der Unschuldsvermutung oder des Grundsatzes *in dubio pro reo* zu messen (Urteile 4A_528/2022 vom 13. März 2023 E. 4.3.3; 4A_470/2016 vom 3. April 2017 E. 3.4; 4A_178/2014 vom 11. Juni 2014 E. 5.2; je mit Hinweisen). Ohnehin ist nicht belegt, dass das Schiedsgericht nach seiner einlässlichen Würdigung aller Beweismittel Zweifel am Dopingverstoss gehabt hätte.

Der Vorwurf, das TAS habe gegen den Grundsatz der *lex mitior* verstossen, scheitert bereits am Nachweis, dass die von ihm angerufenen Identifikationskriterien für rEPO gemäss dem Technischen Dokument TD2024EPO der WADA effektiv vorteilhafter sind als die angewendeten Kriterien gemäss der Version des Technischen Dokuments TD2022EPO. Nach der Beurteilung des TAS trifft dies nicht zu und hat der Beschwerdeführer im schiedsgerichtlichen Verfahren denn auch auf diesem Vorbringen nicht beharrt (Award Rz. 257 und 258). Ohnehin ist äusserst fraglich, ob der Grundsatz der *lex mitior,* der wie der Grundsatz *in dubio pro reo* aus dem Strafrecht stammt, bei der schiedsgerichtlichen Beurteilung von Disziplinarsanktionen privater Organisationen überhaupt zum Ordre public zu zählen ist.

Der in diesem Zusammenhang vom Beschwerdeführer angerufene Grundsatz *in dubio contra stipulatorem* ist entgegen seiner Meinung kein Bestandteil von *in dubio pro reo,* sondern eine Auslegungsregel im Vertragsrecht. Er zählt nicht zum formellen Ordre public, weshalb auf die diesbezüglichen Ausführungen nicht einzutreten ist.

5.4. Demnach erweisen sich alle Vorbringen angeblicher Verletzung des Ordre public als unbegründet, soweit darauf einzugehen ist.

6.
Der Beschwerdeführer beruft sich zuletzt auf Art. 6 EMRK, konkret auf das Recht auf ein faires Verfahren. Zur Begründung legt er

nicht dar, dass seine Verfahrensrechte im schiedsgerichtlichen Verfahren nicht respektiert worden wären. Er begnügt sich mit der Behauptung, die gerügte Gehörsverletzung sowie die beanstandete Verletzung der Grundsätze *in dubio pro reo* und *in dubio contra stipulatorem* sowie der *lex mitior* bedeuteten nebst der Ordre public-Widrigkeit gleichzeitig eine Verletzung des Anspruchs auf ein faires Verfahren.

Wie der Beschwerdeführer selber richtig festhält, kann nach ständiger Rechtsprechung des Bundesgerichts in der Beschwerde gegen einen Schiedsentscheid nicht direkt geltend gemacht werden, das Schiedsgericht habe die EMRK verletzt. Die aus Art. 6 EMRK fliessenden Grundsätze können aber gegebenenfalls bei der Konkretisierung der nach Art. 190 Abs. 2 IPRG anrufbaren Garantien herangezogen werden (**BGE 147 III 586** E. 5.2.1; **146 III 358** E. 4.1; **142 III 360** E. 4.1.2). Angesichts der strengen Begründungsanforderungen (Art. 77 Abs. 3 BGG) ist in der Beschwerde eigens aufzuzeigen, inwiefern die behauptete Konventionsverletzung eine Missachtung der nach Art. 190 Abs. 2 IPRG geschützten Verfahrensgarantien bedeuten soll (**BGE 147 III 586** E. 5.2.1; **146 III 358** E. 4.1; Urteil 4A_488/2023 vom 23. Januar 2024 E. 3).

Diesen strengen Begründungsanforderungen wird der Beschwerdeführer nicht gerecht, indem er die monierte Verletzung eines fairen Verfahrens nach Art. 6 EMRK pauschal mit den zuvor erhobenen Rügen gleichsetzt. Darauf ist nicht einzutreten.

Ohnehin haben sich diese Rügen allesamt als unbegründet erwiesen, und der Beschwerdeführer zeigt nicht auf, inwiefern sich unter dem Blickwinkel einer Konkretisierung der Rügegründe nach Art. 190 Abs. 2 IPRG im Lichte von Art. 6 EMRK im vorliegenden Fall etwas Anderes ergeben müsste. Namentlich sind entgegen dem Beschwerdeführer die strafrechtlichen Grundsätze der Unschuldsvermutung und *in dubio pro reo,* wie sie auch in der EMRK garantiert sind, in Disziplinarverfahren privatrechtlicher Organisationen, wie der Sportverbände, nicht anwendbar (Urteile 4A_10/2022 vom 17. Mai 2022 E. 5.4.2; 4A_644/2020 vom 23. August 2021 E. 6.3; 4A_462/2019 vom 29. Juli 2020 E. 7.1 mit Hinweisen).

7.
Die Beschwerde ist abzuweisen, soweit darauf eingetreten werden kann. Dem Ausgang des Verfahrens entsprechend wird der Beschwerdeführer kosten- und entschädigungspflichtig (siehe Art. 66 Abs. 1 sowie Art. 68 Abs. 1 und 2 BGG).

Entscheidung

Die Beschwerde wird abgewiesen, soweit darauf eingetreten wird.

A_544/2024
A. c. Union Internationale de Biathlon
20 mai 2025

Recours en matière civile contre la sentence rendue le 9 septembre 2024 par le Tribunal Arbitral du Sport (CAS 2020/A/6834)

Confirmation de la portée très restreinte du contrôle de l'ordre public - c'est le résultat, et non le raisonnement de la sentence du TAS qui doit être incompatible avec l'ordre public Suisse - et de la non-application des principes du droit pénal aux affaires disciplinaires dans le domaine du sport

Extrait des faits

A._____ (ci-après: l'athlète) est une ancienne biathlète russe de niveau international. Elle a remporté plusieurs médailles, notamment lors de deux éditions des championnats du monde de biathlon et des Jeux Olympiques de Vancouver 2010. Elle a mis un terme à sa carrière sportive en 2017.

L'Union Internationale de Biathlon (IBU) est l'instance dirigeante du biathlon au niveau mondial; son siège se trouve en Autriche.

À la suite de la diffusion sur une chaîne de télévision d'un documentaire concernant l'existence alléguée d'un programme de dopage étendu au sein de l'athlétisme russe, l'Agence Mondiale Antidopage (AMA) a nommé, en date du 16 décembre 2014, une commission indépendante de trois membres pour enquêter sur cette allégation. Dans son rapport du 9 novembre 2015, la commission indépendante a notamment identifié des manquements systémiques imputables aux autorités russes ayant eu pour effet d'entraver la lutte antidopage.

Le 12 mai 2016, le New York Times a publié un article intitulé "Russian Insider Says State-Run Doping Fueled Olympic Gold". L'auteur de ces révélations était le Dr Grigory Rodchenkov, qui dirigeait alors le laboratoire antidopage de Moscou.

Le 19 mai 2016, l'AMA a chargé le Professeur Richard McLaren de mener une enquête indépendante sur les allégations du Dr Rodchenkov. Dans un premier rapport, daté du 18 juillet 2016, le Prof. McLaren est arrivé à la conclusion qu'il existait un système de dissimulation et de manipulation des contrôles antidopage en Russie.

Le 9 décembre 2016, le Prof. McLaren a publié un second rapport dans lequel il a identifié une série d'athlètes suspectés d'avoir bénéficié du programme de dopage et de dissimulation mis en place.

En octobre 2017, l'AMA a reçu un extrait du système de gestion des informations du laboratoire de Moscou ("Laboratory Information Management System"; ci-après: LIMS). L'extrait de cette base de données, utilisée par le laboratoire pour stocker les résultats des analyses des échantillons, concernait ceux qui avaient été prélevés sur les athlètes entre janvier 2012 et août 2015 (ci-après: LIMS 2015). Il a révélé l'existence de résultats analytiques présumés anormaux obtenus lors de contrôles initiaux des échantillons qui n'avaient pas été signalés en tant que tels dans le système d'administration et de gestion antidopage de l'AMA (le système ADAMS).

En janvier 2019, un groupe d'experts de l'AMA a reçu l'autorisation de pénétrer dans le laboratoire de Moscou et d'effectuer des copies de la base de données LIMS (ci-après: LIMS 2019). En avril 2019, les autorités russes ont envoyé à l'AMA un grand nombre d'échantillons qui avaient été stockés dans le laboratoire de Moscou.

Le 16 septembre 2018, l'IBU a accusé l'athlète d'avoir commis une infraction à la réglementation antidopage. Selon elle, l'analyse des données du LIMS 2015 avait notamment permis d'établir que l'athlète avait fait usage d'une substance interdite (l'ostarine). Les données en question indiquaient en effet que la première analyse et la procédure de confirmation réalisées sur un échantillon d'urine fourni par l'athlète le 22 mars 2013 (ci-après: l'échantillon litigieux), lors d'un contrôle antidopage en compétition, avaient révélé la présence de ladite substance. Ce résultat d'analyse anormal ("Adverse Analytical Finding" [AAF]) avait toutefois été faussement enregistré en tant que résultat négatif dans le système ADAMS.

Le 11 février 2020, la Commission disciplinaire de l'IBU a considéré que l'athlète avait enfreint la réglementation antidopage, l'a suspendue pendant une durée de deux ans à compter de sa décision et a annulé tous les résultats obtenus par l'intéressée lors des épreuves de l'IBU auxquelles elle avait pris part depuis le 22 mars 2013 jusqu'à sa retraite sportive, sanction impliquant notamment le retrait de l'ensemble des médailles, points et prix gagnés par la sportive au cours de cette période.

Le 4 mars 2020, l'athlète a saisi le Tribunal Arbitral du Sport (TAS) d'un appel dirigé contre la décision rendue par la Commission disciplinaire de l'IBU.

La Formation désignée par le TAS, composée de trois arbitres, a tenu une audience à Lausanne le 31 août 2022.

Par sentence du 9 septembre 2024, la Formation a rejeté l'appel interjeté par l'athlète et confirmé la décision entreprise. Elle a souligné que les données relatives à l'échantillon litigieux enregistrées dans le LIMS 2015 étaient authentiques, tandis que celles figurant dans le LIMS 2019 avaient été intentionnellement manipulées aux fins de dissimuler le résultat positif du contrôle antidopage en question. Après avoir analysé les données du LIMS relatives à l'échantillon litigieux ainsi que les enquêtes conduites par les experts sur lesdites données, la Formation a considéré que les preuves recueillies établissaient, dans le contexte avéré d'un système de dopage organisé en Russie, que l'athlète avait utilisé une substance interdite.

Le 10 octobre 2024, l'athlète (ci-après: la recourante) a formé un recours en matière civile aux fins d'obtenir l'annulation de ladite sentence.

(…)

Extrait des considérants

5.
Dans un premier moyen, la recourante, invoquant l'art. 190 al. 2 let. d LDIP, dénonce une violation de son droit d'être entendue.

5.1. La jurisprudence a déduit du droit d'être entendu, tel qu'il est garanti par les art. 182 al. 3 et 190 al. 2 let. d LDIP, un devoir minimum pour le tribunal arbitral d'examiner et de traiter les problèmes pertinents. Ce devoir est violé lorsque, par inadvertance ou malentendu, le tribunal arbitral ne prend pas en considération des allégués, arguments, preuves et offres de preuve présentés par l'une des parties et importants pour la sentence à rendre. Il incombe à la partie soi-disant lésée de démontrer, dans son recours dirigé contre la sentence, en quoi une inadvertance des arbitres l'a empêchée de se faire entendre sur un point important. C'est à elle d'établir, d'une part, que le tribunal

arbitral n'a pas examiné certains des éléments de fait, de preuve ou de droit qu'elle avait régulièrement avancés à l'appui de ses conclusions et, d'autre part, que ces éléments étaient de nature à influer sur le sort du litige (**ATF 142 III 360** consid. 4.1.1 et 4.1.3; arrêt 4A_478/2017 du 2 mai 2018 consid. 3.2.1). Si la sentence passe totalement sous silence des éléments apparemment importants pour la solution du litige, c'est aux arbitres ou à la partie intimée qu'il appartiendra de justifier cette omission dans leurs observations sur le recours (**ATF 133 III 235** consid. 5.2; arrêts 4A_618/2020 du 2 juin 2021 consid. 4.2; 4A_478/2017, précité, consid. 3.2.1). Cependant, les arbitres n'ont pas l'obligation de discuter tous les arguments invoqués par les parties, de sorte qu'il ne peut leur être reproché, au titre de la violation du droit d'être entendu en procédure contradictoire, de n'avoir pas réfuté, même implicitement, un moyen objectivement dénué de toute pertinence (**ATF 133 III 235** consid. 5.2; arrêt 4A_692/2016 du 20 avril 2017 consid. 5.2).

C'est le lieu de rappeler que le grief tiré de la violation du droit d'être entendu ne doit pas servir, pour la partie qui se plaint de vices affectant la motivation de la sentence, à provoquer par ce biais un examen de l'application du droit de fond (**ATF 142 III 360** consid. 4.1.2).

5.2. La recourante fait valoir que les données du LIMS récupérées par l'AMA au sein du laboratoire de Moscou n'étaient pas fiables, raison pour laquelle elles ne pouvaient pas être utilisées pour conclure à l'existence d'une infraction à la réglementation antidopage. Pour elle, les arbitres auraient omis de tenir compte de ce que, selon les chiffres communiqués par l'intimée le 24 août 2021, plus de 95 % des échantillons considérés comme suspects d'après les données du LIMS s'étaient révélés négatifs après avoir fait l'objet d'une nouvelle analyse. Ils n'auraient ainsi pas pris en compte cet élément décisif. La recourante reproche en outre à la Formation d'avoir écarté les nombreuses critiques qu'elle avait émises aux fins de démontrer que le laboratoire de Moscou n'avait pas pu procéder à une analyse conforme aux règles de l'art lors de l'examen de l'échantillon litigieux.

5.3. Tel qu'il est présenté, le grief ne saurait prospérer.

Bien qu'elle prétende le contraire, la recourante, sous le couvert d'une prétendue atteinte à son droit d'être entendue, s'en prend, en réalité, à l'appréciation des preuves, telle qu'elle a été faite par la Formation, ce qui n'est pas admissible. Quoi qu'il en soit, le moyen de preuve dont fait grand cas l'intéressée, c'est-à-dire la lettre du 24 août 2021, n'a visiblement pas échappé aux arbitres puisque ceux-ci y ont fait référence, comme on peut s'en convaincre à la lecture de la sentence attaquée:

"56. On 17 August 2021, the Panel invited the Respondent to answer the following questions raised by the Appellant:

"1. Is it possible to conduct further testing on the sample... ?
2. How many samples appearing as positive findings in the LIMS, but reported as negative in ADAMS, could have been reanalysed?
3. Out of these samples, how many were ultimately found to be negative further to the reanalysis procedure?"
57. On 24 August 2021, the Respondent provided his answer to the above questions."

Lors de l'examen des mérites de l'appel, la Formation a examiné, par le menu, sur plus d'une dizaine de pages, la fiabilité des données du LIMS en général et singulièrement de celles relatives à l'échantillon litigieux, ainsi que le fonctionnement du laboratoire de Moscou et les vices allégués qui auraient prétendument affecté la validité des analyses effectuées par

celui-ci. Au terme de cet examen détaillé, elle a conclu que les données relatives à l'échantillon litigieux étaient authentiques et fiables et qu'elles établissaient que l'athlète avait utilisé une substance interdite. Il appert de la motivation retenue par les arbitres que ceux-ci n'ont visiblement pas jugé décisifs les éléments avancés par la recourante au soutien de sa thèse selon laquelle les données du LIMS n'étaient pas fiables et ne pouvaient pas être retenues contre elle pour conclure à l'existence d'une infraction à la réglementation antidopage. C'est le lieu de préciser ici que la recourante ne saurait obtenir des explications sur chaque détail du raisonnement tenu par la Formation. Force est ainsi d'admettre que la Formation a bel et bien rejeté, ne serait-ce que de manière implicite, l'argument prétendument décisif auquel fait référence la recourante. Le moyen considéré ne peut dès lors qu'être rejeté, dans la mesure où il est recevable.

6.
Dans un second moyen, la recourante, invoquant l'art. 190 al. 2 let. e LDIP et l'art. 6 par. 2 de la Convention européenne des droits de l'homme (CEDH; RS 0.101), soutient que la sentence querellée viole le principe de la présomption d'innocence et aboutit à un résultat contraire au sentiment de justice et d'équité. Selon elle, l'existence d'une infraction à la réglementation antidopage a été retenue sur la base de preuves manquant de fiabilité, raison pour laquelle le doute aurait dû lui profiter.

6.1. Une sentence est contraire à l'ordre public matériel lorsqu'elle viole des principes fondamentaux du droit de fond au point de ne plus être conciliable avec l'ordre juridique et le système de valeurs déterminants (**ATF 144 III 120** consid. 5.1; **132 III 389** consid. 2.2.1). Qu'un motif retenu par un tribunal arbitral heurte l'ordre public n'est pas suffisant; c'est le résultat auquel la sentence aboutit qui doit être incompatible avec l'ordre public (**ATF 144 III 120** consid. 5.1). L'incompatibilité de la sentence avec l'ordre public, visée à l'art. 190 al. 2 let. e LDIP, est une notion plus restrictive que celle d'arbitraire (**ATF 144 III 120** consid. 5.1; arrêt 4A_318/2018 du 4 mars 2019 consid. 4.3.1). Pour qu'il y ait incompatibilité avec l'ordre public, il ne suffit pas que les preuves aient été mal appréciées, qu'une constatation de fait soit manifestement fausse ou encore qu'une règle de droit ait été clairement violée (arrêts 4A_116/2016 du 13 décembre 2016 consid. 4.1; 4A_304/2013 du 3 mars 2014 consid. 5.1.1; 4A_458/2009 du 10 juin 2010 consid. 4.1).

6.2. Selon la jurisprudence constante du Tribunal fédéral, une partie ne peut pas se plaindre directement, dans le cadre d'un recours en matière civile au Tribunal fédéral formé contre une sentence arbitrale internationale, de ce que les arbitres auraient violé l'art. 6 par. 1 CEDH, même si les principes découlant de cette disposition peuvent servir, le cas échéant, à concrétiser les garanties invoquées sur la base de l'art. 190 al. 2 LDIP (**ATF 147 III 586** consid. 5.2.1; **146 III 358** consid. 4.1; **142 III 360** consid. 4.1.2; arrêt 4A_268/2019 du 17 octobre 2019 consid. 3.4.3).
Eu égard aux exigences strictes de motivation applicables en matière d'arbitrage (art. 77 al. 3 LTF), il appartient ainsi à la partie recourante de démontrer en quoi la prétendue violation d'une garantie conventionnelle constitue une atteinte à l'ordre public visé par l'art. 190 al. 2 let. e LDIP (**ATF 147 III 586** consid. 5.2.1; **146 III 358** consid. 4.1).

6.3. Dans plusieurs arrêts, le Tribunal fédéral a souligné que l'application automatique de notions telles que la présomption d'innocence et le principe *in dubio pro reo*, ainsi que des garanties correspondantes figurant dans la CEDH, ne va pas de soi en matière de sanctions disciplinaires prononcées par des associations de droit privé, telles les fédérations sportives (arrêts 4A_10/2022 du 17 mai 2022 consid. 5.4.2; 4A_644/2020 du 23 août 2021 consid. 6.3; 4A_462/2019 du

29 juillet 2020 consid. 7.1; 4A_178/2014 du 11 juin 2014 consid. 5.2 et les références citées). Si la mise en oeuvre du principe *in dubio pro reo* ne prête pas à discussion dans une procédure disciplinaire ou pénale ordinaire, en raison des pouvoirs d'investigation et de coercition étendus dont dispose l'État, l'application stricte du même principe dans le cas de procédures disciplinaires conduites par des organismes privés ne pouvant pas s'appuyer sur un tel rapport de puissance vis-à-vis des sportifs soupçonnés de pratiques interdites pourrait en effet empêcher le système mis en place pour lutter contre le fléau que constitue le dopage sportif de fonctionner correctement (arrêt 4A_488/2011 du 18 juin 2012 consid. 6.2). Dans un arrêt rendu le 6 février 2025 (cause 4A_474/2024), le Tribunal fédéral a considéré que la présomption d'innocence et le *principe in dubio pro reo*, tels qu'ils sont garantis par la CEDH, ne sont pas applicables dans les procédures disciplinaires des organisations de droit privé telles que les fédérations sportives (consid. 6).

6.4. Se fondant en particulier sur les considérations émises par la Section III de la Cour européenne des droits de l'homme (ci-après: la CourEDH) dans son arrêt rendu le 11 juillet 2023 dans l'affaire *Semenya contre la Suis* se, la recourante soutient qu'elle devrait pouvoir invoquer directement les garanties reconnues par la CEDH dans le cadre d'un recours dirigé contre une sentence internationale, sans qu'il existe la moindre limitation du pouvoir d'examen du Tribunal fédéral à cet égard. Ce faisant, elle méconnaît le fait que l'arrêt en question n'est pas définitif, puisque l'affaire Semenya est toujours pendante devant la Grande Chambre de la CourEDH. Cette circonstance a du reste conduit le Tribunal fédéral à confirmer récemment que la partie recourante ne peut pas invoquer directement les garanties de la CEDH dans un recours formé en matière d'arbitrage international (arrêt 4A_488/2023 du 23 janvier 2024 consid. 3). Il ne saurait en être autrement ici. Aussi est-ce en vain que l'intéressée prétend que la Cour de céans devrait en l'occurrence examiner avec une pleine cognition toute violation éventuelle des garanties conventionnelles.

Au vu de ce qui précède, la recourante s'emploie, en pure perte, à démontrer que la Formation aurait enfreint l'art. 6 par. 2 CEDH. Les éléments avancés par la recourante dans ses écritures ne commandent pas davantage de s'écarter de la jurisprudence bien établie du Tribunal fédéral selon laquelle la présomption d'innocence et le principe *in dubio pro reo*, tels qu'ils sont garantis par la CEDH, ne sont pas applicables dans les procédures disciplinaires sportives.

Pour le reste, sous le couvert d'une prétendue violation de l'ordre public matériel, la recourante critique de manière inadmissible l'appréciation des preuves à laquelle s'est livrée la Formation pour en tirer la conclusion que les éléments à sa disposition permettaient de conclure à l'existence d'une infraction à la réglementation antidopage. Elle cherche, en réalité, à refaire le procès arbitral, en exposant une nouvelle fois le point de vue juridique qu'elle a défendu devant la Formation et qui n'a pas trouvé grâce aux yeux des arbitres. Il va sans dire que pareille démarche est vaine. En tout état de cause, la Cour de céans ne considère pas que le résultat auquel a abouti la Formation est contraire à l'ordre public, c'est-à-dire aux valeurs essentielles et largement reconnues qui, selon les conceptions prévalant en Suisse, devraient constituer le fondement de tout ordre juridique.
Il suit de là que le moyen pris d'une violation de l'art. 190 al. 2 let. e LDIP doit être écarté.
(…)

Décision

Le recours est rejeté dans la mesure où il est recevable.

(…)

4A_608/2024
A. c. Fédération Internationale de Football Association
22 janvier 2025

Recours en matière civile contre la sentence rendue le 14 octobre 2024 par le Tribunal Arbitral du Sport (CAS 2023/A/10002)

Confirmation des limites strictes au droit d'être entendu dans le cadre des recours en arbitrage international: il n'y a pas de violation du droit d'être entendu lorsque la formation arbitrale examine implicitement et rejette les arguments soulevés

Extrait des faits

En sa qualité d'instance dirigeante du football au niveau mondial, la Fédération Internationale de Football Association (FIFA) a adopté diverses règles relatives à la rétribution des clubs de football ayant contribué à la formation des jeunes joueurs.

Selon l'art. 20 du Règlement du Statut et du Transfert des Joueurs édicté par la FIFA (ci-après: le RSTJ) et l'art. 2 al. 1 de l'annexe 4 au RSTJ, une indemnité de formation est due à l'ancien club formateur (ou aux anciens clubs formateurs s'ils sont plusieurs) lorsqu'un joueur est enregistré pour la première fois en tant que joueur professionnel ou lorsqu'un footballeur professionnel est transféré entre des clubs appartenant à deux associations différentes (durant ou à la fin de son contrat) avant la fin de l'année calendaire de son 23ème anniversaire.

Le Règlement de la Chambre de compensation de la FIFA (ci-après: le RCCF), adopté en octobre 2022, prévoit une procédure partiellement automatisée aux fins notamment d'arrêter le montant des indemnités de formation. En vertu de l'art. 8 al. 1 du RCCF, lorsqu'une indemnité de formation est due, un "passeport électronique de joueur" ("Electronic Player Passeport"; ci-après: l'EPP) provisoire - document contenant toutes les informations liées à l'enregistrement d'un joueur au cours de sa carrière - est généré dans le système de régulation des transferts de la FIFA ("Transfer Matching System"; ci-après: le TMS) pour le footballeur concerné. Selon l'art. 8 al. 2 du RCCF, les associations membres et les clubs peuvent consulter l'EPP provisoire dans le TMS dans les dix jours suivant l'émission dudit document (période d'inspection). Une fois la période d'inspection terminée, le secrétariat général de la FIFA évalue l'exactitude de l'EPP provisoire conformément à l'art. 8 al. 4 du RCCF, puis il ouvre une procédure d'examen dudit document dans le TMS et invite les parties mentionnées à l'art. 9 al. 1 du RCCF à y prendre part. La procédure d'évaluation de l'EPP provisoire dure 15 jours, mais le secrétariat général de la FIFA peut, à sa seule discrétion, en prolonger la durée (art. 9 al. 2 du RCCF). Toute demande visant à modifier les informations d'enregistrement doit être faite dans le TMS (art. 9 al. 4 du RCCF). Si un club formateur renonce à son droit à une indemnité de formation, une preuve de renonciation valable doit être annoncée dans le TMS par le nouveau club (art. 9 al. 7 du RCCF). Une fois la procédure d'examen de l'EPP provisoire terminée, le secrétariat général de la FIFA communique l'issue de la procédure aux parties concernées, via le TMS (art. 9 al. 10 du RCCF), et décide si les informations d'enregistrement doivent être intégrées à l'EPP final (art. 10 al. 3 du RCCF). Il peut demander, pendant ou après la procédure d'examen de l'EPP, à toute partie impliquée dans ladite procédure de lui faire part de sa position concernant le droit d'un club à obtenir une indemnité de formation (art. 10 al. 2 du RCCF). Une déclaration

d'affectation, c'est-à-dire un document contenant toutes les données nécessaires pour collecter les indemnités de formation et les reverser au (x) club (s) formateur (s), est générée automatiquement par le TMS sur la base de la version finale de l'EPP (art. 10 al. 4 du RCCF), et transmise immédiatement par le TMS à la Chambre de compensation de la FIFA. Cette entité, distincte de la FIFA, assume notamment le rôle d'intermédiaire dans le paiement des indemnités de formation. En vertu de l'art. 10 al. 5 du RCCF, le secrétariat général de la FIFA notifie les versions finales de l'EPP et de la déclaration d'affectation à toutes les parties ayant pris part à la procédure d'examen de l'EPP.

