Arbitration CAS 2017/A/5359 Persepolis Football Club v. Rizespor Futbol Yatirimlari, award of 29 May 2018

Panel: Mr Rui Botica Santos (Portugal), President; Mr Dominik Kocholl (Austria); Mr Michele Bernasconi (Switzerland)

Football
Sporting (disciplinary) sanctions imposed in a contractual dispute
Power to impose sporting sanctions
Standing to be sued
FIFA as necessary respondent to sporting sanctions appeals
Intervention by FIFA in sporting sanctions dispute
Consequences of failure to summon FIFA in sporting sanction dispute

1. **The power to impose disciplinary sanctions on a member or affiliate because of a violation of the FIFA Regulations is at the sole discretion of FIFA, *e.g.* another football club lacks such disciplinary power. Indeed, it is FIFA that has a *de facto* personal obligation and interest as a sports governing body to ensure that its affiliates fully comply with its regulations and with any disciplinary sanctions imposed by its bodies.**

2. **In the context of standing to be sued the question is whether, in view of an appellant's prayers for relief, the appellant has named the right respondent. According to Swiss and CAS case law standing to sue and standing to be sued are questions touching on the substance, as opposed to the admissibility of a claim. Consequently, the lack of quality to sue leads to the dismissal of the claim as unfounded. Similarly, if a respondent lacks standing to be sued, the claim shall also be rejected. A party has standing to be sued if it is personally obliged by the "disputed right" at stake or has a *de facto* interest in the outcome of an appeal.**

3. **FIFA disciplinary proceedings, like basically all disciplinary proceedings of a sport association, are primarily meant to protect an essential interest of FIFA and FIFA's (direct and indirect) members, *i.e.* the full compliance with the rules of the association and with the decisions rendered by FIFA's decision-making bodies and/or by CAS. As a consequence, in an appeal against a decision of FIFA, by means of which disciplinary sanctions have been imposed on a party, only FIFA has standing to be sued, but not the (previously) opposing party in a, *e.g.*, financial dispute before the competent FIFA bodies. In other words, appeals against sporting sanctions must be directed against FIFA as the party having standing to be sued. Lastly, the criteria for awarding legal standing to be sued should not differ depending on whether the dispute is vertical (*i.e.* between FIFA and one of its (indirect) members) or horizontal (*i.e.* only between indirect FIFA members).**

4. **In circumstances where FIFA, upon question at the beginning of CAS appeals proceedings against a decision rendered by FIFA's judicial bodies, renounced its right to participate as a party in the proceedings, FIFA cannot be seen to have accepted to sit as a party merely because it had also stated its position as regards the question of standing to be sued.**

5. **In case an appeal is not filed against FIFA on matters questioning the validity of disciplinary sanctions imposed by FIFA itself the appeal cannot be upheld but has to be dismissed. Specifically, in cases where sporting sanctions are appealed against but FIFA is not summoned as respondent in the proceedings, the parties may not remedy this failure by way of a settlement agreement in which they acknowledge that the basis for the sporting sanctions, *e.g.* that a football club induced a player to terminate his former employment contract, is moot. Put differently, while a football club can agree with another club to settle a certain financial dispute existing between the two clubs, it has no power to decide whether or not a disciplinary sanction shall be maintained or adjusted.**

I. THE PARTIES

1. Persepolis Football Club ("Appellant" or "Persepolis") is an Iranian football club and a member of the Football Federation Islamic Republic of Iran. The latter is a member of the Fédération Internationale de Football Association ("FIFA").

2. Rizespor Futbol Yatirimlari ("Respondent" or "Rizespor") is a Turkish football club and a member of the Turkish Football Federation. The latter is also a member of FIFA.

II. INTRODUCTION

3. This appeal is filed against a decision rendered by the FIFA Dispute Resolution Chamber ("FIFA DRC") on 31 August 2017 ("Appealed Decision"). The Appealed Decision found the Appellant, together with the player M., to be jointly and severally liable to pay the Respondent EUR 789,500 in compensation plus interest at 5% per annum effective from 1 November 2017. It also banned the Appellant from registering any new players either nationally or internationally for the next two entire and consecutive registration periods.

4. The grounds of the Appealed Decision were notified to the Appellant on 22 September 2017.

III. THE FACTUAL BACKGROUND

5. The facts leading to the present arbitration as presented by the Parties can be summarized as follows:

A. The Respondent's contractual relationship with the player M.

6. On an undisclosed date, the Respondent entered into a contract ("Rizespor Employment Contract") with the Iranian Player M. ("Player") valid from 19 July 2016 to 31 May 2018. The Player is purported to have signed the Rizespor Employment Contract as a free player, after his employment contract with his immediate former club - the Appellant - had expired on 13 May 2016.

