Arbitrations CAS 2020/A/6921 & 7297 Vladimir Simunovic & Sindikat Profesionalnih Fudbalera Nezavsinost (SPFN) v. Féderation Internationale de Football Association (FIFA), award of 4 October 2021

Panel: Mr Francesco Macri (Italy), President; Mr Mark Hovell (United Kingdom); Mr Patrick Lafranchi (Switzerland)

Football
Request to open disciplinary proceedings
Definition of decision
Denial of justice
Consolidation of the proceedings
Differentiation between directly and indirectly affected parties with regards to standing to sue or to appeal
Consequences before CAS of lack of standing to sue or to appeal before FIFA

1. **An appealable decision of a sport association or federation is normally a communication of the association directed to a party and based on an *"animus decidendi"*, i.e. an intention of a body of the association to decide on a matter. A decision is thus a unilateral act, sent to one or more determined recipients and intended to produce legal effects. The form of the communication has no relevance to determine whether there exists a decision or not. In particular, the fact that the communication is made in the form of a letter does not rule out the possibility that it constitute a decision subject to appeal as long as it contains a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties. A simple information, which does not contain any ruling, cannot be considered a decision. There can also be a decision where the body issues a ruling as to the admissibility or inadmissibility of a request, without addressing the merits of such request.**

2. **Denial of justice occurs if the judicial body has failed to issue and communicate a decision following a party's request, also taking into account the particular urgency existing in some cases. If there is a lacuna in the rules of the sports body regarding cases of inactivity and lack of answer to a request, a decision not to open a case or the absence of reaction in general must be considered as a decision subject to an appeal to the CAS.**

3. **In order to consolidate proceedings, there must be identity of the parties, identity of applicable rules and identity of the underlying legal relationship. In the case of a plurality of agreements, there should be consistency between them. What is more, the composition of the arbitral tribunal should be the same in both procedures. If the Panel has already been constituted, there should also be identity of arbitrators. A CAS panel has discretion to grant the consolidation. It may consolidate or may deny the request, even though the requirements for consolidation are met, considering the case at hand. In exercising this discretion, the CAS panel may consider any circumstances it deems**

relevant and consider factors such as whether the same or different arbitrators have been confirmed or appointed, the procedural stage of the proceedings, and whether the terms of reference have been established.

4. **Parties with direct, personal and actual interest are considered to have legal standing to sue or to appeal to the CAS. Such an interest can exist not only when a party is the addressee of a measure but also when it is a directly affected third party. This is consistent with the general definition of standing that parties, who are sufficiently affected by a decision, and who have a tangible interest of a financial or sporting nature at stake, may bring a claim, even if they are not addressees of the measure being challenged. There is a category of third party applicants who, in principle, do not have standing, namely those deemed "indirectly affected" by a measure. The differentiation between directly and indirectly affected parties is that where the third party is affected because it is a competitor of the addressee of the measure/decision taken by the association – unless otherwise provided by the association's rules and regulations – the third party does not have a right of appeal. Effects that ensue only from competition are only indirect consequences of the association's decision/measure. If, however, the association disposes in its measure/decision not only of the rights of the addressee, but also of those of the third party, the latter is directly affected with the consequence that the third party then also has a right of appeal. The notion of "directly affected" when applied to third parties who are not the addressees of a measure must be interpreted in a restrictive manner. The correct approach when dealing with standing is to deem mere competitors indirectly affected – and thus exclude them from standing – when the measure does not have tangible and immediate direct consequences for them beyond its generic influence on the competitive relationship as such. The burden of proof to demonstrate a personal, direct and tangible legal interest lies with the party asserting standing.**

5. **A lack of standing to appeal or to sue makes it impossible for FIFA's judicial bodies to examine the merits of the case. This does not amount to a denial of justice, given that the necessity for a party to have standing to sue (or to appeal) is an important principle, which avoids third parties which lack legal interest to act in front of judicial bodies. A lack of standing to appeal or to sue in front of FIFA's judicial bodies means that there is no standing to appeal or to sue in front of CAS either. Indeed, the standing to act before FIFA and before CAS is the same.**

I. PARTIES

1. Vladimir Simunovic (the "Player" or the "First Appellant") is a football player of Serbian nationality.

2. Sindikat Profesionalnih Fudbalera Nezavsinost (the "SPFN", the "Union" or the "Second Appellant") is the Serbian football players' Union, which has been a member of FIFPRO (the international players union) since 2011.

3. Féderation Internationale de Football Association (the "Respondent" or "FIFA") is the international governing body of football. FIFA is an association under Articles 60 et seq. of the Swiss Civil Code (the "SCC") with its headquarters in Zürich, Switzerland.

II. FACTUAL BACKGROUND

4. A summary of the most relevant facts and the background giving rise to the present dispute will be developed based on the parties' written submissions and the evidence filed with these submissions. Additional facts may be set out, where relevant, in connection with the legal discussion which follows. The Panel refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning. However, the Panel has considered all the factual allegations, legal arguments, and evidence submitted by the parties in the present proceedings.

5. On 9 December 2016, the Emergency Board of the Football Association of Serbia (the "FAS") passed a decision through which the FAS changed the composition of the FAS Court of Arbitration (hereinafter also referred to as "FAS NDRC" or "Arbitral Tribunal"). The FAS Emergency Board dismissed the individuals who served as arbitrators on the NDRC, including its Chairman, and replaced those with new arbitrators, chosen and appointed by the FAS.

6. The FAS Emergency Board introduced some changes to the Rulebook of the Work of the Court of Arbitration of Serbia's Football Association (the "FAS NDRC Procedural Rules"). This document governs the procedures in front of the FAS NDRC.

7. In this regard, the Appellants assumed that none of those changes to the composition of the FAS NDRC or the amendments to the FAS NDRC Procedural Rules had previously been discussed with the Union or the clubs in Serbia.

8. On 14 December 2016, FIFPRO, the World Players' Union, after being made aware of the changes by its member SPFN, sent a letter to the FAS expressing discontent with the FAS changes without the involvement of the SPFN: *"We have now come to learn that apparently, your Association has – without any involvement of our member, the Sindikat (SPFN) – amended the Procedural Rules governing the proceedings of your National Dispute Resolution Chamber (NDRC), and that, simultaneously, your Association has both replaced the President of the NDRC as well as dismissed a significant number of arbitrators…".*

9. FIFPRO also asked the FAS to rectify the situation: *"…Evidently, a dispute resolution system* in *which all arbitrators of the NDRC, including the President, are selected and appointed by the Executive Committee of the Football Association of Serbia – without any influence of the SPFN – could not be considered as a system that guarantees fair proceedings and respects the principle of equal representation of players and*

clubs….We consider it absolutely critical that the above concerns are urgently rectified to ensure the players' rights on fair and impartial proceedings…".

10. On 4 January 2017, the FAS replied to FIFPRO stating, *inter alia*, that the amendments were made to *"(…) improve certain rules of the arbitration proceedings, to speed up certain process actions, to raise the number of arbiters on the list and to secure and sustain absolute independence, expertise and impartiality of arbiters that settle the disputes arisen from sports (football) activities and performances. (…) General aim and task was to establish court of arbitration that would be independent and impartial, but also a credible and authoritative one at the same time (…) Therefore, general principles of arbitration are fully guaranteed by the provisions of these new Regulations governing activities of the Court of Arbitration of the FAS and of course, choice of arbiter from the arbiters' list in order to settle a particular dispute will remain exclusive right of the interested parties …and FAS has in no way endangered that right of parties and which is a general principle of work and functioning of the Court of Arbitration".*

11. On 7 February 2017, and in reaction to the decisions passed on 9 December 2016, an "Emergency Meeting" was held at the FAS premises in the framework of the European Professional Football Social Dialogue. UEFA, ECA, European Leagues, FIFPRO, and the FAS and its national stakeholders (amongst which the SPFN) participated in the said meeting. The report of that meeting summarised the events giving rise to that event and further set the next steps and timelines to rectify the situation and comply with several other European Social Dialogue objectives. Regarding the Court Arbitrator, the parties of the meeting stated: *"At the meeting, the FSS accepted to allocate to the players/clubs the 6 remaining spots in its list of arbitrators. In the future, discussions will be held in order to expand the list of arbitrators to 15 (5 members appointed by each of the parties). FIFPro could accept this for the time being, while pointing out that such structure was not completely in line with the relevant requirements…".*

12. Soon after, and under one of the agreements made during the meeting of 7 February 2017, the Union nominated three individuals to the new list of arbitrators of the FAS NDRC, one of them being Mr Jovan Micic.

13. On 15 August 2018, Mr Jovan Micic – acting as a Sole Arbitrator of the FAS NDRC – adjudicated on an employment dispute between the Serbian club, Radnicki Nis, and the Player. In his claim in front of the FAS NDRC, the Player requested the termination of the employment contract he had signed with Radnicki Nis.

14. Mr Jovan Micic ultimately accepted the Player's request for the termination of the employment contract (the "Decision"). The Decision provided for detailed reasoning and stipulated that, under Art. 36 of the FAS NDRC Procedural Rules, the Decision was final and binding (enclosure 5). Indeed, the Procedural Rules of the FAS NDRC did not allow for any appeal or review procedure.

15. On 3 September 2018, the President of Court of Arbitration of Serbia ordered to review the case of the Player against Radnicki Nis as he found that the Decision in such case was rendered

in violation of the imperative regulations of the Republic of Serbia as well as the regulations of the FA of Serbia.

16. In this regard, the Appellants underlined that the Player did not file any request for reconsideration and there was no information or documentation available that Radnicki Nis complained to the FAS about the Decision of Mr Micic.

