



Arbitration CAS 2012/A/2835 Denys Sieriebriennikov v. FC Volyn & Football Federation of Ukraine (FFU), award of 22 July 2013

Panel: Prof. Martin Schimke (Germany), President; Mr Stuart McInnes (United Kingdom); Mr Michele Bernasconi (Switzerland)

Football

Claim for compensation based on tort

CAS jurisdiction

Scope of jurisdiction of a national federation's judicial bodies

1. **If the statutes of a federation give the right to appeal last instance decisions to the CAS and a clear reference is made in a decision of the federation to the CAS competence, the CAS has jurisdiction even if the appellant is not a member of the federation and the objective scope of an arbitration clause contained in the “articles of association” is generally focused on disputes among members or officials of the association/federation.**

2. **According to the applicable rules of the federation, the task and competence of the football justice bodies is, particularly, to resolve the disputes between the football subjects or the disputes of a sporting nature. The two key elements under the statutes of the federation are that disputes that can be brought before the federation’s judicial bodies have to be “internal” and the parties acting as appellants have to be considered as “collective members” or have to be “other person[s] engaged or working in football”. A shareholder of a football club whose claim seem to be of a commercial nature, without any link with either the sporting rules of the federation or any sporting activity or event of the federation or any presumed direct or indirect membership in the federation does not meet these conditions. Furthermore, the federation’s justice bodies are only empowered to impose disciplinary sanctions and are therefore not competent to deal with a claim for compensation based on tort.**

1. THE PARTIES

- 1.1 Mr Denys Sieriebriennikov (hereinafter “*Appellant*”) is a natural person of Ukraine nationality and domiciled in Ukraine. The Appellant is represented by Mr Ilya Skoropashkin, attorney-at-law in Kyiv, Ukraine, as his counsel in the present arbitration proceeding.
- 1.2 The FC Volyn LLC (hereinafter referred to as the “*Respondent 1*” or “*FC Volyn LLC*”) is a legal entity under Ukrainian law and registered with the “Unified State Register of Enterprises and

Organisations” under the identification code 37204659. FC Volyn LLC is a member of the Ukraine Professional Football League “Union of Professional Football Clubs of Ukraine `Premier League” (hereinafter referred to as the “UPFCU Premier League”) based at 7a Peremogy Avenue (Prospekt) in 43000 Lutsk, Ukraine. It is represented by Messrs Abbott, Beheshti and Padley, attorneys-at-law in Dubai, UAE, as its counsels in the present arbitration proceeding. The Panel draws the attention to the fact that a further legal entity exists under Ukraine law with a similar name, i.e. “SC FC Volyn OJSC (Open Joint Stock Company)”, which is registered with the “Unified State Register of Enterprises and Organisations” under the identification code 32035233.

- 1.3 The Football Federation of Ukraine (hereinafter referred as to the “*Respondent 2*” or “*FFU*”) is the governing national sports association for football in the Ukraine and member of the Fédération Internationale de Football Association (FIFA).

2. FACTUAL BACKGROUND

- 2.1 Below is a summary of the main relevant facts, as established by the Panel on the basis of the parties' written submissions and the provided exhibits. Additional facts may be set out, where relevant, in connection with the legal discussion which follows.
- 2.2 The Appellant appeals a decision of the FFU Appeals Committee dated 6 June 2012 (hereinafter referred to as the “*FFU Decision*”) by which the FFU Appeals Committee rejected the Appellant’s claim, inter alia, requesting damages.
- 2.3 In November 2010, the Appellant became a shareholder of “SC FC Volyn OJSC” by acquiring stocks from one of the three founders of “SC FC Volyn OJSC”, Mr Pyrozsko. The Appellant acquired 25% of the total stocks for which he paid the amount of 45 million UAH net (approximately 5.6 million USD) to Mr Pyrozsko who thereafter repurchased 10 shares equal to 0.0019% of the stocks from the Appellant for the payment of 3,333.20 UAH (approximately 420.86 USD) to remain one of the shareholders. The transfers of stocks and the final payments were carried out on 24 November 2010. The further 75% of the stocks remained with the two other founders of “SC FC Volyn OJSC” (in holdings of 50% and 25%).
- 2.4 As the Appellant learned later, on 21 July 2010, these two other shareholders had founded a new legal entity using a similar name, i.e. FC Volyn LLC. It was registered with the “Unified State Register of Enterprises and Organisations” under the identification code 32035233 on 28 July 2010. As submitted by the Appellant, he also was not aware of the following further actions regarding FC Volyn LLC and “SC FC Volyn OJSC”:
- 2.5 On 28 December 2010, “SC FC Volyn OJSC” and the FC Volyn LLC concluded an agreement by which rights and obligations to compete in the “UPFCU Premier League” as well as transfer rights for players and further rights and obligations were transferred from “SC FC Volyn OJSC” to FC Volyn LLC.