Le 12 janvier 2023, le joueur de football néerlandais B._____ (ci-après: le footballeur ou le joueur), né en mars 2001, a été définitivement transféré au club de football professionnel letton A._____ (ci-après: le club letton), lequel est membre de la Fédération Lettone de Football, elle-même affiliée à la FIFA.

Avant ledit transfert, le footballeur avait notamment été enregistré en tant que joueur professionnel prêté au club de football néerlandais C._____ (ci-après: C._____) du 19 août 2022 au 31 décembre 2022.

Le 7 mars 2023, un EPP provisoire a été généré dans le TMS pour le joueur. Cette information a été communiquée au club letton via le TMS ainsi que par courrier électronique.

Une fois la période d'inspection terminée, toutes les parties concernées, y compris le club letton, ont été informées le 20 mars 2023 de l'ouverture de la procédure d'examen de l'EPP provisoire visée par l'art. 9 du RCCF.

Le 18 août 2023, la FIFA a fait savoir au club letton que la procédure d'examen de l'EPP provisoire du joueur était terminée et lui a indiqué que de nouvelles informations avaient été introduites dans le document en question au cours de la procédure. Elle l'a invité à produire, jusqu'au 23 août 2023, tout document pertinent en vue de la fixation des indemnités de rétribution, et notamment d'éventuelles renonciations ("waivers") de clubs formateurs à des indemnités de formation.

Le 22 août 2023, le club letton a reçu un nouveau courrier électronique, généré automatiquement, le rendant attentif au fait que le délai pour fournir les informations requises expirait le lendemain.

Le club letton n'a pas produit le moindre document dans le délai imparti.

La version finale de l'EPP du footballeur (i.e. l'EPP...) a été délivrée le 29 août 2023. Selon la déclaration d'affectation TC-..., générée automatiquement le même jour, le club letton devait payer au club formateur C._____ la somme de 7'397.26 euros (EUR).

Le 30 août 2023, la FIFA a notifié au club letton l'EPP... et la déclaration d'affectation TC-....

Le 14 septembre 2023, le club letton a introduit, dans le TMS, un document, daté du 20 janvier 2023 (ci-après: la déclaration de renonciation), dans lequel C._____ indiquait renoncer à un éventuel droit à une indemnité de formation pour le footballeur.

Le 18 septembre 2023, la FIFA a notamment indiqué au club letton qu'une preuve de la renonciation à une indemnité de formation aurait dû être produite lors de la procédure d'examen de l'EPP, conformément à l'art. 9 al. 7 du RCCF. Elle a ajouté que la décision rendue à propos de l'EPP et de la déclaration d'affectation revêtait un caractère final.

Le 20 septembre 2023, le club letton a contesté la décision du 29 août 2023 auprès

du Tribunal Arbitral du Sport (TAS). Son appel était dirigé exclusivement contre la FIFA.

(…)

Par sentence finale du 14 octobre 2024, l'arbitre a rejeté l'appel formé par le club letton. En bref, il a considéré que l'appelant aurait dû également attraire C._____ à la procédure. Ce dernier possédait en effet la qualité pour défendre puisqu'il était directement concerné par le sort de la procédure d'appel, étant donné qu'il avait droit à une indemnité de formation en vertu de la décision attaquée devant le TAS. L'arbitre a aussi constaté que l'appelant n'avait pas téléchargé dans le TMS la déclaration de renonciation dans le respect du délai visé par l'art. 9.7 du RCCF, empêchant ainsi C._____ de contester, le cas échéant, la validité dudit document. En ne désignant pas C._____ comme défendeur dans la procédure d'appel, l'appelant avait en outre privé ledit club de la possibilité de faire valoir d'éventuelles objections relatives à la validité de la déclaration de renonciation. L'arbitre a estimé que l'affirmation de l'appelant selon laquelle le document concerné était valide ne le dispensait pas de l'obligation d'attraire C._____ à la procédure.

Le 14 novembre 2024, le club letton (ci-après: le recourant) a formé un recours en matière civile, assorti d'une requête d'effet suspensif, aux fins d'obtenir l'annulation de cette sentence.

(…)

Extrait des considérants

(…)

5.
Dans un premier moyen, le recourant, invoquant l'art. 190 al. 2 let. d LDIP, dénonce une violation de son droit d'être entendu. Il reproche à l'arbitre d'avoir omis de prendre en considération plusieurs arguments qu'il avait soulevés au cours de la procédure d'arbitrage qui étaient de nature à influer sur le sort du litige.

5.1. La jurisprudence a déduit du droit d'être entendu, tel qu'il est garanti par les art. 182 al. 3 et 190 al. 2 let. d LDIP, un devoir minimum pour le tribunal arbitral d'examiner et de traiter les problèmes pertinents. Ce devoir est violé lorsque, par inadvertance ou malentendu, le tribunal arbitral ne prend pas en considération des allégués, arguments, preuves et offres de preuve présentés par l'une des parties et importants pour la sentence à rendre (**ATF 142 III 360** consid. 4.1.1 et les références citées). Il incombe à la partie soi-disant lésée de démontrer, dans son recours dirigé contre la sentence, en quoi une inadvertance des arbitres l'a empêchée de se faire entendre sur un point important. C'est à elle d'établir, d'une part, que le tribunal arbitral n'a pas examiné certains des éléments de fait, de preuve ou de droit qu'elle avait régulièrement avancés à l'appui de ses conclusions et, d'autre part, que ces éléments étaient de nature à influer sur le sort du litige (**ATF 142 III 360** consid. 4.1.1 et 4.1.3). Si la sentence passe totalement sous silence des éléments apparemment importants pour la solution du litige, c'est aux arbitres ou à la partie intimée qu'il appartiendra de justifier cette omission dans leurs observations sur le recours. Ceux-ci pourront le faire en démontrant que, contrairement aux affirmations du recourant, les éléments omis n'étaient pas pertinents pour résoudre le cas concret ou, s'ils l'étaient, qu'ils ont été réfutés implicitement par le tribunal arbitral (**ATF 133 III 235** consid. 5.2).

Au demeurant, le grief tiré de la violation du droit d'être entendu ne doit pas servir, pour la partie qui se plaint de vices affectant la motivation de la sentence, à provoquer par ce biais un examen de l'application du droit de fond (**ATF 142 III 360** consid. 4.1.2 et les références citées).

5.2. Pour étayer son moyen pris de la violation de l'art. 190 al. 2 let. d LDIP, le recourant reproche, en substance, à l'arbitre d'avoir omis d'examiner les contradictions qu'il avait décelées entre les divers règlements édictés par l'intimée. Il insiste en particulier sur le fait qu'il n'existerait pas de délai pour présenter une déclaration de renonciation à une indemnité de formation. Selon l'intéressé, l'arbitre a omis, de façon inexplicable, de se pencher plus avant sur la réglementation adoptée par l'intimée. Le recourant fait aussi grief à l'arbitre de ne pas avoir pris en considération certains éléments visant à établir que la procédure concernée revêt un caractère disciplinaire et qu'il ne s'agit ainsi pas d'un litige de nature contractuelle opposant deux équipes de football. Il se plaint également de ce que le TAS n'a pas discuté l'argument selon lequel le fait pour l'intimée d'exiger de sa part le paiement d'une indemnité de formation, alors même qu'une déclaration de renonciation a été signée par C._____, était constitutif d'un abus de droit manifeste. Le recourant reproche, enfin, au TAS d'avoir désigné un avocat danois en tant qu'arbitre qui, à son avis, ne possédait pas les connaissances nécessaires en droit suisse, alors même que ledit droit était applicable à titre supplétif.

5.3. L'argumentation présentée par le recourant n'emporte nullement la conviction de la Cour de céans. Par sa critique purement appellatoire, l'intéressé, sous le couvert d'une prétendue atteinte à son droit d'être entendu, ne cherche, en réalité, qu'à refaire le procès arbitral, en exposant une nouvelle fois le point de vue juridique qu'il a défendu devant l'arbitre. Semblable démarche est inadmissible en matière d'arbitrage international. En tout état de cause, il ressort de la sentence attaquée que l'arbitre a estimé, à tout le moins implicitement, que les arguments matériels soulevés par le recourant au sujet d'éventuelles incohérences affectant la réglementation édictée par l'intimée ou d'un prétendu comportement incompatible avec les règles de la bonne foi de sa part n'étaient pas de nature à influer sur le sort du litige. Il appert, en effet, que l'arbitre a visiblement considéré qu'il s'agissait bel et bien d'un litige de nature contractuelle intéressant plusieurs équipes de football et que le recourant aurait dû diriger également son appel au TAS contre C._____. Contrairement à ce que soutient le recourant, ce n'est ainsi pas de manière inexpliquée que l'arbitre ne s'est pas penché sur les autres arguments invoqués par l'intéressé se rapportant au contenu de la réglementation édictée par l'intimée et aux conditions auxquelles un club formateur peut renoncer à une indemnité de formation. Aussi est-ce en pure perte que le recourant discute de la portée exacte qu'il conviendrait de donner à certaines règles adoptées par l'intimée. Pour le reste, la critique du recourant, en tant qu'elle porte sur les connaissances et les qualités de l'arbitre, ne relève en aucun cas de l'art. 190 al. 2 let. d LDIP. Il s'ensuit le rejet du grief considéré dans la mesure de sa recevabilité.

6.
Dans un second moyen, le recourant prétend que la sentence querellée est incompatible avec l'ordre public matériel.

6.1. Une sentence est incompatible avec l'ordre public si elle méconnaît les valeurs essentielles et largement reconnues qui, selon les conceptions prévalant en Suisse, devraient constituer le fondement de tout ordre juridique (**ATF 144 III 120** consid. 5.1; **132 III 389** consid. 2.2.3). On distingue un ordre public procédural et un ordre public matériel.

6.1.1. Une sentence est contraire à l'ordre public matériel lorsqu'elle viole des principes fondamentaux du droit de fond au point de ne plus être conciliable avec l'ordre juridique et le système de valeurs déterminants (**ATF 144 III 120** consid. 5.1; **132 III 389** consid. 2.2.1). Qu'un motif retenu par un tribunal

arbitral heurte l'ordre public n'est pas suffisant; c'est le résultat auquel la sentence aboutit qui doit être incompatible avec l'ordre public (**ATF 144 III 120** consid. 5.1). L'incompatibilité de la sentence avec l'ordre public, visée à l'art. 190 al. 2 let. e LDIP, est une notion plus restrictive que celle d'arbitraire (**ATF 144 III 120** consid. 5.1; arrêts 4A_318/2018 du 4 mars 2019 consid. 4.3.1; 4A_600/2016 du 29 juin 2017 consid. 1.1.4). Pour qu'il y ait incompatibilité avec l'ordre public, il ne suffit pas que les preuves aient été mal appréciées, qu'une constatation de fait soit manifestement fausse ou encore qu'une règle de droit ait été clairement violée (arrêts 4A_116/2016 du 13 décembre 2016 consid. 4.1; 4A_304/2013 du 3 mars 2014 consid. 5.1.1; 4A_458/2009 du 10 juin 2010 consid. 4.1). L'annulation d'une sentence arbitrale internationale pour ce motif de recours est chose rarissime (**ATF 132 III 389** consid. 2.1).

6.1.2. Il y a violation de l'ordre public procédural lorsque des principes de procédure fondamentaux et généralement reconnus ont été violés, conduisant à une contradiction insupportable avec le sentiment de la justice, de telle sorte que la décision apparaît incompatible avec les valeurs reconnues dans un État de droit (**ATF 141 III 229** consid. 3.2.1; **140 III 278** consid. 3.1; **136 III 345** consid. 2.1). Selon une jurisprudence constante, l'ordre public procédural, au sens de l'art. 190 al. 2 let. e LDIP, n'est qu'une garantie subsidiaire ne pouvant être invoquée que si aucun des moyens prévus à l'art. 190 al. 2 let. a-d LDIP n'entre en ligne de compte (**ATF 138 III 270** consid. 2.3).

6.2. Selon le recourant, l'arbitre n'aurait pas veillé à ce que la procédure soit conduite correctement et aurait ignoré certains principes fondamentaux du droit suisse, tels que celui de la fidélité contractuelle, de la liberté contractuelle, de la liberté personnelle et de la charge de la preuve.

6.3. Pareille affirmation tombe à faux. Force est d'emblée de souligner que les quelques paragraphes que l'intéressé consacre à sa démonstration, à grand renfort d'affirmations péremptoires, ne constituent pas une motivation digne de ce nom visant à établir l'existence d'une prétendue contrariété à l'ordre public. Il apparaît en outre que le moyen examiné consiste, dans une très large mesure, en une présentation, sous un autre angle, des critiques similaires formulées antérieurement au soutien du grief tiré de la violation de l'art. 190 al. 2 let. d LDIP qui ont déjà été écartées. Quoi qu'il en soit, le résultat auquel a abouti l'arbitre, eu égard à l'ensemble des circonstances de la cause en litige, n'apparaît nullement contraire à l'ordre public visé par l'art. 190 al. 2 let. e LDIP, ce qui seul importe ici. Il s'ensuit le rejet du grief dans la mesure de sa recevabilité.

Décision

Le recours est rejeté dans la mesure où il est recevable.

4A_638/2024
A. c. B.
27 mars 2025

Recours en matière civile contre la sentence rendue le 31 octobre 2024 par le Tribunal Arbitral du Sport (CAS 2021/A/8268)

Le fait de ne pas tenir compte d'une disposition contractuelle relative à une clause pénale ne constitue pas une violation de l'ordre public / pacta sunt servanda lorsque le tribunal arbitral considère ladite disposition comme nulle

Extrait des faits

A._____ (ci-après: le club ou A._____) est un club de football professionnel, membre de la Fédération C._____ de Football (C._____), elle-même affiliée à la Fédération Internationale de Football Association (FIFA).

Par contrat de travail du 23 septembre 2020, A._____ a engagé B._____, ressortissant portugais, en qualité d'entraîneur. Le terme des rapports de travail a été fixé soit au 31 juillet 2021 soit à la fin de la saison sportive 2020/2021. L'entraîneur avait droit à une rémunération nette de 1'020'000 euros (EUR), payable en dix mensualités. Il pouvait en outre prétendre, à certaines conditions, au paiement de divers bonus. L'art. 5 du contrat de travail prévoyait ce qui suit:

"If any party for what so ever reason terminate the contract before the end of the contract, the terminating party will pay other party an amount of 204.000 EUR [...] NET of any taxes".

Le 11 mars 2021, le club a licencié l'entraîneur.

En août 2021, A._____ a remporté le championnat de football....

Le 12 avril 2021, B._____ a saisi la Commission du Statut du Joueur (CSJ) de la FIFA d'une demande visant à obtenir de A._____ le paiement de 246'962.50 EUR à titre d'arriérés de salaire et de bonus ainsi que le versement d'une indemnité de 1'455'065.50 EUR pour résiliation unilatérale du contrat de travail sans juste cause, le tout avec intérêts.

Statuant le 30 juin 2021, la CSJ FIFA, faisant partiellement droit à la demande, a condamné le club à payer à l'entraîneur divers montants dont une indemnité de 204'000 EUR, intérêts en sus, pour rupture du contrat de travail injustifiée.

Le 27 août 2021, l'entraîneur a appelé de cette décision auprès du Tribunal Arbitral du Sport (TAS).

(…)

Par sentence du 31 octobre 2024, la Formation a partiellement admis l'appel formé par l'entraîneur. Elle a confirmé la décision de la CSJ FIFA en tant qu'elle avait alloué à l'appelant 244'800 EUR et 40'000..., intérêts en sus, à titre d'arriérés de salaires et de bonus. Pour le reste, la Formation a réformé ladite décision. Elle a ainsi considéré que l'entraîneur avait droit à un montant de 469'200 EUR à titre d'indemnité pour rupture du contrat de travail sans juste cause et à une somme de 102'000 EUR à titre de compensation partielle pour le bonus convenu en cas de victoire en championnat de A._____, le tout avec intérêts. Les motifs qui étayent cette décision seront

examinés plus loin dans la mesure utile à la compréhension des critiques dont celle-ci est la cible.

Le 29 novembre 2024, le club (ci-après: le recourant) a formé un recours en matière civile, assorti d'une requête d'effet suspensif, aux fins d'obtenir l'annulation de cette sentence.
La demande d'effet suspensif a été rejetée par ordonnance présidentielle du 4 décembre 2024.

(…)

Extrait des considérants

(…)

5.
Dans un unique moyen, le recourant, invoquant l'art. 190 al. 2 let. e LDIP, reproche à la Formation d'avoir enfreint le principe de la fidélité contractuelle et, partant, d'avoir rendu une sentence incompatible avec l'ordre public matériel.

5.1. Une sentence est incompatible avec l'ordre public si elle méconnaît les valeurs essentielles et largement reconnues qui, selon les conceptions prévalant en Suisse, devraient constituer le fondement de tout ordre juridique (**ATF 144 III 120** consid. 5.1; **132 III 389** consid. 2.2.3). Tel est le cas lorsqu'elle viole des principes fondamentaux du droit de fond au point de ne plus être conciliable avec l'ordre juridique et le système de valeurs déterminants (**ATF 144 III 120** consid. 5.1). Qu'un motif retenu par un tribunal arbitral heurte l'ordre public n'est pas suffisant; c'est le résultat auquel la sentence aboutit qui doit être incompatible avec l'ordre public (**ATF 144 III 120** consid. 5.1). L'incompatibilité de la sentence avec l'ordre public, visée à l'art. 190 al. 2 let. e LDIP, est une notion plus restrictive que celle d'arbitraire (**ATF 144 III 120** consid. 5.1; arrêts 4A_318/2018 du 4 mars 2019 consid. 4.3.1; 4A_600/2016 du 29 juin 2017 consid. 1.1.4). Pour qu'il y ait incompatibilité avec l'ordre public, il ne suffit pas que les preuves aient été mal appréciées, qu'une constatation de fait soit manifestement fausse ou encore qu'une règle de droit ait été clairement violée (arrêts 4A_116/2016 du 13 décembre 2016 consid. 4.1; 4A_304/2013 du 3 mars 2014 consid. 5.1.1; 4A_458/2009 du 10 juin 2010 consid. 4.1).

Pour juger si la sentence est compatible avec l'ordre public, le Tribunal fédéral ne revoit pas à sa guise l'appréciation juridique à laquelle le tribunal arbitral s'est livré sur la base des faits constatés dans sa sentence. Seul importe, en effet, pour la décision à rendre sous l'angle de l'art. 190 al. 2 let. e LDIP, le point de savoir si le résultat de cette appréciation juridique faite souverainement par le tribunal arbitral est compatible ou non avec la définition jurisprudentielle de l'ordre public matériel (arrêt 4A_157/2017 du 14 décembre 2017 consid. 3.3.3).

5.2. Le principe de la fidélité contractuelle, rendu par l'adage *pacta sunt servanda*, au sens restrictif que lui donne la jurisprudence relative à l'art. 190 al. 2 let. e LDIP, n'est violé que si le tribunal arbitral refuse d'appliquer une clause contractuelle tout en admettant qu'elle lie les parties ou, à l'inverse, s'il leur impose le respect d'une clause dont il considère qu'elle ne les lie pas. En d'autres termes, le tribunal arbitral doit avoir appliqué ou refusé d'appliquer une disposition contractuelle en se mettant en contradiction avec le résultat de son interprétation à propos de l'existence ou du contenu de l'acte juridique litigieux. En revanche, le processus d'interprétation lui-même et les conséquences juridiques qui en sont logiquement tirées ne sont pas régis par le principe de la fidélité contractuelle, de sorte qu'ils ne sauraient prêter le flanc au grief de violation de l'ordre public. Le Tribunal fédéral a souligné à maintes reprises que la quasi-totalité du contentieux dérivé de la violation du contrat est exclue du champ de protection du principe *pacta sunt*

servanda (arrêts 4A_660/2020 du 15 février 2021 consid. 3.2.2; 4A_70/2020 du 18 juin 2020 consid. 7.3.1; 4A_318/2017 du 28 août 2017 consid. 4.2).

5.3. Dans la sentence attaquée, la Formation, appliquant la réglementation adoptée par la FIFA et le droit suisse à titre subsidiaire, estime que le recourant a licencié l'intimé sans juste motif le 12 mars 2021. Examinant ensuite les conséquences financières résultant de cette résiliation injustifiée, elle considère que l'art. 5 du contrat de travail conclu par les parties est nul car il contrevient à l'art. 337c al. 1 du Code des obligations suisse (CO; RS 220), disposition qui revêt un caractère semi-impératif (art. 362 CO). À cet égard, les arbitres soulignent que le montant de l'indemnité prévu à l'art. 5 du contrat de travail (204'000 EUR) est sensiblement inférieur à la somme que l'intimé aurait touché, conformément à l'art. 337c al. 1 CO, si les rapports de travail avaient pris fin à l'échéance convenue. Ils sont d'avis que le travailleur ne peut pas renoncer, pendant la durée du contrat, aux créances résultant de dispositions impératives de la loi (art. 341 al. 1 CO). La Formation aboutit ainsi à la conclusion que l'intimé a droit à un montant de 469'200 EUR, intérêts en sus, à titre d'indemnité pour licenciement immédiat injustifié.

5.4. Dans son mémoire de recours, l'intéressé fait valoir qu'il existe une contradiction intrinsèque dans la sentence entreprise, dès lors que le TAS a reconnu, dans un premier temps, que l'art. 5 du contrat de travail constituait une clause valide au regard de la réglementation adoptée par la FIFA, mais a pourtant jugé, dans un second temps, que ladite clause était contraire au droit suisse. Selon le recourant, la Formation n'aurait pas dû se référer au droit matériel suisse, applicable à titre subsidiaire, dans la mesure où la réglementation édictée par la FIFA était suffisante pour résoudre le problème litigieux. Le recourant reproche ainsi aux arbitres d'avoir appliqué à tort le droit suisse pour fixer le montant de l'indemnité due à l'intimé.

5.5. Tel qu'il est présenté, le grief ne saurait prospérer.

Bien que le recourant prétende le contraire, la Formation n'a pas enfreint le principe de la fidélité contractuelle, au sens restrictif que lui donne la jurisprudence relative à l'art. 190 al. 2 let. e LDIP, puisqu'elle n'a pas refusé d'appliquer une disposition contractuelle en se mettant en contradiction avec le résultat de son interprétation.

Contrairement à ce que soutient l'intéressé, la sentence querellée ne souffre d'aucune contradiction interne. La lecture de la décision entreprise permet en effet de constater que la Formation ne s'est pas contredite en refusant d'appliquer l'art. 5 du contrat de travail. Dans un premier temps, la Formation a certes observé que ladite clause remplissait les exigences posées par le TAS dans sa jurisprudence, ce qui pouvait potentiellement la rendre valide (sentence, n. 81: "The Parties have satisfied the CAS case law requirements for validity of a buy-out/penalty clause and the latter is also balanced, proportionate and non-discriminatory, potentially making for a perfectly valid contractual provision...".). Se référant à une pratique bien établie du TAS, elle a toutefois souligné immédiatement ce qui suit (sentence, n. 82) :

"82. According to well-established CAS case law, however, "according to Article 341 para. 1 of CO an employee may not waive claims arising from mandatory provisions of law or mandatory provisions of a collective employment contract during the period of the employment relationship and for one month after its end. The provision of Article 337 (c) of CO regarding the employee's claims for financial compensation in case of unilateral termination of an employment contract without just cause by the employer

is such a mandatory provision, as explicitly stipulated in Article 362 of CO" (...)".

Poursuivant son analyse, la Formation a considéré que l'art. 5 du contrat de travail était nul car il était incompatible avec l'art. 337c al. 1 CO, disposition revêtant un caractère semi-impératif. Il apparaît ainsi que la Formation a refusé d'appliquer la clause litigieuse car elle était, à son avis, frappée de nullité. Ce faisant, la Formation ne s'est pas mise en contradiction avec le résultat de son interprétation. Le raisonnement tenu par les arbitres pour refuser d'appliquer l'art. 5 du contrat de travail est étranger à la notion de fidélité contractuelle au sens restrictif que lui donne la jurisprudence relative à l'art. 190 al. 2 let. e LDIP. Sous le couvert d'une prétendue violation du principe *pacta sunt servanda*, l'intéressé ne fait que substituer sa propre appréciation juridique à celle de la Formation et cherche à inciter le Tribunal fédéral à examiner les raisons pour lesquelles celle-ci a appliqué le droit matériel suisse et à faire en sorte qu'il se prononce sur l'articulation entre la réglementation de la FIFA et les règles du droit suisse, ce qui n'est pas admissible. Le point de savoir si l'appréciation juridique des arbitres est matériellement correcte échappe en effet à la cognition du Tribunal fédéral, raison pour laquelle la tentative du recourant est vaine.

En tout état de cause, il sied de relever que le résultat auquel a abouti la Formation n'apparaît nullement contraire à l'ordre public matériel visé par l'art. 190 al. 2 let. e LDIP. Il s'ensuit le rejet du grief dans la mesure de sa recevabilité.

(…)

Décision

Le recours est rejeté dans la mesure où il est recevable.

(…)

4A_654/2024
A. c. Russian Anti-Doping Agency, International Skating Union, Agence Mondiale Antidopage
8 octobre 2025

Demande de révision de la sentence rendue le 29 janvier 2024 par le Tribunal Arbitral du Sport (CAS 2023/A/9451, CAS 2023/A/9455 et CAS 2023/A/9456)

Réaffirmation du caractère strict et exceptionnel de la révision dans l'arbitrage international ("une arme à manier avec prudence"), et du rôle du TF dans la préservation de la sécurité juridique

Extrait des faits

Née en avril 2006, A._____ (ci-après: l'athlète) est une patineuse artistique russe de niveau international, domiciliée à Moscou, qui a remporté plusieurs compétitions dans sa discipline.

International Skating Union (ci-après: l'ISU) est la fédération internationale de patinage artistique. Elle a son siège à Lausanne.

L'Agence Mondiale Antidopage (ci-après: l'AMA) est une fondation de droit suisse ayant son siège à Lausanne. Elle a notamment pour but de promouvoir, au niveau international, la lutte contre le dopage dans le sport. L'AMA a édicté le Code Mondial Antidopage (ci-après: le CMA).

La Russian Anti-Doping Center Agency (ci-après: la RUSADA) est l'agence russe de lutte contre le dopage. Elle est chargée de la mise en oeuvre du Règlement antidopage russe ("All Russian Anti-Doping Rules"; ci-après: le RAR).