7. Pursuant to the Rizespor Employment Contract, the Player was entitled to a total remuneration (fixed salary plus bonuses) of EUR 700,000 for the 2016-2017 season and EUR 770,000 for the 2017-2018 season.

8. On 19 July 2016, the Respondent wrote to the Player's immediate former club – the Appellant –, requesting it to facilitate the Player's International Transfer Certificate ("ITC").

9. In a letter dated 18 July 2016, but delivered to the Respondent on 22 July 2016, the Player informed the Respondent that due to the political instability in Turkey, he had changed his mind and signed a two-year contract with the Appellant ("Persepolis Employment Contract") with effect from 19 July 2016.

10. On 22 July 2016, the Respondent rejected the Player's purported termination of the Rizespor Employment Contract and ordered him to report to training within 2 days.

11. On 23 July 2016, the Appellant informed the Respondent that it had indeed signed an employment contract with the Player, i.e. the Persepolis Employment Contract.

B. The FIFA DRC Proceedings

12. On 1 September 2016, the Respondent instituted proceedings before the FIFA DRC against the Player for unjustified termination of contract and also enjoined the Appellant for having allegedly induced the said termination. The Respondent sought EUR 2,000,000 in compensation and also asked for sporting sanctions to be imposed on the Player and the Appellant.

13. In defence, the Player justified his termination by arguing that the Rizespor Employment Contract was subject to his ITC being sent to the Turkish Football Federation (which never happened). He argued that he only travelled to Turkey to attend trials with the Respondent and left a day before the Rizespor Employment Contract was to come into force. He also submitted that he had to leave Turkey due to the political instability the country then faced.

14. The Appellant submitted that it signed the Player unaware that he had already signed the Rizespor Employment Contract. It argued that the Persepolis Employment Contract was signed on 20 June 2016 and registered on 18 July 2016, before the Rizespor Employment Contract, which it submitted must have been signed sometime in July 2016. The Appellant also argued that the Rizespor Employment Contract was subject to the Player's ITC being sent to the Turkish Football Federation.

15. On 31 August 2017, the FIFA DRC rendered the Appealed Decision and held as follows:

> *"1. The claim of the Claimant, Rizespor Futbol Yatirimlari, is partially accepted.*
>
> *2. The Respondent I, [M.], has to pay to the Claimant, within 30 days as from the date of notification of this decision, compensation for breach of contract in the amount of EUR 789,500.*
>
> *3. The Respondent II, Persepolis Football Club, is jointly and severally liable for the payment of the aforementioned compensation.*
>
> *4. In the event that the amount due to the Claimant in accordance with abovementioned point 2 is not paid within the stated time limit, interest at the rate of 5% p.a. will fall due as of expiry of the aforementioned time limit (…).*
>
> *5. (…).*
>
> *6. A restriction of four months on his eligibility to play in official matches is imposed on the Respondent I (…).*
>
> *7. The Respondent II shall be banned from registering any new players, either nationally or internationally, for the next two entire and consecutive registration periods following the notification of the present decision.*
>
> *8. Any further claims lodged by the Claimant are rejected".*

16. The FIFA DRC found the Player to have terminated the Rizespor Employment Contract without just cause. It took into account that the Player had not adduced evidence of any contact or correspondence with Rizespor regarding his security concerns. The FIFA DRC was also of the view that the *coup d'etat* in Turkey was overturned on 15 July 2016 and that Turkey had returned to political stability by the time the Player terminated the Rizespor Employment Contract. The FIFA DRC assessed the compensation due by the Player at EUR 789,500 and found the Appellant to be jointly and severally liable in accordance with Article 17.2 of the FIFA Regulations on the Status and Transfer of Players. The FIFA DRC also took into account the Appellant's failure to provide any specific or plausible explanation as to its possible non-involvement in the Player's decision to unilaterally terminate the Rizespor Employment Contract and consequently applied Article 17.4 of the FIFA Regulations on the Status and Transfer of Players by banning the Appellant from registering any new players, either nationally or internationally for the next two consecutive registration periods.