- 2.6 On 4 January 2011, referring to the succession agreement between “SC FC Volyn OJSC” and FC Volyn LLC of 28 December 2010, the FC Volyn LLC applied to the President of the UPFCU Premier League to accept it as a member of the UPFCU Premier League. However, only at its General Meeting in June 2011 the UPFCU Premier League granted the membership to the FC Volyn LLC *“instead of OJC `Sporting Club `FC Volyn` (Lutsk), due to the conducted procedure of legal succession”*. FC Volyn LLC commenced participation in the UPFCU Premier League with start of the 2011/2012 season.
- 2.7 When the Appellant found out in June 2011 that FC Volyn LLC was participating under the name “FC Volyn” instead of the “SC FC Volyn OJSC” he requested the UPFCU Premier League and the FFU to clarify the transfer of rights and assets and to provide him with the relevant documents. Those requests were not acted upon. Therefore, the Appellant made a similar request to the “national football justice bodies” demanding the league organizers and the FFU Club Licensing Committee to provide him with relevant documents.
- 2.8 In 2012, the Appellant also claimed damages. In particular, by petition of 1 March 2012, he requested the Disciplinary Committee of the UPFCU Premier League to order “FC Volyn” to compensate the Appellant for damage in the amount of 45 million UAH. The Disciplinary Committee of the UPFCU Premier League advised the Appellant to file his claim with the *“court of general jurisdiction at the location of the defendant”*.
- 2.9 On 22 March 2012, the Appellant filed a claim with the FFU Control and Disciplinary Committee demanding compensation for damage equal to the value of his acquired stocks of “SC FC Volyn OJSC”. However, the Head of the FFU Control and Disciplinary Committee refused to initiate legal proceedings because of lack of jurisdiction. In his resolution of 17 April 2012, he found that “SC FC Volyn OJSC” was no longer a member of the “UPFCU Premier League” and that therefore the dispute did not fall under Article 52 of the FFU Statutes providing jurisdiction for internal disputes.
- 2.10 On 31 May 2012, the Appellant appealed the “Resolution of the Head of the FFU Control and Disciplinary Committee” with the FFU Appeals Committee. The Appellant requested *“(1) declaring the agreement concluded between OJC `Sporting Club FC Volyn` and LLC `Football Club Volyn` invalid, (2) paying for the losses by `Football Club Volyn`”*.
- 2.11 On 6 June 2012, the FFU Appeals Committee, composed of three judges, issued the FFU Decision by which the Appellant’s appeal was rejected due to lack of jurisdiction. The Appellant was not considered as “a person engaged or working in football” while the task and competence of the FFU legal bodies is *“resolving the disputes between the subjects of disputes of sporting nature”*. According to the English translation provided by the Appellant and not disputed by the Respondents, the three members of the FFU Appeals Committee unanimously decided as follows:
1. *The institution of legal proceedings by the petition of appeal of Sieriebriennikov D.V. from 31.05.2012 to the Resolution of the Head of the FFU Control and Disciplinary Committee from 17.04.2012, - to refuse.*
 2. *The current resolution to submit to the interested parties”*.

3. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

- 3.1 On 25 June 2012, the Appellant filed a statement of appeal with the Court of Arbitration for Sport (hereinafter the "CAS") directed against FC Volyn LLC and the FFU with respect to the FFU Decision of 6 June 2012.
- 3.2 On 9 July 2012, the Appellant filed his appeal brief with several exhibits.
- 3.3 By letter of 11 July 2012, in accordance with Article R55 of the Code, the CAS Court Office invited the Respondents to file an answer within 20 days.
- 3.4 On 31 July 2012, the FFU submitted its answer with several exhibits.
- 3.5 On 6 August 2012, the Appellant nominated Mr Stuart C. McInnes as arbitrator. By letter of the same date, the CAS Court Office invited the Respondents to jointly nominate an arbitrator from the list of CAS arbitrators, failing which the President of the Appeals Arbitration Division, or his Deputy, should proceed with the appointment in lieu of the Respondents.
- 3.6 By letter of 9 August 2012, the CAS Court Office acknowledged receipt of the FFU's answer (titled "Statement of Defense"), noted that FC Volyn LLC had not filed an answer within the time limit granted and invited the parties to inform the CAS Court Office about their preference to hold a hearing.
- 3.7 On 15 August 2012, the FFU nominated Mr Michele A.R. Bernasconi as arbitrator and informed the CAS Court Office that it agreed to have the present dispute decided on the parties' written submissions only. By letter of the same date, the CAS Court Office acknowledged receipt and invited FC Volyn LLC to express whether it agreed to the nomination of Mr Bernasconi and that its silence on this matter should be deemed to be an agreement.
- 3.8 On 20 August 2012, FC Volyn LLC submitted "explanations" to the CAS and stated that it *"absolutely agree with all statements and objections of the FFU"*. By letter of the same date, the CAS Court Office invited the Appellant to inform it whether the Appellant agreed to accept the submission of the FC Volyn LLC.
- 3.9 By letter of 22 August 2012, the Appellant referred to FFU's submissions and the ones of FC Volyn LLC and stated that *"Mr Sieriebriennikov makes no objections concerning inclusion of these answers in the case"*.
- 3.10 By letter of 23 August 2012, the CAS Court Office noted that it had not received any communication from FC Volyn LLC with regard to the nomination of Mr Bernasconi who, accordingly, should be considered as jointly nominated by the Respondents. Furthermore, the