17. On 4 September 2018, the Court of Arbitration of FA of Serbia, composed of arbitrators, Mr Miroslav Sever, as President, and Mr Vladimir Pantelic and Goran Delic as Members, passed its decision (the "Appeal Body Decision"): *"It is hereby confirmed that by the Decision of the Court of Arbitration rendered in the case No. AS31/18 of 15.08.2018, there has been a violation of the imperative regulations of the Republic of Serbia and the said Decision is hereby DECLARED NULL AND VOID, and the main hearing in this legal matter I reopened. The next hearing is scheduled for 10.09.2018 starting at 2 pm which will be held before this Arbitral Tribunal"*. Briefly, the Panel found that the Decision from Mr Micic, the former Arbitrator, was against the *"imperative regulations of the Republic of Serbia"* and *"contrary to the regulations of the FAS"* as well as *"outside the principle of free judge's opinion"*. Further, the new Panel reasoned that the Decision passed by Mr Micic would be a *"violation of the authority of the Court of Arbitration and the confidence of the Parties in the knowledge of the regulations by the Court"*. The Appeal Body Decision of the new Panel further stipulated that *"An appeal may not be lodged against this Decision"*.

18. On 14 September 2018, a 3-member Panel issued a new decision – again constituted of Mr Sever, Mr Pantelic and Mr Delic – on the Player's claim: the request for the employment contract termination by Mr Simunovic was this time rejected. Mr Simunovic had in the meantime already signed a contract with another club. In essence, he was ordered back in the employment with Radnicki Nis, his registration with the new club not being approved by the FAS Registration Committee. As the Player refused to return to Radnicki Nis, he became unemployed.

19. On 10 October 2018, FIFPRO wrote to the FAS expressing its firm disapproval of how it handled the Simunovic / Radnicki Nis dispute. Furthermore, FIFPRO requested the FAS to explain on which regulatory basis the newly appointed Panel had the competence to "review" and annul the Decision passed by Mr Micic.

20. On 23 October 2018, the FAS replied to FIFPRO, indicating that Mr Micic *"ignored legislation"*, violated *"imperative legislation of the Republic of Serbia"*, and *"called into question the integrity of the Court of Arbitration"*. The FAS also explained the dispute's substance and indicated that the Court of Arbitration *"appointed a jury of three arbitrators to review the gravity of infringement"*.

21. On 2 November 2018, and allegedly under Art. 48 of the FAS Statutes in conjunction with Art. 4 para. 5 of the FAS NDRC Procedural Rules, the FAS Emergency Board decided to dismiss Mr Micic without further explanation.

22. On 13 November 2018, FIFPRO showed its disapproval of the procedure above and requested the FAS reinstate Mr Micic as an arbitrator of the FAS NDRC. FIFPRO

complained: *"what the Court of Arbitration cannot do is – without any legal or regulatory basis, and without any request from the parties to this extent – simply overrule a previous decision, (….) which shows unquestionably that the Court of Arbitration in Serbia is neither independent nor impartial and that the parties are not guaranteed a fair procedure. Please be informed that given the severity of the consequences of this situation, we will inform FIFA and UEFA and request them to take action"*. The said letter remained to no avail.

23. On 11 December 2018, the FAS Emergency Board appointed a new arbitrator to replace Mr Micic, Mr Radan Ilic, under Art. 48 par. 2 of the FAS Statutes in conjunction with Art. 2 par. 2 of the FAS NDRC Procedural Rules.

24. On 29 March and 9 December 2019, FIFPRO and the Appellants lodged complaints before the FIFA Disciplinary Committee requesting the opening of disciplinary proceedings against the FAS and its officials given the above-described actions.

25. On 7 February 2020 – almost one year later – FIFA acknowledged receipt of the complaints and replied by solely addressing FIFPRO informing it, among other things: *"Notwithstanding the above, even though you are entitled to file a complaint with regard to a conduct considered incompatible with the FDC and/or any other provisions of FIFA, it does not follow that you become a party to the proceedings as foreseen in Art. 27 of the FDC. In sum, and based on your complaint and your possible lack of standing in the potential case, FIFA is not mandated to start disciplinary proceedings…. With the above in mind, we would also like to draw your attention to the fact that we will not be in a position to provide you with information with regard to your inquiries or regarding the state of the proceedings before the FIFA Disciplinary Committee…"*.

26. On 21 February 2020, FIFPRO and the Appellants objected to the content of the letter of FIFA dated 7 February 2020, and underlined that: *"It is evident that only FIFA has jurisdiction to sanction its member associations when they engage in conduct that violate their own statutes and regulations, as well as those of FIFA. Indeed, as referenced in the Letter – FIFA bears a special responsibility to safeguard the integrity and reputation of football worldwide"*. Consequently, the Appellants requested FIFA:

- to initiate disciplinary proceedings against the FAS based on the complaints, and
- to keep the Appellants and FIFPRO apprised of any developments concerning those proceedings (or any decision made by FIFA not to initiate proceedings at all).

Simultaneously, FIFPRO and the Appellants stated that if FIFA failed to inform them of any development regarding the complaints by March 20 2020, they would have no choice but to assume that FIFA had decided not to initiate disciplinary proceedings against the FAS.

27. FIFA did not reply to the letter dated 21 February 2020.

28. On 24 March 2020, FIFPRO and the Appellants provided FIFA with a final deadline until 27 March 2020, to comply with their previous requests, failing to consider such failure as a refusal to initiate proceedings/denial of justice, which could be appealed before CAS.

29. On 26 March 2020, FIFA opened disciplinary proceedings against the FAS due to the investigation conducted into the complaint. The Appellants were not informed of the disciplinary proceedings' opening as they were not considered parties.

30. On 4 May 2020, the FIFA Disciplinary Committee issued a decision notified to the FAS on 15 May 2020. The terms of the FIFA Disciplinary Committee's Decision were the following: *"The disciplinary proceedings initiated against the Football Association of Serbia are hereby declared closed".*

31. On 15 July 2020, the Appellants requested the grounds of the FIFA Disciplinary Committee's Decision on 4 May 2020.

32. On 20 July 2020, FIFA replied to the Appellants by email stating that the Appellants were not a party to the disciplinary proceedings and concluding that

"The above being clarified, we would like to draw your attention to Art. 51 par. 3 of FIFA Disciplinary Code which states that "In principle, the FIFA judicial bodies issue the terms of decisions without grounds, and only these terms of the Decision are notified to the parties, who are informed that they have ten days from that notification to request, in writing, a motivated decision. Failure to make such a request results in the Decision becoming final and binding and the parties being deemed to have waived their right to lodge an appeal.

Taking into account that the Football Association of Serbia did not request the grounds of the Decision passed by the FIFA Disciplinary Committee on 4 May 2020, we hereby inform you that said Decision became final and binding. As the result of all the above, we regret having to inform you that your request for the grounds is rejected".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

33. On 7 April 2020, according to Article R47 and R48 of the Code of Sports-related Arbitration (the "CAS Code"), the Appellants filed a Statement of Appeal complaining that FIFA's refusal to initiate disciplinary proceedings against FAS constituted a denial of justice. Consequently, they asked to order FIFA to initiate such disciplinary proceedings and notify any decision regardless of the outcome. Alternatively, should FIFA have already started such disciplinary proceedings, order FIFA to keep the Appellants informed about the evolving. The CAS Court Office registered these proceedings with no. CAS 2020/A/6921.

34. On 6 May 2020, the Appellants filed their Appeal Brief in relation to CAS 2020/A/6921 under Art. R51 of the CAS Code.

35. On 4 June 2020, the Parties were informed by the CAS Court Office that the Panel had been constituted as follows: Mr Francesco Macrì, Attorney-at-Law in Piacenza, Italy (President of the Panel), Mr Mark Hovell, Solicitor, Manchester, United Kingdom (nominated by the Appellants) and Patrick Lafranchi, Attorney-at-Law, Bern, Switzerland (nominated by the Respondent).

36. On 10 July 2020, the Respondent filed its Answer in relation to CAS 2020/A/6921 in accordance with Article R55 of the CAS Code objecting, *inter alia*, the CAS jurisdiction over the claim from the Appellants.

37. On 15 July 2020, the Appellants informed the Panel that, on the same day, having found that FIFA Disciplinary Committee issued a decision in the proceedings against the Football Association of Serbia and the closing of such file, they have requested the grounds of such decision.

38. Pending the Answer to their request, the Appellants asked to suspend the given deadline to file a comment on the admissibility and jurisdiction of the CAS. As the Respondent objected to such request, the decision was referred to the Panel.

39. On 20 July 2020, FIFA replied to the Appellants stating that they were not a party to the disciplinary proceedings against FAS and concluding that *"your request for the grounds of the decision* (of FIFA Disciplinary Committee dated 4 May 2020) *is rejected"*.

40. On 27 July 2020, according to Article R47 and R48 of the CAS Code, the Appellants filed another Statement of Appeal requesting the CAS to rule that the Appellants have an interest worthy of protection and legitimate interest in the proceedings before FIFA Disciplinary Committee and, consequently, to order FIFA to provide the Appellants with the grounds of the Decision of FIFA Disciplinary Committee dated May 4 2020. These proceedings were registered as CAS 2020/A/7297.

41. As a preliminary request for relief, the Appellants asked for the consolidation with CAS 2020/A/6921 and the suspension of the deadline to file the Appeal Brief until the CAS had ruled on that issue.

42. By letter dated 30 July 2020, the CAS Court Office, *inter alia*, invited the Respondent to take a position about the Appellants' request for consolidation with the matter CAS 2020/A/6921 and whether it agreed to submit the procedure to the same Panel of that case. Besides, the CAS Court Office informed the Appellants of the rejection of their request to suspend the time limit to file their Appeal Brief until a decision on the consolidation had been taken.

43. By letter of 10 August 2020, the Respondent objected to the requested consolidation and agreed to submit the matter to the same Panel of CAS 2020/A/6921.