C. The Parties' Settlement Agreement

17. On 14 December 2017 (*i.e.* after the filing of the statement of appeal and the appeal brief in these proceedings – see para. 19 and 25 below), the Parties entered into an agreement ("Settlement Agreement") through which they sought to settle the orders made in the Appealed Decision and agreed as follows:

> a) The Appellant shall within 30 days pay the Respondent EUR 50,000 to offset the legal costs and expenses incurred by the latter during the FIFA DRC proceedings; and

b) The Respondent confirmed that it no longer had, and would not raise any claim for compensation against the Appellant as regards the EUR 789,500 ordered by the FIFA DRC.

18. The relevant parts of the Settlement Agreement provided as follows:

*"**SETTLEMENT AGREEMENT***

Pursuant the decision of FIFA (…) in favour of the claim lodged by Rizespor (…) against player [M.] and Persepolis FC (…) which stipulated Persepolis FC is banned of any player transfer for two entire periods and sanctioned the player to participate in any games for the period of four complete month and also condemned the Player and Persepolis FC to pay the amount of EUR 789,500 as compensation to Rizespor FC (…) and in order to solve the dispute (…).

1. *This settlement agreement is concluded as a result of good faith negotiations (…).*
2. *Persepolis FC will pay Rizespor club the amount of EUR 50,000 (Fifty Thousand Euros) within 30 days as a compensation for the made costs and fees and on the other hand, Rizespor FC confirms that it does not have any claims for compensation amount (EUR 789,500) mentioned in FIFA decision (…) and (…) announces its unconditional and entire consent and satisfaction.*
3. *Persepolis FC guarantees that regarding the mentioned case, Persepolis FC does not have any financial claim against Rizespor FC, nor for the CAS costs and legal fees neither for any other financial matters in relation with the present case. Persepolis also agrees that Rizespor shall not be obliged to pay arbitration or legal fees to CAS or Persepolis arising out of CAS proceedings (…) and if such obligation arises due to CAS award, Persepolis agrees to indemnify Rizespor for any such obligation.*
4. *Persepolis shall not demand anything whatsoever from Rizespor regardless of the outcome of CAS proceedings and guarantees that the Player shall raise no claims whatsoever from Rizespor (…). Persepolis shall not demand any sporting sanction for Rizespor from CAS or FIFA.*

(…)".

IV. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

19. On 11 October 2017, the Appellant filed its Statement of Appeal before the CAS, pursuant to Article R47 *et seq.* of the Code of Sports-related Arbitration ("CAS Code"). The Appellant nominated Dr. Dominik Kocholl as arbitrator and also applied for a stay of the execution of the orders issued in paragraphs 3 and 7 of the operative part of the Appealed Decision.

20. On 17 October 2017, the CAS Court Office informed FIFA of the appeal filed by Persepolis. FIFA was invited, pursuant to Article R41.3 of the CAS Code, to state whether it intended to participate in the proceedings.

21. On 1 November 2017, FIFA informed the CAS Court Office that it renounced its right to take part in these proceedings. It however emphasized that only FIFA had standing to be sued with regard to the issue of the imposition of sporting sanctions and that, given the Appellant's failure

to name FIFA as a party in these proceedings, such issue was "outside the scope of the Panel's review". FIFA referred to the CAS case-law confirming its submission.

22. On 2 November 2017, the Appellant wrote to the CAS Court Office asking it to order FIFA to "intervene" in these proceedings.

23. On 3 November 2017, the CAS Court Office drew the Appellant's attention to *"the fact that it is for the Appellant to name all respondents against which the appeal is directed, within the time limit stipulated in Article R49 of the Code of Sports-related Arbitration (the "Code"), and no intervention of any party in the proceedings may be ordered by the CAS pursuant to Article R41.3 of the Code"*.

24. On 16 November 2017, the Respondent objected to the Appellant's application to stay the execution of the Appealed Decision. The Respondent also nominated Mr. Michele Bernasconi as arbitrator.

25. On 22 November 2017, the Appellant filed its Appeal Brief together with the documents and evidence it intended to rely on. Despite having been invited, the Respondent did not file its Answer to the Appeal Brief.

26. On 21 December 2017, the President of the CAS Appeals Arbitration Division ruled on the Appellant's application for stay and dismissed the same on the following grounds:

    a) With regard to the Appellant's request to stay the section of the Appealed Decision imposing the obligation to pay the amount of EUR 789,500 in favour of Rizespor - pursuant to CAS jurisprudence, a decision of a financial nature issued by a private Swiss association is not enforceable while under appeal. Therefore, the financial orders made against the Appellant could not be enforced while the Appealed Decision was under appeal.

    b) With regard to the Appellant's request to stay the section of the Appealed Decision imposing sporting on the Appellant - in accordance with the consistent CAS case-law, in cases concerning the imposition of sporting (disciplinary) sanctions, FIFA is the only party with standing to be sued. The Appellant's request to stay the execution of the sporting sanctions could not be granted given its failure to name FIFA as a party. The Respondent lacked standing to be sued as regards the application to stay the sporting sanctions.