CAS Court Office noted that it had not received any communication from the Appellant and FC Volyn LLC with regard to their preference for a hearing.

- 3.11 By letter of 23 August 2012, FC Volyn LLC submitted that its submission of 20 August 2012 should not be considered as its Answer according to Article R55 of the Code but rather as “explanations” why FC Volyn LLC should not be considered as a party to the present proceedings.
- 3.12 By letter of 13 September 2012 from Messrs Abbott, Beheshti and Padley, attorneys-at-law in Dubai, UAE, the CAS Court Office was informed about their appointment as counsel for FC Volyn LLC.
- 3.13 By letter of 25 September 2012, the CAS Court Office informed the parties, on behalf of the Deputy President of the CAS Appeals Arbitration Division, that the Panel had been constituted as follows: Prof. Dr Martin Schimke, President of the Panel; Mr Stuart McInnes and Mr Michele Bernasconi, arbitrators. The parties did not raise any objection as to the constitution and composition of the Panel.
- 3.14 By letter of 17 October 2012, the CAS Court Office informed the parties about the Panel’s decision to admit all written submissions filed by the parties until that date. Furthermore, pursuant to Articles R44.3 and R57 of the Code, the Panel requested the Appellant to file a written submission on the issue of jurisdiction only and that thereafter the Respondents would be granted the right to file their submissions in reply.
- 3.15 On 30 November 2012, the Appellant filed a further unsolicited submission.
- 3.16 By letter of 20 December 2012, the Panel invited the parties (first the Appellant and upon receipt of his submission the Respondents) to file written submissions on the following question:
- Assuming that CAS would have jurisdiction on this matter, was the FFU Appeals Committee’s decision (dated 6 June 2012) correct/wrong in denying the opening of legal proceedings in the present case?*
- 3.17 By letter of 4 January 2013, the CAS Court Office confirmed receipt of the Appellant’s submission of the same date in reply to the Panel’s invitation of 20 December 2012. The CAS Court Office forwarded the Appellant’s submission to the Respondents who were invited to file their observations in this regard.
- 3.18 On 24 January 2013, the CAS Court Office acknowledged receipt of the submission of FC Volyn LLC replying to the Appellant’s submission of 4 January 2013. The FFU did not file any observations in this regard.
- 3.19 By letter of 13 February 2013, the CAS Court Office informed the parties that, pursuant to Article R57 para. 2 of the Code, the Panel had decided not to hold a hearing, but rather to render the award based on the parties’ written submissions. The Panel had also decided not

to divide the proceedings to separately determine issues of jurisdiction and the merits of the case.

3.20 By letter dated 6 March 2013, the Appellant filed an unsolicited submission with exhibits and requested “*to be given the opportunity of altering our financial claims in order to extend them to both Respondents jointly*”.

3.21 On 7 March 2013, the CAS Court Office acknowledged receipt and forwarded Appellant’s submission to the Respondents and the Panel. In addition, the CAS Court Office reminded the parties that pursuant to Article R56 of the Code, unless the parties agree otherwise or the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement their argument, nor to produce new exhibits, nor to specify further evidence on which they intend to rely after the submission of the grounds of the appeal and of the answer.

4. THE POSITIONS OF THE PARTIES

A. The Appellant’s position

4.1 The Appellant submitted, in essence, the following:

4.2 As to the jurisdiction of the CAS:

- the local (commercial) courts in the Ukraine do not have an exclusive jurisdiction for the present dispute because national Ukraine law provides the possibility to have disputes decided by arbitral courts;
- the Appellant maintains the status of a football subject because the relevant time is not the moment of his application with the FFU judicial bodies but rather the time when he acquired the shares of “SC FC Volyn OJSC” and when his rights as a shareholder were violated by the illegal transfer to FC Volyn LLC (at which time the “SC FC Volyn OJSC” was still a member of the UPFCU Premier League).

