



Arbitration CAS 2011/A/2669 Evgeny V. Levchenko v. Russian Football Association (FUR), award of 28 August 2012

Panel: Mr Manfred Nan (The Netherlands), President; Mr Mika Palmgren (Finland); Prof. Luigi Fumagalli (Italy)

Football

Ethics

Definition of “football subject”

Timeliness of the appeal brought before the previous body

Interested parties

CAS power to refer the case back to the previous instance

1. **Players are “*football subjects*” falling under the scope of the FUR Ethics Regulations if they were football players in Russia at the period of time during which the alleged illegal activities covered by the FUR Ethics Regulations took place, irrespective of their nationality, their domicile or residence and/or if they are still employed or connected to a Russian football club.**
2. **Decisions of the FUR Ethics Committee may be appealed “*within three business days after issue thereof*”. This means that the appeal can be filed by an interested party within the three business days after handing over the decision to the requested party.**
3. **Neither the FUR Ethics Regulations nor the FUR Disciplinary Regulations require to have been a party to the previous proceedings or to have been affected by a sporting sanction rendered in the appealed decision to be an “*interested party*” entitled to challenge the decisions of the FUR Ethics Committee. Any person whose interests are directly prejudiced by a decision of a Jurisdiction Authority may appeal this decision.**
4. **Pursuant to Article R57 of the CAS Code, a panel may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. If the previous instance did not decide on the substance of a case in which one of the parties was not a party to the previous proceedings and had claims of a specific nature, it is not appropriate to pass over the previous instance and the case has to be referred back to that previous instance.**

I. THE PARTIES

1. Mr Evgeny V. Levchenko (hereinafter referred to as the “Player”) is a Ukrainian professional football player.
2. The Russian Football Association (hereinafter referred to as the “FUR” or “RFA”) is the governing body for the sport of football in Russia, which in turn is a member of FIFA.

II. BACKGROUND FACTS

3. The circumstances set out below are a summary of the main relevant facts, as established by the Panel on the basis of the parties’ written submissions, the exhibits filed, as well as the oral pleadings and comments made during the hearing. Additional facts may be set out, where relevant, in the legal consideration of the present award.
4. The present dispute finds its origin in a publication dated 18 April 2011 of the Russian newspaper “Novaya Gazeta” alleging that Mr Sergei Pryadkin in his capacity as a member of FUR Committees, vice-president of the FUR and president of the Russian Football Premier League had a conflict of interest and was involved in – illegal – activities with his brother Mr Andrei Pryadkin (former players’ agent), Mr Konstantin Sarsanuya (former sport director of FC Zenit Saint Petersburg and FC Dinamo Moscow), Mr Thomas Zorn and Girus GmbH.
5. Based on this article, the Russian Novosibirsk regional branch of the Russian Union of Supporters (hereinafter referred to as the “Novosibirsk Entity”) filed a claim with the FUR Ethics Committee on 27 May 2011, requesting the FUR Ethics Committee to investigate the allegations made by the newspaper “Novaya Gazeta”.
6. On 4 July 2011, the FUR Ethics Committee decided to close the investigation on the claim of the Novosibirsk Entity regarding Sergei Pryadkin’s possible violations of the requirements provided by the FUR Charter and/or FUR and FIFA Ethics Regulations.
7. The decision rendered by the FUR Ethics Committee was communicated to the Player on 27 October 2011.
8. On 31 October 2011, the Player filed an appeal at the FUR Appeal Committee against the decision of the FUR Ethics Committee dated 4 July 2011.
9. On 15 November 2011, the FUR Appeal Committee decided *“on the basis of points 4 and 6 of part 1 art. 80 of the RFA Disciplinary Regulations, as well as the appropriate norms of the RFA Ethics Regulations, to return the appeal claim, filed by (...) against the RFA Ethics Committee decision No14, dated 4th July 2011, to the plaintiff”*.
10. The relevant paragraphs of the decision of the FUR Appeal Committee read as follows:

“Firstly – On the 27th May 2011 the RFA Ethics Committee received a claim from the Novosibirsk Regional office of the Russian Union of Supporters (hereinafter NRO RUS) with a request to carry out an investigation regarding the activities of Sergei Pryadkin, Alexandr Pryadkin, Tomas Zorn, Konstantin Sarsania and GIRRus GmbH.

On 5th March 2011, in accordance with par. 2 art. 21 of the RFA Ethics Regulations, The RFA Ethics Committee decided to accept the «Novosibirsk regional office of the Russian Union of Supporter»’s claim for consideration.