27. On 11 January 2018, the Appellant informed the CAS Court Office of its wish for a hearing.

28. On 23 January 2018, the Parties were informed that the Panel had been constituted as follows:

President:	Mr. Rui Botica Santos, attorney-at-law, Lisbon, Portugal
Arbitrators:	Dr. Dominik Kocholl, attorney-at-law, Innsbruck, Austria
	Mr. Michele A.R. Bernasconi, attorney-at-law, Zurich, Switzerland

The Parties were also informed that Mr. Felix Majani, attorney-at-law in Nairobi, Kenya, would assist the Panel as *ad hoc* clerk.

29. On 23 February 2018, the Respondent informed the CAS Court Office that the Parties had settled their differences regarding the EUR 789,500 compensation ordered by the FIFA DRC and consequently requested that the appeal *"(…) be evaluated and decided in light of our such statement"*.

30. On 26 March 2018, the Appellant informed the CAS Court Office that the Parties on 14 December 2017 had signed the Settlement Agreement, which agreement it asked to be construed to imply that the Appellant did not induce the Player to terminate the Rizespor Employment Contract. The Appellant consequently amended its prayers and requests (see para. 43 below). Whereas Article R56 of the CAS Code generally prohibits a party from amending its requests after the submission of the appeal brief and the answer, the Panel admits the Appellant's amendment since it amounts to a (partial) withdrawal of its original prayers regarding the setting aside or reduction of the compensation ordered by the FIFA DRC. To that extent, the Panel does not find the Appellant's amendment to contravene Article R56 of the CAS Code.

31. On 4 and 5 April 2018, the Appellant and the Respondent informed the CAS Court Office of their availability for a hearing on the dates proposed by the Panel.

32. On 17 April 2018, the CAS Court Office issued an Order of Procedure, which was returned signed by both parties on 18 April 2018.

33. On 18 April 2018, the Respondent filed unsolicited submissions ("Respondent's Unsolicited Submissions") informing the CAS Court Office that the Parties had entered the Settlement Agreement *"(…) in order to settle matters in respect to both the compensation and the sports sanction (…) in (…) good faith"*. It confirmed having been paid all the legal costs and expenses it incurred before the FIFA DRC and consequently requested the CAS to determine the issue of compensation and sporting sanctions in light of the contents of the Settlement Agreement. The Respondent also stated that it would not attend the hearing.

34. Following the Respondent's statement of abstention from the hearing, on 19 April 2018, the CAS Court Office asked the Appellant to state whether it still maintained its request for a hearing.

35. On 20 April 2018, the Appellant informed the CAS Court Office of its request to proceed with the hearing.

36. On 23 April 2018, a hearing was held in Lausanne, Switzerland.

37. At the onset of the hearing, the Appellant confirmed it had no objection to the composition of the Panel and, following the request of the Panel, also stated that it had no objection to the admission of the Respondent's Unsolicited Submissions. Considering the Appellant's position, the Panel admitted the Respondent's Unsolicited Submissions.

38. At the hearing, the Panel was assisted by Mr. Daniele Boccucci, Counsel to the CAS. The Respondent did not attend the hearing. The following persons attended the hearing for the Appellant:

- Mr. Roberto Branco Martins, attorney-at-law, MJ Haarlem, The Netherlands
- Mr. Hamid Reza Garshabi, CEO Persepolis FC
- Mr. Seyed Alireza Haeri, Consultancy Agency

39. At the end of the hearing, the Appellant stated that it was completely satisfied with the manner in which the hearing had been conducted and that its right to be heard and the equal treatment of the Parties had been respected.

V. THE PARTIES' RESPECTIVE POSITIONS

40. Below is a summary of the facts and allegations raised by the Parties. While 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 only to the submissions and evidence it considers necessary to explain its reasoning.