4.3 As to the main issues:

As mentioned above, the appeal filed by Appellant is directed against the decision of FFU of 6 June 2012. In essence, the Appellant is of the view that the FFU was wrong in refusing “to consider his claims in respect of compensation for the damages caused to him [by respondent 1]” (Appeal brief, page 1). In particular, the Appellant claims the following:

- the FFU’s refusal to consider the Appellant’s claims for compensation for damage caused by the illegal actions of FC Volyn LLC has to be considered as a “refusal to administer justice”;
- the FFU Decision states that the claim was directed against FC Volyn LLC and not against “SC FC Volyn OJSC”;

- the agreement between FC Volyn LLC and “SC FC Volyn OJSC” of 28 December 2010, by which “SC FC Volyn OJSC” transferred its “football status” to FC Volyn LLC, was illegally concluded; the transfer was not approved by all shareholders of “SC FC Volyn OJSC” but only at management level;
- consequently, the agreement of 28 December 2010 violated the Appellant’s rights as a shareholder of “SC FC Volyn OJSC” as defined in several rules under Ukraine law, e.g. to participate in managing the joint-stock company and in distribution of the company’s profit and to receive dividends;
- the parties on both sides of the agreement were the same with functions in both legal entities (“SC FC Volyn OJSC” on the one hand and FC Volyn LLC on the other hand) and/or collaborating with each other and the FFU for “mercenary motives” and this happened without the knowledge of the Appellant;
- the claim for damages is based on “tort (non-contractual, delictual) liability” of FC Volyn LLC.

4.4 In his appeal brief, the Appellant submitted the following request for relief:

“On the grounds of the stated above, Mr Sieriebriennikov asks the Sole Arbitrator or the Panel (subject to the Defendant’s wish) to satisfy the following claims:

- *to consider the present case according to the Appellant’s claims against the Defendant 1.*
- *to oblige the Defendant 2 to present for consideration the documents of the Defendant 1, which it submitted to the FFU Club’s Licensing Committee in order to receive the license for the competition season of 2011/2012, and the application documents of the Defendant 1, which it submitted to the Premier League in order to obtain membership for the season of 2011/2012.¹²*
- *to hold the agreement on legal succession between Open joint-stock company «Sporting Club «FC Volyn» and Limited Liability Company «Football Club «Volyn» invalid from the moment of its signing*
- *to oblige the Defendant 1 to compensate Mr Sieriebriennikov for the damages in the amount of 7`993`172.37 USD*

to allocate the legal costs on the Defendant 1.

¹² *Premier League is a collective member of the FFU that is subjected to the FFU and shall execute all orders and directives of the FFU”.*

B. The position of FC Volyn LLC (Respondent 1)

4.5 FC Volyn LLC submitted, in essence, the following:

4.6 As to its position as a party in the present CAS proceeding:

- as the Appellant filed his claim against “FC Volyn”, it remains unclear against which legal entity the claim is filed and, because it is not properly identified in accordance with Article R48 of the Code, FC Volyn LLC is not a party to the present appeal arbitration;
- FC Volyn LLC was not a party to the FFU proceedings and being a party only in the appeal stage would be a breach of due process.

4.7 As to the jurisdiction of the CAS:

- no specific arbitration agreement exists between FC Volyn LLC and the Appellant by which an ordinary or an appeal CAS arbitration proceeding could be initiated;
- the Appellant’s claim *“to hold the agreement on legal succession ... invalid from the moment of its signing”* has never been claimed by the Appellant before the FFU’s judicial bodies and therefore the Appellant is effectively bypassing the requirement to exhaust the legal remedies available to him prior to appeal;
- commercial disputes related to legal entities registered in the Ukraine fall under the exclusive jurisdiction of the Ukraine commercial courts, at least in the absence of any agreement to resolve such disputes in a private forum (e.g. by arbitration);

4.8 In addition, in its submission of 23 November 2012, FC Volyn LLC explicitly stated that it *“agrees with the submissions made by the Second Respondent [FFU] in its Statement of Defence”* in relation to the issue of the jurisdiction of the CAS.

4.9 As to the main issues:

- the FFU Decision was correct, as the dispute was neither a dispute between “football subjects” nor a dispute of “sporting nature”;
- being a minority shareholder with no management responsibilities of an entity engaged in football cannot be sufficient to establish the jurisdiction of the FFU judicial bodies;
- the Appellant filed his claims with the FFU judicial bodies against “FC Volyn” and considering the circumstances results in “SC FC Volyn OJSC” being the actual defendant to the FFU proceedings;
- the Appellant has the opportunity to file a claim for damages with the exclusive competent commercial courts in the Ukraine but uses the present appeal to the CAS to undermine the exclusive jurisdiction of the Ukraine courts because of *“avoiding additional time expenses for legal proceedings”*.
- finally, in its submission of 20 August 2012, FC Volyn LLC stated that it *“absolutely agree with all statements and objections of the FFU”* submitted beforehand.