Having examined the provided documents and heard the interested parties, on 4th July 2011, the RFA Ethics committee decided to stop investigation the claim filed by the «Novosibirsk regional office of the Russian Union of Supporter» regarding Sergei Pryadkin’s possible violations of the RFA Charter, RFA Ethics Regulations and FIFA Ethics Regulations.

“Novosibirsk regional office of the Russian Union of Supporters” ’s interest in the filed claim were represented by Vladimir Leonchenko and Nikolay Grammatikov (who are also the heads of the Union) by the power of attorney. The said fact is reflected in the RFA Ethics Committee’s decision no. 14, dated 14th July 2011. The RFA Appeal Committee is also confident of the fact that all the procedural documents regarding the current case were immediately received by Vladimir Leonchenko and Nikolay Grammatikov as «Novosibirsk regional office of the Russian Union of Supporter»’s representatives.

Having disagreed with the said decision of the RFA Ethics Committee, on the 7th July 2011, the «Novosibirsk regional office of the Russian Union of Supporter» filed an appeal claim in the RFA Appeal Committee, signed by Nikolay Grammatikov, together with a copy of the RFA Ethics Committee decision no. 14, dated 4th July 2011.

On 18th July, having considered the «Novosibirsk regional office of the Russian Union of Supporter»’s appeal claim against the RFA Ethics Committee decision, dated 04.07.2011, the RFA Appeal Committee decided to return the appeal, dated 7th July 2011, to the appellant on the grounds of sub.par.1 and 4 of par. 1 of par. 80 of the RFA Disciplinary Regulations, as well as the relevant norms of the RFA Ethics Regulations.

On 15th August 2011, the RFA Appeal Committee’s decision, dated 18th July 2011, was appealed by the «Novosibirsk regional office of the Russian Union of Supporter» in the Court of Arbitration for Sport (hereafter CAS) in Lausanne. At the time of making this decision, CAS has not sent the parties to the case its final decision on appeal claim filed by the «Novosibirsk regional office of the Russian Union of Supporter» against the decision of the RFA Appeal Committee, dated 18th July 2011. Thereby, at the time of making this decision, an appeal claim filed by the «Novosibirsk regional office of the Russian Union of Supporter» is being considered in CAS (in Lausanne), on the terms similar to the Levchenko E. V.’s demands in the RFA Appeal Committee.

Secondly – in its appeal claim, Levchenko E.V. refers to art. 37-39 of the 2010 edition of RFA Ethics Regulations and art. 35-37 of the 2011 edition of the RFA Ethics Regulations, which indicates that Levchenko E.V. is a party with an interest to the case filed by the «Novosibirsk regional office of the Russian Union of Supporter» in the RFA Ethics Committee. Due to this, Levchenko E.V. has the right to file an appeal, against the decision No. 14, dated 14th July 2011, in the RFA Appeal Committee.

In accordance with par. 2 art. 35 of the RFA Regulations, 2011 edition, in force on 15th July, the RFA Appeal Committee considers the claim under the guidance of the RFA Charter, the current regulations, as well as the RFA Disciplinary Regulations, in part, the procedural norms of the RFA Appeal Committee, if such norms do not contradict with the current regulations. The procedural norms of appealing the decisions of the RFA jurisdictional bodies are set in chapter 6 of the RFA Disciplinary Regulations.

In accordance with par. 76 of the RFA Disciplinary Regulations, the decisions of the jurisdictional bodies can be appealed by a party who has a sanction imposed against it, as well as other parties who are directly affected by the decision of the jurisdictional bodies.

In accordance with par. 1 art. 35 of the 2011 edition of the RFA Ethics Regulations, any ruling of the RFA Ethics Committee may be appealed by a party with an interest in the RFA Appeal Committee within three working days from the moment of receiving the decision.