44. On 24 August 2020, the Appellants filed their Appeal Brief in CAS 2020/A/7297 under Article R51 of the CAS Code.

45. On 27 August 2020, the Parties were informed by the CAS Court Office that the same Panel had been constituted in both CAS 2020/A/6921 and CAS 2020/A/7297.

46. On 5 October 2020, the Respondent filed its Answer in CAS 2020/A/7297 under Article R55 of the CAS Code.

47. With separate communications on 8 and 15 October 2020, the Appellants and the Respondent agreed that the decision in the procedure CAS 2020/A/7297 should be based on the solely written submissions without a hearing. The Appellants also asked that the operative part of the Award be communicated before the reasons.

48. On November 11 2020, as requested by the Panel, FIFA submitted a copy of the disciplinary file regarding the decision 200437, passed on 4 May 2020.

49. On 27 November 2020, the CAS Court Office informed the parties of the decision of the Panel to consolidate the two procedures and invited them to submit a further written submission on the issue of CAS Jurisdiction in the matter CAS 2020/A/6921.

50. On 16 December 2020, the CAS Court Office informed the parties that the Panel did not consider it necessary to hold a hearing in the consolidated procedure. The Respondent was invited to submit to the Panel the reason why the case was closed on 4 May 2020, without any answer from the FAS regardless of granting it the asked time limit extension to file its response.

51. On 27 January 2021, the Panel decided to admit the requested submissions from both the parties such as the last exhibit submitted by the Appellants on 20 December 2020.

52. On the same date, the CAS Court Office issued the Order of Procedure, which was duly signed by all parties. The parties recognised CAS jurisdiction to deal with this matter and confirmed that their right to be heard had been respected in this procedure.

IV. THE PARTIES' REQUEST FOR RELIEF AND SUBMISSIONS.

A. The Appellants' position

53. In their Appeal Brief in CAS 2020/A/6921, the Appellants requested the CAS to rule as follows:

a) "To rule that CAS has jurisdiction to hear the present appeal.

b) To rule that the Appellants have an interest worthy of protection and/or a legitimate interest in the proceedings before the FIFA Disciplinary Committee as well as in this Appeal Procedure.

- Should FIFA have not yet initiated disciplinary proceedings against FAS:

c) To consider that FIFA's refusal to initiate disciplinary proceedings against the FAS constitutes a refusal to initiate proceedings or a denial of justice.

d) To order FIFA to initiate disciplinary proceedings against the FAS.

e) To order FIFA to keep the Appellants informed of any developments regarding the disciplinary

proceedings against the FAS.

f) To order FIFA to notify the Appellants of the Decision of the FIFA Disciplinary Committee, regardless of the outcome.

g) To order FIFA to notify the Appellants of the Decision of the FIFA administration should they proceed to the closure of the disciplinary proceedings against the FAS, without the FIFA Disciplinary Committee passing a decision.

- ***Alternatively, should FIFA have already initiated disciplinary proceedings against FAS:***

h) To consider that FIFA's refusal to inform the Appellants of the developments regarding the disciplinary proceedings against FAS constitutes a denial of justice.

i) To order FIFA to keep the Appellants informed of any developments regarding the disciplinary proceedings against the FAS.

j) To order FIFA to notify the Appellants of the Decision of the FIFA Disciplinary Committee, regardless of the outcome.

k) To order FIFA to notify the Appellants of the Decision of the FIFA administration should they proceed to the closure of the disciplinary proceedings against the FAS, without the FIFA Disciplinary Committee passing a decision.

In all scenarios:

l) To condemn the Respondent to pay the entire CAS administration costs and the arbitration fees.

m) To rule that the Respondent has to pay to the Appellants a contribution towards their legal costs and other expenses incurred with the present proceedings".

54. In its Appeal Brief in CAS 2020/A/7297, the Appellants requested the CAS to rule as follows:

a. "to rule that CAS has jurisdiction to hear the present appeal.

b. to rule that the Appellants have an interest worthy of protection and/or a legitimate interest in the proceedings before the FIFA Disciplinary Committee as well as in this Appeal Procedure.

c. to order FIFA to provide the Appellants with the grounds of the Decision of the FIFA Disciplinary Committee dated 4 May 2020.

d. To condemn the Respondent to pay the entire CAS administration costs and the arbitration fees

e. to rule that the Respondent has to pay to the Appellants a contribution towards their legal costs and other expenses incurred with the present proceedings".

55. In essence, the Appellants state that the Appeal Body Decision of the FAS to revise the Decision of Mr Jovan Micic, as the designated FAS Sole Arbitrator, was manifestly unlawful and contrary to the regulatory framework provided by the FAS' Statutes and FIFA's regulations about the right of the parties (such as football players and clubs) to have an independent and impartial Court of Arbitration to settle their disputes in light of preventing any abuse and safeguard the integrity of matches and competition.

56. Amongst these provisions, the FAS, as a member of FIFA and UEFA, has undertaken to, *inter alia*,: (…): *"**Respect at all times the Statutes, Regulations, Directives and Decisions of FIFA and UEFA and the FIFA Code of Ethics** (…) Refer in the last instance any dispute of national dimension arising from or related to the application of the Statutes or Regulations of the FA of Serbia to an **independent and impartial court of arbitration** to settle the dispute to the exclusion of any ordinary court, unless expressly prohibited so by the laws in force in Serbia; Respect the principles of loyalty, **integrity** and sportsmanship in conformity with the principles of fair-play; (…)Exercise due care in respect of others rights and responsibilities deriving from the Statutes, Regulations and decisions of FIFA and UEFA"* (Art. 3 FAS Statutes).

57. FIFA Statutes also provide: *"The objectives of FIFA are: (…) to draw up regulations and provisions governing the game of football and related matters and to ensure their enforcement; to control every type of association football by taking appropriate steps to prevent infringements of the Statutes, regulations or decisions of FIFA or of the Laws of the Game; (…) (g) to promote integrity, ethics and fair play with a view to preventing all methods or practices, such as corruption, doping or match manipulation, which might jeopardise the integrity of matches, competitions, players, officials and member associations or give rise to abuse of association football".*

58. Art. 14 of the FIFA Statutes provides, *inter alia*, that*: "1. Member associations have the following obligations: (a) to comply fully with the Statutes, regulations, directives and decisions of FIFA bodies at any time as well as the decisions of the Court of Arbitration for Sport (CAS) passed on appeal on the basis of Art. 57 par. 1 of the FIFA Statutes;(…) d) to cause their own members to comply with the Statutes, regulations, directives and decisions of FIFA bodies; (…) (j) to comply fully with all other duties arising from these Statutes and other regulations. 2.Violation of the abovementioned obligations by any member association may lead to sanctions provided for in these Statutes.(…)".*

59. Art. 15 of the FIFA Statutes provides, *inter alia*, that*: "Member associations' statutes must comply with the principles of good governance, and shall in particular contain, at a minimum, provisions relating to the following matters:(…) to be independent and avoid any form of political interference; (…) to ensure that judicial bodies are independent (separation of powers);all relevant stakeholders must agree to respect the Laws of the Game, the principles of loyalty, integrity, sportsmanship and fair play as well as the Statutes, regulations and decisions of FIFA and of the respective confederation; (…) (i) to avoid conflicts of interests in decision-making; (j) legislative bodies must be constituted in accordance with the principles of representative democracy and taking into account the importance of gender equality in football".*

60. The Appellants stated that the replacement of the designated arbitrator was contrary to the national rules of the Serbian Federation and all the FIFA rules in force concerning fair competition.

61. As such, Art. 59 of the FIFA Statutes provided that disputes shall be taken to an independent and duly constituted arbitration tribunal recognised under the rules of the association or confederation or to the CAS: *"The associations shall insert a clause in their statutes or regulations, stipulating that it is prohibited to take disputes in the association or disputes affecting leagues, members of leagues, clubs, members of clubs, players, officials and other association officials to ordinary courts of law, unless the FIFA regulations or binding legal provisions specifically provide for or stipulate recourse to ordinary courts of law. Instead of recourse to ordinary courts of law, provision shall be made for arbitration. Such disputes shall be taken to an independent and duly constituted arbitration tribunal recognised under the rules of the association or confederation or to CAS. (…)".*

62. In light of the above, the Appellants argued that neither the decision from FAS Emergency Board to remove Mr Micic nor the FAS NDRC's composition itself are fair, independent and impartial.

63. Regarding the first censure, the decision of FAS Emergency Board to dismiss Mr Micic as an arbitrator of the FAS NDRC violates the principle of integrity and ethics and Art. 15 of the FIFA Statues, and it was incompatible with the principles of separation of powers and good governance, and therefore again a blatant violation of FIFA Statutes. In addition, the actions taken by FAS show that the NDRC in Serbia is not independent.

64. In this regard, the Appellants stressed that the actions were taken by the FAS and/or the FAS NDRC Chairman are not in line with the FAS regulations. Art. 30 and Art. 36 of the FAS NDRC Procedural Rules foresee that the awards of the FAS NDRC are final and binding and thus not subject to a "review" or appeal. Hence, the Decision passed by Mr Micic was final and binding and could, following the applicable regulations of the FAS, neither be "reviewed" nor be annulled.

65. Despite this provision, the Decision of Mr Micic was annulled on 4 September 2018, and a newly constituted 3-member Panels passed a new decision on 14 September 2018. Therefore, in the absence of any provision to that extent, it was not up to the discretion of the FAS and/or the Chairman of the FAS NDRC to order a review/annulment and to constitute a new Panel and pass a recent decision. These actions infringed fundamental law principles and the FAS NDRC procedure, such as FIFA Statutes and Regulations.