4.10 In its submission of 23 November 2012, FC Volyn LLC submitted the following request for relief:

“8. Conclusion

8.1 For the reasons set out above, LLC submits that the CAS manifestly lacks jurisdiction over the Appellant’s claims”.

C. The position of the FFU (Respondent 2)

4.11 The FFU submitted, in essence, the following:

- the Appellant failed to prove an arbitration agreement existed between the parties to these proceedings, in particular, the CAS lacks jurisdiction with regard to a claim of a commercial character for compensation in damages in the sum of 7,993,172.37 USD: the claimed compensation is related purely to commercial activities of legal entities and the Appellant’s claim therefore does not fall under disputes arising within “the field of sport” according to Article R27 of the Code;
- Article 12 of the Ukraine Commercial Procedural Code directs commercial disputes to the ordinary state courts, namely the commercial courts and the Appellant is not precluded from filing a claim to the competent commercial court;
- the FFU and its judicial bodies are not entitled to impose sanctions in connection with issues which belong to the competence of other jurisdictions;
- at the time of application to the FFU judicial bodies, “SC FC Volyn OJSC” was no longer a member of any football association/organization and the Appellant as a shareholder could not be considered as a “person connected to the sport” to which the FFU’s jurisdiction is restricted;
- the Appellant’s claim *“to hold the agreement on legal succession ... invalid from the moment of its signing”* has never been subject of the decisions of the FFU’s judicial bodies;
- regarding his claim *“to present for consideration the documents of the Defendant 1, ...”* the Appellant failed to provide the basis for this request against the FFU.

4.12 In its Answer (“Statement of defence”), the FFU submitted the following request for relief:

“Basing on the mentioned above the FFU argues the lack of jurisdiction of CAS in regards of the claims in question and insist (sic) that the issues mentioned by the Appellant in the Appeal brief belongs (sic) to the jurisdiction of commercial courts of Ukraine”.

5. JURISDICTION OF THE CAS

5.1 The jurisdiction of the CAS is disputed by both FC Volyn LLC and the FFU.

5.2 According to Article R28 of the Code the seat of the CAS and of each Panel is Lausanne, Switzerland. Therefore, CAS arbitration proceedings are governed by Chapter 12 of the Swiss Act on Private International Law (PILA), irrespective of the parties’ domicile.

- 5.3 According to Article 186 para. 1 PILA, the arbitral tribunal shall rule on its own jurisdiction.
- 5.4 Therefore, the Panel of the present dispute has the power to decide about its own jurisdiction.
- 5.5 According to the applicable Chapter 12 of the PILA, the jurisdiction of the CAS presupposes, inter alia, the existence of a valid arbitration agreement between the parties and the validity of that arbitration agreement shall be determined in accordance with Swiss law. Consequently, the decisive elements of a binding arbitration agreement are:
- a) The agreement of the parties to submit their dispute to arbitration by designating a particular arbitral tribunal or at least one that is determinable by objective interpretation (see BERGER/KELLERHALS, International and domestic arbitration in Switzerland, 2nd edition, para. 275 et seq.);
 - b) The description of the dispute or the legal relationship which shall be covered by the arbitration agreement (see BERGER/KELLERHALS, International and domestic arbitration in Switzerland, 2nd edition, para. 284 et seq.);
 - c) These elements, on which the formation of the arbitration agreement is based, are subject to a restrictive interpretation (see BERGER/KELLERHALS, para. 414 et seq.) whereas all other elements of the clause shall be interpreted more broadly and in favor of the validity of the arbitration agreement.

- 5.6 This is in line with Article R27 of the Code as a general rule for the application of the Code and the initiation of ordinary or appeal proceedings before the CAS. Article R27 of the Code reads as follows:

“R27 Application of the Rules

These Procedural Rules apply whenever the parties have agreed to refer a sports-related dispute to the CAS. Such disputes may arise out of an arbitration clause inserted in a contract or regulations or of a later arbitration agreement (ordinary arbitration proceedings) or involve an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies, or a specific agreement provides for an appeal to the CAS (appeal arbitration proceedings).

Such disputes may involve matters of principle relating to sport or matters of pecuniary or other interests brought into play in the practice or the development of sport and, generally speaking, any activity related or connected to sport”.

- 5.7 More specifically, Article R47 para. 1 of the Code provides for CAS Appeal Arbitration proceedings 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”.