As is evident from the indicated norms and the documents provided to the RFA Appeal Committee, Levchenko E.V. is not a party to the «Novosibirsk regional office of the Russian Union of Supporter»'s case against Sergei Pryadkin, the appealed decision does not affect Levchenko E.V.'s interests, as well as, sporting sanctions, set by the RFA Disciplinary Regulations, have not been imposed on Levchenko E.V.. Due to this, the RFA Appeal Committee does not consider the claimant's arguments, of a possible right to file an appeal claim in the RFA Appeal Committee by a physical or a legal entity who is not a party to the case, as viable. Furthermore, the RFA Appeal Committee considered that the claimant's arguments, that a party who is not a party to the case has the right to file an appeal claim in the RFA Appeal Committee, are an attempt to distort the acting norms of the RFA Ethics Regulations and to arbitrarily and unreasonably interpret them for to its advantage. The RFA Appeal Committee also believes that even if it was assumed that Levchenko E.V. has the right to file an appeal claim in the RFA Appeal Committee, then in accordance with the RFA Regulatory documents, Levchenko E.V. missed the deadline to appeal the RFA Ethics Committee decision No. 14, dated 4th July 2011, and Levchenko E.V.'s arguments that the RFA Ethics Committee's decision was received on 27th October 2011 are unfounded as Levchenko E.V. is not a party to the case and the RFA Ethics Committee is not obliged to send him the decision. The RFA Appeal Committee established if Levchenko E.V. had a real interest in the appealed case of the RFA Ethics Committee decision No. 14, dated 4th July 2011, then he could have asked for a copy of the said decision within the set deadline”.

11. The decision of the FUR Appeal Committee was notified to the Player by fax dated 23 November 2011.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

12. On 14 December 2011, the Player filed a statement of appeal at the Court of Arbitration for Sport (hereinafter referred to as “CAS”) against the decision of the FUR Appeal Committee dated 15 November 2011 (hereinafter referred to as the “Appealed Decision”), pursuant to which the FUR Appeal Committee rejected its request to set aside the decision rendered by the FUR Ethics Committee on 4 July 2011 and to order the Ethics Committee to carry out an investigation into alleged conflicts of interest and corruption.
13. On 24 December 2011, the Player filed the appeal brief.
14. On 7 February 2012, a “Notice of formation of the Panel” was sent to the Parties. The following arbitrators were appointed, in application of Articles R33 and R52, R53 and R54 of the Code of Sports-related Arbitration (hereinafter referred to as the “CAS Code”):
President: Mr Manfred Nan, attorney-at-law in Arnhem, Netherlands
Arbitrators: Mr Mika Palmgren attorney-at-law in Turku, Finland
Professor Luigi Fumagalli, attorney-at-law in Milan, Italy
15. On 24 February 2012, the FUR filed its answer.

16. In a letter dated 12 March 2012, the Panel issued some procedural directions.
17. On 2 April 2012, the Player filed additional submissions.
18. On 30 April 2012, the FUR filed additional submissions.
19. On 29 May 2012, the CAS Court Office informed the Parties that the Panel, pursuant to Article R57 of the CAS Code, had decided to hold a hearing on 14 June 2012, limited to the issues raised thus far in the parties' submissions, and more specifically to the question of the admissibility of the appeal to the FUR Appeal Committee. On 30 May 2012, pursuant to Article R44.2.3 of the CAS Code, the Parties were invited to state whether they intended to call any witness and/or experts which they have specified in their written submissions.
20. By letter dated 11 June 2012, the Player submitted a witness statement.
21. In a letter dated 12 June 2012, the FUR objected to the witness statement.
22. On 14 June 2012, the hearing was held at the CAS in Lausanne, Switzerland. The Panel was assisted at the hearing by Ms. Louise Reilly, Counsel to the CAS. During the hearing, the Player was represented by Mr Nikolai V. Grammatikov. The FUR was represented by Counsel Mr Philippe Fuchs.
23. At the conclusion of the hearing, the Parties confirmed that they had no objections in respect to the manner in which the hearing had been conducted, in particular the principles of the right to be heard and to be treated equally in the arbitration proceedings.

IV. SUMMARY OF THE PARTIES' SUBMISSIONS

24. Below is a summary of the main relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although 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.

A. The Player

The Player's submissions, in essence, may be summarized as follows:

25. The Player submits that he was entitled to file an appeal with the FUR Appeal Committee against the decision of the FUR Ethics Committee, because he is a subject of football according to Article 1 of the FUR Ethics Regulations and an interested party as referred to in Article 35-