66. In the view of the Appellants, the FAS NDRC is also not an independent tribunal.

67. The Chairman of the FAS NDRC had been elected and appointed by the FAS Executive Committee (cf. Art. 2 FAS NDRC Procedural Rules), and not by consensus between player and club representatives, as contemplated under the FIFA RSTP. Indeed, Art. 22 lit. b) of the FIFA RSTP indicates that an independent national arbitration tribunal must respect the principle of equal representation of players and clubs. This element was absent in Serbia.

68. Another blatant indication that no equal representation between players and club exists in the FAS NDRC is the fact that Mr Micic – an arbitrator nominated by the Union – has been replaced by the FAS with an arbitrator who is employed by the Serbian club, Radnicki Nis (Mr Radan Ilic), i.e. the club which was involved in the dispute on which Mr Micic adjudicated.

69. Lastly, it needed to be recalled by the Appellants that the FAS Emergency Board – which played a questionable role in this matter – is a sub-committee of the Executive Board and was therefore appointed and constituted similarly as the FAS Executive Board. In this respect, the "urgency" of the various decisions taken by the FAS Emergency Board has also not been clarified by the FAS.

70. The Appellants argued that, as a player and as the football players' union, they are entitled to promote, through the disciplinary bodies of FIFA, the necessary actions to protect the due process in disputes between players and clubs and be informed of the outcome of such instances. In particular, they shall be kept informed of the commencement of disciplinary action and the results of the investigations and decisions of the relevant court or tribunal.

71. In this sense, the request to know the existence and the state of the disciplinary procedure appear legitimate and admissible given the direct interest of the appellants in receiving just and fair decisions and respecting the Serbian football system and the rules of FIFA: *"In seeking such a confirmation from the FIFA Disciplinary Committee, the Appellants submit that they have: a legitimate interest and an interest worthy of protection in having disciplinary proceedings opened by FIFA; a legitimate interest and an interest worthy of protection in having their complaints assessed by the FIFA Disciplinary Committee; and a legitimate interest and an interest worthy of protection in the FIFA Disciplinary Committee imposing sanctions on the FAS"* (Appeal Brief CAS 2020/A/6921, pag. 18).

72. In brief, and with particular reference to the player's rights, the Appellants have standing to sue because: they are directly affected by the FIFA Disciplinary Committee's decision; they have a substantial interest of a financial or sporting nature; they have been treated unjustly; it has been shown that there is a "practical use" in the appeal.

73. Regarding the Player, he is directly affected since he is seeking confirmation from FIFA that the actions of the FAS and its officials in the FAS NDRC procedure initiated by him are incompatible with the rules and regulations of the FAS and FIFA. He has been aggrieved by the actions of the FAS and its officials and seeks confirmation to this extent which does just to his belief that he is the victim of non-compliant – or even corrupt - behaviour and that he has been mistreated. He also has a tangible financial interest as a confirmation from the FIFA Disciplinary Committee that the actions of the FAS are incompatible would open up a claim for damages against the FAS for the latter's unlawful acts. Lastly, FAS has violated his human rights by making it compulsory to submit his dispute to arbitration, while not providing independent and impartial arbitration. As the Player is invoking the violation of a human right, he has *per se* a legitimate interest and/or an interest worthy of protection.

74. Regarding the Union, SPFN, art. 10 of its Statutes, provides the following: *"The task and the purpose of the Trade Union shall be protection and promotion of individual, specific and collective economic,*

social, educational, professional and cultural interests and rights of its members and the interests of all professional football players".

75. In this context, reference must also be made to Art. 89 of the Swiss Civil Procedure Code which, *inter alia*, stipulates that associations and other organisations - which are authorised by their statutes to protect the interests of a specific group of individuals - may bring an action in their name for a violation of the personality of the members of such group. This is the case for the SPFN, which, based on its Statutes, protects the interests of professional football players in Serbia: the SPFN and its members, therefore, have a tangible financial interest in FIFA initiating disciplinary proceedings and taking action against the FAS when the latter's arbitration system is unfair and not independent.

76. As such, the Appellants submitted that they have a legitimate interest and an interest worthy of protection in these appeal proceedings when FIFA refuses to inform the Appellants of any developments of the proceedings against the FAS and/or refuses to disclose the Appellants whether or not FIFA will even open proceedings against the FAS. Indeed, by refusing to keep the Appellants apprised of the state of proceedings or whether a procedure has been initiated, FIFA – in an absolute manner – prevents the Appellants from ever finding out whether their complaints are adequately dealt with or even dealt with at all.

77. Consequently, the letter from FIFA of 7 February 2020 and the absence of any reply to the Appellants' letter of 21 February 2020, means that FIFA decided not to initiate a disciplinary proceeding against FAS, which is an appealable decision before CAS.

78. In the Appellants' view, such interest to know the outcome of their complaints against FAS is also reflected in the right to know the grounds of FIFA Disciplinary Committee's Decision to terminate the proceedings without imposing disciplinary sanctions against FAS or its governing bodies.

79. As the Appellants received FIFA's Answer in CAS 2020/A/6921 on 10 July 2020, they learned that the FIFA Disciplinary Committee had opened disciplinary proceedings against FAS and a decision was passed on 4 May 2020. FIFA rejected the Appellants' request for the grounds of the Decision given by the Disciplinary Committee; therefore, the Player and the Union filed a new appeal on 24 August 2020 in CAS 2020/A/7927.

80. In brief, the Appellants argue that *"if FIFA cannot be forced or ordered to enforce its rules, regulations and statutes against its direct members, it would effectively mean that players (and clubs) are completely dependent on FIFA's willingness to sanctions their Member Associations, for which FIFA may not always have an appetite. If there is a severe violation of the rules and regulations of FIFA by a Member Association – yet it does not directly affect FIFA like in the matter at hand – it cannot be left to FIFA's sole discretion to decide to initiate disciplinary proceedings against a Member Association. There must be a mechanism of checks and balances for indirect members of FIFA and those collectively representing them"* (submission reported in both Appeal Briefs).

81. Accordingly, if the NDRC set up by the Member Association is not complying with the principles of FIFA, if the Player (as well as the Union) does not have the right to ask FIFA to sanction a Member Association, and, finally, if FIFA its does not enforce its regulations against its Member Associations, Players would be left unprotected and forced, at least, into an arbitration procedure (such as it happened before FAS NDRC) that is neither independent nor impartial.

82. In a case like the one at stake, where there is compulsory arbitration for the players in Serbia, and they do not have any alternative, it is fundamental that FIFA orders the FAS to provide the safeguard of fair and independent arbitration and sanctions the FAS if they do not.

83. In its Human Rights Policy, FIFA itself has emphasised that they have jurisdiction over its Member Associations and has already confirmed it has a special responsibility concerning players' rights. Suppose FIFA is indeed serious about its human rights policy. In that case, it cannot simply ignore individuals when they address FIFA's human rights violations and not grant them a place in the disciplinary process.

B. FIFA's position

84. In its Answer filed in CAS 2020/A/6921, FIFA requested the CAS to rule as follows:

"a) declaring that it does not have jurisdiction to deal with the present matter and that the appeal is inadmissible;

Alternatively, should the Panel deem that it has jurisdiction and that the appeal is admissible, FIFA requests that it issue an award:

b) rejecting the reliefs sought by the Appellants:

In any event, FIFA asks that:

c) the Appellants are ordered to bear the full costs of these arbitration proceedings;

d) the Appellants are ordered to pay a contribution to FIFA's legal and other costs incurred in the framework of these proceedings".

85. In its Answer filed in CAS 2020/A/7297, FIFA requested the CAS to rule as follows:

"a) Rejecting the reliefs sought by the Appellants:

In any event, FIFA asks that:

b) the Appellants are ordered to bear the full costs of these arbitration proceedings;

c) the Appellants are ordered to pay a contribution to FIFA's legal and other costs incurred in the framework of these proceedings".

86. Firstly, FIFA objected that the Appellants provided *"a misleading portrayal of the facts and law applicable"* to the cases at stake and that they don't have standing to sue as well as they lack legal interest.

87. The Respondent argued that the Appellants were not even the persons filing the Complaint: FIFPRO filed it on both occasions; the fact that the Appellants co-signed the second complaint did not result in their consideration as complainants, as they objectively signed the document in their capacity as members of FIFPRO; they did not demonstrate a tangible interest in the outcome of eventual disciplinary proceedings against FAS and did not prove how the closure of the proceedings (with a sanction or not against FAS) could directly affect them.

88. Besides, in FIFA's view, the Appellants did not (and continue not to have) a right for disciplinary proceedings to be opened against the FAS, and even less for a disciplinary sanction to be issued against the FAS.

89. Both the appeals filed by the Player and the Union should be rejected.

90. Notably, in the first case (CAS 2020/A/6921), the Appellants did not (and continue not to have) a right to open disciplinary proceedings against the FAS. Even less for a disciplinary sanction to be issued against the FAS and the appeal became moot due to the Disciplinary Committee had issued the final and binding Decision.

91. In CAS 2020/A/7927, the Appellant's request for grounds of the FIFA Disciplinary Committee's Decision was rightfully rejected on the basis of the applicable regulations as well as on the lack of standing in the framework of the disciplinary proceedings against the FAS and before CAS.

92. FIFA recalled the principle of standing to sue under the Swiss Civil Procedural law whereas: *"the basic principle is that a claimant has standing to sue and the claim is admissible providing the person is invoking a substantive right of its own, i.e. a right deriving from contract, tort or another source"* In other words, the standing to sue is recognised if a person appealing against a specific decision has an interest worthy of protection, i.e. sufficient interest in the matter being appealed. This principle is provided in Article 59(2) of the Swiss Civil Procedure Code ("SCPC") and is known as "intérêt digne de protection". Thus, having a legal interest is a condition for access to justice.