According to the provisions listed above, the arbitration agreement has to be specifically concluded by the parties or contained in the respective statutes or regulations of the relevant federation or sporting body, i.e. here the FFU

5.8 As indicated, the appeal filed by Appellant is directed against the decision of FFU. When asked to comment on the issue of the jurisdiction of CAS the Appellant basically focused on three issues, i.e. on the fact that no other (state) courts would have exclusive jurisdiction, that the Appellant held the status of “football person” and that on the merits its claims against Respondents were well founded (cf. Submission of Appellant of 1 November 2012).

5.9 Article R47 para. 1 of the Code foresees that CAS has jurisdiction if “*the statutes or regulations of the said body*” provide the right to file an appeal with the CAS against the decision of the federation. It is therefore necessary to carefully consider Article 51 of the FFU Statutes which reads as follows (English translation, as provided by the Appellant and not disputed by the Respondents):

“Article 51 The Court for (sic) Arbitration for Sport

The Court of Arbitration for Sports (CAS) (Lausanne, Switzerland) shall have exclusive competence to consider all disputes related to activities of FIFA and UEFA, as well as appeals against decisions of the Appeal Committee of FFU, as the tribunal of last instance. The Court of Arbitration for Sports (CAS) shall not accept appeals against decisions with regard to suspension from four matches or up to three months”.

5.10 The Panel notes that Article 51 of the FFU Statutes gives the right to appeal “decisions of the Appeal Committee of FFU” with the CAS. The Panel further notes that the appealed FFU Decision falls under the wording of Article 51 of the FFU Statutes and that a clear and explicit reference is made to the CAS as arbitral tribunal.

5.11 The appealed FFU Decision is such a decision rendered by the FFU Appeal Committee and a clear and explicit reference is made to the CAS as competent arbitral tribunal. The Panel is also aware that the Appellant is not a member of the FFU and that the objective scope of an arbitration clause contained in the “articles of association” is generally focused on disputes among members or officials of the association/federation. However, the FFU did take a decision on the appeal filed by Appellant to the FFU Appeals Committee and FFU agreed to have the decisions of the FFU Appeal Committee reviewed by the CAS under the provisions of the Code, in particular reviewing the facts and the law *de novo* (Article R57 of the Code).

5.12 Since the FFU rendered a decision in the matter, and since the Panel cannot find any limitation of the right to appeal decisions of the FFU Appeals Committee that would be applicable here and would limit the right of Appellant to appeal the decision of FFU of 6 June 2012, the Panel holds that the jurisdiction of CAS to decide on the appeal filed by Appellant against such decision of FFU flows from Article 51 of the FFU Statutes in conjunction with FFU’s mentioned approach in the proceedings at hand. Consequently, the CAS has jurisdiction to decide on the appeal filed by appellant and on whether the decision of the FFU Appeal Committee has to be confirmed or to set aside.

6. APPLICABLE LAW

6.1 Article 187 para. 1 PILA states in its English version as follows:

“The arbitral tribunal shall rule according to the rules of law chosen by the parties or, in the absence of such choice, according to the law with which the action is most closely connected”.

6.2 In line with this rule, Article R58 of the Code provides in more detail 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”.

6.3 The Appellant and the FFU have not explicitly chosen any law for the present dispute. However, in their submissions they refer to several regulations of the FFU and to provisions of Ukraine law.

6.4 The FFU Decision, i.e. the “Challenged Decision”, was issued by the FFU as the national football federation for the Ukraine. The FFU is domiciled in Kyiv, Ukraine. Furthermore, all parties are located and/or registered in the Ukraine and/or of Ukraine nationality.

6.5 Thus, according to Article 187 para. 1 PILA and Article R58 of the Code the applicable law in this arbitration is Ukrainian Law.

7. MERITS OF THE APPEAL

7.1 Under Article R57 of the Code and in line with the consistent jurisprudence of the CAS, the Panel has the full power to review the facts and the law. The Panel therefore dealt with the case *de novo*, evaluating all facts and legal issues involved in the dispute as far as it had jurisdiction. As agreed by the parties and hold by the Panel, this dispute is decided on the basis of the parties’ written submissions only without holding a hearing.

7.2 Considering all parties’ submissions, the first, and main issue to be resolved by the Panel is: was the FFU Decision of 6 June 2012 correct or wrong in denying the opening of legal proceedings in the present case?

7.3 The findings of the FFU Appeal Committee read in their main relevant parts as follows (English translation of the FFU Decision, as provided by the Appellant and not disputed by the Respondents [emphasis added]):

“Having studied the materials of the case, the FFU Appeals Committee comes to the following conclusions.

Mr Sieriebriennikov D.V. as an owner of the part of the OJC “Sporting Club FC Volyn” shares is a stockholder of this company. Though, according to the strong opinion of the AC FFU members, subject to the art.10, 11 of the Law of Ukraine “On economic entities”, the proprietary right of the claimant for the part of the OJC “Sporting Club FC Volyn” shares does not automatically make him a person engaged in football.