- 37 (37-39 old version) of the FUR Ethics Regulations as well as in Article 76 of the FUR Disciplinary Rules.
26. The Player refers to Articles 24 and 35 of the FUR Ethics Regulations, as well as to Article 14 of the Russian Labor Code and Article 193 of the Russian Civil Code, and argues that the appeal against the decision of the FUR Ethics Committee dated 4 July 2011 was within the set deadline.
 27. The Player argues that Mr Sergei Pryadkin in his capacity as a Chairman of the Player's Agents Committee (from April 2009 to April 2010), member of the FUR Executive Committee, vice-president of the FUR and president of the Russian Premier League (since 2007), is an official and also a subject of football. Therefore the Player submits that *"from 2007 till until now S.G. Pryadkin has been able to influence directly or indirectly on the situation of all subjects of Russian football, including Evgeny Levchenko, who in 2009-2010 (...) was a player for FC Saturn Moscow Region"*.
 28. The Player alleges that *"his application was caused inter alia by circumstances of ethical nature directly relating to (...) himself"* and refers to the alleged involvement of Andrei Pryadkin, brother of Sergei Pryadkin, as a players agent with regard to his employment contract with FC Saturn, which club is affiliated to the FUR.
 29. The Player alleges that Mr Pryadkin violated the rules of moral nature, which violation effects all subjects in football.
 30. The Player argues that the Appealed Decision *"has been made without specifying the legal grounds"*.
 31. In continuation, the Player submits that the FUR Appeal Committee *"did not make a proper assessment of the facts that were identified and established during the investigative proceedings of the case"*. The Player points out that Mr Pryadkin has violated the obligations as mentioned in Articles 5.1, 5.2, 5.3 of the FIFA Ethics Regulations and Article 29.3 of the FUR Charter by not disclosing information and by not refraining from taking part in discussions and voting procedures with regard to a possible conflict of interest.
 32. The Player states that the FUR Appeal Committee *"effectively deviated from collecting evidence and did not hold accountable the organizations who failed to fulfill the Committee's request to provide evidence"*.
 33. Subsequently, the Player argues that the FUR Appeal Committee *"did not apply the compulsory norms which should have been applied when making the decision"*. The Player refers to Articles 3, 6, 7 and 26 of the FUR Ethic Regulations, as well as Article 5 of the FIFA Code of Ethics.
 34. The Player alleges that *"during the period of 2006-2011, Sergei Pryadkin, his relatives and his business partner (...) had an interest while carrying out agency work and conflict of interest in accordance with his occupied official position. Sergei Pryadkin, directly influenced and participated in the creation and approval of the said regulatory framework, as well as appointment of members of the REA jurisdictional bodies, authorized to make binding decisions and impose sanctions on those involved in agency activities"*.
 35. In the light of the above, the Player submits the following prayers for relief in his written

submissions:

“As the claim was not fully and accordingly investigated by the RFA Appeal Committee the Union is therefore asking the Court of Arbitration for Sports:

- *to overturn the ruling of the RFA Appeal Committee*
- *to carry out a detailed and a comprehensive judgement concerning the conflict of interests and the alleged corruption related to the activities of Sergei Pryadkin, Andrey Pryadkin, Tomas Zorn, Konstantin Sarsania and Girus GmbH*
- *to overturn the ruling of the RFA Ethics Committee*
- *and hold accountable the violators of the ethical norms.*

In part, due to the violation of the norms and regulations of FIFA and RFA Ethics Regulations and the RFA Charter, we ask to take sanctions against Sergei Pryadkin and other officials involved”.

B. The FUR

The FUR’s submissions, in essence, may be summarized as follows:

36. The FUR submits that the appeal to CAS is unsubstantiated and shall therefore not be admitted.
37. The FUR argues that the FUR Appeal Committee was correct in not admitting the appeal of the Player against the decision of the FUR Ethics Committee for the following reasons:
 - the Player is not a Football Subject in the meaning of Article 1 (9) of the FUR Ethics Regulations, because he does not live in Russia, is not a Russian citizen and no longer plays for a Russian football club;
 - the Player is not an interested party for the purposes of Article 35 of the current FUR Ethics Regulations, because *“to be considered as “interested party” it is either necessary to participate in the proceedings before the FUR Ethics Committee or to be affected by a sporting sanction rendered in a decision of the FUR Ethics Committee”*. The FUR emphasizes that the Player was neither a party to the proceedings of the FUR Ethics Committee, nor was he affected by any sporting sanction rendered in the decision of the FUR Ethics Committee since the decision was not directed against the Player;
 - the Player did not file the appeal within the three-day deadline as prescribed in Article 35 para. 1 of the FUR Ethics Regulations.
38. In the event that the CAS Panel should come to the conclusion that the FUR Appeal Committee should have accepted the appeal, the FUR adopts the position that *“CAS should refer the case back to the FUR Appeal Committee, so that the FUR Appeal Committee can decide in the substance (i.e. whether the FUR Ethics Committee has performed an adequate investigation”*. In addition, the FUR states that *“if the CAS decides in the substance, the parties would lose an instance and their right to be heard would be violated”*. In fact, according to the FUR:

- *“the question whether the FUR Ethics Committee has performed an adequate investigation is not and cannot be part of this appeal proceedings since the lower court (i.e. the FUR Appeal Committee) did not decide in this respect”*. The FUR argues that the power of the CAS Panel is limited to the analysis of the Appealed Decision: *“as foreseen in art. R57 of the CAS Code, the Panel shall review the Appealed decision, which is (...) the decision of the FUR Appeal Committee of 15 November 2011 to dismiss the appeal (...). The decision of the FUR Ethics Committee rendered on 4 July 2011 is not the subject of the present appeal”*. The FUR refers to Article R47 of the CAS Code.
 - the investigation by a special Investigation Committee has been executed in an adequate way.
 - the decision of the FUR Ethics Committee is in compliance with the FUR Disciplinary Regulations, especially with article 27 and 30 of the FUR Ethics Regulations.
39. In the light of the above, the FUR submits the following prayers for relief in its written submissions:

“The Football Union of Russia respectfully requests the honourable Panel to issue an award:

1. *Ruling that the Appeal is not admissible;*
– *or, in the alternative –*
2. *Rejecting the Appeal;*
– *or, if the Appeal is not rejected –*
3. *Annuling the Appealed Decision and referring the case back to the previous instance*
– *and, in any event –*
4. *Ordering the Appellant to (i) pay any arbitration costs in full and (ii) pay in full, or pay a contribution towards the legal fees and other expenses incurred by the Football Union of Russia in connection with these proceedings”*.

V. JURISDICTION OF THE CAS

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

“An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body”.

41. The jurisdiction of CAS, which is not disputed, derives from Article 81 par. 4 of the FUR Disciplinary Regulations in connection with Article 47 par. 1 of the FUR Statutes and Article R47 of the CAS Code.
42. It follows that the CAS has jurisdiction to decide the present dispute.

43. Pursuant to Article R57 of the CAS Code, the Panel has full power to review the facts and the law. Therefore, the Panel has the power and the duty to examine the whole case and to decide whether the Appealed Decision is just and appropriate. As the parties were advised, at this stage of the procedure the Panel will decide only the question of the admissibility of the appeal to the FUR Appeal Committee.

VI. APPLICABLE LAW

44. Article R58 of the CAS Code reads 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”.

45. A likewise approach can be found in Article 187 of the Swiss Private International Law Act of 1989 (PIL), which – *inter alia* – provides that *“the arbitral tribunal shall rule according to the law chosen by the parties or, in the absence of such a choice, according to the law with which the action is most closely connected”.*
46. In the present matter, the parties have not agreed, before CAS, on the application of any particular law.
47. The rules applicable to adjudicate this case are therefore the various regulations of FUR. Russian law shall apply subsidiary.

VII. ADMISSIBILITY

48. The appeal was filed within the deadline provided by Article R49 of the CAS Code in conjunction with Article 81.4 of the FUR Disciplinary Regulations. It complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court office fee.
49. The FUR challenged the admissibility of the appeal to CAS alleging that the appeal is unsubstantiated.
50. This defence fails because the appeal to CAS complies with the requirements set out in Articles R48 and R51 of the CAS Code. Accordingly, the appeal to CAS is admissible.

VIII. DISCUSSION

A. Witness statement

51. By letter dated 11 June 2012 the Player submitted a new witness statement. Pursuant to Article R51 of the CAS Code the parties are *inter alia* obliged to file any witness statement together with the Appeal Brief. As a consequence, the Panel disregards the witness statement.