Le 22 décembre 2021, l'athlète a pris le train à destination de Saint-Pétersbourg, en compagnie de sa mère, en vue de participer aux championnats russes de patinage artistique.

Le soir du 25 décembre 2021, l'athlète, alors âgée de 15 ans et 8 mois, a remporté le programme libre lors de ladite compétition. À l'issue de sa prestation, elle a fait l'objet d'un contrôle antidopage. Les échantillons prélevés ont été transmis pour analyse au laboratoire de Stockholm accrédité par l'AMA.

Les Jeux Olympiques d'hiver de 2022, organisés à Pékin, ont débuté le 4 février 2022.

En date des 6 et 7 février 2022, l'athlète et ses coéquipières russes ont obtenu la médaille d'or lors de l'épreuve par équipe de patinage artistique.

En raison du retard pris par le laboratoire de Stockholm lors de l'analyse des échantillons prélevés, la RUSADA a informé l'athlète, le 8 février 2022, que le test antidopage subi par elle en décembre 2021 avait révélé la présence de trimétazidine, une substance non spécifiée proscrite selon la Liste des interdictions publiée par l'AMA. Elle a suspendu provisoirement l'athlète sur la base de l'art. 9.4.1 RAR et lui a signalé qu'elle pouvait contester ladite décision auprès de la Commission disciplinaire de la RUSADA ("Russian Disciplinary Anti-Doping Committee"; ci-après: la DADC).

Par décision du 9 février 2022, la DADC a décidé de lever la suspension provisoire de l'athlète.

L'AMA, l'ISU et le Comité International Olympique ont attaqué cette décision devant la Chambre ad hoc du Tribunal Arbitral du Sport (TAS) mise sur pied lors des Jeux Olympiques de Pékin 2022.
Statuant le 14 février 2022, la Chambre ad hoc du TAS a refusé de suspendre provisoirement l'athlète. Celle-ci a ainsi pu participer à l'épreuve individuelle de patinage artistique lors des Jeux Olympiques de Pékin 2022, à l'issue de laquelle elle a terminé à la quatrième place.

Le 17 mars 2022, sur requête de l'athlète, le laboratoire de Stockholm a analysé l'échantillon B prélevé en décembre 2021, lequel a confirmé la présence de trimétazidine.

Le 22 septembre 2022, après avoir mené des investigations et recueilli les explications de l'athlète, la RUSADA a officiellement reproché à l'intéressée d'avoir enfreint le RAR.

Après avoir tenu une audience le 14 décembre 2022, la DADC a rendu sa décision le 24 janvier 2023. Elle a renoncé à suspendre l'athlète et à annuler les résultats obtenus par elle lors des Jeux Olympiques de Pékin 2022.

En date des 14, 20 et 21 février 2023, la RUSADA, l'ISU et l'AMA ont chacune appelé de cette décision auprès de la Chambre arbitrale d'appel du TAS.

La jonction des trois procédures a été ordonnée par le TAS le 1er mars 2023.

(…)

Par sentence finale du 29 janvier 2024, la Formation a annulé la décision entreprise. Cela fait, elle a reconnu l'athlète coupable d'avoir enfreint la réglementation antidopage, prononcé sa suspension pour une durée de quatre ans à compter du 25 décembre 2021 et ordonné la disqualification de tous les résultats obtenus par l'intéressée depuis cette date-là. Les motifs qui étayent cette sentence peuvent être résumés comme il suit.

Après avoir exposé les faits pertinents à ses yeux, décrit la procédure conduite sous son autorité, présenté les positions respectives des parties, examiné sa compétence pour connaître de la présente affaire et réglé certains aspects d'ordre procédural (sentence, n. 11-320), la Formation passe à l'examen des mérites des arguments qui lui ont été soumis (sentence, n. 321-420). Elle relève tout d'abord que l'existence d'une violation des règles antidopage est établie (sentence, n. 322-328). Selon les arbitres, un sportif ne peut pas bénéficier du régime prévu par les art. 12.5 RAR et 10.5 CMA (élimination de la période de suspension en l'absence de faute ou de négligence), d'une part, et par les 12.6 RAR et 10.6 CMA (réduction de la période de suspension pour cause d'absence de faute ou de négligence significative), d'autre part, aussi longtemps qu'il n'a pas établi que la violation des règles antidopage n'était pas intentionnelle, la notion d'intention visant ici les sportifs qui ont adopté un comportement dont ils savaient qu'il constituait une violation des règles antidopage ou qu'il existait un risque important qu'il puisse constituer ou entraîner une violation des règles antidopage, et ont manifestement ignoré ce risque (sentence, n. 329-342).

Constatant qu'une substance non spécifiée a été retrouvée dans l'organisme de l'athlète, la Formation précise que celle-ci risque une suspension d'une durée de quatre ans, à moins qu'elle n'établisse, au degré de preuve requis ("balance of probabilities"), que la violation des règles antidopage n'était pas intentionnelle. Elle insiste aussi sur le fait qu'il n'y a pas lieu de traiter différemment une athlète revêtant le statut de "personne protégée" des autres sportifs lorsqu'il s'agit d'examiner si elle a enfreint intentionnellement les règles antidopage. La Formation observe que l'athlète a évoqué initialement trois scénarios possibles pour expliquer la présence de trimétazidine dans

son organisme: la thèse d'un "sabotage", la piste d'un médicament/complément alimentaire contaminé et, enfin, l'hypothèse d'un dessert aux fraises contenant la substance interdite que lui aurait concocté celui qu'elle considère comme son grand-père bien qu'ils n'aient aucun lien biologique, cette dernière option étant la plus probable selon l'intéressée (sentence, n. 343-367). Après avoir examiné attentivement la justification la plus probable selon l'intéressée, elle estime qu'il existe trop de lacunes et de questions sans réponse pour que la thèse de l'athlète soit jugée plus probable qu'improbable. S'il est certes possible que celle-ci ait ingéré la substance interdite de cette manière, elle considère que l'athlète n'a pas établi, selon la prépondérance des probabilités, que l'origine de la substance interdite retrouvée dans son organisme était effectivement le dessert aux fraises préparé par son grand-père (sentence, n. 368-373). Passant ensuite en revue les autres explications fournies par l'intéressée, la Formation estime que celle-ci a échoué à démontrer, au degré de preuve requis, que la violation des règles antidopage n'était pas intentionnelle, raison pour laquelle elle doit être suspendue pour une durée de quatre ans, d'éventuelles réductions de la durée de la sanction n'entrant pas en ligne de compte (sentence, n. 374-403). Tenant compte des retards dans la conduite de la procédure antidopage non imputables à l'athlète, elle juge qu'il y a lieu, exceptionnellement, de faire débuter la période de suspension à la date du prélèvement de l'échantillon, soit le 25 décembre 2021 (sentence, n. 404-410). Au surplus, tous les résultats obtenus par l'athlète à compter de cette date doivent être disqualifiés (sentence, n. 411-420).

Le 28 février 2024, l'athlète a formé un recours en matière civile aux fins de faire constater la nullité de ladite sentence, respectivement d'obtenir son annulation.

Statuant le 5 septembre 2024, le Tribunal fédéral a rejeté le recours dans la mesure de sa recevabilité (arrêt 4A_136/2024 partiellement publié aux **ATF 151 III 53**).

Le 10 décembre 2024, l'athlète (ci-après: la requérante) a présenté une demande de révision de la sentence rendue le 29 janvier 2024. Elle sollicite l'annulation de celle-ci et le renvoi de la cause à l'autorité précédente pour nouvelle décision.

En tête de sa réponse, l'ISU (ci-après: la fédération intimée) a proposé le rejet de la demande révision.

Au terme de sa réponse, l'AMA (ci-après: la fondation intimée) a conclu au rejet de la demande de révision, dans la mesure de sa recevabilité.

Le TAS a indiqué que la Formation avait renoncé à formuler des observations sur la demande de révision.

Le 11 mars 2025, le Tribunal fédéral a transmis aux parties la réponse de la fédération intimée, celle de la fondation intimée et l'écriture du TAS, tout en précisant que d'éventuelles observations pourraient être déposées jusqu'au 26 mars 2025. Il a souligné que la RUSADA avait déposé sa réponse le 5 mars 2025, soit après l'échéance du délai qui lui avait été imparti pour se déterminer, raison pour laquelle cette écriture et son annexe ne pouvaient pas être prises en considération.

Le 19 mars 2025, la fédération intimée a présenté des observations complémentaires.

Par pli daté du 24 mars 2025, la RUSADA a déposé une écriture dans laquelle elle a indiqué se rallier aux conclusions prises par la fondation intimée et proposé le rejet de la demande de révision. Elle a demandé au Tribunal fédéral de revoir sa position et de juger recevable le mémoire de réponse qu'elle lui avait adressé précédemment

(…)

Considérants en droit

(…)

3.
Il convient d'examiner la recevabilité de la réponse déposée le 5 mars 2025 par la RUSADA dans le cadre de la présente procédure.

3.1. Selon l'art. 48 al. 1 LTF, les actes adressés au Tribunal fédéral doivent être remis au plus tard le dernier jour du délai, soit au Tribunal fédéral, soit, à l'attention de ce dernier, à La Poste Suisse ou à une représentation diplomatique ou consulaire suisse. Ils peuvent également être transmis par voie électronique s'ils sont munis d'une signature électronique reconnue selon l'art. 42 al. 4 LTF (art. 48 al. 2 LTF). Les autres soumissions électroniques ne sont pas valables (arrêts 4A_596/2015 du 9 décembre 2015; 9C_739/2007 du 28 novembre 2007 consid. 1.1).

3.2. En l'occurrence, le Tribunal fédéral, par ordonnance du 20 janvier 2025, a imparti à la RUSADA un délai échéant le 10 février 2025 pour répondre à la demande de révision. L'exemplaire de ladite ordonnance a été conservé au dossier en application de l'art. 39 al. 3 LTF. Il ressort clairement du texte de cette disposition légale que la partie domiciliée à l'étranger a l'obligation d'élire un domicile de notification en Suisse, faute de quoi le Tribunal fédéral a le choix de renoncer à toute notification ou de procéder à la publication dans une feuille officielle. Une telle exigence légale doit être observée d'office, sans qu'il soit nécessaire de rendre attentive la partie à l'étranger à cette exigence ou de l'inviter à élire un domicile de notification en Suisse (CARRUZZO/KISS, Les particularités du contrôle des sentences exercé par le Tribunal fédéral suisse en matière d'arbitrage international, in SJ 2023 p. 649).

Il sied également de relever que la RUSADA connaissait pareille exigence puisque le mandataire britannique, qui avait assuré la défense de ses intérêts devant le TAS dans la présente affaire, avait été rendu attentif à cette obligation non seulement dans la procédure fédérale de recours 4A_136/2024 mais aussi lors de l'envoi aux parties, le 13 décembre 2024, de l'avis de réception de la demande de révision déposée par la requérante.

Il apparaît en outre que la RUSADA a bel et bien eu connaissance de ladite demande de révision étant donné que, dans une lettre datée du 6 février 2025 annexée à un courrier électronique transmis au Tribunal fédéral le 18 février 2025, le mandataire de cette partie a indiqué avoir reçu une copie de cette écriture et a fait référence au numéro de la cause (i.e. 4A_654/2024).

Le 27 février 2025, l'avocat concerné a été informé de ce que son envoi électronique ne respectait pas les exigences prévues par l'art. 42 al. 4 LTF, raison pour laquelle le Tribunal fédéral n'en tiendrait pas compte.

En l'espèce, le mémoire de réponse de la RUSADA, remis à un transporteur privé (DHL), a été distribué au Tribunal fédéral le 5 mars 2025, soit après l'expiration du délai qui avait été imparti à cette partie pour répondre.

Le 26 mars 2025, la RUSADA a contesté l'information figurant dans l'ordonnance présidentielle du 11 mars 2025 selon laquelle sa réponse avait été déposée tardivement et ne pouvait pas être prise en considération. Elle s'est plainte de n'avoir pas reçu les envois du Tribunal fédéral expédiés aux parties dans le cadre de la présente procédure. Elle a soumis un nouvel exemplaire de son mémoire de réponse et demandé au Tribunal fédéral d'en tenir compte. Il n'y a pas lieu d'accéder à cette requête. Il appert, en effet, que le Tribunal fédéral n'a pas omis de

communiquer à la partie concernée les actes qui lui étaient destinés, mais qu'il les a valablement conservés au dossier en application de l'art. 39 al. 3 LTF. Nonobstant les dénégations de la RUSADA, la réponse de cette partie a bel et bien été déposée tardivement, raison pour laquelle le Tribunal fédéral ne la prendra pas en considération.

4.
Toute loi de procédure prévoit un moment à partir duquel les décisions de justice sont définitives, qu'elles émanent d'autorités étatiques ou de tribunaux privés. Effectivement, il arrive toujours un moment où la vérité matérielle, si tant est qu'elle puisse être établie, doit s'effacer devant la vérité judiciaire, quelque imparfaite qu'elle soit. Il est cependant des situations extrêmes où le sentiment de la justice et de l'équité requiert impérativement qu'une décision en force ne puisse pas prévaloir, parce qu'elle est fondée sur des prémisses viciées. C'est précisément le rôle de la révision que de permettre d'y remédier (**ATF 142 III 521** consid. 2.1 et les références citées).

Étant donné son caractère exceptionnel, la révision est une arme à manier avec prudence parce que la généralisation de son usage mettrait en péril la sécurité du droit. Il convient donc d'examiner avec une certaine rigueur les conditions légales de son application (**ATF 151 III 62** consid. 7.5).

5.
Depuis le 1er janvier 2021 (RO 2020 p. 4184), la LDIP contient des dispositions relatives à la révision des sentences arbitrales internationales.

Le Tribunal fédéral est l'autorité judiciaire compétente pour connaître d'une demande de révision visant une sentence arbitrale internationale et la procédure est régie par l'art. 119a LTF (art. 191 LDIP). Selon l'art. 119a al. 2 LTF, la procédure de révision est régie par les art. 77 al. 2biset 126 LTF. Si le Tribunal fédéral admet la demande de révision, il annule la sentence et renvoie la cause au tribunal arbitral pour qu'il statue à nouveau, ou fait les constatations nécessaires (art. 119a al. 3 LTF).

6.

6.1. Invoquant l'art. 190a al. 1 let. a LDIP, la requérante soutient avoir découvert, après la reddition de la sentence attaquée, un élément déterminant pour l'issue du litige dont la RUSADA et la fondation intimée auraient sciemment caché l'existence au cours de la procédure d'arbitrage.

6.2. La révision d'une sentence arbitrale internationale peut être demandée pour l'un des motifs énoncés à l'art. 190a LDIP. La demande de révision, dont la recevabilité est subordonnée à l'existence d'un intérêt digne de protection, doit être déposée devant le Tribunal fédéral, sous peine de déchéance, dans les 90 jours qui suivent la découverte du motif de révision, compte tenu de la suspension de ce délai légal dans les hypothèses prévues à l'art. 46 LTF (art. 190a al. 2 LDIP; arrêts 4A_69/2022 du 23 septembre 2022 consid. 4.2.1 non publié in **ATF 148 III 436**; 4A_247/2014 du 23 septembre 2014 consid. 2.3). Le droit de demander la révision se périme par dix ans à compter de l'entrée en force de la sentence, à l'exception des cas prévus à l'art. 190a al. 1 let. b LDIP (art. 190a al. 2 LDIP). Il appartient à la partie requérante d'établir les circonstances déterminantes pour la vérification du respect du délai (**ATF 149 III 277** consid. 4.1.2 et les références citées; arrêt 4A_528/2024 du 26 juin 2025 consid. 3.4 non destiné à la publication).

6.3. Aux termes de l'art. 190a al. 1 let. a LDIP, une partie peut demander la révision d'une sentence si elle découvre après coup des faits pertinents ou des moyens de preuve concluants qu'elle n'a pu invoquer dans la procédure précédente bien qu'elle ait fait preuve de la diligence requise; les faits ou moyens de preuve postérieurs à la sentence

sont exclus. Une demande de révision fondée sur l'art. 190a al. 1 let. a LDIP obéit aux mêmes conditions que celle introduite sur la base de l'art. 123 al. 2 let. a LTF. En effet, la formulation de l'art. 190a al. 1 let. a LDIP correspond, en substance, à celle de l'art. 123 al. 2 let. a LTF. Aussi peut-on se référer à la jurisprudence relative à la disposition précitée de la LTF (**ATF 149 III 277** consid. 4.1.1 et les références citées).

6.3.1. La révision pour le motif tiré de la découverte de faits nouveaux suppose la réalisation de cinq conditions: 1° le requérant invoque un ou des faits; 2° ce ou ces faits sont "pertinents", dans le sens d'importants, c'est-à-dire qu'ils sont de nature à modifier l'état de fait qui est à la base de la décision et à conduire à une solution différente en fonction d'une appréciation juridique correcte; 3° ces faits existaient déjà lorsque la décision a été rendue: il s'agit de pseudo-nova, c'est-à-dire de faits antérieurs à la décision ou, plus précisément, de faits qui se sont produits jusqu'au moment où, dans la procédure principale, des allégations de fait étaient encore recevables; 4° ces faits ont été découverts après coup; 5° le requérant n'a pas pu, malgré toute sa diligence, invoquer ces faits dans la procédure précédente (**ATF 147 III 238** consid. 4.1; **143 III 272** consid. 2.2 et les références citées; arrêts 4F_24/2024 du 6 mai 2025 consid. 6.1 non destiné à la publication; 4A_606/2021 du 28 avril 2022 consid. 3.2.1).

6.3.2. Quant à la demande de révision fondée sur la découverte de preuves concluantes, elle suppose en bref aussi la réunion de cinq conditions: 1° les preuves doivent porter sur des faits antérieurs (pseudo-nova); 2° elles doivent être concluantes, c'est-à-dire propres à entraîner une modification du jugement dans un sens favorable au requérant; 3° elles doivent avoir déjà existé lorsque le jugement a été rendu (plus précisément jusqu'au dernier moment où elles pouvaient encore être introduites dans la procédure principale); 4° elles doivent avoir été découvertes seulement après coup; 5° le requérant n'a pas pu les invoquer, sans faute de sa part, dans la procédure précédente (**ATF 147 III 238** consid. 4.2; arrêt 4A_606/2021, précité, consid. 3.2.2). Une révision fondée sur un moyen de preuve postérieur à la sentence attaquée est exclue (arrêt 4A_46/2024 du 17 avril 2025 consid. 6 destiné à la publication).

6.4.

6.4.1. Dans sa demande de révision, la requérante expose qu'un article publié le 12 septembre 2024 par l' *Associated Press* a révélé qu'un rapport avait été établi par l'expert B._____ sur requête de la RUSADA, rapport dont les conclusions lui étaient très favorables, puisqu'il accréditait la thèse de la contamination qu'elle avait avancée pour expliquer la présence de la substance interdite retrouvée dans son organisme. Selon la requérante, l'AMA avait déjà connaissance, lors de la procédure d'arbitrage, des travaux du Prof. B._____ et aurait tout fait pour que son rapport ne soit pas produit devant le TAS, comme le confirmerait le passage suivant tiré de l'article en question:

"Upon learning of the experiment, C._____ [le directeur général de la fondation intimée] texted D._____, the head of I&I [le directeur du département Renseignements et enquêtes de la fondation intimée].
Parts of the message read: "D._____ we have a big issue. How come we have (former anti-doping lab director) B._____ doing an opinion for A._____, super favorable to her.... If it is a RUSADA (Russian Anti-Doping Agency) opinion, we should absolutely not be involved in anyway.... this is a big issue on our side to get involved in such an opinion that will be used in court. We have to stop that urgently".

La requérante souligne qu'elle n'a jamais eu connaissance du rapport de cet expert durant la procédure d'arbitrage. Elle s'emploie ensuite à démontrer que la RUSADA et la

fondation intimée ont commis une "fraude procédurale" puisqu'elles n'ont, d'une part, pas respecté l'injonction de la Formation du 28 septembre 2023 de produire l'intégralité du dossier d'enquête concernant l'athlète et son entourage et qu'elles ont, d'autre part, tenté de faire croire qu'elles s'étaient conformées à leurs engagements de divulguer tous les résultats de leurs investigations concernant l'athlète, que ceux-ci soient à charge ou à décharge de la sportive, l'un des représentants de la fondation intimée ayant notamment déclaré, à tort, lors de la procédure d'arbitrage, que cette entité ne disposait pas d'autres documents relatifs à l'enquête sur les circonstances entourant la prise de trimétazidine que ceux qui avaient été produits par la RUSADA. Elle fait valoir que la fondation intimée a menti, sciemment dissimulé un élément décisif pour l'issue du litige et fait preuve de déloyauté dans la procédure arbitrale, adoptant ainsi un comportement se situant aux antipodes des principes fondateurs justifiant son existence.

Depuis la publication de l'article en question, la requérante indique avoir tenté, sans succès, d'obtenir un exemplaire dudit rapport. Elle souligne toutefois que, dans un courriel du 20 novembre 2024, le Prof. B._____ a confirmé avoir réalisé une expertise à la demande de la RUSADA, avec l'accord de l'AMA, sur la base d'un contrat conclu avec la RUSADA qui l'a rémunéré pour ses services. En raison d'une clause de confidentialité figurant dans ledit contrat, l'expert a toutefois refusé de remettre un exemplaire de son expertise à la requérante.

Selon la requérante, le rapport établi par le Prof. B._____ est une preuve concluante au sens de l'art. 190a al. 1 let. a LDIP. La requérante prétend en outre que la circonstance selon laquelle la fondation intimée et la RUSADA auraient délibérément caché l'existence dudit document et se seraient abstenues de le produire dans le cadre de la procédure arbitrale constitue un fait pertinent au sens de la disposition légale citée. Elle soutient également que les autres conditions d'application de l'art. 190a al. 1 let. a LDIP sont remplies, ce qui justifie de faire droit à sa demande de révision. Elle conclut ainsi à l'annulation de la sentence querellée et au renvoi de la cause au TAS afin que diverses mesures d'instruction puissent être mises en oeuvre.

6.4.2. Dans sa réponse, la fédération intimée indique ne pas être en possession de l'expertise du Prof. B._____ et ignorer les conclusions tirées par celui-ci dans l'affaire de l'athlète. Dans ces circonstances, elle précise ne pas être en mesure de déterminer si le moyen en question est concluant au sens de l'art. 190a al. 1 let. a LDIP ni de prendre position sur le comportement de la fondation intimée et de la RUSADA sévèrement mis en cause par la requérante. Elle se réserve dès lors le droit de se prononcer sur le bien-fondé de la demande de révision une fois qu'elle aura pu prendre connaissance de l'analyse effectuée par le Prof. B._____. Cette remarque faite, la fédération intimée estime toutefois que l'article de presse invoqué par la requérante n'apporte rien qui puisse conduire à retenir que le moyen de preuve manquant présenterait un caractère concluant au sens de la disposition citée. Selon elle, l'article en question laisse en effet entendre que le seul avis d'expert manquant ne permettrait un réexamen du cas de l'athlète concernée qui si celle-ci parvenait à fournir des preuves étayant la thèse d'une contamination alimentaire alléguée par elle. Or, la fédération intimée observe que la Formation a jugé que la requérante n'avait pas fourni de preuves corroborant sa version des faits. Elle considère que la requérante n'allègue aucun fait susceptible de remettre en cause les conclusions tirées à cet égard par la Formation.

6.4.3. Dans sa réponse, la fondation intimée prétend que la demande de révision est irrecevable, dans la mesure où la requérante se prévaut d'un élément postérieur à la date de la reddition de la sentence querellée, soit

en l'occurrence l'article de presse publié le 12 septembre 2024.

En tout état de cause, la fondation intimée soutient que le prétendu "rapport super favorable" du Prof. B._____ n'est rien d'autre qu'un projet d'opinion qui a été réalisé sur requête de la RUSADA dans le cadre de la procédure disciplinaire conduite devant la DADC. Son département Renseignements et enquêtes n'a joué qu'un rôle d'intermédiaire entre l'expert et la RUSADA, raison pour laquelle la fondation intimée a sollicité et obtenu l'avis du Prof. B._____ pour le compte de la RUSADA. Afin de "couper court aux spéculations" selon ses dires, la fondation intimée produit un document, signé par le Prof. B._____ et daté du 19 septembre 2022, document qu'elle qualifie de "projet de rapport" (ci-après: le Document du 19 septembre 2022). Elle prétend que le Document du 19 septembre 2022 ne constitue pas une preuve concluante au sens de l'art. 190a al. 1 let. a LDIP. À cet égard, elle souligne que le Prof. B._____, appelé à se prononcer sur les différentes hypothèses avancées par l'athlète pour expliquer la présence de la substance interdite retrouvée dans son organisme, a simplement considéré que la thèse d'une éventuelle contamination alimentaire ne pouvait être exclue d'un point de vue théorique ("... contamination of home-made fruit puree through the cutting board or the knife used by the grandfather, cannot be theoretically excluded...."). La fondation intimée relève toutefois que l'expert a conclu que la prise volontaire d'une dose de trimétazidine 4 à 5 jours avant le contrôle antidopage demeurait le scénario le plus plausible. Elle fait en outre valoir que le Document du 19 septembre 2022, s'il avait été produit, n'aurait eu aucune influence sur l'issue de la procédure. À cet égard, elle observe que la Formation a elle aussi jugé possible que la substance interdite retrouvée dans l'organisme de la requérante ait pu résulter d'une contamination alimentaire. La Formation a toutefois considéré que la requérante avait échoué à établir une série d'éléments factuels permettant d'accréditer cette thèse. Aussi la production du Document du 19 septembre 2022 n'aurait-elle pas permis de remédier à ces lacunes.

La fondation intimée conteste également les accusations proférées à son encontre par la requérante, notamment celle selon laquelle elle aurait agi frauduleusement et "menti à dessein pour convaincre les arbitres en dissimulant des éléments essentiels pour l'issue de la procédure". Elle soutient, par ailleurs, que la requérante reproche à tort à la RUSADA de ne pas avoir respecté l'ordonnance de production de pièces du 28 septembre 2023, dont la teneur était la suivante: "RUSADA shall produce, on or before 6 Octobre 2023... a copy of the investigation file (save for irrelevant and/or privileged material) in its original language, related to the WADA/RUSADA investigation in relation to Ms A._____ and her entourage." Selon la fondation intimée, cette injonction visait uniquement le "dossier d'enquête" ("investigation file"), ce qui n'incluait pas l'expertise du Prof. B._____, laquelle avait été mise en oeuvre en vue de la procédure disciplinaire conduite devant la DADC.

6.4.4. Dans ses écritures complémentaires, la requérante conteste l'assertion de la fondation intimée selon laquelle la présente demande de révision reposerait sur un fait postérieur à la reddition de la sentence attaquée. Selon elle, ce n'est pas l'article de presse du 12 septembre 2024 qui fonde sa demande de révision, mais l'expertise du Prof. B._____, d'une part, et les agissements de la fondation intimée pour en dissimuler l'existence, d'autre part, soit des éléments qui sont tous antérieurs à la décision entreprise.