A. The Appellant's submissions and request for relief

41. Whereas the Appellant extensively submitted that the FIFA DRC erred by finding the Player to have terminated the Rizespor Employment Contract without just cause and further submitted on why the EUR 789,500 compensation ordered in the Appealed Decision ought to be reviewed and/or set aside, the Panel finds no need to summarise these submissions given the fact that the issue of compensation is no longer in dispute, having already been amicably settled through the Settlement Agreement.

42. The Appellant's key contention in these appeal proceedings has to do with the sporting sanctions imposed by the FIFA DRC, which it submits ought to be set aside or varied for the following reasons:

a) By signing the Settlement Agreement, the Parties acknowledge that the Appellant did not induce the Player to terminate the Rizespor Employment Contract. This should be taken into account in overturning the sporting sanctions in consideration of Article 17.4 of the FIFA Regulations on the Status and Transfer of Players pursuant to which sporting sanctions may only be imposed on a club which induces a player to breach his contract during the protected period.

b) The Appellant was the first party to have signed the Player, having done so on 20 June 2016, with the Respondent only signing the Player much later, probably in July 2016. The FIFA DRC therefore ought to have found the Respondent guilty of having induced the Player to terminate his contract with the Appellant and consequently impose sporting sanctions on the Respondent as the Player's "new club".

c) Pursuant to CAS jurisprudence (CAS 2016/A/4550), a judicial body should approach the question of sporting sanctions established under Article 17.3 and 17.4 of the FIFA Regulations on the Status and Transfer of Players on a case by case basis. As a general rule, sporting sanctions are imposed on repeat offenders, with clubs found to have induced a player to breach his contract during the protected period more likely to face sporting sanctions (CAS 2014/A/3765). The Appellant is not a repeat offender and should therefore be treated with leniency.

d) By sending the letter dated 1 November 2017 addressing the question as to whether FIFA had standing to be sued, FIFA intervened in these proceedings and should therefore be considered as a party.

e) As FIFA recognizes CAS (Article 57.1 FIFA Statutes) it has to accept any decision on sporting sanctions this CAS Panel takes - even without FIFA having been a party to the proceeding. The imposition of sanctions is reserved to the FIFA Disciplinary Committee. If the FIFA DRC imposes sporting sanctions "it should not be required to introduce FIFA as a party". CAS may take a binding decision as FIFA was offered the chance to participate but has renounced to do so.

43. The Appellant thus seeks the following remaining (see para. 30 above) relief:

"The CAS panel shall set aside the decision passed by the DRC on 31 August 2017 in relation to the sporting sanctions that are imposed on the Appellant with respect to point 7; and

In the alternative, in case the decision of the DRC will not be set aside as requested, the CAS panel shall reduce the sporting sanctions imposed on the Appellant with respect to point 7".

B. The Respondent's submissions and request for relief

44. The Respondent did not file any formal Answer despite having been invited to do so.

45. Nevertheless, it sent several correspondences to the CAS Court Office submitting that through the Settlement Agreement, the Parties had *"(…) settle*[ed] *matters in respect to both the compensation and the sports sanction (…) in (…) good faith".* It consequently requested these appeal proceedings *"(…) be evaluated and decided in light of our such statement".*

VI. JURISDICTION OF THE CAS

46. 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 him prior to the appeal, in accordance with the statutes or regulations of that body".

47. The jurisdiction of the CAS, which is not disputed, derives from Article 58.1 of the FIFA Statutes (2016 edition) which states as follows:

"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question".

48. The jurisdiction of the CAS is further confirmed by the Order of Procedure duly signed by the Parties.

49. It follows that the Panel is satisfied that CAS has jurisdiction to decide on the present dispute.

VII. ADMISSIBILITY

50. The Appealed Decision was communicated to the Appellant on 22 September 2017. The Statement of Appeal was filed on 11 October 2017. This was within the 21-day deadline fixed under Article 58.1 of the FIFA Statutes 2016 edition and in line with Article R49 of the CAS Code.

51. It follows that the appeal is admissible.

VIII. APPLICABLE LAW

52. Article R58 of the CAS Code provides the following:

"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".

53. Article 57.2 of the FIFA Statutes (2016 edition) states that:

"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".

54. Therefore, the Panel finds that the dispute must be decided in accordance with the FIFA Regulations and supplemented by Swiss law, if necessary. In particular, since the FIFA Regulations do not (directly) foresee rules concerning the standing to be sued (*cf.* CAS 2014/A/3850, p. 59 ff), the issue will be analysed on the basis of Swiss law.