B. Admissibility of the appeal before the FUR Appeal Committee

52. The Panel first has to deal with the preliminary issue raised by the FUR with regard to the question whether the appeal before the FUR Appeal Committee was admissible. The FUR, in fact, submits that the FUR Appeal Committee rightly dismissed, as inadmissible, the appeal filed by the Player, because the Player is not a “football subject”, was not an “interested party”, and did not file the appeal within the applicable deadline.
53. In its Answer Brief the FUR explains that Article 43 of the FUR Statutes provides that the FUR Ethics Committee is responsible for protecting FIFA’s, UEFA’s and FUR’s values and regulations and has to sanction infringements of the ethics provisions set out in the FUR Ethics Regulations. The FUR states that *“according to Article 21 of the old version of the FUR Ethics Regulations (which were replaced on 15 July 2011 by a new version), any football related person may request the FUR Ethics Committee to consider a matter regarding the violation of the FUR Regulations. Based on this provision, The FUR Ethics Committee decided to accept the request of the Russian Novosibirsk branch of Union of Supporters in May 2011 and to start an investigation”*.
54. The Panel observes that all parties refer to the FUR Ethics Regulations to adjust their position. As a consequence, the Panel first turns its attention to the FUR Ethics Regulations.
55. From the preamble of the FUR Ethics Regulations it may be concluded that these Ethics Regulations are drawn up:
- “1. (...)
- 1) *in an effort to ensure welfare and prosperity of the Russian Football;*
 - 2) *stating that all football subjects shall observe rules and norms of the FIFA, UEFA, RFU as well as principles of fair game, loyalty, football integrity and sportive spirit;*
 - 3) *establishing that the RFU promotes friendly and partnership relations between its members, officials, players and other football subjects (...);*
 - 4) (...);
2. *The Regulations contain the list of key rules of behavior and requirements to officials based upon generally recognized moral principles and establish working proceedings of the Ethics Committee of the RFU, determine its competence in the area of consideration of infringement of the above mentioned norms and application of punishments;*
3. (...).”

56. It is evident to the Panel that these regulations are meant to protect the world of football in Russia in a broad sense.

a) *Football subjects and officials*

57. In continuation, the Panel notes that Article 1.1 sub 9 of the FUR Ethics Regulations reads as follows (as relevant):

“1. *The following terms and definitions are used in these Regulations:*

(...)

9) ***football subjects*** – *the RFU, organizations approved by it, members of the RFU, regional (local) branches of the RFU, members of bodies of the RFU, employees of the RFU (administrative apparatus of the RFU), leagues and employees thereof, clubs and employees thereof, officials, players, sport teams, collectives on physical culture, match agents and players’ agents, professional union in the football area, centres for sportive training, sportive schools of various types, users and holders of sportive facilities used in football, sport fans and their associations and other persons whose activities are associated with competitions held under the aegis of the RFU and recognizing norms set by the RFU”.*

58. It stems from this Article that “players” are football subjects falling under the scope of the FUR Ethics Regulations.

59. The Panel observes that the Player played for the Russian football club FC Saturn Moscow Region in the period 2009-2010, and that the requested investigations inter alia refer to alleged conflicts of interest and illegal activities during this period. Therefore, the Panel concludes that the Player was a football player in Russia in the relevant period of time, and as such a football subject in the meaning of Article 1.1 sub 9 of the FUR Ethics Regulations, irrespective of his nationality, his domicile or residence and/or if he is still employed or connected to a Russian football club.

60. The Panel also acknowledges that Article 1.1 sub 9 of the FUR Ethics Regulations provides that the scope of the FUR Ethics Regulations is not restricted to members of the FUR, which confirms the applicability of these rules in a broad sense in Russian football.

61. Furthermore, the Panel establishes that the requested investigation regarding the alleged illegal activities relates to Mr Sergei Pryadkin in his capacity of a member of FUR Committees, Vice-President of the FUR and President of the Russian Football Premier League.

62. The Panel notes that Article 1.1 sub 8 of the FUR Ethics Regulations reads as follows (as relevant):

“1. *The following terms and definitions are used in these Regulations:*

(...)

8) **official** – *an empowered official accomplishing organizational and arrangement or administrative and management functions in the following football subjects - the RFU, leagues, clubs, RFU members including (without limitation) managers of such organizations (a member of the collegial executive body, sole executive body etc), members of management bodies of such organizations as well as members of committees, commissions, boards and other similar bodies of the above mentioned organizations (...)*”.

63. It stems from this Article that Mr Sergei Pryadkin is an official falling under the scope of the FUR Ethics Regulations.

64. As a result, the Panel finds that both the Player and Mr Sergei Pryadkin can be considered to be “football subjects” within the meaning and for the purposes of the FUR Ethics Regulations.

65. The next issues to be solved are the questions whether the Player filed the appeal within the three day deadline as prescribed, and whether the Player is an interested party as referred to in Article 35 of the current FUR Ethics Regulations (Article 37 of the old version of the FUR Ethics Regulations).