La requérante souligne, par ailleurs, que la fondation intimée se borne à affirmer qu'elle n'a commis aucune fraude procédurale, sans nullement chercher à démontrer le caractère prétendument infondé des accusations

portées à son encontre. Elle fait aussi valoir que l'avis du Prof. B._____ a bel et bien été sollicité par la fondation intimée - et non par la RUSADA - lors de la phase d'enquête, raison pour laquelle rien ne pouvait justifier que la RUSADA et la fondation intimée ne produisent pas le rapport établi par cet expert.

La requérante soutient en outre que le Document du 19 septembre 2022 produit par la fondation intimée sous la dénomination "Projet de rapport d'expertise du Prof. B._____ du 19 septembre 2022" n'est, selon toute vraisemblance, pas la version du document à laquelle l'article de presse du 12 septembre 2024 faisait référence. Selon elle, la lecture dudit rapport est "édifiante et démontre, sans le moindre doute, les mensonges et manoeuvres commises par l'AMA ou, en son sein, dans le but d'influencer la décision des arbitres". Détaillant le contenu de la pièce produite par la fondation intimée, la requérante prétend que l'expertise du Prof. B._____ a été modifiée pour tenir compte des demandes exprimées par la fondation intimée. Elle fait valoir que l'expert aurait établi un "pré-rapport" auquel n'aurait pas eu accès la RUSADA et soutient que la fondation intimée, insatisfaite des conclusions très favorables à l'athlète, aurait fait pression sur le Prof. B._____ afin qu'il modifie son projet de rapport. Plusieurs éléments viendraient corroborer cette conclusion. D'abord, le Document du 19 septembre 2022 - que la fondation intimée présente comme un "projet de rapport" - est daté et signé, ce qui, selon la requérante, indique que le document concerné n'est pas le projet de rapport ("draft report") dont il est question dans l'article de presse du 12 septembre 2024, mais un rapport établi ultérieurement qui a subi des modifications.

La requérante soutient, ensuite, que la comparaison entre les analyses effectuées par le Prof. B._____ et les conclusions tirées par lui mettent en évidence un certain nombre d'incohérences et de contradictions qui peuvent s'expliquer uniquement par une altération du projet de rapport. À cet égard, elle observe que l'expert a conclu son rapport en indiquant que la prise volontaire d'une dose de trimétazidine 4 à 5 jours avant le contrôle antidopage paraissait le scénario le plus plausible, alors même qu'il n'a pas consacré de développements à ce sujet dans le document en question. Elle considère que cette conclusion, qui serait contredite par les résultats des tests effectués par l'expert figurant dans son rapport, a été rajoutée afin que l'expertise ne lui soit plus "super favorable". Se fondant en outre sur la lettre du 16 juin 2022 par laquelle le vice-directeur du département Renseignements et enquêtes de la fondation intimée a formellement sollicité l'avis du Prof. B._____, la requérante fait remarquer que ce dernier a été invité à répondre à huit questions. Or, la huitième question, intitulée "How did the TMZ [trimétazidine] enter the Athlete's body ?" ne figure pas dans le Document du 19 septembre 2022. Selon la requérante, il est évident que l'expert a initialement répondu à cette question, mais qu'il a ensuite supprimé ses développements à ce sujet sur requête de la fondation intimée car ils étaient "super favorables" à la position de l'athlète. La requérante relève que, par courriel du 25 mars 2025, elle a interrogé le Prof. B._____ sur cette "disparition inexpliquée", mais que l'expert n'a pas daigné lui répondre. Selon elle, les nombreuses incohérences qu'elle a décelées ne peuvent s'expliquer que par une "altération du pré-rapport initial", sous la pression de la fondation intimée à la suite de l'intervention de son directeur dont il est fait mention dans l'article du 12 septembre 2024. La requérante estime qu'un contre-interrogatoire du Prof. B._____ aurait permis de pointer du doigt les contradictions dont serait entachée l'expertise du 19 septembre 2022 et de révéler l'existence de plusieurs versions successives de son rapport, ce qui aurait nécessairement conduit la Formation à adopter une solution différente.

6.4.5. La fédération intimée souligne, dans ses observations complémentaires, que la seule existence d'un rapport d'expert qui n'aurait pas été versé à la procédure ne suffit pas à justifier l'admission d'une demande de révision. Elle fait aussi valoir que le Document du 19 septembre 2022 produit par la fondation intimée ne constitue pas un moyen de preuve concluant au sens de l'art. 190a al. 1 let. a LDIP. Elle se dit en outre étonnée de l'argumentation de la requérante selon laquelle ladite expertise aurait été "manipulée", au motif principal que le Prof. B._____ n'a pas répondu à la huitième question qui lui avait été soumise. Selon elle, il ne revient à aucun expert de dire comment une substance interdite a pénétré dans l'organisme d'un athlète, puisqu'il incombe exclusivement au sportif mis en cause d'en faire la démonstration.

6.4.6. Dans ses observations complémentaires, la fondation intimée conteste fermement la nouvelle accusation portée à son encontre par son adversaire selon laquelle elle aurait reçu plusieurs versions successives du projet de rapport du Prof. B._____. Elle affirme n'en avoir reçu qu'une seule, soit le Document du 19 septembre 2022 produit dans le cadre de la présente procédure. Elle conteste également s'être rendue coupable d'une quelconque fraude procédurale et soutient qu'elle n'était pas tenue de produire le document en question lors de la procédure d'arbitrage. La fondation intimée s'emploie ensuite à démontrer que le Document du 19 septembre 2022 ne présente pas d'incohérences, contrairement à ce que soutient la requérante. Elle fait en outre valoir que le moyen de preuve concerné ne revêt de toute manière pas un caractère concluant au sens de l'art. 190a al. 1 let. a LDIP. Elle soutient, enfin, que les conseils de la requérante n'ont pas hésité à employer des termes indignes de la profession d'avocat ainsi qu'à formuler des accusations péremptoires sans la moindre preuve, raison pour laquelle elle estime que pareil comportement, qualifié par elle d'inacceptable et de téméraire, mérite sanction.

6.5. Les positions respectives des parties ayant été exposées ci-dessus, il convient d'examiner les mérites des critiques formulées par la requérante au soutien de sa demande de révision fondée sur l'art. 190a al. 1 let. a LDIP.

6.5.1. En l'occurrence, la recevabilité de la demande de révision soumise à l'examen de la Cour de céans apparaît des plus douteuses. Il faut en effet bien voir que la requérante assoit en grande partie son argumentation sur un moyen de preuve postérieur à la sentence attaquée, soit l'article de presse publié le 12 septembre 2024, ce qui n'est pas admissible (arrêt 4A_46/2024, précité, consid. 6 destiné à la publication). Dans sa demande de révision, la requérante se prévaut par ailleurs d'un document, soit le rapport établi par le Prof. B._____, à titre de moyen de preuve concluant, document qu'elle ne produit toutefois pas à l'appui de sa requête, raison pour laquelle on peut légitimement douter qu'elle ait effectivement "découvert" le moyen de preuve en question au sens de l'art. 190a al. 1 let. a LDIP. Aussi les développements relatifs au contenu dudit rapport consacrés par l'intéressée dans sa demande de révision relèvent-ils de la pure conjecture. Le point de savoir si la requérante a déposé sa demande de révision en temps utile apparaît également incertain. La requérante se borne en effet à affirmer, comme s'il fallait la croire sur parole, qu'elle a découvert l'existence du rapport établi par le Prof. B._____ lorsqu'elle a lu l'article de presse publié le 12 septembre 2024. Point n'est toutefois besoin de pousser plus avant l'examen de la recevabilité de la demande de révision soumise au Tribunal fédéral, dès lors que celle-ci doit de toute manière être rejetée pour les motifs exposés ci-après.

6.5.2. Pour que l'on puisse faire droit à la demande de révision, il faut que la requérante

établisse non seulement que le Document du 19 septembre 2022 aurait dû être produit au cours de la procédure d'arbitrage mais aussi qu'il constitue un moyen de preuve concluant au sens de l'art. 190a al. 1 let. a LDIP. À cet égard, il sied d'emblée de souligner qu'une partie au procès est libre de rassembler les preuves qu'elle juge utiles pour étayer ses arguments, de les modifier et, le cas échéant, de ne pas les présenter. Ainsi, un litigant peut-il, par exemple, solliciter l'avis d'un expert privé sur une question litigieuse et lui demander, s'il l'estime nécessaire, de compléter ou de modifier certains aspects de son rapport d'expertise. La partie qui fait appel aux services d'un expert privé conserve la faculté de ne pas se prévaloir du rapport final établi par ce dernier si elle considère que ce document ne sert pas ses intérêts.

En l'occurrence, il apparaît que le Document du 19 septembre 2022 n'a pas été versé à la procédure. Ni la RUSADA ni la fondation intimée ne se sont servis de ce document pour étayer leurs arguments. Aussi peut-on légitimement s'interroger sur le point de savoir si ledit document peut effectivement être qualifié de moyen de preuve au sens de l'art. 190a al. 1 let. a LDIP. Il est vrai que la Formation, par ordonnance du 28 septembre 2023, a enjoint à la RUSADA de produire une copie du dossier d'enquête relatif aux investigations conduites par la fondation intimée et la RUSADA à l'égard de la requérante et de son entourage ("RUSADA shall produce... a copy of the investigation file [save for irrelevant and/or privileged material]... related to the WADA/RUSADA investigation in relation to Ms A._____ and her entourage."). La fondation intimée soutient toutefois que cette injonction visait uniquement le "dossier d'enquête" ("investigation file"), ce qui n'incluait pas le Document du 19 septembre 2022, lequel avait été sollicité en vue de la procédure disciplinaire conduite devant la DADC. Sur le vu des explications fournies par la fondation intimée, il n'est pas certain que le document en question aurait dû être produit par la RUSADA, laquelle était la seule partie visée par l'ordonnance du 28 septembre 2023. Il faut du reste souligner que la Formation n'a pas donné suite à la demande formulée par la requérante tendant à ce qu'il soit ordonné à la fondation intimée de produire son dossier relatif à la propre enquête qu'elle avait ouverte et menée conformément à l'article 20.7.14 CMA (cf. sentence, n. 101 let. c et 102). La requérante fait grand cas d'un témoignage écrit daté du 28 novembre 2023, dans lequel l'un des représentants de la fondation intimée a notamment déclaré ce qui suit:

"... To be clear WADA does not have any documents from the investigation into the circumstances of ingestion of TMZ other than those that were generated by RUSADA and later made available to WADA....".

La requérante voit dans cette déclaration la preuve de ce que la fondation intimée aurait sciemment menti et commis une fraude procédurale. Les accusations formulées par la requérante, vigoureusement contestées par la fondation intimée, ne sauraient toutefois suffire à retenir l'existence d'une fraude procédurale commise par cette dernière. Il faut en effet admettre que les déclarations faites par le représentant de la fondation intimée ne peuvent pas être taxées de mensongères si, comme le soutient cette dernière de façon défendable, le Document du 19 septembre 2022 ne faisait pas partie de la phase d'enquête diligentée à l'égard de l'athlète.

En tout état de cause, il sied de relever que le simple fait pour une partie de n'avoir, par hypothèse, pas respecté une ordonnance de production de pièces, respectivement d'avoir tu l'existence d'un moyen preuve ne saurait, en principe, suffire à bouleverser l'ordre établi et à justifier l'annulation d'une décision entrée en force sur le fondement de l'art. 190a al. 1 let. a LDIP, sous peine de mettre gravement en péril la sécurité du droit. L'omission de faire état, respectivement la

volonté de ne pas produire le fruit des travaux réalisés par le Prof. B._____, fussent-elles délibérées de la part de la RUSADA et/ou de la fondation intimée, ne sauraient constituer des circonstances qui justifieraient en l'occurrence, à elles seules, de faire droit à la présente demande de révision fondée sur l'art. 190a al. 1 let. a LDIP.

6.5.3. Même si l'on devait considérer que le Document du 19 septembre 2022 aurait dû être produit devant le TAS par la RUSADA et/ou la fondation intimée, encore faudrait-il en effet que la requérante établisse que le moyen de preuve qui n'a pas été versé à la procédure d'arbitrage présentât un caractère concluant au sens de l'art. 190a al. 1 let. a LDIP. Or, après avoir examiné attentivement les considérations émises par les arbitres pour justifier la solution retenue par eux ainsi que les arguments avancés par les parties, la Cour de céans considère que le Document du 19 septembre 2022 ne constitue pas un moyen de preuve concluant au regard de l'art. 190a al. 1 let. a LDIP, car il n'est pas de nature à entraîner une modification de la sentence entreprise en faveur de la requérante. À cet égard, elle observe tout d'abord que, dans le document en question, le Prof. B._____ a certes estimé que l'hypothèse d'une contamination avancée par la requérante ne pouvait pas être exclue, tout en précisant néanmoins que la prise volontaire de trimétazidine 4 à 5 jours avant le contrôle antidopage demeurait le scénario le plus plausible. Les conclusions tirées par l'expert en question correspondent, en substance, aux considérations formulées par la Formation. Celle-ci n'a en effet pas écarté la thèse de la contamination présentée par l'athlète parce qu'elle la jugeait scientifiquement impossible. Elle a, au contraire, souligné qu'une contamination alimentaire était possible, comme en attestent les passages suivants de la sentence attaquée:

"n. 373. In any event, the Panel is not persuaded by the Grandfather Explanation. There are too many shortcomings in the evidence, and too many unanswered questions, for the Panel to decide that her account is more likely than not. It is certainly possible that the Athlete ingested the TMZ in this way, but possible is not probable and the Athlete fails to discharge her burden in this respect. In the view of the Panel, the Athlete has not established, on the balance of probabilities, that the origin of the TMZ in her Sample was the strawberry dessert provided by Mr E._____.";

"n. 395. (...) As Prof. F._____ says, "*there is nothing in the scientific literature that prevents the scenario of contamination*"...;
"n. 396. That being so, the scientific evidence, including in particular the evidence relating to the elimination profile of TMZ and the evidence of the Athlete's expert, Prof. F._____, is entirely equivocal. It equally supports the thesis that the TMZ was taken intentionally as it does that it was brought about by contamination and it does not assist the Athlete in the discharge of her burden".

Une lecture attentive de la sentence entreprise démontre que la Formation a en réalité écarté la thèse de la contamination avancée par l'athlète car celle-ci n'avait pas prouvé les éléments de fait permettant de retenir semblable scénario. La Formation a en effet considéré que l'athlète aurait dû prouver trois choses pour que l'on puisse épouser sa thèse (sentence, n. 369) :

- que son grand-père prenait des médicaments à base de trimétazidine fin décembre 2021 (a);

- que ladite substance s'est retrouvée d'une manière ou d'une autre dans le dessert aux fraises concocté par son grand-père (b); et

- qu'elle avait emporté le dessert aux fraises avec elle à Saint-Pétersbourg et l'avait mangé pendant son séjour là-bas (c).

Poursuivant son analyse, la Formation a relevé que chacun de ces éléments posait

problème (sentence, n. 370). Elle a en particulier souligné qu'il n'existait pas de preuves tangibles établissant que le grand-père de l'athlète se serait vu prescrire des médicaments contenant de la trimétazidine avant décembre 2021 ni qu'il en aurait fait l'acquisition avant cette période-là. Elle a aussi indiqué que le grand-père de la sportive n'avait pas fait état d'un dessert aux fraises dans ses premières déclarations, cette explication n'ayant été avancée que plusieurs mois après. La Formation a par ailleurs relevé qu'il n'y avait pas de preuves tangibles démontrant que l'athlète aurait emporté le dessert aux fraises dans le train qui devait la conduire jusqu'à Saint-Pétersbourg. Il apparaît ainsi que ce sont les lacunes d'ordre factuel et probatoire émaillant le récit de l'athlète qui ont amené la Formation a écarté la thèse d'une prétendue contamination alimentaire. Or, le Document du 19 septembre 2022 n'est nullement susceptible de remettre en cause les conclusions de la Formation à ce sujet qui ont exercé une influence décisive sur l'issue du litige.

6.5.4. En cours de procédure, la requérante a changé son fusil d'épaule en soutenant, pour la première fois, dans sa réplique du 26 mars 2025, que le Document du 19 septembre 2022 produit par la fondation intimée ne serait pas le projet de rapport dont il est question dans l'article de presse daté du 12 septembre 2024.

Sur la base des preuves à sa disposition, la Cour de céans ne saurait retenir que le Prof. B._____ aurait établi plusieurs versions successives de son rapport ni admettre que la fondation intimée aurait fait pression sur ce dernier pour qu'il modifie son projet de rapport afin qu'il soit moins favorable à l'athlète. À cet égard, force est d'emblée d'observer que de telles allégations sont contredites avec force par la fondation intimée, laquelle a du reste affirmé, devant le Tribunal fédéral, n'avoir pas reçu "plusieurs versions successives du projet de rapport". Par ailleurs, la requérante assoit en partie sa démonstration sur un moyen de preuve postérieur à la sentence attaquée, soit l'article de presse publié le 12 septembre 2024, ce qu'elle n'est pas recevable à faire (cf. dans le même sens: arrêt 4A_46/2024, précité, consid. 6 destiné à la publication), notamment lorsqu'elle fait allusion à d'éventuelles démarches du directeur de la fondation intimée tendant à éviter qu'un rapport très favorable à l'athlète ne soit utilisé en procédure.

Le Tribunal fédéral ne considère pas davantage que les prétendues incohérences figurant dans le Document du 19 septembre 2022, pointées du doigt par la requérante, seraient le signe de ce que ledit document aurait subi des modifications substantielles. Il note en particulier que le simple fait que la pièce en question - qualifiée de projet de rapport par la fondation intimée - soit datée et signée ne permet pas d'établir que l'expert aurait établi d'autres versions de son expertise plus favorables à l'athlète. La requérante fait grand cas de ce que l'expert n'a pas formellement répondu à la huitième question qui lui avait été soumise et qui était libellée de la manière suivante: "How did the TMZ enter the Athlete's body ?". Cela étant, le simple fait que le Prof. B._____ n'ait pas apporté de réponse à cette interrogation dans le Document du 19 septembre 2022 ne saurait constituer la preuve de ce que cet expert aurait initialement consacré des développements à ce sujet qui étaient favorables à l'athlète et qui auraient été biffés ultérieurement à la demande de la fondation intimée. En tout état de cause, l'expert concerné semble avoir pris indirectement position sur ce point, puisqu'il a indiqué, à la fin du Document du 19 septembre 2022, que la prise volontaire de trimétazidine 4 à 5 jours avant le contrôle antidopage demeurait le scénario le plus plausible. Contrairement à ce qu'affirme la requérante, l'absence de développements consacrés par l'expert à ce propos ne saurait constituer la preuve de ce que ce dernier aurait modifié ses conclusions initiales, respectivement que le Document du

19 septembre 2022 aurait subi des modifications sur requête de la fondation intimée.

Les accusations de manipulation formulées par la requérante sont ainsi dénuées de fondement et ne changent rien au fait que la condition du caractère concluant du moyen de preuve au sens de l'art. 190a al. 1 let. a LDIP n'est pas remplie.

(…)

Décision

La demande de révision est rejetée dans la mesure où elle est recevable.

(…)

4A_682/2024
A. c. Union Internationale de Biathlon
20 mai 2025

Recours en matière civile contre la sentence rendue le 18 novembre 2024 par le Tribunal Arbitral du Sport (CAS 2020/A/7509)

Confirmation de l'inapplicabilité directe des dispositions de la CEDH, réitération du fait que ces garanties relèvent du champ d'application restrictif de l'art. 190, al. 2, let. e, LDIP; non-application des principes du droit pénal tels qu'ils sont garantis par la CEDH aux affaires disciplinaires dans le domaine du sport

Extrait des faits

A._____ (ci-après: l'athlète) est un ancien biathlète russe de niveau international. Il a remporté plusieurs médailles olympiques aux Jeux Olympiques de Vancouver 2010 et de Sotchi 2014. Il a mis un terme à sa carrière sportive en 2014.

L'Union Internationale de Biathlon (IBU) est l'instance dirigeante du biathlon au niveau mondial; son siège se trouve en Autriche.

Un groupe de trois experts (ci-après: le groupe d'experts) chargé d'examiner le passeport biologique de l'athlète, constitué de 17 échantillons sanguins prélevés entre le 24 janvier 2010 et le 14 février 2014, a estimé, dans un premier avis du 21 mars 2017, que la probabilité que les anomalies détectées dans le passeport biologique soient dues à une manipulation sanguine était élevée.

Le 5 mai 2017, l'IBU a informé l'athlète de l'ouverture d'une enquête en raison d'une potentielle infraction à la réglementation antidopage et l'a invité à s'expliquer.

Dans un nouvel avis formulé le 7 septembre 2017, le groupe d'experts a considéré que de nouvelles analyses devraient être menées aux fins d'apprécier les explications relatives à des variations génétiques fournies entre-temps par l'athlète.

À cette fin, l'IBU a demandé à l'athlète, le 2 octobre 2017, d'accepter de se soumettre à des contrôles inopinés pendant une période de six mois. L'athlète a donné son consentement le 10 octobre 2017 et s'est dit prêt à coopérer.

De nouveaux échantillons ont été prélevés sur l'athlète les 25 octobre et 6 décembre 2017.

En avril 2018, le laboratoire de Belfast a identifié l'existence d'une variation génétique chez l'athlète (mutation du gène EGLN2).

Le 16 juin 2018, le groupe d'experts a émis un troisième avis, au terme duquel il s'est déclaré incapable, sur la base des nouveaux éléments à sa disposition, de conclure qu'il était très probable que l'athlète ait utilisé des substances ou méthodes interdites. Il a préconisé d'effectuer des analyses complémentaires.

Le cas de l'athlète a été discuté, de manière anonyme, lors d'une séance organisée par l'Agence Mondiale Antidopage (AMA) en décembre 2019. À cette occasion, l'un des participants, le généticien B._____, a été interrogé sur le point de savoir si les anomalies hématologiques détectées dans le passeport biologique en question pouvaient s'expliquer par des variations génétiques. Le Prof. B._____ a répondu à cette question par la négative.

À la demande de l'AMA, le Prof. B._____ a établi un rapport le 9 janvier

2020 dans lequel il a indiqué, en substance, que la variation génétique présente chez l'athlète ne pouvait pas expliquer les valeurs constatées dans son passeport biologique.

Le 11 janvier 2020, le groupe d'experts, qui s'était vu remettre un exemplaire du rapport du Prof. B._____, a émis un quatrième avis, dans lequel il a notamment mentionné ce qui suit:

"In his Expert Opinion, Professor B._____ now affirms, on the basis of solid scientific evidence, that the observed mutation is observed among healthy subjects and has no 'functional consequences in humans of pathological, clinical or biological importance'. His statement confirms the comment of Dr C._____ to the analytical report from the Belfast laboratory (in which the mutation was found) that the variant detected in the gene EGLN2 is not-pathogenetic.
On the basis of the exclusion of any possible role of the gene mutation in erythropoiesis, it is our unanimous opinion that it is highly likely that the abnormalities observed in this passport and described by us in detail in our first Joint Expert Report were caused by the use of prohibited substances or prohibited methods, and that it is unlikely that they were the result of confounding factors.
In particular, even if a mild effect of anabolic steroids on erythropoiesis has been described in the scientific literature, it is our unanimous opinion that the timing, the type and the amplitude of the abnormalities in this passport fully exclude any role of anabolic steroids in their genesis".

Le 21 janvier 2020, l'IBU a accusé l'athlète d'avoir enfreint la réglementation antidopage entre 2010 et 2014.

Le 7 février 2020, l'athlète a réfuté les accusations de dopage portées à son encontre.

Le 25 février 2020, l'IBU a assigné l'athlète devant la Chambre antidopage du Tribunal Arbitral du Sport (CAD TAS).

Statuant le 27 octobre 2020, la CAD TAS s'est déclarée compétente et a admis la requête déposée par l'IBU. Elle a constaté l'existence d'une infraction à la réglementation antidopage applicable, prononcé la suspension de l'athlète pour une durée de quatre ans à compter de la décision et ordonné la disqualification de tous les résultats obtenus par ce dernier entre le 24 janvier 2010 et la fin de la saison 2013/2014, sanction impliquant notamment le retrait de l'ensemble des médailles, points et prix gagnés par l'athlète.

Le 13 novembre 2020, l'athlète a appelé de cette décision auprès de la Chambre arbitrale d'appel du TAS (CAA TAS).

Le 23 novembre 2020, l'intéressé a également formé un recours en matière civile au Tribunal fédéral aux fins d'obtenir l'annulation de la décision rendue par la CAD TAS.

Le 25 mars 2021, la Formation de la CAA TAS, composée de trois arbitres, a décidé de suspendre la procédure jusqu'à droit connu sur le recours pendant devant le Tribunal fédéral.

Statuant le 18 juin 2021, le Tribunal fédéral a déclaré irrecevable le recours formé par l'athlète (arrêt 4A_612/2020 partiellement publié aux **ATF 147 III 500**).

Après avoir ordonné la reprise de la procédure, la Formation a décidé de scinder la procédure et d'examiner préliminairement les questions relatives à la compétence et à la composition de la CAD TAS.

Par sentence du 8 avril 2022, la Formation s'est déclarée compétente pour connaître de l'appel formé par l'athlète à l'encontre de la

décision rendue le 27 octobre 2020 par la CAD TAS.

Statuant le 22 décembre 2022, le Tribunal fédéral a rejeté, dans la mesure de sa recevabilité, le recours interjeté par l'athlète à l'encontre de ladite sentence (arrêt 4A_232/2022 partiellement publié aux **ATF 148 III 427**).

(…)

Par sentence du 18 novembre 2024, la Formation a rejeté l'appel formé par l'athlète et confirmé la décision rendue le 27 octobre 2020 par la CAD TAS.

Les motifs qui étayent cette sentence peuvent être résumés comme il suit.

Dans la décision attaquée, la Formation précise, à titre liminaire, que les dix-sept échantillons récoltés aux fins de constituer le passeport biologique de l'athlète sont valides, raison pour laquelle ils peuvent être pris en considération pour apprécier l'existence d'une éventuelle infraction à la réglementation antidopage. Elle estime, par ailleurs, que le rapport établi par le Prof. B._____ ne constitue pas une preuve obtenue illégalement, puisque l'athlète a consenti, le 10 octobre 2017, à ce que son matériel génétique puisse être examiné par l'IBU, laquelle était en droit de faire appel à des experts du domaine génétique afin d'apprécier le bien-fondé des explications fournies par l'athlète. En tout état de cause, le rapport du Prof. B._____, même s'il avait été établi sur la base de données transmises illégalement, pourrait de toute manière être pris en compte selon les arbitres, car des intérêts privés et publics l'emportent en l'occurrence sur ceux de l'athlète.