93. CAS jurisprudence recalls such principle stating that whether there is a legal interest is the so-called "aggrievement requirement" which has been defined as the *"essential element to determine the legal interest and the standing of a party to appeal before the CAS a sports body's decision, because the duty assigned to a panel by the CAS Code rules governing the appeal arbitration procedure is that of solving an actual dispute and not that of delivering an advisory opinion to a party that has not been aggrieved by the appealed decision".*

94. Notwithstanding that FIFA objected that the Appellants would never have become parties to or had any rights concerning the disciplinary proceedings against the FAS, the Respondent

stressed that disciplinary proceedings were opened and a decision was passed. In any case, such a decision could not directly affect the Appellants as a third party. As a result, the Respondent concluded that FIFA simply cannot be used by every player or union that disagrees with a domestic dispute resolution mechanism to further their interests. This is neither the purpose of the FIFA Disciplinary Code or the practical solution to the Appellants' alleged problems.

95. In addition to the abovementioned lack of standing to sue and appeal of the Appellants, by the wording of Article 70(2) FIFA DC 201747, the Respondent argued that it is clear that, even if the requirements set out in the mentioned provision that entitles the judicial bodies of FIFA to deal with a matter which in principle falls under the scope of an association, confederation or other sports organisation, would have been fulfilled, it would be at FIFA's discretion whether to open disciplinary proceedings and, if applicable, impose sanctions. This discretionary element impedes anyone from claiming that justice was denied by FIFA in case it would choose not to investigate an alleged infraction.

96. In this regard, FIFA recalls the provision of Article 108(2) FIFA DC, which establishes that *"[a]ny person or body may report conduct that he or it considers incompatible with the regulations of FIFA to the judicial bodies. Such complaints shall be made in writing"*. The Respondent also stressed that CAS jurisprudence has acknowledged that said provision does not impose any obligation on FIFA to pursue or not a possible infringement.

97. FIFA complained that the Appeals filed by the Player and the Union constituted a sort of "manifesto" against the FIFA disciplinary system, which, on the contrary, is fully compliant with Swiss Law.

98. Besides, FIFA objected that the Appellants have not provided any evidence of having challenged the system that they believed to be unjust within their domestic framework. Of course, FIFA has an interest in its member associations respecting their own and FIFA's statutes, and it was frivolous of the Appellants to imply the contrary. However, for the purposes that the Appellants wished to achieve, it would appear that the FIFA Disciplinary Committee is not the correct forum to solve their domestic problems.

99. Lastly, FIFA believes that it cannot be accused of a diminished commitment to protecting human rights where "persons" (understood as all those belonging to the world of football) are not considered parties in disciplinary proceedings such as the one at stake.

100. Such statements, as well as all the reasoning from the Appellants, should be rejected.

V. CAS JURISDICTION AND ADMISSIBILITY

101. According to Art. 186 PILA, the arbitral tribunal shall rule on its jurisdiction (*"Kompetenz Kompetenz"* principle). Therefore, the Panel is competent to rule on its jurisdiction.

102. Art. R47 para 1 of the CAS Code provides the following: *"An appeal against the decision of a federation, association or sports-related body may be filed with CAS insofar as the statues or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of the body"*.

103. Art. 49 of the CAS Code reads as follows: *"in the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against"*.

104. According to Art. 58 para. 1 of the FIFA Statutes, *"appeals against final decisions passed by FIFA's legal bodies and against decision passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of notification of the decision in question"* and Art. 128 of the FIFA Disciplinary Code (FIFA DC) simply refers to the Statutes concerning appeals to the CAS.

105. Whereas the parties concur on CAS jurisdiction in CAS 2020/A/7927, FIFA objects to the absence of any appealable ruling in CAS 2020/A/6921. Recalling the Panel's determination for the consolidation of the proceedings, it is clear that the Respondent's Answer has the same content as well as the FIFA Disciplinary Committee's appealed Decision is concretely the refusal to allow the Appellants to participate in the disciplinary proceedings against FAS. Therefore, the Panel deems it appropriate to rule its jurisdiction in both cases.

106. In essence, the Appellants deem that the FIFA's refusal to answer to their request, namely to their last letter dated 24 March 2020, constitute a denial of justice which could be appealed to CAS: *"By means of said letter, we respectfully requested FIFA to initiate disciplinary proceedings against the FAS on the basis of the complaints as well as to keep the Player, the SPFN and FIFPRO apprised of any developments with respect to those proceedings (…) we herewith provide FIFA with a final deadline until 27 March 2020 to comply to our request, failing which FIFA leaves us with no other choice than consider such failure as a refusal/denial of justice (…)"*.

107. For the sake of completeness, such request and the previous on 9 December 2019 and 21 February 2020 were signed by the Player and the Union or on their behalf (see authorisation to represent to Mr Vermeer, dated 11 February 2020).

108. FIFA argues that: a) the Appellants did not direct their appeal against its letter dated 7 February 2020; b) the FIFA letter was not considered to be a decision; c) FIFA never stated that it did not have the intention to open proceedings against the FAS or investigate the matter (as disciplinary proceedings were opened on 26 March 2020); d) any request was brought through FIFPRO, that is not a party before the FAS and neither before FIFA. Moreover, and in any case, the Appellants are not affected (and even less directly affected) by the outcome of the disciplinary proceedings opened against the FAS.

109. In FIFA's view, there was not a decision not to open a case (nor was this suggested to the Appellants) or of an absence of a reaction in general (FIFPRO was notified the FIFA Letter

and FIFA opened proceedings against the FAS). FIFA had not the duty to keep the Appellants (and FIFPRO) appraised of the status of the proceedings.

The Panel's determination

110. Given the above arguments, to determine whether the CAS has jurisdiction and whether the appeal is admissible, the Panel first has to define the object of the appeal. The Panel must then decide whether the appeal was filed against a "decision" within the meaning of Art. R47 para. 1 of the CAS Code and Art. 58 para. 1 of the FIFA Statutes, i.e. a final decision passed by FIFA against which the internal remedies have been exhausted. Finally, the Panel must analyse whether the time limit to appeal to the CAS and the other formal requirements of Art. R48 of the CAS Code were respected.

111. In the Appellants' opinion, the FIFA refusal to answer their requests to initiate disciplinary proceedings against the FAS, or in any case to keep them appraised about the outcome of the case, constitutes a denial of justice. It is worth noting that, despite the different content of the Answers, the Appellants consider each FIFA's communication (as well as the letter appealed in CAS 2020/A/7927) as denied justice.

112. In analysing the various FIFA's communications, the Panel shall be particularly keen on the principle of good faith, which is also expressed in Art. 9 of the Swiss Federal Constitution (*"Every person has the right to be treated by state authorities in good faith and a non-arbitrary manner"*). According to this principle, citizens are protected in the legitimate trust they have in the declarations or the behaviour of authorities. The latter must not act in a contradictory or abusive manner. Although stemming from public law, this principle can, in the Panels' view, be applied by analogy.

113. The Panel endorses the definition of "decision" and the characteristic features of a "decision" stated in those CAS precedents:

- *"the form of the communication has no relevance to determine whether there exists a decision or not. In particular, the fact that the communication is made in the form of a letter does not rule out the possibility that it constitute a decision subject to appeal"* (see CAS 2015/A/4213; CAS 2008/A/1633; CAS 2007/A/1251).

- *"in principle, for a communication to be a decision, this communication must contain a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties"* (see CAS 2008/A/1633 para. 31; CAS 2007/A/1251 para. 30).

- *"a decision is thus a unilateral act, sent to one or more determined recipients and is intended to produce legal effects"* (see CAS 2008/A/1633 para. 31; CAS 2004/A/748 para. 89).

- *"an appealable decision of a sport association or federation is normally a communication of the association directed to a party and based on an "animus decidendi", i.e. an intention of a body of the association to*

decide on a matter […]. A simple information, which does not contain any "ruling", cannot be considered a decision" (CAS 2015/A/4213 para. 49; CAS 2008/A/1633 para. 32).

- *"there can also be a decision where the body issues a ruling as to the admissibility or inadmissibility of a request, without addressing the merits of such request"* (see CAS 2005/A/899 para. 12).

114. As this is the case of an assumed FIFA's "refusal to answer", CAS jurisprudence dealt with this matter: *"In addition, if a body refuses without reasons to issue a decision or* delays *the issuance of a decision beyond a reasonable period of time, there can be a denial of justice, opening the way of an appeal against the absence of a decision (see TAS 97/169, in Digest of CAS Awards 1986- 1998, p. 539). If the body considers that it does not have jurisdiction over a certain matter, there can thus be a denial of justice if that body does not rule on its jurisdiction within a reasonable period of time"* (CAS 2005/A/899).

115. In CAS 2005/A/944, that Panel established the following:

"15. Article 113 of the FIFA Disciplinary Code states that "disciplinary infringements are automatically prosecuted" (para. 1) and that "any person or authority may report conduct that he or it considers incompatible with the regulations of FIFA to the judicial bodies" (para. 2). On the other hand, the regulations do not contain any provision regarding cases in which FIFA remains inactive. In particular, the regulations do not give the intervening party any right to appeal to a particular body in case its complaint remains unanswered. A decision from FIFA or one of its juridical bodies not to open a disciplinary procedure – or the mere absence of any reaction – must therefore be considered as a decision which is final within FIFA. It is thus subject to an appeal with CAS.

16. Therefore, CAS in this case has jurisdiction to hear the Appellant's appeal, insofar as the Appellant's request – at least to the knowledge of the Appellant at the time of submission of the appeal, i.e. on 28 July 2005 – was unanswered".

116. In CAS 2015/A/4162, that Panel stated:

"52. The decisive criteria, thus, is whether or not the act in question impacts upon the legal situation of the Appellant. If that is the case (independent of what the intentions of the relevant sports organisation were), there must be access to justice for the person concerned.