IX. LEGAL ANALYSIS

A. Preliminary

55. The Panel takes notice that in addition to the sporting sanctions, the Appellant has also joined issue with other matters arising from the Appealed Decision, *inter alia*:

a) its finding that the Player terminated the Rizespor Employment Contract without just cause; and

b) the compensation ordered.

56. However, following the Settlement Agreement through which the Parties amicably resolved these issues, the Appellant amended its prayers and exclusively limited its appeal to the sporting sanctions. Therefore, the subject of the present appeal is only the sporting sanctions imposed on the Appellant.

B. Sporting Sanctions

57. As mentioned above, the Appellant's key cause of action in these proceedings is to set aside or reduce the sporting sanctions imposed on it by FIFA under Article 17.4 of the FIFA Regulations on the Status and Transfer of Players. In essence, the Appellant seeks relief from FIFA, the body which imposed the said sanctions. The Appellant further reiterates that FIFA was in fact a party in these proceedings and intervened by sending the letter dated 1 November 2017 addressing the question as to whether FIFA had standing to be sued.

(i) Preliminary remarks

58. To start with, the Panel notes that FIFA, and not the Respondent, is the legal body with the power to impose disciplinary sanctions on the Appellant because of a violation of the FIFA Regulations.

59. The Appellant though has not filed an appeal against FIFA in these proceedings and has only named Rizespor as a respondent. This raises the question whether Rizespor has standing to be sued (*i.e. légitimation passive*). In other words, the question is whether, in view of Persepolis' prayers for relief, the Appellant has named the right respondent.

(ii) An issue of the merits

60. As a prelude to this question, the Panel refers to settled Swiss and CAS case law (see for example CAS 2017/A/5227, CAS 2016/A/4585, CAS 2015/A/3910 and CAS 2015/A/3880) pursuant to which standing to sue and standing to be sued are questions touching on the substance as opposed to the admissibility of a claim. The consequence thereof is that *"(…) the lack of quality to sue leads to the dismissal of the claim as unfounded"*. (ATF 114 II consid. 3a; 126 III 59 consid. 1a). Similarly, if a respondent lacks standing to be sued, the claim shall also be rejected.

61. It thus follows that the question of standing to be sued shall be treated as a substantive matter or, in other words, as an issue of the merits.

(iii) Who is the proper respondent in an appeal against sporting sanctions?

62. Pursuant to CAS jurisprudence, a party has standing to be sued if it is personally obliged by the "disputed right" at stake or has a *de facto* interest in the outcome of an appeal. For instance, the panel in CAS 2006/A/1206 stated as follows:

> *"4. Under Swiss law, applicable pursuant to Article R58 of the Code, the defending party has standing to be sued (légitimation passive) if it is personally obliged by the "disputed right" at stake".*

63. Turning to the case at hand the "disputed right at stake" is whether the Appellant ought to be relieved from the sporting sanctions. As already highlighted, the power to impose disciplinary sanctions on a member or affiliate is the sole discretion of FIFA: another football club, such as the Respondent, lacks such disciplinary power. Indeed, it is FIFA (and not Rizespor), that has a *de facto* personal obligation and interest as a sports governing body to ensure that its affiliates fully comply with its regulations and with any disciplinary sanctions imposed by its bodies.

64. In CAS 2012/A/3032, the panel stated as follows:

> *"42. (…) FIFA disciplinary proceedings, like basically all disciplinary proceedings of a sport association, are primarily meant to protect an essential interest of FIFA and FIFA's (direct and indirect) members, i.e. the full compliance with the rules of the association and, as here, with the decisions rendered by FIFA's decision-making bodies and/or by CAS (cf. CAS 2008/A/1620, para. 4.6.).*
>
> *43. As a consequence, in an appeal against a decision of FIFA, by means of which disciplinary sanctions have been imposed on a party, only FIFA has standing to be sued, but not the (previously) opposing party in, e.g., a financial dispute before the competent FIFA bodies (cf. CAS 2008/A/1620, para. 4.7.; CAS 2007/A/1367, para. 43 et seq.). In other words, only FIFA can be the correct Respondent having standing to be sued".*

65. The Panel is further comforted by the findings in CAS 2015/A/3910, which observed as follows:

> *"The criteria for awarding legal standing to be sued should not differ in vertical or horizontal disputes. In vertical disputes the association has (sole) standing to be sued because it is the party primarily concerned and the best representative of the interests of all other stakeholders affected by the dispute. The other stakeholders – in principle – only have a general and abstract interest that the associations' rules and regulations be applied to their respective co-member in an equal, consistent and correct way. This general interest – in principle – will be represented and taken care of by the association. Thus, there is no need – in vertical disputes – to direct the appeal against any other party than the association. Applying the same principles to horizontal disputes leads inevitably to the conclusion that the (sole) party having standing to be sued is the Respondent".*