Moreover, as mentioned above, according to the official UPFCU “Premier League” data, (letter No.185 dated 11.04.2012), OJC “Sporting Club FC Volyn” is not a member of PL.

On such conditions, the FFU Appeals Committee does not see any good reasons to consider Mr Sieriebriennikov D.V. as a person engaged or working in football.

Subject to the art.3, 5 of the FFU Disciplinary Rules, the task and competence of the football justice bodies is, particularly, resolving the disputes between the football subjects or disputes of sporting nature.

Presented documents provide no opportunity to relate the claimant to the football subjects.

At the same time, the section of the FFU Disciplinary Rules “Definition of the terms” defines the dispute of sporting nature as a contradiction or unconformity of positions exactly between the subjects of football activity”.

- 7.4 Thus, the FFU Appeal Committee after review of all the “the materials of the case” denied initiating legal proceedings basically because it did not consider the Appellant a “person engaged in football”, the “SC FC Volyn OJSC” not a member of the UPFCU Premier League and the dispute not of “sporting nature”.
- 7.5 According to Article 48 para. 1 of the FFU Statutes (English translation, as provided by the Appellant and not disputed by the Respondents [emphasis added]), the FFU’s “organs of football justice” are the FFU Control and Disciplinary Committee as the judicial body of first instance and the FFU Appeal Committee as second and final instance inside the FFU. The competence of these two judicial bodies is stipulated in Article 48 para. 2 of the FFU Statutes whereas “[t]he organs of football justice resolve all internal disputes between the FFU, its collective members and other persons engaged or working in football”. Article 52 of the FFU Statutes extends the jurisdiction of the FFU judicial bodies to disputes between organisations which are members of the UPFCU Premier League.
- 7.6 The two key elements under Articles 48 and 52 of the FFU Statutes are therefore that disputes that can be brought before the FFU judicial bodies have to be “internal” and the parties acting as appellants have to be considered as “collective members” or have to be “other person[s] engaged or working in football” or in an “organisation which is a member of the UPFCU Premier League”.
- 7.7 The term “internal” is not defined. The case brought before the FFU Appeal Committee was not a dispute between the Appellant and the FFU but rather between the Appellant and FC Volyn LLC from which the Appellant requested damages. As submitted by the Appellant in detail, his damage claim was based on “*tort (non-contractual, delictual) liability*” of FC Volyn LLC in connection with the Appellant’s position as shareholder of the “SC FC Volyn OJSC”. Thus, the claim, if any, that Appellant asserted before the bodies of FFU is supposed to be based on actions within the “SC FC Volyn OJSC” and not within the FFU. As neither the Appellant nor the “SC FC Volyn OJSC” have ever been a member of the FFU, the FFU was not directly concerned by the dispute brought before its judicial bodies. In fact, the claims raised by Appellant before the FFU bodies seem to be of a commercial nature, without any link with either the sporting rules of FFU or any sporting activity or event of FFU or any a presumed direct or indirect membership in FFU.

- 7.8 The FFU's dispute resolution mechanism was used by the Appellant by the way of being adopted for disputes among non-members. However, such adoption needs to be explicitly stipulated in the association's statutes or regulations and the parties of the dispute have to specifically refer to the association's dispute resolution mechanism as the instance to resolve their (potential) disputes (see for instance **BERGER/KELLERHALS**, International and domestic arbitration in Switzerland, 2nd edition, para. 450). Although Article 52 of the FFU Statutes states an extension of the jurisdiction of the FFU judicial bodies to disputes between members of the UPFCU Premier League, the "internal" requirement still remains. Also in this context, the Panel is satisfied that the term "internal" has to be interpreted in a quite narrow sense, i.e. to concern only those disputes arising from within the relationship of the members of the UPFCU Premier League or, at least, disputes that have a clear link with the sporting relations of (direct or indirect) members of FFU and/or of the UPFCU Premier League. But neither in Article 51 nor in Article 52 nor in other provisions of the Statutes can one find an extension of the competence of the sporting judiciary bodies for "extraneous" matters.
- 7.9 Furthermore, pursuant to Article 58 para. 3 FFU Disciplinary Rules (English translation, as provided by the FFU and not disputed by any other party) the FFU Control and Disciplinary Committee is only empowered to impose disciplinary sanctions. Consequently, the same applies to the FFU Appeal Committee as instance of appeal against decisions of the FFU Control and Disciplinary Committee. The Appellant thus started a procedure within the FFU that, in theory at least, could have led to disciplinary sanctions of Appellant's counterparts. However, taking into consideration the (rather obvious and well justified) statutory limitation of the powers of the FFU Control and Disciplinary Committee, the Panel is not surprised that the FFU bodies invoked by Appellant refused to deal with a claim for compensation based on tort, i.e. a claim fully disconnected from any sporting disciplinary issue. In addition, the Appellant explicitly stood back from requesting any disciplinary sanctions as stated in his petition to the FFU Control and Disciplinary Committee dated 22 March 2012 (*"I ask to consider that I do not intend to impede the sporting activity of the football club Volyn, therefore I do not require to terminate its membership in the "Premier League", though I do not exclude the possibility of increasing claims in this part"*). Moreover, the Appellant's appeal to the CAS did not contain any request for disciplinary sanctions.
- 7.10 In addition to the above considerations, the Panel notes that Appellant does not embrace the further subjective elements necessary to argue a hypothetical competence of the FFU bodies, i.e. Appellant being a "collective member" or "other person engaged or working in football" or "organization which is a member of the UPFCU Premier League".
- 7.11 Article 5 of the FFU Statutes defines who is a "collective member" of the FFU:
"Collective Members can be groups of NGOs, unions of NGOs, associations, groups of companies, institutions, economic companies that are responsible for the organization addressed related with football on its territory or in a particular area".
- 7.12 According to that provision, the Appellant was not a "collective member" of the FFU. Moreover, as a natural person he was also not an "organization which is a member of the UPFCU Premier League". As clearly submitted by the Appellant, he filed his damage claim in