53. In the case at hand the Appealed Decision stated that FIFA was not in a position to further deal with the case ("no nos encontramos en posición de seguir tratando este caso"). In view of the above, therefore, the Appealed Decision clearly ruled on the admissibility of the Appellant's request for relief, denying such admissibility and thus, objectively affecting the Appellant's legal position with regard to the right of the latter to pursue the enforcement of its claim against RZ. It must be concluded, therefore, that notwithstanding the fact that the Appealed Decision was dressed in the form of a letter it is in substance an appealable decision within the meaning of Article R47 of the CAS Code".

117. This interpretation is also confirmed in MAVROMATI/REEB, The Code of Arbitration for Sport, para. 24, pag. 388: *"Denial of justice occurs if the judicial body has failed to issue and communicate a decision following a party's request, also taking into account the particular urgency existing in some cases. If*

there is a lacuna in the rules of the sports body regarding cases of inactivity and lack of answer to a request, a decision not to open a case or the absence of reaction in general must be considered as a decision subject to an appeal to the CAS".

118. In light of the jurisprudence just mentioned, the Panel deems necessary to verify further whether, regardless of the existence of the right of the Appellants to be a party in the disciplinary proceedings, the failure of FIFA to reply to their complaints and the follow-up letters, could constitute an unjust refusal to their request and therefore a decision appealable before CAS.

119. In their Statement of Appeal, the Appellants submitted: *"The Serbian professional football player, Vladimir Simunovic (hereinafter also: "the Player"), and the Sindikat Profesionalnih Fudbalera Nezavsinost (hereinafter also: "SPFN") herewith submit their Statement of Appeal to the CAS concerning FIFA's refusal to initiate disciplinary proceedings against the Football Association of Serbia (hereinafter also: "the FAS") and/or FIFA's refusal to keep the Appellants apprised of any developments with respect to any disciplinary proceedings against the FAS (should they have already been initiated by FIFA). As will be explained in more detail in the Appellants' Appeal Brief, FIFA's failure to act on the complaints filed by the Appellants on 29 March and 9 December 2019 to the FIFA Disciplinary Committee, - together with the letter of FIFA dated 7 February 2020 and FIFA's subsequent failure to reply to the Appellants' letters dated 21 February and 24 March 2020 - is to be considered a decision to refuse to initiate proceedings or a denial of justice against which an appeal to CAS is possible".*

120. FIFA sent only one reply to the Appellants, dated 7 February 2020, by which, although expressing satisfaction for the filing of a complaint pursuant to Art. 52 of the FIFA DC, firstly it argued that *"it appears that the matter at the basis of the present complaint has, at first sight, no international dimension and, as such, would not fall within FIFA's jurisdiction (…)"* and further *"Notwithstanding the above, even though you are entitled to file a complaint with regard to a conduct considered incompatible with the FDC and/or any other provisions of FIFA, it does not follow that you become a party to the proceedings as foreseen in Art. 27 of the FDC. In sum, and based on your complaint and your possible lack of standing in the potential case, FIFA is not mandated to start disciplinary proceedings. Also for the sake of clarity, please note that the secretariat to the FIFA Disciplinary Committee may initiate investigations ex officio and at any time (cf. Art. 32 par. 5 in conjunction with Art. 52 par. 1 lit. h) of the FDC)".* Lastly: *"With the above in mind, we would also like to draw your attention to the fact that we will not be in a position to provide you with information with regard to your inquiries or regarding the state of the proceedings before the FIFA Disciplinary Committee (if any). However, in the event that we would require any further information or documents from your part, we will contact you in due course".*

121. Bearing the parties' position in mind, the Panel finds that it is clear that, from the beginning (and definitively), FIFA has taken the decision not to consider further any request coming from the Appellants regarding the initiation or not of the disciplinary proceedings, its status and what decisions were taken against the FAS if any. FIFA decided to remain silent on the issue, and it continues to act in the same manner notwithstanding the following Appellants' letters (namely dated 21 February and 24 March 2020).

122. The present matter is also comparable to the facts analysed in the case CAS 2007/A/1251, in which FIFA sent a letter enumerating several reasons for which it considered that its judicial bodies lack the competence to entertain the appellant's request and invited the latter to seek relief in front of the competent national authorities. In that case, that Panel considered that in the letter, FIFA clearly manifested that it would not entertain the request, thereby making a ruling on the admissibility of the request and directly affecting the appellant's situation. Thus, despite being formulated in a letter, such a refusal was, in substance, held to be a decision. In that Award, the issue of the signatory of the letters was also analysed: that Panel held that a first letter signed by the secretariat on behalf of the Dispute Resolution Chamber and a second letter signed by the head of FIFA Legal Division and the President of the Player's Status Committee were both to be considered as issued by those judicial bodies themselves. Besides, FIFA signified to the appellant that it refused to entertain its request on behalf of both potentially competent bodies indicated that the decision was final.

123. Based on the above, the Panel considers that the FIFA letter dated 7 February 2020 is a decision as well as the subsequent refusal to answer the Appellants' requests.

124. After the first (and only) FIFA's answer, the Player and the Union, the first as a member of FIFA and the second as, at least, a stakeholder, filed, through their counsel (see enc. 16), a further complaint on 21 February where they again explained the reasons for which they asked to initiate disciplinary proceedings against the FAS and replied to the submissions from FIFA, thus bringing new and further arguments in support of their requests. Given the silence of FIFA, they sent the following letter in March 2020 asking for an answer and specifying that they would consider this attitude as a refusal/denial of justice in the event of a denial response.

125. Instead of giving a complete answer, or at least simply referring to its first letter, FIFA did not reply at all to the last requests from the Appellants, and primarily to their new submissions explicitly objecting to the arguments put forward by FIFA in its letter of 7 February 2020.

126. As a consequence, bearing in mind the principle of good faith, the Appellants were entitled not to be misled by FIFA's contradictory (and negative) behaviour and forced to follow the provision under Article R47 of the CAS Code; therefore, the CAS has the competence to rule on the appeal filed against FIFA's denial of justice (accordingly, MAVROMATI/REEB, *ibidem*: *"in cases of denial of justice (and logically so), there is no need to comply with the time limit of 21 days of Article R49 of the CAS Code"*).

127. Notwithstanding this, as the last communication of the Appellants is dated 24 March 2020, the appeal was filed on 7 April 2020 and, consequently, it complies with the time limit provided by Art. R49 of the Code.

VI. APPLICABLE LAW

128. As the CAS is an arbitral tribunal with seat in Switzerland, and as the Appellants have their domicile or habitual residence outside of Switzerland, pursuant to Art. 176 of the Swiss Private

International Law Act ("PILA"), Chapter 12 of this act (Art. 176 to 194 PILA) is applicable to the present arbitration.

129. Art. 187 para. 1 PILA provides: *"The arbitral tribunal shall decide the dispute according to the* rules *of law chosen by the parties or, in the absence of such a choice, according to the rules of law with which the case has the closest connection"*.

130. Art. 57.2 of the FIFA Statutes (edition 2018) provides: *"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"*.

131. According to Art. R58 of the CAS Code, *"the Panel shall decide if 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-relented body which has issued the challenged Decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its Decision"*.

132. In the present case, the parties agree that the rules and regulations of FIFA are applicable. Given the date at which the Appellants lodged their complaints before FIFA (namely, the first on 29 March 2019 and the second on 9 December 2019), the procedural matters of the case are regulated by the FIFA Statutes, edition 2018 and 2019, and the FIFA Disciplinary Code, edition 2017 (if needed, also edition 2019).

133. Accordingly, the Panel shall apply the rules of FIFA, which is the federation whose decision (or lack of decision) has been challenged, as well as, and on a subsidiary basis, Swiss law, to which the relevant FIFA Statutes make explicit reference.

134. As the issue at stake is whether or not the Appellants are entitled to ask FIFA to initiate disciplinary proceedings against a third party (and to be apprised on the outcome of such investigation), the Panel is satisfied with the legal framework abovementioned and does not deem that the FAS Statutes and regulations apply to the present dispute.

VII. CONSOLIDATION OF THE PROCEEDINGS.

135. After having consulted the parties, the Panel considers that the requirements in fact and law for the consolidation of the two proceedings are met.

136. According to Art. R52 para. 5 of the CAS Code, some conditions have to be met to consolidate the proceedings: the identity of the parties, the identity of applicable rules and the identity of the underlying legal relationship. In the case of a plurality of agreements, there should be consistency between them. What is more, the composition of the arbitral tribunal should be the same in both procedures. If the Panel has already been constituted, there should be the identity of arbitrators (MAVROMATI/REEB, The Code of Arbitration for Sport, pag. 251).

137. The same legal basis is provided by Art. 4 (1) of the Swiss Rules of International Arbitration (in force since 2012): *"Where a Notice of Arbitration is submitted between parties already involved in other arbitral proceedings pending under the Rules, the Court may decide, after consulting with the parties and any confirmed arbitrator in all proceedings, that the new case shall be consolidated with the pending arbitral proceedings. The Court may proceed in the same way where a Notice of Arbitration is submitted between parties that are not identical to the parties in the pending arbitral proceedings. When rendering its Decision, the Court shall take into account all relevant circumstances, including the links between the cases and the progress already made in the pending arbitral proceedings (…)".*

138. In this legal and factual framework and the consequent costs savings in case of consolidation, the Panel finds that all the above-mentioned conditions are met in the case at stake, such as the reasons underlying the requests for relief of the parties are essentially the same in both proceedings.

139. The Panel finds that where the Appellants, by arguing in both cases their legitimate interest and their interest as being worthy of protection, claim in the first proceedings to order FIFA to initiate disciplinary proceedings against the FAS (as well as to be informed of the outcome of this procedure), in the second case, given the decision of the FIFA Disciplinary Committee, they ask to know the grounds of such decision dated 4 May 2020.