66. Article 35 of the FUR Ethics Regulations - as well as Article 37 of the old version - reads as follows:

“Any decision of the Ethics Committee of the RFU may be appealed by a party interested in the case at the RFU’s Committee of Appeal within three business days after issue thereof”.

b) *Deadline to file appeal*

67. The Panel first turns its attention to the question whether the Player filed the appeal within the three day deadline.

68. It is obvious that the Player did not file the appeal within three business days after notification of the decision on 4 July 2011 to the parties involved in the proceedings at the FUR Ethics Committee. The Panel notes that the Player argues that the decision was not published and that he has taken notice of the decision by chance on 27 October 2011.

69. Article 16.5 of the FUR Ethics Regulations provides that *“The responsible secretary shall be responsible for publication of decisions (extracts) taken by the Ethics Committee of the RFU on the official web site of the RFU (www.rfs.ru). In exceptional cases the Ethics Committee of the RFU may take the decision not to publish certain decisions”.*

70. In this regard, the Panel is most surprised to learn that the outcome of the investigations carried out by the Ethics Committee involving allegations of the violation of regulations mend to protect the world of football in Russia in a broad sense, which allegations are based on a publication in a Russian newspaper, apparently only are communicated to the parties at stake. Although at the hearing the FUR argued that the operative part was published on its website on 10th July 2011, i.e. three days after the alleged expiry of the appeal period, the FUR did not

put it forward in evidence in its written submissions nor at the hearing. Moreover, it is undisputed by the parties that the full text of the decision of the Ethics Committee dated 4 July 2011 was not published.

71. As a consequence, the Panel is of the opinion that “*within three business days after issue thereof*” means that the appeal can be filed (by an interested party) within three business days after handing over the decision to the requesting party.
72. The Player submits that he requested and received the decision by fax on Thursday 27 October 2011. The FUR did not prove that the Player had any knowledge of the decision dated 4 July 2011, before 27 October 2011. As a result, the Panel considers that the Player received the decision on Thursday 27 October 2011. It is undisputed that the Player filed his appeal on Monday 31 October 2011, as such within three business days after receiving.
73. As a consequence, the Panel establishes that the Player had an excusable reason for exceeding the – original – term. Any other interpretation would constitute a possible violation of the Player’s rights – by hiding or not publishing a decision within the time limit for lodging an appeal – to intervene as defined in Article 76 of the FUR Disciplinary Regulations, which provides that “*any other person whose interests are directly prejudiced by a decision of a Jurisdiction Authority may appeal the decision of the Jurisdiction Authority*”.
74. This finding by the Panel is further backed by the observation that at the hearing the FUR confirmed that under Article 21 of the FUR Ethic Regulations as it stands a request of the Player to the Ethics Committee regarding the same investigation probably will be denied unless new evidence will be submitted.
75. Therefore, the Panel concludes that the appeal of the Player before the FUR Appeal Committee was in time.

c) Interested parties

76. In continuation, the Panel turns its attention to the question whether the Player is an interested party as referred to in Article 35 of the current FUR Ethics Regulations (Article 37 of the old version of the FUR Ethics Regulations).
77. The Panel observes that – based on the objectives of the FUR Ethics Regulations as mentioned in the Preamble in conjunction with Article 1.1 sub 9 of the FUR Ethics Regulations – in principle there is no reason to exclude the Player as a football subject from the group of interested parties, unless the regulations explicitly provide for such an exclusion. The Panel notices that no such explicit exclusion exists in the FUR Ethics Regulations.
78. Further, the Panel notes that the FUR claims that the Player is not an interested party as referred to in Article 35 of the current FUR Ethics Regulations, because “*to be considered as “interested party” it is either necessary to participate in the proceedings before the FUR Ethics Committee or to be affected by a*

sporting sanction rendered in a decision of the FUR Ethics Committee". The FUR refers to Article 76 of the FUR Disciplinary Regulations and emphasizes that the Player was neither a party to the proceedings of the FUR Ethics Committee nor was he affected by any sporting sanction rendered in the decision of the FUR Ethics Committee since the decision was not directed against the Player.

79. However, the Panel notices that neither the FUR Ethics Regulations nor the Disciplinary Regulations require that the interested party was a party to the previous proceedings or that the interested party has to be affected by a sporting sanction rendered in the appealed decision.

80. The Panel observes that the applicable regulations do not preclude parties who were not participating in the proceedings at the FUR Ethics Committee from challenging the decision of the FUR Ethics Committee. The Panel is supported by the wording of Article 35 of the FUR Ethics Regulations – as well as Article 37 of the old version – which reads that “**Any** decision of the Ethics Committee of the RFU may be appealed by a party interested in the case (...)”.