his personal capacity as a shareholder of the “SC FC Volyn OJSC” and not on behalf of this company. Thus, the only position which remains available to the Appellant is his potential position as an “other person engaged or working in football”. It is undisputed that the Appellant is primarily a businessman not employed by the “SC FC Volyn OJSC” or any other football club and that he holds shares of the “SC FC Volyn OJSC” without having any management responsibilities. He therefore did not and still does not “work” in football. However, it is in dispute whether this shareholding could consider the Appellant somehow “engaged” in football.

- 7.13 In their submissions, the Respondents draw attention to the fact that a personal shareholding is not sufficiently within the scope of the mechanism providing for the acceptance of jurisdiction by sports clubs. In this context the Panel takes into account that the Appellant was a minority shareholder with no management responsibilities. The Panel accepts the Respondents’ argument that the entity in which shares are held is not one so “engaged” in football as it holds no “active involvement in the sport”. In order to deem “SC FC Volyn OJSC” as “engaged” in sport, it would be necessary to adopt a very wide interpretation capable of having regard to its historical background as an entity previously registered with the UPFCU Premier League and holding assets pertaining to football. The Panel points to the well justified, regulatory need for sports federations to extend the jurisdiction of their judicial bodies to those persons and entities that “play a role” within the framework of the respective sport. However, this does not mean that any individual or entity that asserts a certain claim with a narrow link to the framework of a certain sport, may be entitled to make use of the disciplinary bodies of such sport, even though at no time that person had ever submitted himself to the jurisdictional, disciplinary power of those sporting bodies. Against this background, the Panel finds that the Appellant cannot claim to fall under the term “other person engaged in football”, in particular, in connection with on one side a disciplinary procedure before FFU and, on the other side, a claim for compensation of damages based on tort and related to a commercial transaction, without arguing any violation of FFU rules that should lead to a disciplinary sanction.
- 7.14 In addition, the Panel notes that Article 12 of the Ukraine Commercial Procedural Code directs commercial disputes to the ordinary state courts, namely the commercial courts. Whether this is a mandatory provision stipulating an exclusive jurisdiction of the Ukraine commercial courts has not to be analysed by the Panel because of the outcome of this procedure. However, this provision of Ukraine Law shows that the Appellant has the possibility to bring his case before a national commercial court. Corresponding advice was already given by the Disciplinary Committee of the UPFCU Premier League in reply to the Appellant’s petition of 1 March 2012. Additionally, the Appellant failed to provide any evidence why he would be deprived of seeking legal justice or a fair hearing in the Ukraine national courts. He also failed to support his argument that the FFU Decision could lead to adverse consequences for the development of the Ukraine and the international football.
- 7.15 Consequently, the Panel holds that the FFU Appeals Committee was right in not further dealing with the claims raised by Appellant. Accordingly, the FFU Decision of 6 June 2012 was correct and can be confirmed. This outcome makes unnecessary to deal with the other

requests of Appellant, in particular his request to change the amount of the claim for compensation of damages. Therefore, all other requests can be rejected in full.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Sieriebriennikov on 25 June 2012 against the decision issued by the FFU Appeals Committee on 6 June 2012 is dismissed.
2. The decision of the FFU Appeals Committee of 6 June 2012 is confirmed.
3. (...).
4. (...).
5. All other or further claims are dismissed.