140. In light of the above, let alone any other issue on CAS Jurisdiction and Appellants' lack standing to sue, it appears that the content of CAS 2020/A/6921 has been absorbed in CAS 2020/A/7297 after the conclusion of the disciplinary proceedings as the issues seem to be the same. However, the request for relief in CAS 2020/A/6921 is clearly and time-wise previous to CAS 2020/A/7297.

141. The Panel finds that the concrete and final aim of the Appellants is to seek the opening of disciplinary proceedings against FAS and sanctions to be imposed over such Association whenever it is found guilty of the violation of the applicable national and FIFA's regulations. As such, it can be stated that the disputes in the arbitrations have arisen in connection with the same legal relationship between the same parties.

142. Due to these considerations, the Appellants requested the consolidation of the two proceedings due to the close subjective and objective connection. FIFA objected to this request due to the lack of jurisdiction of the CAS and, in any case, the intervened lack of interest in the dispute CAS 2020/A/6921 after the decision of the Disciplinary Committee. In any case, FIFA underlines the difference in objects of the respective proceedings.

143. In light of the above, it should be stated that the Panel has the discretion to grant the consolidation. The Panel may consolidate or may deny the request, even though the requirements for consolidation are met, considering the case at hand. In exercising this discretion, the Panel may consider any circumstances it deems relevant and consider factors such as whether the same or different arbitrators have been confirmed or appointed, the procedural stage of the proceedings, and whether the terms of reference have been established.

144. Consequently, the Panel deems that all the conditions to consolidate the proceedings have been met.

VIII. STANDING TO APPEAL

145. Having reached the above conclusion, the Panel shall now turn to the issue of standing to appeal. Indeed, the Respondent raised a preliminary issue on the merits of the case, explaining that the FIFA had no obligation to open disciplinary proceedings against FAS, the Appellants would never have become (nor became) parties to or had any rights concerning the disciplinary proceedings against the FAS and never had a legitimate interest in the framework of the disciplinary proceedings that FIFPRO wished to investigate. Therefore, the Appellants had no right to file an appeal before the CAS.

146. In essence, the main objection from FIFA is *"how the Appellants (whether as complainants quod non, or otherwise) could possibly have been affected by the Decision passed by FIFA DC (if any) in a manner that would entitle them to be apprised of the disciplinary proceedings and, as a consequence, request and/or receive the grounds of that Decision"*.

147. In light of above, Art. 108 of FIFA DC (edition 2017) (Commencement of proceedings) provides: *"1. Disciplinary infringements are prosecuted ex officio. 2. Any person or body may report conduct that he or it considers incompatible with the regulations of FIFA to the judicial bodies. Such complaints shall be made in writing"*.

148. Art. 119 of FIFA DC (Eligibility to appeal) reports: *"1. Anyone who has been a party to the proceedings before the first instance and has a legally protected interest justifying amendment or cancellation of the Decision may lodge an appeal with the Appeal Committee. 2. Associations may appeal against decisions sanctioning their players, officials or members. They shall have the written agreement of the person concerned"*.

149. For sake of completeness, as one of the complaints of the Appellants was filed after it entered in force (9.12.2019 enc. 14), Art. 52 of FIFA DC, edition 2019, determines: *"Proceedings are opened by the secretariat of the Disciplinary Committee: a) on the basis of match officials' reports; b) where a protest has been lodged; c) at the request of the FIFA Council; d) at the request of the Ethics Committee; e) on the basis of a report filed by FIFA TMS; f) on the basis of article 15 of this Code; g) on the basis of documents received from a public authority; h) ex officio. 2. Any person or body may report conduct that he or it considers incompatible with the regulations of FIFA to the FIFA judicial bodies. Such complaints shall be made in writing"*.

150. Again Art. 58 FIFA DC (edition 2019) provides: *"Standing to appeal 1. Anyone who has been a party to the proceedings before the Disciplinary Committee may lodge an appeal with the Appeal Committee, provided this party has a legally protected interest in filing the appeal. 2. Associations and clubs may appeal against decisions sanctioning their players, officials or members"*.

151. Upon the basis of the legal framework provided by the regulations referred to above, it is clear that, let alone the *ex officio* investigative power of the FIFA disciplinary bodies, the FIFA

Disciplinary Code (in both the editions) recognises but not fosters the participation of third parties in the disciplinary procedure rather their involvement as subjects who should collaborate in the ascertainment of an infringement. The intent is clear, that is, to have as many reports as possible to evaluate, where it is difficult to hypothesize that the FIFA officials can, by themselves, ascertain every supposed breach of regulations against all subjects under Art. 3 of FIFA DC (federations, associations, clubs, players, coaches and any other recipient of these regulations).

152. These procedural provisions must be read and interpreted in the light of the general inspiring principles of the FIFA Statutes and the FIFA Disciplinary Code:

Art. 2 FIFA Statutes (Objectives*): a. The objectives of FIFA are: a) to improve the game of football constantly and promote it globally in the light of its unifying, educational, cultural and humanitarian values, particularly through youth and development programmes (…); d) to control every type of association football by taking appropriate steps to prevent infringements of the Statutes, regulations or decisions of FIFA or of the Laws of the Game (…)".*

Art. 1 FIFA DC (Object): *This code describes infringements of the rules in FIFA regulations, determines the sanctions incurred, regulates the organisation and function of the bodies responsible for taking decisions and the procedures to be followed before these bodies.*

Art. 2 FIFA DC (Scope of application: substantive law): *This code applies to every match and competition organised by FIFA. Beyond this scope, it also applies if a match official is harmed and, more generally, if the statutory objectives of FIFA are breached, especially with regard to forgery, corruption and doping. It also applies to any breach of FIFA regulations that does not fall under the jurisdiction of any other body".*

Art. 3 FIFA DC (Scope of application: natural and legal persons): *The following are subject to this code: a) associations; b) members of associations, in particular the clubs; c) officials; d) players; e) match officials; f) licensed match and players' agents; g) anyone with an authorisation from FIFA, in particular with regard to a match, competition or other event organised by FIFA; h) spectators".*

153. The Panel finds that these provisions assign FIFA a specific and non-replaceable role in disciplinary proceedings against all the subjects indicated in Art. 3, which become parties in such proceedings if opened against them. On the other hand, those who have reported the violation or attempt to violate, (i.e. the so-called whistleblowers) remain outside of the procedure.

154. This is confirmed by art. 19 of the FIFA DC: *"Anyone subject to this Code shall immediately report to the secretariat of the Disciplinary Committee any violation of, or attempt to violate, this Code by any third party"*. Again, it is clear that the disciplinary proceedings entail only the FIFA bodies (the exclusive addressee of such report) and the investigated third-parties that have committed the reported violation.

155. In this regard, standing to sue (or to appeal) is attributed to a party that can validly invoke the rights it puts forward because it has a legally protectable and tangible interest at stake in the litigation. This corresponds to the Swiss legal notions of "légitimation active" or "qualité pour agir", as confirmed by the case law of the Swiss Federal Tribunal (Decision of 3 April 2002 in the case 4P.282/2001).

156. According to CAS jurisprudence, parties with direct, personal and actual interest are considered to have legal standing to appeal to the CAS. Such an interest can exist not only when a party is the addressee of a measure but also when it is a directly affected third party. The case law provides that *"this is consistent with the general definition of standing that parties, who are sufficiently affected by a decision, and who have a tangible interest of a financial or sporting nature at stake, may bring a claim, even if they are not addressees of the measure being challenged"* (CAS 2016/A/4924 & 4943).

157. There is a category of third-party applicants who, in principle, do not have standing, namely those deemed "indirectly affected" by a measure. As regards the differentiation of directly affected parties from indirectly affected parties, CAS jurisprudence displays a *"common thread"*, as restated in numerous CAS awards: *"Where the third party is affected because he is a competitor of the addressee of the measure/decision taken by the association, – unless otherwise provided by the association's rules and regulations – the third party does not have a right of appeal. Effects that ensue only from competition are only indirect consequences of the association's decision/measure. If, however, the association disposes in its measure/decision not only of the rights of the addressee, but also of those of the third party, the latter is directly affected with the consequence that the third party then also has a right of appeal"* (CAS 2016/A/4924 & 4943, para. 86). The correct approach when dealing with standing is to deem mere competitors indirectly affected – and thus exclude them from standing – when the measure does not have tangible and immediate direct consequences for them beyond its generic influence on the competitive relationship as such. Previous CAS decisions shed some light on how the notion *"directly affected"* is interpreted.

158. For instance, in the case CAS 2002/O/373, the CAS granted an athlete placed third the right to appeal against a decision by the IOC not to award her the gold medal after the first and second-placed athletes were involved in doping scandal. It was held that a disciplinary decision in respect of an athlete placed first had inevitably affected an athlete's rights placed second. The Panel explained: *"gaining an Olympic medal is one of the ultimate goals in a star athlete's career, which can bring with it many fruits, thereby giving her/him a very particular interest in challenging a decision if, as in the present case, the modification of the decision could allow her/him to obtain a gold medal or a medal she/he did not get"*. By contrast, athletes who lack a chance to obtain a medal have no right to appeal (CAS 2002/O/373, para 23 ss).

159. In the CAS 2008/A/1583 & 1584 cases, the CAS found that a decision by UEFA's disciplinary body granting the winner of the 2007/2008 Portuguese football league admission into the UEFA Champions League, pending an investigation into alleged bribery of referees, had the effect of excluding the third club in the 2007/2008 Portuguese football league from direct admission to and the club ranked fourth in the 2007/2008 Portuguese football league from a qualification place in the Champions League. The Panel held that both clubs were *"directly*

affected; *for if UEFA grants a club a starting place in a championship which has a closed field of starters, it has at the same time made a negative decision about including other candidates for said starting place"*. The Panel added*: "UEFA's allocation or denial of a starting place in the CL is not the realisation of any vague hope or fateful bad luck for the club concerned. Rather, it is a decision about a legal right of the clubs (more particularly specified in the UCL-Regulations)"*. Then that Panel analysed the applicable UEFA Champions League Regulations and held that said rules gave the appellant clubs a direct right to replace the excluded winner (CAS 2008/A/1583 & 1584, para. 32).