Après avoir résumé le contenu des rapports ainsi que des témoignages des experts respectifs des parties, la Formation constate qu'il existe des anomalies dans le passeport biologique de l'athlète. Selon les résultats fournis par le logiciel utilisé dans le cadre du système du passeport biologique, les probabilités de dopage sont supérieures à 99,9 % s'agissant des taux d'hémoglobine constatés. Quatre échantillons de sang présentent en particulier des taux d'hémoglobine anormaux.

Poursuivant le fil de son raisonnement, la Formation estime qu'il n'est pas établi que la condition génétique alléguée par l'athlète pourrait expliquer les anomalies détectées dans son passeport biologique. L'intéressé n'a en effet pas réussi à démontrer qu'il présentait continuellement un taux d'hémoglobine élevé. La Formation n'est pas convaincue que les variations génétiques invoquées par l'athlète puissent être à l'origine des taux d'hémoglobine élevés détectés dans son passeport biologique. À cet égard, elle souligne que les preuves scientifiques présentées par l'athlète reposent essentiellement sur des déductions et des hypothèses. Selon les arbitres, il n'appartient pas à l'IBU d'exclure toutes les variations génétiques éventuelles susceptibles d'expliquer les valeurs élevées d'hémoglobine constatées dans le passeport biologique. L'athlète ne peut dès lors pas se contenter d'affirmer qu'il n'existe pas suffisamment d'études à ce sujet.

Même si elle devait admettre que l'athlète souffrait d'une affection génétique se traduisant par des taux d'hémoglobine élevés (*quod non*), la Formation estime qu'il n'existe aucune raison à même d'expliquer les fluctuations importantes des taux d'hémoglobine constatés dans le passeport biologique de l'athlète. À son avis, ces fluctuations significatives demeurent inexpliquées.

La Formation écarte, par ailleurs, la thèse d'une éventuelle contamination de l'un des échantillons prélevés. Quant aux échantillons prélevés en 2017, elle considère qu'ils présentent une valeur probante limitée, dans la mesure où l'athlète avait été averti qu'il

pourrait faire l'objet de contrôles inopinés dans les mois à venir. Quoi qu'il en soit, lesdits échantillons n'expliquent pas les fluctuations du taux d'hémoglobine constatées au cours de la période comprise entre 2010 et 2014.

La Formation souligne que d'autres éléments corroborent en l'occurrence l'existence d'une infraction à la réglementation antidopage. Premièrement, elle observe que les pics d'hémoglobine coïncident avec les compétitions majeures auxquelles a participé l'athlète. En effet, le taux d'hémoglobine a sensiblement augmenté chez l'athlète peu avant les Jeux Olympiques de Vancouver et ceux de Sotchi, sans que l'intéressé fournisse la moindre explication à cet égard. La Formation estime qu'il est statistiquement très improbable qu'un athlète présente des pics d'hémoglobine aussi élevés juste avant les deux compétitions les plus importantes dans la carrière d'un biathlète. Secondement, elle relève que l'appelant était l'un des "athlètes protégés" ("protected athletes") dans le système de dopage russe mis en place en particulier lors des Jeux Olympiques de Sotchi.

Au terme de son analyse, la Formation aboutit à la conclusion suivante:

"202. After carefully assessing the Parties' arguments and experts' testimony, the Panel finds that the Respondent has proven to the Panel's comfortable satisfaction that the Athlete committed an ADRV [anti-doping rule violation] between January 2010 and April 2014... Indeed, there are abnormalities in the Athlete's ABP [Athlete Biological Passport] and these abnormalities - in particular, the significant fluctuations in the levels of HGB [hemoglobin concentration] - are not explained by the Athlete's alleged hereditary erythrocytosis or by an alleged infection. Further, the circumstantial evidence - specifically, the facts that the peaks of HGB levels coincide with major competitions and that the Athlete was a "protected athlete"... prior to and during the 2014 Sochi Olympics- strongly and decisively supports this finding of an ADRV".

Le 23 décembre 2024, l'athlète (ci-après: le recourant) a formé un recours en matière civile aux fins d'obtenir l'annulation de cette sentence.
L'IBU (ci-après: l'intimée) a conclu au rejet du recours dans la mesure de sa recevabilité.

(…)

Extrait des considérants

(…)

5.
Dans un unique moyen, le recourant soutient que la sentence attaquée est incompatible avec l'ordre public matériel (art. 190 al. 2 let. e LDIP), motif pris de ce qu'il n'a, selon lui, pas bénéficié d'un procès équitable au sens de l'art. 6 de la Convention européenne des droits de l'homme (CEDH; RS 0.101). À cet égard, il fait valoir que la Formation a violé le principe de la présomption d'innocence, d'une part, et prétend que la sentence attaquée serait contraire à la "sécurité juridique", d'autre part.

5.1. Une sentence est contraire à l'ordre public matériel lorsqu'elle viole des principes fondamentaux du droit de fond au point de ne plus être conciliable avec l'ordre juridique et le système de valeurs déterminants (**ATF 144 III 120** consid. 5.1; **132 III 389** consid. 2.2.1). Qu'un motif retenu par un tribunal arbitral heurte l'ordre public n'est pas suffisant; c'est le résultat auquel la sentence aboutit qui doit être incompatible avec l'ordre public (**ATF 144 III 120** consid. 5.1). L'incompatibilité de la sentence avec l'ordre public, visée à l'art. 190 al. 2 let. e LDIP, est une notion plus restrictive que celle d'arbitraire (**ATF 144 III 120** consid. 5.1; arrêt 4A_318/2018 du 4 mars 2019 consid. 4.3.1). Pour qu'il y ait incompatibilité avec l'ordre public, il ne suffit pas que les preuves

aient été mal appréciées, qu'une constatation de fait soit manifestement fausse ou encore qu'une règle de droit ait été clairement violée (arrêts 4A_116/2016 du 13 décembre 2016 consid. 4.1; 4A_304/2013 du 3 mars 2014 consid. 5.1.1; 4A_458/2009 du 10 juin 2010 consid. 4.1).

5.2. Selon la jurisprudence constante du Tribunal fédéral, une partie ne peut pas se plaindre directement, dans le cadre d'un recours en matière civile au Tribunal fédéral formé contre une sentence arbitrale internationale, de ce que les arbitres auraient violé l'art. 6 par. 1 CEDH, même si les principes découlant de cette disposition peuvent servir, le cas échéant, à concrétiser les garanties invoquées sur la base de l'art. 190 al. 2 LDIP (**ATF 147 III 586** consid. 5.2.1; **146 III 358** consid. 4.1; **142 III 360** consid. 4.1.2; arrêt 4A_268/2019 du 17 octobre 2019 consid. 3.4.3).
Eu égard aux exigences strictes de motivation applicables en matière d'arbitrage (art. 77 al. 3 LTF), il appartient ainsi à la partie recourante de démontrer en quoi la prétendue violation d'une garantie conventionnelle constitue une atteinte à l'ordre public visé par l'art. 190 al. 2 let. e LDIP (**ATF 147 III 586** consid. 5.2.1; **146 III 358** consid. 4.1).

5.3. Se fondant en particulier sur les considérations émises par la Section III de la Cour européenne des droits de l'homme (ci-après: la CourEDH) dans son arrêt rendu le 11 juillet 2023 dans l'affaire *Semenya contre la Suis* se, le recourant soutient qu'il devrait pouvoir invoquer directement les garanties reconnues par la CEDH dans le cadre d'un recours dirigé contre une sentence internationale, sans qu'il existe la moindre limitation du pouvoir d'examen du Tribunal fédéral à cet égard. Ce faisant, il méconnaît le fait que l'arrêt en question n'est pas définitif, puisque l'affaire Semenya est toujours pendante devant la Grande Chambre de la CourEDH. Cette circonstance a du reste conduit le Tribunal fédéral à confirmer récemment que la partie recourante ne peut pas invoquer directement les garanties de la CEDH dans un recours formé en matière d'arbitrage international (arrêt 4A_488/2023 du 23 janvier 2024 consid. 3). Il ne saurait en être autrement ici. Aussi est-ce en vain que l'intéressé prétend que la Cour de céans devrait en l'occurrence examiner avec une pleine cognition toute violation éventuelle des garanties conventionnelles.

5.4.

5.4.1. Dans la première branche du moyen examiné, le recourant soutient que la Formation aurait violé le principe de la présomption d'innocence en confirmant la sanction prononcée à son encontre car les arbitres ne pouvaient pas acquérir la certitude qu'il avait enfreint la réglementation antidopage. À cet égard, il insiste sur le fait que tous les contrôles antidopage qu'il a subis se sont révélés négatifs. Il souligne également que plusieurs experts ont indiqué, au cours de la procédure d'arbitrage, que les anomalies détectées dans son passeport biologique pouvaient s'expliquer par des variations génétiques. Selon le recourant, la Formation aurait considéré, à tort, que c'était à lui de prouver son innocence en établissant l'origine de telles anomalies. Elle aurait aussi dû appliquer le standard de l'intime conviction. Si elle l'avait fait, la Formation aurait dû retenir qu'il existait des doutes insurmontables quant à l'existence d'une infraction à la réglementation antidopage. Le recourant reproche en outre aux arbitres de n'avoir pas pris en considération tous les éléments de preuve censés démontrer que son profil génétique pouvait expliquer les taux d'hémoglobine élevés observés dans son passeport biologique. Il fait enfin valoir qu'il présente constamment, à l'instar de ses parents, un taux d'hémoglobine élevé et que les variations de celui-ci, identifiées dans son passeport biologique, sont naturelles.

5.4.2. Tel qu'il est présenté, le grief examiné ne saurait prospérer.

Dans plusieurs arrêts, le Tribunal fédéral a souligné que l'application automatique de notions telles que la présomption d'innocence et le principe *in dubio pro reo*, ainsi que des garanties correspondantes figurant dans la CEDH, ne va pas de soi en matière de sanctions disciplinaires prononcées par des associations de droit privé, telles les fédérations sportives (arrêts 4A_10/2022 du 17 mai 2022 consid. 5.4.2; 4A_644/2020 du 23 août 2021 consid. 6.3; 4A_462/2019 du 29 juillet 2020 consid. 7.1; 4A_178/2014 du 11 juin 2014 consid. 5.2 et les références citées). Si la mise en oeuvre du principe *in dubio pro reo* ne prête pas à discussion dans une procédure disciplinaire ou pénale ordinaire, en raison des pouvoirs d'investigation et de coercition étendus dont dispose l'État, l'application stricte du même principe dans le cas de procédures disciplinaires conduites par des organismes privés ne pouvant pas s'appuyer sur un tel rapport de puissance vis-à-vis des sportifs soupçonnés de pratiques interdites pourrait en effet empêcher le système mis en place pour lutter contre le fléau que constitue le dopage sportif de fonctionner correctement (arrêt 4A_488/2011 du 18 juin 2012 consid. 6.2). Dans un arrêt rendu le 6 février 2025 (cause 4A_474/2024), le Tribunal fédéral a considéré que la présomption d'innocence et le *principe in dubio pro reo*, tels qu'ils sont garantis par la CEDH, ne sont pas applicables dans les procédures disciplinaires des organisations de droit privé telles que les fédérations sportives (consid. 6).

Au vu de ce qui précède, le recourant s'emploie, en pure perte, à démontrer que la Formation aurait enfreint l'art. 6 par. 2 CEDH. Les éléments avancés par le recourant dans ses écritures ne commandent pas davantage de s'écarter de la jurisprudence bien établie du Tribunal fédéral selon laquelle la présomption d'innocence et le principe *in dubio pro reo*, tels qu'ils sont garantis par la CEDH, ne sont pas applicables dans les procédures disciplinaires sportives.

En tout état de cause, la Cour de céans estime, à l'instar de l'intimée (cf. réponse, n. 35), que la lecture de la sentence entreprise permet de constater que la Formation, après avoir examiné minutieusement l'ensemble des preuves à sa disposition, ne nourrissait visiblement aucun doute raisonnable quant au fait que le recourant avait enfreint la réglementation antidopage.

5.5.

5.5.1. Dans la seconde branche du moyen considéré, le recourant prétend que la sentence querellée porterait atteinte à la "sécurité juridique". À cet égard, il fait valoir que la procédure disciplinaire le visant a été ouverte en janvier 2020 et qu'il a dû s'expliquer sur des faits remontant à l'année 2010, ce qui serait incompatible avec la sécurité du droit.

5.5.2. La recevabilité du grief soumis à l'examen de la Cour de céans apparaît des plus douteuses. On peut en effet d'emblée s'interroger sur le point de savoir si un principe aux contours aussi vagues que celui de la "sécurité juridique" entre dans la notion d'ordre public visée par l'art. 190 al. 2 let. e LDIP.

Quoi qu'il en soit, l'argumentation développée par le recourant au soutien de ce grief n'emporte nullement la conviction de la Cour de céans. L'intéressé prétend, de façon inexacte, que c'est seulement à partir de janvier 2020 qu'il a dû fournir des explications au sujet des anomalies observées dans son passeport biologique, constitué d'échantillons prélevés entre janvier 2010 et février 2014. Selon les constatations factuelles figurant dans la sentence attaquée qui lient le Tribunal fédéral, le recourant a en effet été informé, en mai 2017 déjà, de l'ouverture d'une enquête en raison d'une potentielle infraction à la réglementation antidopage. À cette occasion, il a été invité à s'expliquer à propos des anomalies détectées

dans son passeport biologique, ce qu'il a fait après avoir consulté un généticien. Aussi est-ce à tort que le recourant affirme n'avoir pu se déterminer qu'en 2020 sur des faits remontant à plus de dix ans.

En tout état de cause, la Cour de céans considère que, sous le couvert d'une prétendue violation du principe de la "sécurité juridique", le recourant tente de contourner, de manière inadmissible, l'obstacle dirimant selon lequel le délai de prescription de dix ans, applicable dans la présente cause, n'était en l'occurrence pas échu, ce que ne conteste au demeurant pas l'intéressé. À le supposer recevable, le grief considéré ne pourrait dès lors qu'être rejeté.

(…)

Décision

Le recours est rejeté dans la mesure où il est recevable.

(….)

4A_168/2025
A. c. United States Anti-Doping Agency
4 août 2025

Recours en matière civile contre la sentence rendue le 21 juin 2024 par le Tribunal Arbitral du Sport (CAS 2024/A/10291)

Confirmation des limites de l'examen par le TF du droit d'être entendu en vertu de l'art. 190, al. 2, let. d, LDIP, qui ne peut être utilisé pour réexaminer l'appréciation des preuves; le raisonnement implicite d'une formation du TAS suffit lorsque le point a été examiné mais jugé non convaincant

Extrait des faits

Le dopage sanguin est une pratique interdite visant à améliorer les performances sportives en augmentant la capacité du sang à transporter l'oxygène dans l'organisme. Il existe deux formes principales de manipulation sanguine. La première consiste à administrer un agent stimulant l'érythropoïèse (ASE), comme l'érythropoïétine (EPO), dans l'organisme de l'athlète aux fins de stimuler la production de globules rouges. La seconde réside dans la réalisation de transfusions sanguines, soit en réinjectant le propre sang de l'athlète précédemment prélevé sur sa personne (transfusion autologue), soit en utilisant du sang fourni par un donneur compatible (transfusion homologue).

Le programme intitulé "Passeport Biologique de l'Athlète" est une méthode indirecte de détection du dopage. Il s'agit d'un système électronique qui compile et surveille les résultats des tests subis par un athlète ainsi que d'autres données au fil du temps. Initialement, les résultats de l'athlète concerné sont comparés à ceux d'une population de référence, puis, au fur et à mesure que d'autres données sont récoltées, le passeport biologique s'adapte, grâce à un logiciel, aux fins d'établir un profil physiologique propre au sportif en question. Le module hématologique du passeport biologique regroupe une série de marqueurs permettant de détecter une éventuelle manipulation sanguine, parmi lesquels figurent notamment:

- le taux d'hémoglobine: l'hémoglobine est une protéine présente dans les globules rouges chargée de transporter l'oxygène des poumons vers le reste de l'organisme. Le taux d'hémoglobine dans le sang est un indicateur essentiel de la capacité d'une personne à transporter de l'oxygène;

- le pourcentage de réticulocytes: les réticulocytes sont des globules rouges immatures récemment libérés par la moelle osseuse dans la circulation sanguine. Le pourcentage de réticulocytes est une mesure du nombre de ces cellules dans le sang par rapport au nombre total de globules rouges. Il reflète le taux de production de globules rouges par l'organisme.

Le dopage sanguin entraîne généralement une combinaison anormale d'un taux d'hémoglobine élevé et d'un pourcentage inhabituel de réticulocytes.

Lorsque des anomalies sont signalées, le profil du passeport biologique de l'athlète concerné est envoyé par l'unité de gestion du Passeport Biologique de l'Athlète (ci-après: l'APMU), sous une forme anonymisée, à un expert indépendant. Si ce dernier conclut à l'existence

d'un "dopage probable", le profil en question est examiné individuellement par deux experts supplémentaires. Si les experts concluent unanimement à un cas de "dopage probable", l'APMU fait état d'un "résultat anormal de passeport biologique" dans le système d'administration et de gestion antidopage (le système ADAMS) géré par l'Agence Mondiale Antidopage (AMA). L'athlète concerné est ensuite informé de l'existence d'une potentielle infraction à la réglementation antidopage et invité à fournir des explications au sujet des anomalies détectées. Si les trois experts maintiennent leur appréciation initiale après avoir examiné les explications de l'athlète, une procédure disciplinaire est initiée à l'encontre du sportif.

En juin 2023, un groupe de trois experts, chargé d'examiner le passeport biologique du nageur américain de niveau international A., a estimé que les anomalies détectées dans deux échantillons de sang prélevés sur l'athlète les 20 juillet et 27 septembre 2022 découlaient probablement d'une manipulation sanguine. Après avoir pris connaissance des explications fournies par le sportif, les experts ont maintenu leur conclusion initiale dans deux rapports successifs datés des 17 août et 20 octobre 2023.

Le 18 août 2023, l'agence antidopage américaine (US Anti-Doping Agency; ci-après: l'USADA) a officiellement reproché au nageur d'avoir enfreint la réglementation antidopage applicable et l'a suspendu provisoirement.

Un arbitre unique, siégeant sous l'égide du "New Era Arbitration", a rendu sa décision le 27 novembre 2023. Il a statué en faveur de l'athlète incriminé. Il a considéré que l'USADA avait échoué à établir, à la satisfaction confortable de l'arbitre, que le nageur avait usé respectivement tenté d'user d'une substance interdite ou d'une méthode interdite.

Le 9 janvier 2024, l'USADA a appelé de cette décision auprès du Tribunal Arbitral du Sport (TAS).

(…) Admettant partiellement l'appel formé par l'USADA, la Formation a annulé la décision attaquée, jugé que le nageur avait enfreint la réglementation antidopage applicable, l'a suspendu pour une durée de quatre ans à compter de la reddition de la sentence, déduction faite de la période de suspension provisoire déjà subie par l'intéressé, et a annulé tous les résultats obtenus par lui entre le 20 juillet et le 31 décembre 2022.

Les motifs qui étayent cette décision seront examinés plus loin dans la mesure utile à la compréhension des critiques dont elle est la cible.

Le 2 avril 2025, le nageur (ci-après: le recourant) a formé un recours en matière civile aux fins d'obtenir l'annulation de ladite sentence. Il a présenté une requête d'assistance judiciaire pour la procédure fédérale.

Extrait des considérants

(…)

5.
Dans un unique moyen, le recourant, invoquant l'art. 190 al. 2 let. d LDIP, dénonce une violation de son droit d'être entendu. Il reproche à la Formation d'avoir omis d'examiner un argument pertinent avancé par lui.

5.1. La jurisprudence a déduit du droit d'être entendu, tel qu'il est garanti par les art. 182 al. 3 et 190 al. 2 let. d LDIP, un devoir minimum pour le tribunal arbitral d'examiner et de traiter les problèmes pertinents. Ce devoir est violé lorsque, par inadvertance ou malentendu, le tribunal arbitral ne prend pas en considération des allégués, arguments, preuves et offres de

preuve présentés par l'une des parties et importants pour la sentence à rendre (**ATF 142 III 360** consid. 4.1.1 et les références citées). Il incombe à la partie soi-disant lésée de démontrer, dans son recours dirigé contre la sentence, en quoi une inadvertance des arbitres l'a empêchée de se faire entendre sur un point important. C'est à elle d'établir, d'une part, que le tribunal arbitral n'a pas examiné certains des éléments de fait, de preuve ou de droit qu'elle avait régulièrement avancés à l'appui de ses conclusions et, d'autre part, que ces éléments étaient de nature à influer sur le sort du litige (**ATF 142 III 360** consid. 4.1.1 et 4.1.3). Si la sentence passe totalement sous silence des éléments apparemment importants pour la solution du litige, c'est aux arbitres ou à la partie intimée qu'il appartiendra de justifier cette omission dans leurs observations sur le recours. Ceux-ci pourront le faire en démontrant que, contrairement aux affirmations du recourant, les éléments omis n'étaient pas pertinents pour résoudre le cas concret ou, s'ils l'étaient, qu'ils ont été réfutés implicitement par le tribunal arbitral (**ATF 133 III 235** consid. 5.2). Cependant, les arbitres n'ont pas l'obligation de discuter tous les arguments invoqués par les parties, de sorte qu'il ne peut leur être reproché, au titre de la violation du droit d'être entendu en procédure contradictoire, de n'avoir pas réfuté, même implicitement, un moyen objectivement dénué de toute pertinence (**ATF 133 III 235** consid. 5.2 et les références citées).

Au demeurant, le grief tiré de la violation du droit d'être entendu ne doit pas servir, pour la partie qui se plaint de vices affectant la motivation de la sentence, à provoquer par ce biais un examen de l'application du droit de fond (**ATF 142 III 360** consid. 4.1.2 et les références citées).

5.2. Le recourant expose, dans son mémoire de recours, qu'il a avancé, au cours de la procédure d'arbitrage, l'argument selon lequel les anomalies détectées dans son passeport biologique découlaient d'une forte réduction de sa charge d'entraînement ("désentraînement" ["detraining"]), à la suite notamment de la maladie qu'il avait contractée (COVID-19). Il rappelle avoir fait valoir, dans sa réponse à l'appel, que cette période d'inactivité prolongée entre la mi-mai et la mi-juillet 2022 avait pu donner lieu à des fluctuations hématologiques significatives affectant son profil sanguin et singulièrement son taux de réticulocytes. Il précise aussi avoir produit des publications scientifiques au soutien de la thèse qu'il défendait. Le recourant insiste également sur le fait que les experts des deux parties ont été entendus durant la procédure au sujet des conséquences que pouvait avoir le "désentraînement" sur le profil hématologique d'un sportif. Selon lui, la Formation aurait cependant omis d'examiner cet argument et ne l'aurait pas écarté implicitement. Le recourant s'attelle enfin à démontrer que cet élément était susceptible d'influer sur le sort du litige.

5.3. L'argumentation développée par le recourant ne suffit pas à établir une violation des principes jurisprudentiels susmentionnés, relatifs à l'un des éléments constitutifs de la garantie du droit d'être entendu.

Il appert en effet que, sous le couvert d'une prétendue violation de l'art. 190 al. 2 let. d LDIP, le recourant critique, en réalité, la motivation de la sentence entreprise et tente d'inciter la Cour de céans à contrôler le bien-fondé des considérations émises par la Formation pour justifier la solution retenue par elle. Il va sans dire que semblable démarche est vaine. Les considérations détaillées formulées par les arbitres aux fins de conclure à l'existence d'un cas de manipulation sanguine relèvent de l'appréciation des preuves et sont soustraites, comme telles, à l'examen du Tribunal fédéral. Dès lors, le recourant les critique en vain.

En tout état de cause, il apparaît, à la lecture de la sentence entreprise, que les arbitres ont écarté, ne serait-ce que de manière implicite, l'argument dont le recourant fait grand cas, même si ce dernier prétend le contraire. Il n'a en effet pas échappé à la Formation que l'intéressé avait invoqué son "désententraînement" pour expliquer les anomalies détectées dans ses marqueurs sanguins. La Formation a, en effet, relevé que l'athlète s'était prévalu de cette circonstance, en juin 2023, lorsque les trois experts avaient conclu unanimement à l'existence probable d'une manipulation sanguine (sentence, n. 20). Elle a également observé que l'arbitre unique, qui avait statué en faveur de l'athlète dans la décision entreprise devant le TAS, avait notamment conclu que le scénario avancé par le recourant à propos de la question du "désentraînement" était plausible (sentence, n. 27). Dans la sentence attaquée, la Formation a en outre bel et bien tenu compte de ce que le recourant avait réduit drastiquement sa charge d'entraînement à la suite de la maladie dont il avait été victime. Elle n'a toutefois visiblement pas vu dans cette circonstance un motif susceptible d'expliquer les anomalies détectées dans le profil sanguin du recourant, mais a au contraire considéré qu'il s'agissait d'un élément accréditant la thèse selon laquelle l'intéressé avait voulu retrouver plus rapidement son état de forme, à la suite de sa période de "désentraînement", en utilisant un ASE (sentence, n.135-136). Au terme de son analyse, la Formation a estimé que les explications fournies par l'intimée, eu égard aux avis scientifiques disponibles et à l'ensemble des faits de la cause, constituaient un scénario de dopage plausible. Il apparaît ainsi que la Formation a écarté, à tout le moins implicitement, l'argument selon lequel le "désentraînement" pouvait expliquer les anomalies détectées dans le profil hématologique du passeport biologique du recourant, étant précisé ici que ce dernier ne saurait obtenir des explications détaillées sur chaque aspect du raisonnement tenu par les arbitres. Il s'ensuit que le moyen soulevé au titre de la violation du droit d'être entendu n'apparaît pas fondé, si tant est qu'il soit recevable.

6.
(…)
Invoquant l'art. 64 al. 1 LTF, le recourant sollicite sa mise au bénéfice de l'assistance judiciaire. Comme le recours était voué à l'échec, l'une des deux conditions cumulatives à la réalisation desquelles la disposition citée subordonne l'octroi de l'assistance judiciaire n'est pas remplie en l'espèce. Ladite requête doit, dès lors, être rejetée. Le recourant, qui succombe, supportera ainsi les frais de la présente procédure (art. 66 al. 1 LTF). L'intimée, qui n'a pas été invitée à déposer une réponse, n'a pas droit à des dépens.

Décision

Le recours est rejeté dans la mesure où il est recevable.
La demande d'assistance judiciaire présentée par le recourant est rejetée.

4A_180/2025
A. c. B.
6 novembre 2025

Recours en matière civile contre la sentence rendue le 7 mars 2025 par le Tribunal Arbitral du Sport (CAS 2023/O/10217).