66. It is apparent from CAS jurisprudence that appeals against sporting sanctions must be directed against FIFA as the party with standing to be sued. *In casu* this could have be done either in addition to the Respondent Rizespor or separately – the latter only if the prayers of relief concerned the disciplinary (sporting) sanctions. The Panel is of course aware that the awards in

CAS 2012/A/3032 and CAS 2015/A/3910 arose from so-called "vertical disputes" between FIFA and one of its (indirect) members.

67. *In casu* FIFA DRC has added a "vertical" element to what initially was a horizontal dispute. Whereas before the FIFA DRC the present dispute initially took the form of a so-called "horizontal" dispute between three indirect FIFA members, with FIFA only acting as a dispute resolution body, they assumed a different nature when FIFA exercised its powers and imposed sporting sanctions on the Appellant. By doing so, FIFA turned the proceedings – especially regarding the sporting sanctions – (also) into a vertical dispute. This would still be the case even if Rizespor were not named as a party in these appeal proceedings.

68. The Panel therefore finds that in connection with the request to set aside the disciplinary sanctions imposed on the Appellant, the party that has standing to be sued is FIFA and not the Respondent.

(iv) Is FIFA actually a party to these proceedings? – FIFA's role under Article R41.3 of the CAS Code and the expired 21-day time limit

69. It is not in dispute that FIFA has not been named as a respondent in these appeal proceedings. The Appellant however argues that, by submitting written comments on the question of standing to be sued, with its letter dated 1 November 2017, FIFA intervened in these proceedings and ostensibly became a party under Article R41.3 of the CAS Code. Article R41.3 of the CAS Code states as follows:

> *"Intervention*
>
> *If a third party wishes to participate as a party to the arbitration, it shall file an application to this effect with the CAS Court Office, together with the reasons therefor within 10 days after the arbitration has become known to the intervenor, provided that such application is filed prior to the hearing, or prior to the closing of the evidentiary proceedings if no hearing is held. The CAS Court Office shall communicate a copy of this application to the parties and fix a time limit for them to express their position on the participation of the third party and to file, to the extent applicable, an answer pursuant to Article R39".*

70. The Panel disagrees with the Appellant. It is in line with the CAS Code and it is also standard CAS procedure to ask FIFA to state whether it would like to participate as a party in appeals against decisions rendered by FIFA's judicial bodies. FIFA replied to CAS by renouncing its right to take part in these proceedings. By doing so, FIFA cannot be seen to have accepted to sit as a party merely because it also stated its position as regards the question of standing to be sued. FIFA's role would of course turn into that of a respondent if the Appellant would have named FIFA as a respondent, as it could have done, or if FIFA goes a step further by requesting the intervention (which it didn't, as it expressly renounced to its right to intervene) and if the other parties had then agreed thereto.

71. Summing up, the Panel therefore rejects the Appellant's assertion that FIFA became a party through its letter dated 1 November 2017.

(v) Failure to name FIFA as a respondent in disciplinary proceedings

72. The consequences in cases in which an appeal is not filed against FIFA on matters questioning the validity of disciplinary sanctions imposed by FIFA itself have long been settled - the CAS cannot uphold the appeal, which is, therefore, dismissed.

73. This is the position irrespective of whether the Parties have through the Settlement Agreement purportedly acknowledged that the Appellant did not induce the Player to terminate the Rizespor Employment Contract. The Panel would be overlooking the Respondent's lack of standing to be sued if it were to vary or set aside the disciplinary sanctions on the basis of the Settlement Agreement in FIFA's absence: a football club can of course agree with another club to settle a certain financial dispute existing between the two clubs, but it has no power to decide whether or not a disciplinary sanction shall be maintained or adjusted.

74. The Panel therefore also rejects the Appellant's prayer to have the Settlement Agreement considered in addressing the question of disciplinary sanctions as the Parties could not settle those.