160. In the case CAS 2015/A/4151, the runner-up football club was denied standing to appeal because it could not prove that it would automatically replace the first club, which was excluded. The Panel indeed held that the practice of UEFA showed that it could order a draw instead of automatically admitting the sanctioned team's closest competitor to the Champions League. It was specified that: *"standing to sue should be restricted to a club that could show to the Panel that it would directly replace an excluded club and not by means of possibly being entered into a draw along with a number of other clubs or by a possible one-off decision that the Emergency Panel could take"* (CAS 2015/A/4151, para. 135-146).

161. In the case CAS 2015/A/3874, the Panel denied legal standing for the request to impose higher sanctions on a national football association. That Panel found that the other national football association was not directly affected as the "victim" of the racist and discriminatory chants. The Panel in that case also held: *"the mere fact that an individual is a victim does not as such establish a standing to appeal a sanction imposed on the offender. Such an interpretation would have far-reaching consequences and could lead to the possibility of appeals from a potentially very large group of persons. Under such an interpretation, for instance, any player who is injured by a dangerous tackle or is bitten by another player would be able to appeal if he were unhappy with the sanction imposed on the offender"* (CAS 2015/A/3874, para. 182).

162. The burden of proof to demonstrate a personal, direct and tangible legal interest lies with the party asserting standing, based on Art. 8 SCC, which provides: *"Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact"*. The case law of the CAS reaffirms this principle, underlining at the same time that the notion of "directly affected" when applied to third parties who are not the addressees of a measure must be interpreted in a restrictive manner.

163. Neither the Player nor the Union has proven how the potential sanctions required against the FAS could have, in any way, altered their sphere of rights and interests as, it comes clear, that they only asked for the opening of disciplinary proceedings, as FIFA opened it.

164. CAS jurisprudence on the question of standing further denies the Appellants' requests. For instance, in CAS 2018/A/5746, that Panel found that: *"In the Panel's view, in the case at hand, Trabzonspor's legal situation could not directly be affected if FIFA had decided to open a case on the merits and had decided ultimately to order TFF to sanction Fenerbahçe or if FIFA had decided to sanction directly Fenerbahçe, Indeed, there is no legal provision which would have allowed TFF (in the first case) or FIFA (in the second case) to award the championship title to Trabzonspor. Trabzonspor did not bring any proof of the existence of legal provisions of FIFA or TFF which could serve as a basis for such a decision"*.

165. Bearing in mind the content of Art. 3 of FIFA DC, the Appellants, (indeed the Player), are subject to the FIFA regulations and any investigation in case of a possible infringement; for this reason, the content of the abovementioned rule does not confer to the Appellants the chance to play an active role in such disciplinary proceedings, as much as they can be informed of the receipt of their complaints.

166. Moreover, the Appellants have failed to explain how the Disciplinary Committee sanctioning the FAS would result in a legitimate interest worthy of protection.

167. Although the Panel deems valuable to stress that every Member Association should provide an independent and impartial arbitration system such as the national dispute resolution bodies should comply with the requirements of FIFA, it appears that the Player is not directly affected by the wished disciplinary proceedings against FAS as well as he does not have alleged financial interest in sanctions to be imposed on the football federation. And, in any case, the Player's alleged human rights could be compensated with sanction against FAS (moreover, by simply disciplinary proceedings).

168. Likewise, this reasoning applies to the complaints submitted by SPFN, as the Union association representing Serbian footballers, as it appears that the final aim of the Union is to obtain fair domestic proceedings for their members in front of the NDRC. However, although this is a commendable request, it is unlikely be solved by requesting sanctions against the FAS.

169. Art. 15 of FIFA Statutes (Member Associations) provides: *"Member associations' statutes must comply with the principles of good governance, and shall, in particular, contain, at a minimum, provisions relating to the following matters: (…) c) to be independent and avoid any form of political interference; d) to ensure that judicial bodies are independent (separation of powers) (…)".* Thus, the fairness of arbitral proceedings in the FAS NDRC appears as a domestic issue. Any investigation appears unlikely to result in sanctions from the FIFA Disciplinary Committee so could not directly affect the Union or its members.

170. Again, Art. 70 para. 2 of the FIFA DC provides in fact that *"The judicial bodies of FIFA reserve the right to sanction serious infringements of the statutory objectives of FIFA (cf. final part of art. 2) if associations, confederations and other sports organisations fail to prosecute serious infringements or fail to prosecute in compliance with the fundamental principles of law".* The wording of such provision makes it clear that FIFA has the discretion to open disciplinary proceedings: by "reserving the right" of FIFA, Art. 70 para. 2 of the FIFA DC does not create an obligation on it to open those proceedings and adopt sanctions. Therefore, there is no right of any party to bring a claim against FIFA to enforce an obligation that does not exist.

171. This finding complies with one of the fundamental principles of Swiss private law such as the freedom of the parties in the design of their legal relationship: *"Consequently, the right to freely organise one's association does not only entail the composition of the article, but rather the design of the entire regulatory system. Under Swiss law, the freedom of association thus comprises the creation, application and enforcement of the rules. This broad conception of Vereinsautonomie and its liberal application in Swiss association law is generally considered the main reason why most international sports federations have chosen*

this country as their seat" (see Routledge Handbook of Sports Governance, David Shilbury, Lesley Ferkins).

172. In light of the above, the Players and all other "stakeholders" entrusted FIFA to determine the applicable regulations in competitions (and, of course, the disciplinary rules) and, amongst such duties, to carry out the disciplinary power to sanction the infringements. But the Players and all other involved subjects did not receive any legitimate interest in participating in disciplinary proceedings delegated to the FIFA bodies.

173. This principle was stated also in CAS 2018/A/5746:

"196. Therefore, the Panel holds that Trabzonspor did not have standing to sue in front of the FIFA DC and, consequently, it did not have standing to appeal in front of the FIFA AC. The FIFA AC rejected the appeal, but the grounds given in its letter of 27 April 2018 are incomplete. In fact, it should have held that Trabzonspor did not have standing to appeal in front of the FIFA AC. Given its power to review the case de novo, under Art. R57 §1 of the Code, the Panel considers that the FIFA AC Letter must be upheld, with the grounds that Trabzonspor did not have standing to appeal, as its legal interests were not directly affected. The lack of standing to appeal made it impossible for FIFA's judicial bodies to examine the merits of the case brought by Trabzonspor. This does not amount to a denial of justice, given that the necessity for a party to have standing to sue (or to appeal) is an important principle, which avoids third parties which lack legal interest to act in front of judicial bodies".

197. By way of consequence, if Trabzonspor did not have standing to appeal to the FIFA AC, it does not have standing to appeal to CAS either. Indeed, the standing to act before FIFA and before CAS is the same. The relief which the CAS could award in this matter could not have any direct effect for Trabzonspor. Just like FIFA, this Panel cannot take decisions which are not foreseen in any legal provision. In reaching this conclusion, the Panel wishes to stress that it expresses no view on the approach taken by the TFF, or the manner in which the TFF proceeded to act or not act. The Panel recognises the sense of grievance on the part of the Appellant, but is limited, in its exercise of jurisdiction, to apply the rules as they have been adopted".

174. As deducted from the previously cited CAS case-law, although the potential sanctions applicable to a Member Association may also have effects on its affiliates if said association, hopefully, determines to change its rules and offer a fair and just judicial system to its members, these indirect effects do not entitle the latter to claim an advantage in legal terms.

175. In the Panel's view, in the case at hand, Appellants' legal situation could not directly be affected if FIFA had decided to open a case on the merits and ultimately decided to impose sanctions on the FAS. Indeed, no legal provision would have allowed the Appellants to participate in such disciplinary proceedings. Both the Player and the Union did not prove the existence of FIFA's legal requirements, which could serve as a basis for such a decision.

176. Moreover, by filing a complaint, the Appellants did not acquire any procedural right such as a right to verify or a standing to appeal the relevant decision of FIFA DC and, on the other hand, nor do they have a direct, tangible and legitimate interest in sanctions being imposed on the FAS.

177. Therefore, the Panel holds that Appellants did not have the standing to sue in front of the FIFA DC and, consequently, they do not have the standing to appeal in front of CAS either. Indeed, the standing to act before FIFA and before CAS is the same. The relief which the CAS could award in this matter could not directly affect the Appellants. Just like FIFA, this Panel cannot take decisions that are not foreseen in any legal provision. In reaching this conclusion, the Panel wishes to stress that it expresses no view on the judicial system brought by FAS or how the FAS intervened in its NDRC proceedings. The Panel recognises the sense of grievance on the part of the Appellants (and was somewhat surprised that FIFA decided to open an investigation, only then to close it before having heard from the FAS) but is limited, in its exercise of jurisdiction, to apply the rules as they have been adopted.

IX. CONCLUSION

178. The above makes it unnecessary to examine the parties' other arguments. The lack of standing to appeal also makes it impossible for the Panel to review all the other prayers for relief from the Appellants.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeals filed by Mr Vladimir Simunovic and Sindikat Profesionalnih Fudbalera – Nezavsinost on 7 April 2020 and on 27 July 2020 against FIFA's refusal to answer to their letters of 21 February and 24 March 2020 and refusal to pass the grounds of the Decision of FIFA Disciplinary Committee dated 4 May 2020 are dismissed.

2. (…).

3. (…).

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