Approche stricte du TF, fondée sur le consentement, dans les conventions d'arbitrage dans le domaine de l'arbitrage sportif (volontaire) et limite de l'effet de la succession sportive – ou d'autres concepts de la lex sportiva – lorsqu'il s'agit d'interpréter la convention d'arbitrage

Extrait des faits

A._____ (ci-après: l'agent), ressortissant argentin, est un agent de joueurs de football agréé par la Fédération Argentine de Football.

B._____ est un club de football professionnel, basé à..., membre de la Fédération Italienne de Football (FIF), elle-même affiliée à la Fédération Internationale de Football Association (FIFA).

Le 25 mars 2015, l'agent et le club de football C._____ ont signé un contrat, intitulé"Commission Agreement" (ci-après: le contrat de commission), en vertu duquel ledit club s'engageait à verser à son cocontractant une commission en cas de transfert du footballeur D._____ à une autre équipe de football. L'art. 5 dudit contrat prévoyait notamment ce qui suit:

"Any controversy arising from this contract, related to its interpretation, execution and resolution, will be decided by the Courts of Rome or the CAS of Lausanne, with a procedure that will be carried out in the English language. (...)".

Durant l'année 2015, D._____ a été transféré de C._____ à un autre club italien pour un montant de 40 millions d'euros (EUR).

Le 2 juin 2015, C._____ et l'agent ont conclu un accord à teneur duquel ledit club s'est engagé à verser à son partenaire contractuel la commission convenue de 4'000'000 EUR, en trois versements successifs, les montants de 1'550'000 EUR, 900'000 EUR et 1'550'000 EUR devant être payés respectivement avant le 30 juin, le 30 septembre et le 31 décembre 2015.

N'ayant reçu que le premier versement de 1'550'000 EUR, l'agent a assigné C._____ devant le Tribunal Arbitral du Sport (TAS) en vue d'obtenir le paiement du solde de 2'450'000 EUR.

Par sentence du 19 décembre 2017 (CAS 2016/O/4548), le TAS a condamné C._____ à payer au demandeur la somme de 2'450'000 EUR.

C._____ n'a pas versé le montant en question à l'agent.

Le 12 juillet 2019, la FIF a exclu C._____ du championnat italien de deuxième division pour la saison 2019/2020.

Le 24 juillet 2019, B._____ - connu alors sous le nom de E._____ - a été constitué.

Le 31 juillet 2019, B._____ a été autorisé à évoluer dans le championnat amateur italien en quatrième division.

Le 18 octobre 2019, une procédure d'insolvabilité a été ouverte à l'encontre de C._____ par les juridictions italiennes.
Le 25 octobre 2019, C._____ a été exclu de la FIF.

En juillet 2020, B._____ a modifié son nom à la suite de sa promotion en troisième division du championnat italien.

Le 12 avril 2023, une formation arbitrale du TAS, saisie d'un litige divisant B._____ d'avec un autre agent de joueurs, a rendu une sentence dans laquelle elle a considéré que les conditions permettant de conclure à l'existence d'une succession sportive entre C._____ et B._____ semblaient être remplies.

Le 9 décembre 2023, l'agent a saisi le TAS d'une requête d'arbitrage dirigée contre B._____. Il a soutenu, en substance, que le défendeur était le successeur sportif ("sporting successor") de C._____, raison pour laquelle le club défendeur devait répondre des dettes découlant du contrat de commission.

B._____ a excipé de l'incompétence du TAS.

Le 20 février 2024, la Formation désignée par le TAS, composée de trois arbitres, a décidé de limiter la procédure à l'examen de sa compétence.

(…)

Par sentence du 7 mars 2025, la Formation s'est déclarée incompétente pour connaître de la requête d'arbitrage dirigée contre B._____. Les motifs qui étayent cette décision seront examinés plus loin dans la mesure utile à la compréhension des critiques dont elle est la cible.

Le 9 avril 2025, l'agent (ci-après: le recourant) a formé un recours en matière civile aux fins d'obtenir l'annulation de ladite sentence et de faire constater la compétence du TAS pour connaître du litige divisant les parties.

(…)

Extrait des considérants

(…)

5.
Dans un premier moyen, le recourant, invoquant l'art. 190 al. 2 let. b LDIP, reproche à la Formation de s'être déclarée incompétente pour connaître du litige divisant les parties. Selon le recourant, il convenait en l'occurrence d'étendre la clause d'arbitrage insérée dans le contrat de commission à l'intimé. Avant d'examiner les mérites des critiques formulées par le recourant au soutien de ce moyen, il sied de rappeler certains principes et d'exposer les motifs énoncés par la Formation pour justifier la solution retenue par elle.

5.1. Saisi du grief d'incompétence, le Tribunal fédéral examine librement les questions de droit, y compris les questions préalables, qui déterminent la compétence ou l'incompétence du tribunal arbitral (**ATF 146 III 142** consid. 3.4.1; **133 III 139** consid. 5; arrêt 4A_618/2019 du 17 septembre 2020 consid. 4.1). Il ne revoit cependant l'état de fait à la base de la sentence attaquée - même s'il s'agit de la question de la compétence - que si l'un des griefs mentionnés à l'art. 190 al. 2 LDIP est soulevé à l'encontre dudit état de fait ou que des faits ou des moyens de preuve nouveaux (cf. art. 99 al. 1 LTF) sont exceptionnellement pris en considération dans le cadre de la procédure du recours en matière civile (**ATF 144 III 559** consid. 4.1; **142 III 220** consid. 3.1; **140 III 477** consid. 3.1).

5.2. Selon l'art. 190 al. 2 let. b LDIP, la sentence peut être attaquée lorsque le tribunal arbitral s'est déclaré à tort compétent ou incompétent. Le tribunal est compétent lorsque la cause peut faire l'objet d'un arbitrage en vertu de l'art. 177 LDIP, que la convention d'arbitrage est valable à la forme et au fond d'après l'art. 178 LDIP et que la cause est visée par cette convention, toutes ces conditions étant indissociables (**ATF 133 III 139** consid. 5).

5.2.1. S'agissant du fond, la convention d'arbitrage est valable, selon l'art. 178 al. 2 LDIP, si elle répond aux conditions que pose soit le droit choisi par les parties, soit le droit régissant l'objet du litige (*lex causae*) et notamment le droit applicable au contrat principal, soit encore le droit suisse en tant que droit du siège de l'arbitrage. La disposition citée consacre trois rattachements alternatifs *in favorem validitatis*, sans aucune hiérarchie entre eux (**ATF 129 III 727** consid. 5.3.2).

5.2.2. Lorsqu'il examine s'il est compétent pour trancher le différend qui lui est soumis, le tribunal arbitral doit résoudre, entre autres questions, celle de la portée subjective de la convention d'arbitrage, qualifiée aussi d'extension de la clause à des tiers non-signataires. Il lui appartient ainsi de déterminer quelles sont les parties liées par cette convention et de rechercher, le cas échéant, si un ou des tiers qui n'y sont pas désignés entrent néanmoins dans son champ d'application (**ATF 147 III 107** consid. 3.1.1; **145 III 199** consid. 2.4). Cette question de compétence *ratione personae*, qui relève du fond, doit être résolue à la lumière de l'art. 178 al. 2 LDIP (**ATF 147 III 107** consid. 3.1.1; **145 III 199** consid. 2.4; **134 III 565** consid. 3.2; arrêt 4A_64/2022 du 18 juillet 2022 consid. 6.3.2).

En vertu du principe de la relativité des obligations contractuelles, la convention d'arbitrage incluse dans un contrat ne lie en principe que les cocontractants (**ATF 147 III 107** consid. 3.3.1; **145 III 199** consid. 2.4). L'exigence de forme posée par l'art. 178 al. 1 LDIP ne s'applique qu'à la convention d'arbitrage elle-même, soit à l'accord par lequel les parties initiales ont manifesté leur volonté réciproque et concordante de compromettre. Autre est toutefois la question de savoir si des tiers entrent dans le champ d'application d'une convention formellement valable, bien qu'ils ne l'aient pas signée et n'y soient pas mentionnés (**ATF 129 III 727** consid. 5.3.1).

Dans un certain nombre d'hypothèses, comme la cession de créance, la reprise (simple ou cumulative) de dette ou le transfert d'une relation contractuelle, le Tribunal fédéral admet de longue date qu'une convention d'arbitrage peut obliger même des personnes qui ne l'ont pas signée et qui n'y sont pas mentionnées (**ATF 147 III 107** consid. 3.3.1; **145 III 199** consid. 2.4; **129 III 727** consid. 5.3.1; arrêt 4A_528/2019 du 7 décembre 2020 consid. 3.1). En outre, le tiers qui s'immisce dans l'exécution du contrat contenant la convention d'arbitrage est réputé avoir adhéré, par actes concluants, à celle-ci si l'on peut inférer de cette immixtion sa volonté d'être partie à la convention d'arbitrage (**ATF 147 III 107** consid. 3.3.1; **145 III 199** consid. 2.4; **134 III 565** consid. 3.2; **129 III 727** consid. 5.3.2; arrêt 4A_528/2019, précité, consid. 3.1 et les références citées). Cette jurisprudence est fondée sur les règles de la bonne foi; elle permet de déduire du comportement d'une partie la volonté d'adhérer à un contrat qu'elle n'a pas signé et de se soumettre à la clause arbitrale qui y figure; dans cette mesure, des circonstances postérieures à la conclusion de la convention d'arbitrage peuvent être prises en considération (arrêts 4A_528/2019, précité, consid. 3.1; 4A_450/2013 du 7 avril 2014 consid. 3.5.4). On ne saurait toutefois admettre à la légère une telle volonté. La jurisprudence

relève de manière générale qu'il faut avoir égard à la nature particulière de la convention d'arbitrage. La renonciation à la justice étatique implique en particulier une restriction importante des voies de recours, qui ne doit pas être admise facilement (**ATF 140 III 134** consid. 3.2; **129 III 675** consid. 2.3). En d'autres termes, la volonté de se soumettre à l'arbitrage doit ressortir de façon claire et non équivoque (**ATF 140 III 367** consid. 2.2.2; arrêt 4A_144/2023 du 4 septembre 2023 consid. 6.3).

5.3. Dans la sentence attaquée, la Formation observe que les parties ne contestent pas la validité de la clause d'arbitrage figurant dans le contrat de commission. Pour déterminer si ladite clause peut être étendue à l'intimé, elle estime qu'il convient de trancher cette question à la lumière de l'art. 178 al. 2 LDIP. Soulignant que la disposition citée consacre trois rattachements alternatifs, la Formation constate que les parties n'ont pas choisi le droit applicable à la convention d'arbitrage ni déterminé le droit régissant le contrat de commission, de sorte que les deux premiers rattachements visés par l'art. 178 al. 2 LDIP n'entrent pas en ligne de compte. Par conséquent, la question litigieuse doit être résolue à l'aune du droit suisse, étant précisé que la référence au "droit suisse" figurant à l'art. 178 al. 2 LDIP vise, selon la Formation, le droit matériel suisse et - principalement - les règles du Code des obligations (CO; RS 220; sentence, n. 41-54).

La Formation relève que le recourant prétend que l'intimé est lié par la clause d'arbitrage insérée dans le contrat de commission car le club défendeur serait le successeur sportif ("sporting successor") de C._____. Elle observe que ce mécanisme juridique a été initialement développé par la jurisprudence du TAS puis consacré ultérieurement dans plusieurs règlements de la FIFA. La Formation note que le concept de succession sportive est inconnu en droit suisse. Si le Tribunal fédéral a certes considéré dans son arrêt 4A_246/2022 du 1er novembre 2022 que le mécanisme de la succession sportive prévu dans la réglementation édictée par la FIFA n'est pas contraire à l'ordre public matériel (art. 190 al. 2 let. e LDIP), il n'existe aucune norme, en droit suisse, consacrant semblable concept. Statuant à la majorité de ses membres, la Formation considère qu'une éventuelle reprise de dette ainsi qu'une extension de la clause d'arbitrage à l'intimé ne peuvent dès lors pas se fonder sur un tel mécanisme. Elle estime qu'une telle reprise de dette - et partant une extension de la clause arbitrale - ne peut pas découler d'autres normes du droit suisse, y compris les art. 181 et 333 al. 1 CO (sentence, n. 55-62).

Poursuivant son analyse, la Formation considère, sous la rubrique "No Jurisdiction by Appearance" de sa sentence, que l'intimé n'a pas créé l'impression univoque de vouloir être lié par le contrat de commission et la clause d'arbitrage insérée dans celui-ci (sentence, n. 63).

La Formation estime, par ailleurs, que l'intimé ne s'est pas immiscé dans l'exécution du contrat de commission. Elle aboutit ainsi à la conclusion qu'il n'existe pas de convention d'arbitrage valide qui lierait les parties au litige (sentence, n. 64-67).

5.4. Pour étayer son moyen pris de la violation de l'art. 190 al. 2 let. b LDIP, le recourant reproche à la Formation d'avoir adopté une interprétation trop restrictive de l'art. 178 al. 2 LDIP, en considérant, à tort selon lui, que le "droit suisse" au sens de la disposition citée visait le droit matériel suisse et principalement les dispositions du CO. Selon lui, la référence au droit suisse figurant à l'art. 178 al. 2 LDIP inclut nécessairement les normes de droit suisse mais aussi la jurisprudence ainsi que les principes consacrés par la "doctrine suisse dominante". Le recourant fait grief aux

arbitres d'avoir exclu l'application du concept de succession sportive, motif pris de ce qu'aucune norme du droit suisse ne consacre pareil mécanisme. Ce faisant, la Formation aurait méconnu l'art. 178 al. 2 LDIP, lequel autorise "une validation d'une extension sur la base du droit suisse, y compris à travers la jurisprudence et la pratique arbitrale".

Le recourant insiste également sur le fait que le Tribunal fédéral a admis, à plusieurs reprises, d'étendre une clause d'arbitrage à des tiers n'ayant pas signé le contrat contenant une telle clause, dans diverses hypothèses qui ne sont pas formellement codifiées dans le CO, par exemple en cas d'immixtion dans l'exécution du contrat concerné. Il rappelle que cette jurisprudence est fondée sur les règles de la bonne foi et permet de déduire du comportement d'une partie la volonté d'adhérer à un contrat qu'elle n'a pas signé et de se soumettre à la clause d'arbitrage qui y figure.

Le recourant souligne que le concept de "succession sportive" est "solidement établi dans la *lex sportiva* ", qu'il est codifié dans la réglementation adoptée par la FIFA et régulièrement appliqué par les formations du TAS. Il rappelle aussi que l'intimé s'est vu attribuer la qualité de successeur sportif de C._____ dans une autre affaire jugée le 12 avril 2023 par le TAS (CAS 2020/A/7314). Citant l'arrêt 4A_246/2022, il fait en outre valoir que la succession sportive est un mécanisme reconnu par le système juridique suisse, puisque le Tribunal fédéral l'a jugé compatible avec l'ordre public au sens de l'art. 190 al. 2 let. e LDIP. Selon le recourant, le concept de succession sportive est en adéquation avec les principes dégagés par la jurisprudence du Tribunal fédéral sur l'extension de la clause d'arbitrage. En reprenant l'activité sportive d'un autre club, le successeur de ce dernier adopte en effet un comportement qui, selon les règles de la bonne foi, traduit une volonté d'assumer les engagements juridiques de son prédécesseur.

5.5. Semblable argumentation n'emporte pas la conviction de la Cour de céans.

Il sied d'emblée de rappeler que, conformément aux exigences de motivation accrues en matière d'arbitrage international, il appartient à la partie recourante de montrer, par une argumentation précise, en partant de la sentence attaquée, en quoi le motif invoqué justifie l'admission du recours. À cet égard, il ne suffit pas que la partie qui soutient que le tribunal arbitral s'est déclaré à tort incompétent s'en prenne aux motifs qui étayent cette décision. Encore faut-il qu'elle démontre que la solution à laquelle ont abouti les arbitres est contraire au droit pour que l'on puisse admettre le moyen pris de la violation de l'art. 190 al. 2 let. b LDIP.

En l'occurrence, le recourant laisse intacte l'analyse de la Formation selon laquelle l'éventuelle extension de la clause d'arbitrage insérée dans le contrat de commission doit être appréciée à la lumière du droit suisse, dès lors que seul le troisième rattachement visé par l'art. 178 al. 2 LDIP entre en ligne de compte. Aussi n'y a-t-il pas lieu de s'attarder sur ce point.

Contrairement à ce que semble sous-entendre le recourant, la Formation n'a jamais prétendu que la référence au droit suisse figurant à l'art. 178 al. 2 LDIP englobait uniquement les normes contenues dans certaines lois suisses. La Formation a simplement relevé, en citant une opinion doctrinale, que la mention du droit suisse dans la disposition citée visait le droit matériel suisse et, principalement, les règles du CO. Ce faisant, elle n'a aucunement laissé entendre qu'il fallait faire abstraction de la jurisprudence du Tribunal fédéral relative à l'extension de la clause d'arbitrage à des tiers non-signataires. La lecture de la sentence entreprise permet de s'en convaincre puisque

les arbitres ont fait abondamment référence à la jurisprudence du Tribunal fédéral développée en la matière.

Le recourant fait grand cas de ce que la majorité de la Formation a souligné que le concept de succession sportive est inconnu en droit suisse et qu'il n'existe pas de norme de droit suisse consacrant pareil mécanisme, raison pour laquelle une éventuelle extension de la clause d'arbitrage ne pouvait pas reposer sur ce fondement-là. Force est toutefois de souligner que l'intéressé ne parvient pas à établir l'éventuel caractère erroné d'une telle appréciation. Le recourant ne cite en particulier aucune norme juridique ni opinion doctrinale ni jurisprudence du Tribunal fédéral pour étayer sa thèse selon laquelle le droit suisse consacrerait une telle institution. Il fait certes valoir que le concept de succession sportive est reconnu par la jurisprudence du TAS et qu'il figure dans plusieurs règlements édictés par la FIFA. Cela étant, il perd de vue que les règles de droit adoptées par une association de droit privé ne sont pas des normes de droit suisse. Par ailleurs, la jurisprudence arbitrale, en particulier celle du TAS, ne constitue pas une source du droit de l'arbitrage (arrêt 4A_600/2016 du 29 juin 2017 consid. 3.3.4.3 et les références citées), ni *a fortiori* du droit suisse.

Le recourant ne peut pas davantage être suivi lorsqu'il prétend que la succession sportive serait un mécanisme reconnu par le système juridique suisse, motif pris de ce que le Tribunal fédéral ne l'a pas jugé incompatible avec l'ordre public visé par l'art. 190 al. 2 let. e LDIP dans son arrêt 4A_246/2022. Qu'une sentence arbitrale confirmant une condamnation fondée sur le mécanisme de la succession sportive ne soit pas jugée contraire à l'ordre public au sens de l'art. 190 al. 2 let. e LDIP est une chose. Qu'un tel concept fasse partie de l'ordre juridique suisse en est une autre. À cet égard, il sied de souligner que la jurisprudence du Tribunal fédéral s'est employée à délier l'ordre public de l'art. 190 al. 2 let. e LDIP de toute attache nationale, qu'il s'agisse de la *lex fori*, de la *lex causae* ou de la loi d'un État tiers, dès lors que le motif de recours prévu par cette disposition ne vise pas à protéger l'ordre juridique suisse, pas plus qu'il ne tend à sanctionner le défaut d'application ou la mauvaise application du droit étranger applicable au fond du litige, fût-il impératif (**ATF 132 III 389** consid. 2.2.2). Le recourant ne peut ainsi rien tirer des considérations émises par la Cour de céans dans l'arrêt 4A_246/2022.

C'est également en vain que le recourant reproche à la Formation de ne pas avoir pris en compte les principes dégagés par le Tribunal fédéral dans sa jurisprudence relative à l'extension de la clause d'arbitrage à des tiers non-signataires. La Formation a certes indiqué que le concept de succession sportive était inconnu en droit suisse et qu'aucune norme ne consacrait pareil mécanisme. La lecture de la sentence attaquée permet toutefois de constater que les arbitres n'en ont pas moins examiné si la jurisprudence développée par le Tribunal fédéral pouvait justifier d'étendre la clause d'arbitrage insérée dans le contrat de commission à l'intimé. La Formation a en particulier recherché si l'apparence créée par le comportement de l'intimé pouvait légitimer pareille extension, ce qu'elle a nié, en considérant notamment que le club défendeur n'avait pas manifesté son intention d'être lié par le contrat de commission et la clause d'arbitrage figurant dans celui-ci (sentence, n. 63). Sur le vu des faits constatés dans la sentence attaquée, la solution retenue par les arbitres n'apparaît pas contraire au droit suisse. Il s'ensuit le rejet du moyen pris de la violation de l'art. 190 al. 2 let. b LDIP.

6.
Dans un second moyen, le recourant se plaint d'une atteinte à son droit d'être entendu (art.

190 al. 2 let. d LDIP). Il reproche, en substance, à la Formation de n'avoir pas examiné les éléments qu'il avait avancés aux fins de démontrer que la jurisprudence du Tribunal fédéral relative à l'extension de la clause d'arbitrage aurait dû conduire les arbitres à admettre leur compétence en présence d'un cas allégué de succession sportive.

6.1. La jurisprudence a déduit du droit d'être entendu, tel qu'il est garanti par les art. 182 al. 3 et 190 al. 2 let. d LDIP, un devoir minimum pour le tribunal arbitral d'examiner et de traiter les problèmes pertinents. Ce devoir est violé lorsque, par inadvertance ou malentendu, le tribunal arbitral ne prend pas en considération des allégués, arguments, preuves et offres de preuve présentés par l'une des parties et importants pour la sentence à rendre (**ATF 142 III 360** consid. 4.1.1 et les références citées). Il incombe à la partie soi-disant lésée de démontrer, dans son recours dirigé contre la sentence, en quoi une inadvertance des arbitres l'a empêchée de se faire entendre sur un point important. C'est à elle d'établir, d'une part, que le tribunal arbitral n'a pas examiné certains des éléments de fait, de preuve ou de droit qu'elle avait régulièrement avancés à l'appui de ses conclusions et, d'autre part, que ces éléments étaient de nature à influer sur le sort du litige (**ATF 142 III 360** consid. 4.1.1 et 4.1.3). Si la sentence passe totalement sous silence des éléments apparemment importants pour la solution du litige, c'est aux arbitres ou à la partie intimée qu'il appartiendra de justifier cette omission dans leurs observations sur le recours. Ceux-ci pourront le faire en démontrant que, contrairement aux affirmations du recourant, les éléments omis n'étaient pas pertinents pour résoudre le cas concret ou, s'ils l'étaient, qu'ils ont été réfutés implicitement par le tribunal arbitral (**ATF 133 III 235** consid. 5.2).

C'est le lieu de préciser que le grief tiré de la violation du droit d'être entendu ne doit pas servir, pour la partie qui se plaint de vices affectant la motivation de la sentence, à provoquer par ce biais un examen de l'application du droit de fond (**ATF 142 III 360** consid. 4.1.2 et les références citées).

6.2. En l'occurrence, il est flagrant que le recourant, sous le couvert d'une prétendue atteinte à son droit d'être entendu, s'en prend exclusivement à la motivation des arbitres et tente, en pure perte, d'obtenir un examen matériel de la sentence par l'autorité de recours, ce qui n'est pas admissible. En tout état de cause, il apparaît, à la lecture de la sentence entreprise, que la Formation n'a pas omis de d'examiner certains éléments avancés par le recourant, mais qu'elle a simplement abouti à un résultat différent de la thèse défendue par ce dernier. La Formation a dès lors rejeté, ne serait-ce que de manière implicite, l'argumentation présentée par le recourant, lequel ne saurait au demeurant obtenir une motivation détaillée sur chaque aspect du raisonnement tenu par les arbitres. Il n'y a dès lors pas trace d'une violation du droit d'être entendu du recourant *in casu*. À le supposer recevable, le moyen tiré de la violation du droit d'être entendu ne pourrait qu'être rejeté.

(…)

Décision

Le recours est rejeté dans la mesure où il est recevable.

(…)

4A_230/2025
A. c. B.
10 novembre 2025

Recours en matière civile contre la sentence rendue le 15 avril 2025 par le Tribunal Arbitral du Sport (CAS 2024/O/10564)

Distinction entre compétence et recevabilité dans les clauses à plusieurs niveaux FIFA-TAS; les délais réglementaires – que ce soit devant la FIFA ou le TAS – sont des conditions procédurales régissant l'accès à une instance et les parties ne peuvent contourner une hiérarchie juridictionnelle convenue dans les clauses de règlement des litiges à plusieurs niveaux en laissant expirer les délais

Extrait des faits

Le 9 juillet 2018, A._____ (ci-après: A._____), un club de football professionnel espagnol, et B._____ (ci-après: B._____), ont signé un accord, intitulé "Memorandum of Cooperation" (ci-après: le Mémorandum), valable jusqu'au 30 juin 2021, en vertu duquel les parties s'engageaient à collaborer dans le cadre d'éventuels transferts de joueurs de football. L'art. 40 du Mémorandum contenait une clause de résolution des litiges ayant la teneur suivante:

"This Agreement is governed by the Football Laws. Any and all disputes will be handled by the competent committee of FIFA [Fédération Internationale de Football Association]. In the event that FIFA shall not be competent to hear any particular dispute arising out of or in connection with this Agreement, such dispute shall be finally settled in accordance with the Rules of the Code of Sports-related Arbitration of the Court of Arbitration for Sport, by three arbitrators appointed in accordance with such Rules and Code".

L'art. 41 du Mémorandum prévoyait ce qui suit:

"This Agreement... shall be governed by and interpreted in accordance with the laws of England and Wales and in the event that either FIFA and/or the Court of Arbitration for Sport shall have no jurisdiction to hear any dispute arising hereunder the parties shall submit to the jurisdiction of the courts England and Wales".

Le 8 février 2024, soit plus de deux ans et sept mois après l'expiration du Mémorandum, A._____, se fondant sur l'art. 40 dudit contrat, a assigné B._____ devant le Tribunal du football de la FIFA. Il reprochait au défendeur de ne pas avoir respecté ses obligations financières découlant du Mémorandum.

Le 12 février 2024, le Tribunal du football a informé A._____ qu'il ne traiterait pas sa demande et qu'il allait clore la procédure, eu égard à l'art. 23 al. 3 du Règlement du Statut et du Transfert des Joueurs (RSTJ; édition de février 2024), à teneur duquel le Tribunal du football ne traite pas les affaires soumises au RSTJ si plus de deux ans se sont écoulés depuis l'événement ayant occasionné le litige.

Le 7 mai 2024, A._____ a déposé une requête d'arbitrage contre B._____ auprès du Tribunal Arbitral du Sport (TAS).

Le club intimé a soulevé l'exception d'incompétence.

La Formation désignée par le TAS, composée de trois arbitres, a décidé de limiter la procédure à l'examen de sa compétence.