81. Further, Article 76 of the FUR Disciplinary Regulations reads as follows:

“Right of Appeal

The person subject to a sport sanction as well as any other person whose interests are directly prejudiced by a decision of a Jurisdiction Authority may appeal the decision of the Jurisdiction Authority”.

82. It stems from this Article that apart from the person subject to a sport sanction also any other person whose interests are directly prejudiced by a decision of a Jurisdiction Authority may appeal this decision.

83. To assess whether the Player is a person whose interests are directly prejudiced by the decision of the FUR Ethics Committee, the Panel notes that it is undisputed that the Player played for the Russian football club FC Saturn in the period 2009-2010.

84. In continuation the Panel observes that the Player alleges that “*on 1st July 2009, when he was a player for Saturn, a sham contract No8 FKS 09, was concluded between Saturn and Wisser Trading Limited (offshore jurisdiction – the Seychelles Islands), which involved the provision of agency services. The certificate of acceptance of the services in accordance with the contract was signed on 10th August 2009. Igor Efremov, the club’s general director, signed the documents for FC Saturn. The agent’s remuneration in accordance with the contract was 400 000 (...) USD and this sum was transferred to the offshore company. At the same time, in actual fact, when the employment contract with the club was being signed, the player was a free agent, did not have any current employment contract at the time, and was transferring to FC Saturn absolutely free of charge. The signing of this agency agreement with FC Saturn, a club that was in pre-bankruptcy situation, involved Sergei Pryadkin’s younger brother, Andrei Pryadkin, who repeatedly met with player Levchenko, discussed the terms of his employment in FC Saturn, hiding from the player the fact that this transfer to FC Saturn would be completed via a sham agent registered in an offshore jurisdiction. Furthermore, Andrei Pryadkin was no longer a players’ agent licensed by the Russian Football Union at the time of conducting the agency work related to Levchenko, because on 14th March 2009 he relinquished his license No071 due to the fact that his brother, Sergei Pryadkin, was appointed chairman of the RFU Players’ Agents Committee. Thus, Sergei Pryadkin had a conflict of interest as he was patronizing illegal agency activities of his younger brother Andrei, who operated*

without a license”.

85. As the decision of the FUR Ethics Committee is directly related to the allegations made by the Player, the Panel has no hesitation to believe that the Player is a person whose interests are directly prejudiced by the decision of the FUR Ethics Committee and as such is an interested party in the meaning of Article 35 of the current FUR Ethics Regulations (Article 37 of the old version of the FUR Ethics Regulations).

d) Conclusion

86. In view of the foregoing facts and considering the evidence and submissions adduced, the Panel is of the opinion that the appeal of the Player to the FUR Appeal Committee should have been accepted, and therefore the appeal is admissible.

87. In continuation, the Panel turns its attention to the question whether it is competent to get to the substance of the case.

88. The Panel notes that the Player asks the Panel *“to carry out a detailed and comprehensive judgement concerning the conflict of interests and the alleged corruption related to the activities of Sergei Pryadkin, Andrey Pryadkin, Tomas Zorn, Konstantin Sarsania and Girrus GmbH”.*

89. On the other hand, the FUR adopts the position that *“CAS should refer the case back to the FUR Appeal Committee, so that the FUR Appeal Committee can decide in the substance (i.e. whether the FUR Ethics Committee has performed an adequate investigation)”.* In addition, the FUR states that *“if the CAS decides in the substance, the parties would lose an instance and their right to be heard would be violated”.*

90. Pursuant to Article R57 of the CAS Code, the Panel shall have 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. The Panel observes that the FUR Appeal Committee did not decide on the substance and that the Player was not a party to the proceedings before the Ethics Committee. Whereas the nature of the claim of the Player, the Panel considers it not appropriate to pass over the FUR Appeal Committee. Therefore, the Panel concurs with the FUR that both parties would lose an – important – instance in case the Panel should go into the merits of this case.

92. As a result and pursuant to Article R57 of the CAS Code, the Panel annuls the decision of the FUR Appeal Committee and refers the case back to the FUR Appeal Committee, being the previous instance.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Evgeny V. Levchenko against the decision of the FUR Appeal Committee dated 15 November 2011, is upheld.
2. The decision of the FUR Appeal Committee dated 15 November 2011 is annulled and the case is referred back to the FUR Appeal Committee.

(...)

5. Any further claims for relief are dismissed.