75. Returning to the question posed in this section, reference is made to CAS 2014/A/3489 & CAS 2014/A/3490 which stated as follows:

> *"175. As the Panel already explained (supra at paras. 134 et seq.), not naming FIFA as a respondent does not render* [club A's] *Appeal inadmissible because it is in any event an arbitration between two clubs and one player on their reciprocal contractual rights. However, while the Panel may entertain such horizontal dispute between* [club A]*,* [club B] *and the Player, it may not entertain the vertical dispute related to the disciplinary sanctions that, in* [club A's] *opinion,* [club B] *and the Player should deserve. Indeed, a disciplinary sanction does not concern the contractual relationships between the (direct or indirect) members of the association but it concerns the hierarchical relationship between FIFA and its (direct or indirect) members (see M. Baddeley, L'association sportive face au droit, Bâle, 1994, p. 220: "la relation entre la société et ses membres repose sur un rapport hiérarchique"), with the consequence that the disciplinary sanctions provided by FIFA rules could be ordered by the CAS only if FIFA were summoned as a respondent. In other terms, given that FIFA is a third party vis-à-vis the case CAS 2014/A/3489, the Panel is prevented from ordering FIFA to impose, or from overruling FIFA in imposing, disciplinary sanctions on indirect members of FIFA such as* [club B] *and the Player.*
>
> *(…)*
>
> *177. Therefore, the Panel upholds the objections raised by the Respondents in case CAS 2014/A/3489 and dismisses* [club A's] *request to impose a sporting punishment on them (as set forth in* [club A's] *prayers for relief nos. iv and v, supra at para. 103)".*

76. In CAS 2008/A/1677, the panel held as follows:

> *"50. Indeed, with respect to the annulations of the sporting sanction, the Appellant is not claiming anything against the club nor seeking anything from it. The Appellant is seeking something only against FIFA and this relief affects FIFA only and, indirectly, the new club of the Appellant (…).*

51. Therefore, the Panel considers that the Respondent has no standing to be sued (legitimation passive) and could not be summoned as respondent on this regards. This claim shall therefore be dismissed".

77. In CAS 2007/A/1369, the player sought to be relieved from a 4-month ban imposed by FIFA from playing official matches. He however failed to summon FIFA as a respondent. In dismissing the player's request, the sole arbitrator observed as follows:

"150. The Appellant has filed the present appeal only against the Club and not against FIFA. The Sole Arbitrator agrees that an appeal against any sporting sanctions imposed by the FIFA competent bodies must also be filed against FIFA, in accordance to the CAS case-law.

151. On the other hand, the Single Arbitrator can see no reason which could justify the alteration of the appealed decision.

152. Therefore, the Sole Arbitrator upholds the DRC Decision with respect to this issue and confirms the imposition of a four-month restriction on playing in official matches. This sanction shall take effect as from the first day of the registration of the Player with a new Club".

(vi) The fact that FIFA rules oblige it to enforce CAS awards even if not summoned as a respondent does not change the position of Appellant. The FIFA DRC had the power to impose sporting sanctions

78. FIFA recognizes CAS (Article 57.1 FIFA Statutes). The fact that FIFA regulations oblige it (and its confederations, member associations, leagues etc.) to enforce CAS awards even if not summoned as a respondent is of no avail to the Appellant's position. In this very case the issue is not enforcement – neither at state courts level nor in the sporting environment. Sporting sanctions set by FIFA themselves are disputed. Thus any general recognition of CAS and its awards must not be construed in a way to bypass the failure to name FIFA as a respondent in an appeal against the disciplinary sanctions imposed by FIFA. Also regarding the role and power of the FIFA DRC the Panel disagrees with the Appellant: The FIFA DRC has itself the power to impose disciplinary (sporting) sanctions according to Article 24.1 together with Article 22 (a) and 17.4 FIFA Regulations on the Status and Transfer of Players. Thus nothing changes at all whenever the FIFA DRC imposes disciplinary (sporting) sanctions, it is FIFA which has standing to be sued (*légitimation passive*) and not the Respondent.

(vii) Conclusion

79. The aforementioned considerations and case-law clearly show that the present appeal regarding the disciplinary sanctions imposed by FIFA on the Appellant stand to be dismissed on account of FIFA's absence as respondent. The Respondent lacks standing to be sued and the Appellant has to bear the consequences of its failure to name FIFA as a respondent in the present appeal proceedings.

80. The above conclusion, finally, makes it unnecessary for the Panel to consider the other requests submitted by the Parties to the Panel. Accordingly, all other prayers for relief are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Persepolis Football Club against the decision of the FIFA Dispute Resolution Chamber dated 31 August 2017 is dismissed.

2. The decision of the FIFA Dispute Resolution Chamber dated 31 August 2017 is confirmed.

(…)

5. All other motions or prayers for relief are dismissed.