Après avoir tenu une audience par visioconférence le 4 septembre 2024, la Formation a rendu sa sentence le 15 mars 2025. Elle s'est déclarée incompétente pour connaître du litige divisant les parties. Les motifs qui étayent cette décision seront examinés plus loin dans la mesure utile à la compréhension des critiques dont elle est la cible.

Le 15 mai 2025, A._____ (ci-après: le recourant) a formé un recours en matière civile à l'encontre de cette sentence. Il demande au Tribunal fédéral d'annuler cette décision et de constater que le TAS est compétent pour connaître de cette affaire.

(…)

Extrait des considérants

(…)

5.
Dans un unique moyen, le recourant, invoquant l'art. 190 al. 2 let. b LDIP, reproche à la Formation d'avoir décliné sa compétence pour connaître de la requête qu'il avait déposée le 7 mai 2024.

Avant d'examiner les mérites des critiques formulées par l'intéressé au soutien de ce moyen, il sied de rappeler certains principes et d'exposer les motifs qui étayent la sentence attaquée sur le problème considéré.

5.1. Selon l'art. 190 al. 2 let. b LDIP, la sentence peut être attaquée lorsque le tribunal arbitral s'est déclaré à tort compétent ou incompétent.

5.1.1. Saisi du grief d'incompétence, le Tribunal fédéral examine librement les questions de droit, y compris les questions préalables, qui déterminent la compétence ou l'incompétence du tribunal arbitral (**ATF 146 III 142** consid. 3.4.1; **133 III 139** consid. 5; arrêt 4A_618/2019 du 17 septembre 2020 consid. 4.1). Il ne revoit cependant l'état de fait à la base de la sentence attaquée - même s'il s'agit de la question de la compétence - que si l'un des griefs mentionnés à l'art. 190 al. 2 LDIP est soulevé à l'encontre dudit état de fait ou que des faits ou des moyens de preuve nouveaux (cf. art. 99 al. 1 LTF) sont exceptionnellement pris en considération dans le cadre de la procédure du recours en matière civile (**ATF 144 III 559** consid. 4.1; **142 III 220** consid. 3.1; **140 III 477** consid. 3.1; **138 III 29** consid. 2.2.1).

5.1.2. Lorsqu'il examine s'il est compétent pour trancher le différend qui lui est soumis, le tribunal arbitral doit résoudre, entre autres questions, celles de la portée objective (ou *ratione materiae*) de la convention d'arbitrage. Il lui appartient de déterminer quels sont les litiges visés par cette convention. Cette question de compétence doit être résolue à la lumière de l'art. 178 al. 2 LDIP. La disposition citée consacre trois rattachements alternatifs *in favorem validitatis*, sans aucune hiérarchie entre eux, à savoir le droit choisi par les parties, le droit régissant l'objet du litige (*lex causae*) et le droit suisse (**ATF 134 III 565** consid. 3.2).

5.1.3. La convention d'arbitrage est un accord par lequel deux ou plusieurs parties déterminées ou déterminables s'entendent pour confier à un tribunal arbitral ou à un arbitre unique, en lieu et place du tribunal étatique qui serait compétent, la mission de rendre une sentence à caractère contraignant sur un ou des litige (s) existant (s) (compromis arbitral) ou futur (s) (clause compromissoire) résultant d'un rapport de droit déterminé (**ATF 142 III 239** consid. 3.3.1).

En droit suisse, l'interprétation d'une convention d'arbitrage se fait selon les règles générales d'interprétation des contrats. À l'instar du juge, l'arbitre ou le tribunal arbitral

s'attachera, tout d'abord, à mettre au jour la réelle et commune intention des parties (cf. art. 18 al. 1 CO), le cas échéant empiriquement, sur la base d'indices, sans s'arrêter aux expressions et dénominations inexactes dont elles ont pu se servir. Constituent des indices en ce sens non seulement la teneur des déclarations de volonté, mais encore le contexte général, soit toutes les circonstances permettant de découvrir la volonté des parties, qu'il s'agisse des déclarations antérieures à la conclusion du contrat, des projets de contrat, de la correspondance échangée, voire de l'attitude des parties après la conclusion du contrat. Cette interprétation subjective repose sur l'appréciation des preuves. Si elle s'avère concluante, le résultat qui en est tiré, c'est-à-dire la constatation d'une commune et réelle intention des parties, relève du domaine des faits et lie, partant, le Tribunal fédéral. Dans le cas contraire, celui qui procède à l'interprétation devra rechercher, en appliquant le principe de la confiance, le sens que les parties pouvaient et devaient donner, selon les règles de la bonne foi, à leurs manifestations de volonté réciproques en fonction de l'ensemble des circonstances (**ATF 142 III 239** consid. 5.2.1 et les références citées; arrêt 4A_174/2021 du 19 juillet 2021 consid. 5.2.3).

5.2. Dans la sentence attaquée, la Formation observe, à titre liminaire, que les parties s'accordent sur les points suivants:

- la demande formée par le recourant devant le Tribunal du football a été introduite tardivement ("time-barred") au regard de l'art. 23 al. 3 RSTJ (i);

- l'art. 40 du Mémorandum contient une clause d'arbitrage valide selon le droit suisse (ii);

- la réelle et commune intention des parties lorsqu'elles ont conclu le Mémorandum était que tous les litiges pour lesquels la FIFA ne serait pas compétente seraient réglés par le TAS (iii).

La Formation considère que la compétence du TAS dépend ainsi du point de savoir si la FIFA était elle-même compétente ou non pour trancher le présent litige ("the Panel notes that whether the CAS has jurisdiction ultimately depends on whether FIFA was originally competent to adjudicate the present dispute"; sentence, n. 31). Selon elle, il convient d'opérer une distinction, en droit suisse, entre le concept de compétence ("jurisdiction or competence"), d'une part, et la notion de recevabilité de la demande ("admissibility"), d'autre part. Les objections relatives à la compétence portent sur l'existence même et l'étendue du pouvoir de résoudre un différend confié par les parties à un organe juridictionnel, tandis que celles afférentes à la recevabilité de la demande concernent les obstacles factuels ou juridiques empêchant cet organe d'examiner le fond du litige, sans toutefois remettre en cause son pouvoir juridictionnel en tant que tel. Examinant les termes de l'art. 23 al. 3 RSTJ et se fondant en particulier sur le commentaire de cette disposition établi par la FIFA, à teneur duquel une demande est considérée comme irrecevable lorsqu'elle n'a pas été introduite dans le délai prévu ("If the two-year deadline is found to have elapsed, the claim will thus be deemed inadmissible"), la Formation considère que le Tribunal du football ne s'est, en l'occurrence, pas déclaré incompétent pour connaître du litige divisant les parties, mais qu'il a plutôt jugé irrecevable la demande portée devant lui, car celle-ci avait été formée tardivement au regard de l'art. 23 al. 3 RSTJ. Selon la Formation, la limitation prévue par cette disposition réglementaire constituait un obstacle à l'examen du fond de l'affaire par le Tribunal du football qui ne remettait toutefois pas en question sa compétence pour connaître du litige divisant les parties (sentence, n. 30-36).

Poursuivant son analyse, la Formation considère en outre que la FIFA aurait été

compétente pour connaître de la demande du recourant si celle-ci n'avait pas été introduite tardivement (sentence, n. 38-46).

5.3. Le recourant fait grief à la Formation d'avoir mal interprété la clause d'arbitrage figurant à l'art. 40 du Mémorandum. Après avoir rappelé les principes qui gouvernent l'interprétation d'une convention d'arbitrage en droit suisse, il soutient que les parties étaient convenues que le TAS connaîtrait de tous leurs litiges, soit directement selon la procédure ordinaire, soit en appel. Selon lui, la compétence du TAS ne dépendait ainsi pas du point de savoir si la FIFA était elle-même compétente pour statuer sur un litige divisant les parties, puisque le TAS devait être compétent dans tous les cas. Toute autre interprétation reviendrait, à son avis, à réduire artificiellement la portée de l'art. 40 du Mémorandum et à frustrer la volonté clairement exprimée par les parties de voir leurs litiges résolus en dernière instance par un tribunal arbitral, volonté qui serait corroborée par le caractère subsidiaire de la clause d'élection de for en faveur des tribunaux anglais prévue à l'art. 41 du Mémorandum.

Le recourant reproche, par ailleurs, à la Formation d'avoir mal interprété le membre de phrase "In the event that FIFA shall not be competent" figurant à l'art. 40 du Mémorandum. Selon le recourant, les termes en question, interprétés selon le principe de la confiance, englobent toutes les hypothèses où la FIFA n'entre pas en matière sur une demande et non pas uniquement celles où elle considère qu'elle n'est pas compétente *stricto sensu*. Se référant à l'encyclopédie *Britannica*, le recourant fait valoir que la notion de "competence" est objectivement plus large que celle de "jurisdiction", puisqu'elle comprend non seulement les circonstances liées à la compétence au sens strict ("jurisdiction"), mais également toutes celles qui sont pertinentes pour déterminer si un tribunal a le pouvoir de se saisir de l'affaire qui lui est soumise. Il prétend que les parties, en choisissant les termes figurant à l'art. 40 du Mémorandum, visaient tous les cas dans lesquels la FIFA ne se saisirait pas d'un litige, indépendamment du motif procédural en cause. Pareille interprétation serait confirmée par la volonté claire des parties de soumettre tout litige en priorité à un tribunal non étatique.

Même à supposer que les parties aient entendu faire référence au concept plus restreint de "jurisdiction", le recourant soutient qu'une interprétation correcte de l'art. 23 al. 3 RSTJ - fondée sur une analyse littérale, systématique, téléologique et historique - conduit à retenir que le délai de deux ans visé par cette disposition constitue bel et bien une limitation temporelle de la compétence de la FIFA et non une règle de "prescription procédurale". Il fait valoir que l'art. 23 al. 3 RSTJ se trouve dans le chapitre intitulé "Jurisdiction" de ladite réglementation, raison pour laquelle le motif ayant conduit le Tribunal du football à ne pas traiter le litige porté devant lui relève bien de la notion de compétence au sens strict.

5.4. Semblable argumentation n'emporte point la conviction de la Cour de céans.

Selon les constatations factuelles ressortant de la sentence attaquée (n. 30), le recourant a expressément reconnu que la réelle et commune intention des parties, lorsque celles-ci ont conclu le Mémorandum, était que tous les litiges pour lesquels la FIFA ne serait pas compétente seraient soumis au TAS. Aussi est-ce à juste titre que la Formation a considéré que la compétence du TAS était intimement liée à la question de savoir si la FIFA était elle-même compétente pour connaître du litige divisant les parties. Interprétée selon le principe de la confiance, la clause d'arbitrage litigieuse permet en effet de conclure que les parties entendaient soumettre prioritairement tous leurs litiges en relation avec le Mémorandum à l'organe juridictionnel compétent de la FIFA, la

compétence du TAS revêtant visiblement un caractère subsidiaire, dans l'hypothèse uniquement où la FIFA ne serait pas compétente pour connaître d'un différend. Autrement dit, l'art. 40 du Mémorandum ne visait pas à permettre aux parties de porter le litige devant le TAS si le litige concerné relevait de la compétence de la FIFA.

Le Tribunal fédéral ne saurait suivre le recourant lorsque celui-ci tente d'effectuer une subtile distinction, sur le plan terminologique, entre les notions de "competence" et de "jurisdiction". À cet égard, il observe tout d'abord que l'intéressé n'a semble-t-il jamais procédé à pareille différenciation durant la procédure d'arbitrage. De plus, comme l'expose l'intimé dans sa réponse sans être véritablement contredit par son adversaire, les deux parties, représentées par des mandataires professionnels, ont utilité indistinctement, lors de la procédure d'arbitrage, les termes "competence" et "jurisdiction", sans jamais laisser entendre qu'il s'agirait de concepts distincts. Quoi qu'il en soit, si les parties avaient réellement voulu opérer pareille distinction et prévoir la compétence du TAS pour connaître de tous les litiges indépendamment du motif ayant conduit la FIFA à ne pas entrer en matière sur le litige porté devant elle, elles auraient pu et dû l'exprimer en des termes plus clairs. Au demeurant, si l'on suivait la thèse prônée par le recourant, cela reviendrait à admettre que celui-ci aurait en l'occurrence pu choisir librement soit de saisir le Tribunal du football de la FIFA avant l'expiration du délai de deux ans prévu à l'art. 23 al. 3 RSTJ soit d'attendre l'échéance dudit délai pour porter l'affaire directement devant le TAS et court-circuiter ainsi la compétence de la FIFA. La Cour de céans estime qu'une telle solution n'est guère compatible avec le sens que les parties pouvaient et devaient donner, selon les règles de la bonne foi, à la clause d'arbitrage concernée, puisque les parties ont consacré en premier lieu la compétence de la FIFA pour connaître de tous les litiges résultant du Mémorandum.

Dans la sentence attaquée, la Formation a examiné si le Tribunal du football aurait été compétent dans l'hypothèse où la demande du recourant aurait été introduite dans le respect du délai visé par l'art. 23 al. 3 RSTJ. Elle a tranché cette question par l'affirmative. Le recourant laisse intacte la solution retenue par la Formation à ce sujet. Aussi ne conteste-t-il pas la compétence de principe de la FIFA pour connaître du litige divisant les parties. Force est dès lors d'admettre que le Tribunal du football serait entré en matière sur la requête portée devant lui si celle-ci avait été introduite en temps utile.

Contrairement à ce que soutient le recourant, la Cour de céans considère que le Tribunal du football n'a pas refusé d'entrer en matière sur l'affaire qui lui était soumise pour un motif d'incompétence, mais bel et bien parce qu'il estimait que la requête avait été introduite tardivement au regard de l'art. 23 al. 3 RSTJ. Autrement dit, le Tribunal du football n'a pas rendu une décision d'incompétence, mais une décision d'irrecevabilité en raison du non-respect du délai prévu par la réglementation de la FIFA pour former une requête devant lui. L'interprétation de l'art. 23 al. 3 RSTJ proposée par le recourant selon laquelle le non-respect du délai prévu par cette disposition relèverait d'un problème de compétence *ratione temporis* du Tribunal du football n'emporte pas la conviction de la Cour de céans. Le Tribunal fédéral considère en particulier que le simple fait que l'art. 23 al. 3 RSTJ figure dans le chapitre intitulé "Jurisdiction" dudit règlement n'est pas décisif. Sur un plan plus général, il sied de rappeler que, dans plusieurs arrêts (arrêt 4A_626/2020 du 15 mars 2021 consid. 3.2; 4A_198/2020 du 1er décembre 2020 consid. 3.2; 4A_287/2019 du 6 janvier 2020 consid. 4.2), la Cour de céans a considéré que le non-respect du délai pour contester une décision auprès du TAS constituait une condition de recevabilité de l'appel qui ne se

rapportait pas à la compétence du tribunal arbitral. Autrement dit, l'inobservation du délai dans lequel un appel doit être déposé auprès du TAS n'entraîne pas l'incompétence de cette juridiction arbitrale, mais seulement l'irrecevabilité de l'appel. Il ne saurait en aller différemment en l'espèce. Aussi l'art. 23 al. 3 RSTJ ne constitue-t-il pas une règle limitant la compétence *ratione temporis* du Tribunal du football. Comme l'intimé le démontre de façon convaincante dans sa réponse (cf. en particulier, n. 69 ss), il s'agit en réalité d'une disposition de nature procédurale empêchant le Tribunal du football d'entrer en matière sur le fond du litige, sans que cela ne remette en question sa compétence de principe pour connaître d'un litige de cette nature.

Il suit de là que le moyen pris de la violation de l'art. 190 al. 2 let. b LDIP est infondé.
(…)

Décision

Le recours est rejeté.

(…)

4A_268/2025
A. c. B.
22 octobre 2025

Demande de révision de la sentence rendue le 8 août 2019 par le Tribunal Arbitral du Sport (CAS 2018/O/5735)

Révision d'une sentence arbitrale par le TF fondée sur un faux et usage de faux et une fraude; dans des circonstances extraordinaires, le système prévoit un mécanisme correctif efficace lorsqu'une sentence arbitrale a été influencée de manière décisive par un comportement criminel avéré

Extrait des faits

A._____ (ci-après: le joueur ou le footballeur) est un joueur de football franco-comorien qui a évolué sous les couleurs de plusieurs clubs européens.

B._____ (ci-après: l'agent), ressortissant grec, est un agent de joueurs de football.

Le 8 mai 2018, l'agent a saisi le Tribunal Arbitral du Sport (TAS) d'une requête d'arbitrage dirigée contre le joueur. Il soutenait, en substance, avoir droit à une commission en raison du rôle qu'il prétendait avoir joué dans le cadre du transfert du joueur à C._____, club de football professionnel serbe, survenu en janvier 2018. Pour étayer ses dires, le demandeur s'est prévalu de deux contrats prétendument signés par le joueur, soit un "Exclusive Mandate" et un "Representation Agreement" (ci-après désignés collectivement: les contrats litigieux), qui contenaient tous deux une clause d'arbitrage en faveur du TAS. Il a également produit un courriel que le joueur lui aurait prétendument envoyé le 18 octobre 2017, courriel auquel était annexé un exemplaire signé du "Representation Agreement".

Le footballeur a conclu à l'incompétence du TAS et au rejet de la demande. Il a notamment prétendu n'avoir jamais signé les contrats litigieux ni envoyé de courrier électronique à l'agent le 18 octobre 2017. Il a également soutenu que les documents en question avaient été falsifiés.

L'arbitre désigné par le TAS a rendu sa sentence finale le 8 août 2019. Admettant partiellement la demande, il a condamné le défendeur à payer à l'agent la somme de 84'900 euros (EUR), intérêts en sus. En bref, il a considéré que les accusations de falsification des contrats litigieux étaient infondées et que le "Representation Agreement" avait bien été signé par le joueur et transmis par courrier électronique du 18 octobre 2017, de sorte qu'il existait un contrat liant les parties contenant une clause d'arbitrage valide en faveur du TAS. Tout en observant que le joueur avait fait appel aux services d'un autre agent le 4 décembre 2017 qui avait finalisé les termes du transfert avec le club serbe, l'arbitre a jugé que le footballeur devait partiellement indemniser le demandeur sur la base du "Representation Agreement" pour les services fournis par ce dernier dans le cadre dudit transfert.

Le 30 octobre 2019, le joueur a déposé plainte en Suisse contre l'agent et s'est constitué partie plaignante.

Par jugement du 16 février 2023, le Tribunal de police de l'arrondissement de Lausanne a notamment constaté que l'agent s'était rendu coupable d'escroquerie et de faux dans les titres, l'a condamné à une peine privative de liberté de 8 mois avec sursis pendant 2 ans, ainsi qu'à une amende de 3'000 fr., convertible en 30 jours de peine privative de

liberté de substitution en cas de non-paiement fautif dans le délai imparti et a renvoyé le footballeur à faire valoir ses conclusions civiles devant toute autorité compétente.

Saisie d'un appel de l'agent, la Cour d'appel pénale du Tribunal cantonal du canton de Vaud l'a rejeté par jugement du 16 août 2023 et a confirmé le jugement entrepris. Elle a jugé que le joueur n'avait jamais signé ni envoyé les contrats litigieux à l'agent et qu'il s'agissait de faux documents établis par l'appelant lui-même en vue d'obtenir gain de cause devant le TAS et de s'enrichir indûment.

Pour aboutir à pareille conclusion, la cour cantonale s'est notamment fondée sur le rapport établi par un expert privé - au bénéfice d'une certification reconnue par la Confédération suisse dans le domaine de l'expertise des écritures et des signatures manuscrites - qui avait indiqué de façon claire et sans équivoque que les deux signatures figurant sur les contrats litigieux étaient identiques et que cela ne pouvait s'expliquer que par le fait que l'une, voire les deux, avait été réalisée au moyen d'un "copier/coller". Elle a observé que l'agent n'avait jamais produit l'original des contrats litigieux ni démontré les avoir remis au club serbe. La juridiction cantonale a aussi constaté que la boîte mail prétendument employée par le footballeur pour envoyer le courrier électronique du 18 octobre 2017 n'était en réalité plus utilisée à cette époque-là, ce qui était corroboré par plusieurs éléments figurant au dossier. En juillet 2017, le joueur avait en effet informé sa banque que ladite adresse électronique n'était plus valable. Il avait aussi fait usage d'une autre adresse électronique pour s'adresser à l'agent. En outre, les documents communiqués par la société hébergeant la boîte électronique concernée, d'une part, et le rapport établi par un informaticien mandaté en tant qu'expert privé, d'autre part, démontraient que la dernière connexion à la boîte mail en cause avait été effectuée en mars 2017. La cour cantonale a également relevé que l'apparence du courriel litigieux différait de celle des autres courriels envoyés par le joueur. Divers éléments (léger décrochement au niveau de la date et espace manquant entre le mois et le jour du mois) laissaient entendre que le courriel litigieux avait été "fabriqué de toute pièce". La juridiction cantonale a aussi constaté qu'aucune trace du courriel du 18 octobre 2017 n'avait été retrouvée sur l'ordinateur du joueur. Elle a encore souligné que le footballeur, contrairement à l'agent, était resté constant dans ses déclarations.

Par arrêt du 12 mars 2025 (cause 6B_136/2024), la I re Cour de droit pénal du Tribunal fédéral a rejeté le recours, dans la mesure de sa recevabilité, formé par l'agent à l'encontre du jugement cantonal. En bref, elle a considéré que la cour cantonale avait retenu, sans arbitraire, que l'agent avait apposé la signature du joueur par "copier/coller" sur les contrats litigieux et qu'il avait fabriqué de toute pièce le courriel du 18 octobre 2017 prétendument envoyé par le footballeur. Selon le Tribunal fédéral, la décision attaquée ne prêtait pas le flanc à la critique en tant que les juges cantonaux avaient conclu que l'agent s'était rendu coupable de faux dans les titres et d'escroquerie. Il ressortait des constatations opérées par la juridiction cantonale, exemptes d'arbitraire, que l'agent avait en effet rempli lui-même les contrats litigieux en y apposant la signature du joueur, tout en fabriquant de toute pièce le courriel du 18 octobre 2017. Semblable manoeuvre était destinée et propre à tromper le TAS et à lui faire croire que l'intéressé était toujours l'agent du joueur, en vue d'obtenir le paiement indu d'une commission en lien avec le transfert du footballeur à C._____.

Le 2 juin 2025, le joueur (ci-après: le requérant) a présenté une demande de révision, assortie d'une requête d'effet suspensif, aux fins de faire constater la nullité,

respectivement d'obtenir l'annulation de la sentence du 8 août 2019.

(…)

La requête d'effet suspensif a été admise par ordonnance présidentielle du 9 septembre 2025, faute d'opposition de la part de l'intimé et du TAS.

Extrait des considérants

(…)

3.

3.1. Depuis le 1er janvier 2021, la LDIP contient des dispositions relatives à la révision des sentences arbitrales internationales. Celles-ci s'appliquent aux demandes de révision introduites devant le Tribunal fédéral après le 1er janvier 2021, même lorsque la sentence attaquée a été rendue, comme en l'espèce, avant cette date (art. 132 LTF; **ATF 148 III 436** consid. 3.1 et les références citées).

3.2. Le Tribunal fédéral est l'autorité judiciaire compétente pour connaître d'une demande de révision visant une sentence arbitrale internationale (art. 191 LDIP). Selon l'art. 119a al. 2 LTF, la procédure de révision est régie par les art. 77 al. 2biset 126 LTF. Si le Tribunal fédéral admet la demande de révision, il annule la sentence et renvoie la cause au tribunal arbitral pour qu'il statue à nouveau, ou fait les constatations nécessaires (art. 119a al. 3 LTF).

4.
Le Tribunal fédéral examine d'office et librement la recevabilité des moyens de droit qui lui sont soumis (**ATF 138 III 46** consid. 1).

4.1.

4.1.1. La demande de révision doit être déposée devant le Tribunal fédéral, sous peine de déchéance, dans les 90 jours qui suivent la découverte du motif de révision, compte tenu de la suspension de ce délai légal dans les hypothèses prévues à l'art. 46 LTF (art. 190a al. 2 LDIP; arrêt 4A_288/2023 du 11 juin 2024 consid. 5.1.1 et les références citées). Le droit de demander la révision se périme par dix ans à compter de l'entrée en force de la sentence, à l'exception des cas prévus à l'art. 190a al. 1 let. b LDIP (art. 190a al. 2 LDIP).

Dans le cas prévu à l'art. 190a al. 1 let. b LDIP, le délai de 90 jours court dès que la partie requérante apprend la condamnation passée en force ou, si celle-ci n'est plus possible, l'existence de l'infraction et les preuves de celle-ci (arrêts 4A_69/2022 du 23 septembre 2022 consid. 4.2.1 non publié in **ATF 148 III 436**; 4A_666/2012 du 3 juin 2013 consid. 5.1; 4A_596/2008 du 6 octobre 2009 consid. 3.3).

4.1.2. En l'espèce, la I re Cour de droit pénal du Tribunal fédéral, par arrêt du 12 mars 2025, a rejeté le recours formé par l'agent à l'encontre du jugement cantonal du 16 août 2023, confirmant ainsi définitivement que l'agent s'était rendu coupable de faux dans les titres et d'escroquerie au procès pour avoir trompé le TAS en lui soumettant des documents falsifiés afin que le footballeur soit condamné au paiement d'une commission indue.

Le requérant a déposé sa demande de révision de la sentence attaquée en date du 2 juin 2025. Ce faisant, il a respecté le délai de 90 jours de l'art. 190a al. 2 LDIP.

4.2. Pour le reste, les autres conditions de recevabilité de la demande de révision sont satisfaites. Rien ne s'oppose dès lors à l'entrée en matière.

5.
Invoquant l'art. 190a al. 1 let. b LDIP, le requérant soutient que la sentence entreprise a été influencée, à son détriment, par un

crime ou un délit établi par la procédure pénale conduite en Suisse.

5.1. Selon l'art. 190a al. 1 let. b LDIP, une partie peut demander la révision d'une sentence si une procédure pénale établit que la sentence a été influencée au préjudice de cette partie par un crime ou un délit, même si aucune condamnation n'est intervenue; si l'action pénale n'est pas possible, la preuve peut être administrée d'une autre manière.

La formulation de l'art. 190a al. 1 let. b LDIP correspond, en substance, à celle de l'art. 123 al. 1 LTF. Aussi peut-on se référer à la jurisprudence relative à la disposition précitée de la LTF (arrêts 4A_528/2024 du 26 juin 2025 consid. 5.1 destiné à la publication; 4A_69/2022, précité, consid. 5.1 non publié in **ATF 148 III 436**; 4A_210/2021 du 28 septembre 2021 consid. 4).

Il est sans importance que l'information pénale ait été conduite à l'étranger, pour autant qu'elle ait respecté les garanties minimales de procédure prescrites par les art. 6 par. 2 et 3 de la Convention européenne des droits de l'homme (CEDH; RS 0.101) et 14 al. 2 à 7 du Pacte international relatif aux droits civils et politiques (Pacte ONU II; RS 0.103.2; arrêts 4A_528/2024, précité, consid. 5.1 destiné à la publication; 4A_69/2022, précité, consid. 5.1 non publié in **ATF 148 III 436** et la référence citée).

Il importe peu que l'infraction pénale ait été commise par une partie ou par un tiers (arrêts 4A_528/2024, précité, consid. 5.1 destiné à la publication; 4A_69/2022, précité, consid. 5.1 non publié in **ATF 148 III 436** et la référence citée). L'élément essentiel est qu'il existe un rapport de causalité entre l'infraction commise et le dispositif de la sentence dont la révision est requise. Autrement dit, l'infraction, peu importe la date de sa survenance, doit avoir exercé une influence effective, directe ou indirecte, sur la décision en cause au préjudice du requérant, lequel a ainsi pâti d'un résultat défavorable pour lui (arrêts 4A_528/2024, précité, consid. 5.1 destiné à la publication; 4A_69/2022, précité, consid. 5.1 non publié in **ATF 148 III 436** et les références citées).

L'influence de l'arrêt au détriment du requérant par un crime ou un délit doit avoir été établie par une décision mettant fin à une procédure pénale distincte de celle ayant conduit à la décision dont la révision est sollicitée, telle qu'une ordonnance de clôture d'enquête ou de jugement; la décision rendue par le juge pénal doit démontrer que les conditions objectives d'un crime ou d'un délit sont réalisées. Il n'est toutefois pas nécessaire que la procédure pénale ait abouti à une condamnation, comme cela ressort explicitement du libellé de l'art. 190a al. 1 let. b LDIP (arrêts 4A_528/2024, précité, consid. 5.1 destiné à la publication; 4A_69/2022, précité, consid. 5.1 non publié in **ATF 148 III 436** et la référence citée).

5.2. Comme le démontre le requérant de façon convaincante, sans être nullement contredit par son adversaire, il apparaît que la sentence attaquée a été influencée directement par les infractions pénales commises par l'intimé. Il existe indubitablement un lien de causalité entre lesdites infractions et le dispositif de la décision entreprise. Il appert, en effet, que l'intimé a produit des contrats falsifiés et s'est prévalu d'un document fabriqué de toute pièce (i.e. le courrier électronique du 18 octobre 2017) dans le but de tromper l'arbitre désigné par le TAS et d'obtenir indûment le paiement d'une commission de la part du requérant. Pareil stratagème a porté ses fruits, puisque l'arbitre a fait partiellement droit à la requête d'arbitrage introduite par l'agent et a ainsi condamné le requérant au paiement d'un montant de 84'900 EUR, intérêts en sus. Pour aboutir à ce résultat, l'arbitre s'est appuyé sur les faux documents établis par l'intimé. Il suit de là que les conditions visées

par l'art. 190a al. 1 let. b LDIP sont remplies et que la demande de révision doit être admise.

5.3. Dans son mémoire, le requérant soutient que la sentence entreprise doit être qualifiée de nulle, car les clauses d'arbitrage prévoyant la compétence du TAS figurent dans de faux documents, à savoir les contrats litigieux. Le TAS n'était dès lors pas compétent pour connaître du litige divisant les parties.

5.3.1. Selon la jurisprudence, la nullité absolue d'une décision peut être invoquée en tout temps devant toute autorité et doit être constatée d'office. Elle ne frappe que les décisions affectées des vices les plus graves, manifestes ou du moins facilement décelables; sa constatation ne doit pas mettre sérieusement en danger la sécurité du droit (**ATF 138 II 501** consid. 3.1; **137 I 273** consid. 3.1). Sauf dans les cas expressément prévus par la loi, il ne faut admettre la nullité qu'à titre exceptionnel, lorsque les circonstances sont telles que le système d'annulabilité n'offre manifestement pas la protection nécessaire (**ATF 130 II 249** consid. 2.4; arrêt 4A_407/2017 du 20 novembre 2017 consid. 2.2.2.1). La nullité absolue, constatable en tout temps, d'une décision en matière d'arbitrage ne sera prononcée que dans des cas extrêmes et doit rester l'exception (arrêt 4A_407/2017, précité, consid. 2.2.2.1 et la référence citée). Ainsi, une sentence, même affectée d'un vice grave, n'est en principe pas nulle, remarque qui vaut plus particulièrement pour les vices que la loi érige en motifs d'annulation de la sentence (arrêt 4A_407/2017, précité, consid. 2.2.2.1).

5.3.2. En l'occurrence, il n'apparaît pas - et le requérant ne prétend pas le contraire ni n'en fait la démonstration - que le système d'annulabilité de la sentence prévu par l'art. 119a al. 3 LTF n'offrirait manifestement pas la protection nécessaire à la sauvegarde des intérêts du requérant. Dans ces circonstances, il n'y a pas lieu de taxer la décision attaquée de nulle.

6.
Au vu de ce qui précède, il convient d'admettre la demande de révision fondée sur l'art. 190a al. 1 let. b LDIP, d'annuler la sentence attaquée et de renvoyer la cause au TAS. Le requérant obtient gain de cause puisque la décision entreprise par lui est annulée. Les frais seront dès lors mis à la charge de l'intimé (art. 66 al. 1 LTF). Ce dernier versera en outre au requérant une indemnité à titre de dépens (art. 68 al. 1 et 2 LTF).

Décision

La demande de révision est admise. La sentence rendue le 8 août 2019 par le Tribunal Arbitral du Sport dans la cause CAS 2018/O/5735 opposant B._____ à A._____ est annulée et la cause est renvoyée au Tribunal Arbitral du Sport.

(…)

4A_334/2025
A. c. B.
18 novembre 2025

Recours en matière civile contre la sentence rendue le 30 mai 2025 par le Tribunal Arbitral du Sport (CAS 2023/A/9669).

Droit d'être entendu; confirmation d'une interprétation restrictive du droit d'être entendu dans l'arbitrage sportif international

Extrait des faits

Le 30 août 2021, A._____, club de football professionnel russe membre de la Fédération Russe de Football (FRF), elle-même affiliée à la Fédération Internationale de Football Association (FIFA), a définitivement transféré le joueur de football C._____ à B._____, équipe de football anglaise affiliée à la Fédération Anglaise de Football (FA), elle-même membre de la FIFA. Le prix du transfert, fixé à 26'666'667 euros (EUR), était payable en trois tranches égales qui devaient être versées les 6 septembre 2021, 31 juillet 2022 et 31 juillet 2023.

Le 3 septembre 2021, les parties ont conclu un amendement audit contrat, en vertu duquel elles ont abaissé le prix du transfert à 25'650'800.31 EUR, les trois tranches étant ajustées en conséquence.

B._____ a payé en temps utile la première tranche de 8'550'266.77 EUR sur le compte ouvert par A._____ auprès de la banque russe D._____, conformément à l'art. 10.1 du contrat de transfert.

Le 24 décembre 2021, les cocontractants ont signé un nouvel avenant au contrat de transfert aux fins de modifier les données bancaires du A._____ mentionnées à l'art. 10.1 dudit contrat. Les futurs paiements devaient désormais être effectués sur le compte détenu par le A._____ auprès de l'établissement bancaire russe E._____.

Le 24 février 2022, les États-Unis d'Amérique, en réaction aux opérations militaires menées par la Russie à l'encontre de l'Ukraine, ont adopté de nouvelles sanctions visant diverses entités russes. À ce titre, ils ont notamment pris des mesures tendant au blocage complet de A._____, de son actionnaire majoritaire de l'époque F._____ et de E._____, lesquels ont été inscrits en tant que "Ressortissants spécialement désignés" ("Specially Designated Nationals") dans la liste établie par le Bureau américain de contrôle des avoirs étrangers ("Office of Foreign Assets Control").

Le 28 février 2022, le gouvernement britannique, par le truchement du Bureau chargé de la mise en oeuvre des sanctions financières ("Office of Financial Sanctions Implementation"; ci-après: l'OFSI) a également étendu son régime de sanctions vis-à-vis de la Russie, en ajoutant notamment E._____ et F._____ - mais non A._____ -, en qualité de "Personne désignée" ("Designated person"), à la liste des entités russes visées par les sanctions en question.

Le 7 juillet 2022, A._____ a indiqué à B._____ avoir fait l'objet de sanctions financières car son ancien actionnaire majoritaire F._____ était une société étatique russe. Il a précisé que cette dernière n'était désormais plus actionnaire du club, raison pour laquelle A._____ n'avait plus de raison de figurer sur la liste des sanctions visant la Russie. En attendant que

A._____ ne soit formellement plus visé par les sanctions en question, ledit club a soumis à B._____ plusieurs options alternatives de paiement en vue du règlement de la deuxième tranche du prix du transfert censé intervenir le 31 juillet 2022.

Le 20 juillet 2022, B._____ a répondu qu'il était dans l'impossibilité d'effectuer le moindre paiement à A._____ sur la base du contrat de transfert, que ce soit directement ou via les méthodes alternatives proposées par le club russe, eu égard au régime de sanctions en vigueur au Royaume-Uni.

Le 8 août 2022, A._____ a suggéré à B._____ de verser le montant qui lui était dû en mains de G._____, club néerlandais envers lequel l'équipe russe avait une dette. Il a souligné que le Ministère des finances des Pays-Bas avait consenti à ce que le club néerlandais puisse recevoir un paiement émanant de A._____ pour le transfert d'un joueur de football.

Le même jour, B._____ a rétorqué qu'il n'envisageait pas de recourir à d'autres méthodes de paiement que celle arrêtée par les parties, car cela reviendrait à vouloir tenter de contourner les sanctions financières mises en place par les autorités britanniques.

Le 13 octobre 2022, B._____ a indiqué à A._____ que H._____ avait confirmé qu'elle ne procéderait pas à des paiements en faveur du club russe depuis le compte bancaire détenu auprès d'elle par B._____.

Le 21 décembre 2022, après une mise en demeure restée sans effet, A._____ a assigné B._____ devant la Chambre du Statut du Joueur du Tribunal du Football de la FIFA (ci-après: la CSJ) aux fins d'obtenir le paiement de la deuxième tranche du prix du transfert.

Le 18 janvier 2023, B._____ a requis l'autorisation de l'OFSI de verser à A._____ la deuxième tranche du prix du transfert.

Le 22 février 2023, B._____ a informé l'OFSI que E._____ était une "Personne désignée" en vertu du régime de sanctions mis en place par les autorités britanniques.

Le 23 février 2023, H._____ a indiqué que, selon la politique qu'elle avait adoptée en matière de sanctions financières, B._____ ne pouvait pas effectuer de virements depuis son compte en faveur de A._____.

Le 31 mars 2023, la CSJ a condamné B._____ à payer à A._____ la deuxième tranche du prix du transfert, intérêts en sus, dans un délai de 45 jours, sous peine de se voir infliger une interdiction de recruter de nouveaux joueurs.

Le 17 mai 2023, B._____ a appelé de cette décision auprès du Tribunal Arbitral du Sport (TAS).

Le 27 juin 2023, H._____ a informé B._____ que, nonobstant la décision rendue par la CSJ, elle maintenait sa position selon laquelle elle n'autoriserait pas de paiements au profit de A._____, en l'absence d'autorisation délivrée par l'OFSI.

Le 1er septembre 2023, B._____ a informé l'OFSI que F._____ ne détenait plus de participation financière dans A._____ et lui a fourni des informations actualisées relatives à l'actionnariat du club russe.

À la demande des parties, le TAS a suspendu la procédure d'arbitrage du 7 septembre 2023 au 1er mai 2024.

Le 23 octobre 2023, G._____ a demandé l'aval des autorités néerlandaises afin que le montant que lui devait A._____ puisse

être versé par B._____. Le 27 novembre 2023, le Ministère des finances néerlandais a donné son accord, à condition que les autorités britanniques autorisent cette opération.

Le 29 juillet 2024, l'OFSI a adressé un courrier à B._____, dans lequel elle a notamment indiqué ce qui suit:

"(...)
Based on the information you have provided, and on the understanding that A._____ is not owned or controlled by a designated person, OFSI does not consider that a licence would be required for B._____ to make payments to A._____... This is based on the understanding that neither A._____ nor its football creditors are owned or controlled by a designated person. This being the case, a licence would not be required to make this payment in the absence of other regulations. However... you have also informed us that a direct payment to A._____ may be routed via a Russian bank designated for the purpose of regulation 17 A. In the absence of an alternate payment route which does not involve any designated persons (including designated banks), a licence would be required to make a payment via designated Russian banks.
OFSI understand that some people with a minority economic interest in A._____ may be Designated. Regulation 7 sets out what is meant by a person being owned directly or controlled indirectly by a designated person. If each of the designated persons' shareholding is at 50% or falls below the 50% threshold in respect of share ownership and there is no evidence of control over the non-designated person, the non-designated person (A._____) will not be subject to sanctions. However, if there is evidence of control, the non-designated person will be subject to sanctions. [...]
It is your responsibility to ensure compliance with financial sanctions. (...)".

Le 9 août 2024, B._____ s'est déterminé sur le courrier de l'OFSI. Il a indiqué persister dans sa requête tendant à pouvoir effectuer un virement en faveur de A._____ et a demandé certains éclaircissements de la part de l'OFSI.

(…)

Le 15 novembre 2024, A._____ a communiqué à B._____ les coordonnées d'un nouveau compte bancaire qu'il venait d'ouvrir auprès de l'entité russe I._____, en précisant que celle-ci n'était pas visée par les sanctions financières en vigueur.

Le 20 novembre 2024, A._____ a insisté sur le fait qu'aucune personne figurant sur la liste des sanctions établie par les autorités britanniques ne détenait de participations financières dans le club, raison pour laquelle il n'existait aucun obstacle réglementaire au paiement du montant dû par B._____.

Le lendemain, le gouvernement américain a placé I._____ sur la liste des entités visées par les sanctions adoptées par cet État.

Le 16 décembre 2024, l'OFSI a demandé à B._____ de lui indiquer si elle avait reçu des informations de la part de A._____ établissant qui détenait, respectivement contrôlait le club russe.

Le lendemain, B._____ a transmis à l'OFSI un courrier que lui avait remis le conseiller juridique de A._____ qui contenait une liste actualisée des actionnaires ainsi qu'un organigramme du club russe.

Le 6 mars 2025, B._____ a indiqué que l'OFSI avait refusé de lui délivrer une autorisation lui permettant de virer de l'argent sur un compte ouvert auprès de E._____.

Par sentence du 30 mai 2025, la Formation a partiellement admis l'appel de B._____. Partant, elle a partiellement réformé la

décision de la CSJ, en ce sens que B._____ était tenu de payer la somme de 8'550'266.767 EUR à A._____, intérêts en sus, une fois qu'il aurait reçu l'autorisation de l'OFSI de procéder au versement en question et/ou que le régime de sanctions mis en place par les autorités britanniques aurait pris fin ou été modifié de manière à ce que l'appelant puisse effectuer un paiement en mains de A._____. Si l'appelant ne s'exécutait pas dans un délai de 45 jours à partir de ce moment-là, il risquait de se voir interdire d'enregistrer de nouveaux joueurs, tant au niveau national qu'international, pour une durée maximale de trois périodes d'enregistrement entières et consécutives. Les motifs qui étayent cette sentence seront examinés plus loin dans la mesure utile à la compréhension des critiques dont celle-ci est la cible.

Le 2 juillet 2025, A._____ (ci-après: le recourant) a formé un recours en matière civile aux fins d'obtenir l'annulation de cette sentence.

Au terme de sa réponse, B._____ (ci-après: l'intimé) a conclu principalement à l'irrecevabilité du recours et, subsidiairement, au rejet de celui-ci.

(…)

Considérant en droit :

5.
Dans un unique moyen, le recourant dénonce une violation de son droit d'être entendu (art. 190 al. 2 let. d LDIP). Il reproche, en substance, à la Formation de n'avoir pas examiné certains arguments qu'il avait avancés durant la procédure d'arbitrage.

5.1. La jurisprudence a déduit du droit d'être entendu, tel qu'il est garanti par les art. 182 al. 3 et 190 al. 2 let. d LDIP, un devoir minimum pour le tribunal arbitral d'examiner et de traiter les problèmes pertinents. Ce devoir est violé lorsque, par inadvertance ou malentendu, le tribunal arbitral ne prend pas en considération des allégués, arguments, preuves et offres de preuve présentés par l'une des parties et importants pour la sentence à rendre (**ATF 142 III 360** consid. 4.1.1 et les références citées). Il incombe à la partie soi-disant lésée de démontrer, dans son recours dirigé contre la sentence, en quoi une inadvertance des arbitres l'a empêchée de se faire entendre sur un point important. C'est à elle d'établir, d'une part, que le tribunal arbitral n'a pas examiné certains des éléments de fait, de preuve ou de droit qu'elle avait régulièrement avancés à l'appui de ses conclusions et, d'autre part, que ces éléments étaient de nature à influer sur le sort du litige (**ATF 142 III 360** consid. 4.1.1 et 4.1.3). Si la sentence passe totalement sous silence des éléments apparemment importants pour la solution du litige, c'est aux arbitres ou à la partie intimée qu'il appartiendra de justifier cette omission dans leurs observations sur le recours. Ceux-ci pourront le faire en démontrant que, contrairement aux affirmations du recourant, les éléments omis n'étaient pas pertinents pour résoudre le cas concret ou, s'ils l'étaient, qu'ils ont été réfutés implicitement par le tribunal arbitral (**ATF 133 III 235** consid. 5.2).
C'est le lieu de préciser que le grief tiré de la violation du droit d'être entendu ne doit pas servir, pour la partie qui se plaint de vices affectant la motivation de la sentence, à provoquer par ce biais un examen de l'application du droit de fond (ATF142 III 360 consid. 4.1.2 et les références citées).

5.2. Pour étayer son moyen pris de la violation de l'art. 190 al. 2 let. d LDIP, le recourant reproche à la Formation d'avoir traité uniquement les arguments qu'il avait développés dans son mémoire de réponse et d'avoir fait fi de ceux qu'il avait avancés lors de l'audience et dans les écritures déposées postérieurement à celle-ci.

En premier lieu, le recourant insiste sur le fait qu'il avait présenté divers éléments visant à démontrer que le paiement de la deuxième

tranche du prix du transfert était possible. À cet égard, il avait notamment fait valoir que seule la banque E._____ figurait sur la liste des entités et personnes visées par le régime de sanctions institué par les autorités britanniques, alors que le club lui-même et ses actionnaires n'étaient pas concernés par lesdites sanctions, raison pour laquelle le droit anglais n'interdisait nullement un paiement en sa faveur. Le recourant avait affirmé que la situation de blocage résultait uniquement de l'attitude adoptée par H._____, laquelle avait décidé d'appliquer une politique de sanctions plus stricte, alignée sur la réglementation américaine. Selon lui, l'intimé aurait parfaitement pu procéder au paiement de la deuxième tranche du prix de transfert en ayant recours aux services d'un autre établissement bancaire britannique suivant une pratique différente en ce qui concerne la mise en oeuvre des sanctions financières. Se référant à certains passages d'un avis de droit produit par l'intimé au cours de la procédure d'arbitrage, le recourant rappelle avoir insisté, au cours de l'audience, sur le fait que l'expert concerné n'avait jamais soutenu qu'un tel paiement était impossible, dès lors qu'il s'était contenté de faire état "de très sérieuses difficultés" ("there are very serious difficulties in B._____ making the payment") à ce sujet et d'indiquer que les chances d'obtenir une autorisation de la part de l'OFSI pour procéder au versement en faveur du recourant étaient "faibles" ("the prospect of obtaining an OFSI licence to facilitate the payment... appear to be poor").

En second lieu, le recourant fait grief aux arbitres d'avoir passé sous silence les arguments qu'il avait présentés aux fins de démontrer que l'intimé n'avait pas entrepris tout ce que l'on pouvait raisonnablement attendre de lui pour procéder au paiement de la deuxième tranche du prix du transfert, enfreignant ainsi ses engagements contractuels qui lui imposaient de se conformer aux règles de la bonne foi. À cet égard, il avait notamment mis en avant le fait que l'intimé n'avait entrepris des démarches auprès de l'OFSI qu'à partir du 18 janvier 2023 et lui avait soumis une requête qui comportait des renseignements erronés. Le recourant avait aussi fait valoir que le montant en jeu aurait pu être versé sur le compte nouvellement ouvert par lui auprès d'un autre établissement bancaire (I._____) non visé par les sanctions financières, mais que l'attentisme de l'intimé avait compromis cette opération, puisque la banque en question avait par la suite été ajoutée à la liste des entités visées par lesdites sanctions. Il avait en outre fait grief à l'intimé de n'avoir pas communiqué à l'OFSI les autres possibilités envisagées par les parties pour procéder au paiement du montant convenu.

Le recourant s'emploie ensuite à démontrer que les divers éléments que la Formation aurait omis d'examiner étaient susceptibles d'influer sur le sort du litige.

5.3. À la lecture de l'argumentation développée par le recourant, qui revêt un caractère essentiellement appellatoire, il est flagrant que l'intéressé, sous le couvert d'une prétendue atteinte à son droit d'être entendu, s'en prend exclusivement à la motivation des arbitres et tente, en pure perte, d'obtenir un examen matériel de la sentence par l'autorité de recours. Le recourant cherche en effet à entraîner la Cour de céans sur le terrain de l'application du droit de fond et de l'appréciation des preuves, en l'incitant à contrôler le bien-fondé des considérations émises par la Formation pour justifier la solution retenue par elle. Il va sans dire que pareille démarche est inadmissible en matière d'arbitrage international.

Quoi qu'il en soit, la lecture de la sentence querellée permet de constater que la Formation n'a pas failli à son devoir minimum d'examiner et de traiter les problèmes pertinents. Les arbitres ont simplement abouti à un résultat différent de la thèse soutenue par le recourant. Dans le

chapitre de sa sentence intitulé "Was the B._____ prevented from making the payment of the second instalment under the sanctions regimes?", la Formation s'est penchée attentivement sur la question au coeur du litige de savoir si l'intimé pouvait ou non verser au recourant le montant de la deuxième tranche du prix du transfert eu égard aux sanctions en vigueur visant diverses entités russes. Elle a jugé que cette circonstance n'entraînait pas l'extinction de la dette mais empêchait provisoirement l'intimé de procéder légalement au paiement du montant en jeu. Pour aboutir à pareille solution, la Formation a notamment émis les considérations suivantes:

"165. The Parties brought to the attention of the Panel that OFSI has recently explained that while B._____ will not, in principle, need a licence to pay A._____, there is still a doubt whether a Designated Person could be controlling A._____. In the Panel's opinion, this issue could possibly still prevent the payment to be made to date, both in a direct manner to A._____, or through a third party (namely, G._____ as the Dutch Finance Ministry has still not approved the agreement). In the view of the majority of the Panel, it is a striking feature of this case that A._____ shareholders' controlling interests have not yet been determined by OFSI.
166. The majority of the Panel concludes that no alternative legal routes were available to pay A._____ at that time, as A._____ was under the UK and the USA Sanctions Regimes. The only possible manner to make a payment was if a licence or authorisation from state authorities was granted.
167. B._____ has thus proved, to the satisfaction of the majority of the Panel, that the Sanctions Regimes prevented it from fulfilling its payment obligation to A._____".

Dans la sentence attaquée, la Formation a en outre relevé que la CSJ avait fait droit à la requête introduite devant elle, motif pris de ce que l'intimé n'avait pas fait tout ce qui était en son pouvoir pour régler sa dette envers le recourant. Après avoir détaillé, par le menu, les démarches répétées entreprises par l'intimé auprès de l'OFSI aux fins d'obtenir son autorisation pour procéder au paiement de la deuxième tranche du prix du transfert, elle est visiblement parvenue à la conclusion inverse de celle retenue par la CSJ. Il apparaît ainsi que la Formation a rejeté, ne serait-ce que de manière implicite, les divers arguments dont le recourant fait grand cas dans ses écritures, étant précisé que ce dernier ne saurait obtenir une motivation détaillée sur chaque aspect du raisonnement tenu par les arbitres. Quant à savoir si la motivation fournie est juridiquement convaincante, cette question ne ressortit pas au droit d'être entendu et échappe, partant, à la cognition du Tribunal fédéral.

En tout état de cause, la Cour de céans considère que les éléments prétendument omis n'étaient pas de nature à influer sur le sort du litige, quoi qu'en dise le recourant. À cet égard, elle fait siennes les explications convaincantes fournies par l'intimé à ce sujet (réponse, n. 59-86).

Il n'y a dès lors pas trace d'une violation du droit d'être entendu du recourant *in casu*. Même s'il avait été recevable, le moyen tiré de la violation du droit d'être entendu ne pourrait ainsi qu'être rejeté.

Décision

Le recours est rejeté dans la mesure où il est recevable.

Sélection de publications récentes relatives au TAS /Selected recent CAS publications/ Selección de publicaciones recientes del CAS

- Cherkeh R. & Heyn C., Doping-Schiedsvereinbarungen zum CAS im Lichte des Anspruchs auf Justizgewährleistung und effektiven Rechtsschutz in der Union, Spurt 1/2026 p. 12

- Gesenhoff A. & Hünting S., Zwischen Menschenrechten und Sportrecht: Die Relevanz der Engel-Kriterien für Schiedsverfahren vor dem CAS, Spurt 1/2026 p. 21

- Hessert B. & Ling Goh C., Elgar Concise Encyclopedia of Sports Law, Edward Elgar publishing 2025

- Football Legal N°23 - 2025/2, Focus, When Arbitration Meets EU Law: Understanding the Seraing Judgement, p. 42 ff.

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- Hass U., The Hayden Opie Keynote Address, 2025 Anzla Annual Conference: Access to Justice and the Court of Arbitration for Sport, The Australian and New Zealabd Sports Law Journal, 2025 Volume 18 N0.1, p. 145

- Maisonneuve M., L'arrêt Semenya c/ Suisse de la grande chambre de la CEDH: à la recherche d'un équilibre entre l'autonomie de l'arbitrage TAS et la protection des droits fondamentaux des athletes, Journal du droit international (Clunet) n°1, Janvier-février-mars 2026

- Maisonneuve M., Les conclusions de l'avocate Générale de la CJUE dans l'affaire RFC Seraing

- Mateus Lopez C., Annulment of Awards of the Court of Arbitration for Sport (CAS) in a Nutshell, The International Sports Law Journal (Springer Nature, London), published online 2 December 2025

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- Tschanz P.-Y., Spoorenberg F., Franchini D., Chronique de jurisprudence étrangère Suisse, Revue de l'Arbitrage, Comité français de l'Arbitrage, 2025 – N° 4, p. 979

- Shinohara T & Sugiyama S., Rejection of the legal aid by the Court of Arbitration for Sport in light of Article 6 of the European convention on human rights, The international Sports Law Journal, Volume 25, Number 4, December 2025, p. 313