Arbitration CAS 2016/A/4836 Raúl Gonzalez Riancho v. FC Rubin Kazan, award of 19 December 2017

Panel: Mr Mark Hovell (United Kingdom), President; Mr Efraim Barak (Israel); Mr Michele Bernasconi (Switzerland)

Football
Contractual dispute
Respondent's lack of standing to be sued in connection with "vertical" disputes-related prayers for relief
Distinction between "horizontal" and "vertical" disputes

1. **Subject to the condition that Swiss law applies to the merits, the sole proper respondent in an appeal filed by a member against a decision rendered by its association is the association insofar said decision constitutes the matter of the appeal. This holds even true if annulling the association's decision was to materially affect the status and legal sphere of a co-member of said association. Considering that an appellant's requests for relief before CAS were that the FIFA's Player's Status Committee was wrong to decline its jurisdiction to deal with a contractual dispute opposing it to a co-member and that the case be referred back to FIFA, FIFA's involvement in the appeal proceedings as respondent was required. The aforesaid co-member has no standing to be sued in this respect.**

2. **Disputes adjudicated by FIFA bodies can be qualified of "horizontal" disputes where they involve two or more direct or indirect members of FIFA (such as clubs, players, or coaches) and did not involve FIFA's particular prerogatives or disciplinary powers and where FIFA has nothing directly at stake. In such context, and provided the relevant other conditions are met, a CAS panel will proceed to examine the appeal and adjudicate the dispute although FIFA was not summoned as respondent. Other decisions involving the application of sporting sanctions, purely disciplinary issues, jurisdiction, eligibility or registration matters fall within the "vertical" criteria. Disputes where both "vertical" and "horizontal" issues are present in the same decision exist, an illustration being a breach of contract case between a player and a club where the FIFA Dispute Resolution Chamber renders a decision awarding compensation to party A, but also imposes sporting sanctions against party B. Here there exists a horizontal dispute between party A and party B relating to the breach of contract and the compensation, but also a vertical dispute between FIFA and party B as relates to the sporting sanctions.**

I. PARTIES

1. Raúl Gonzalez Riancho ("Mr Gonzalez") is a professional football coach from Spain, currently working as an assistant coach with the Ukrainian national team.

2. FC Rubin Kazan ("Rubin Kazan") is a football club with its registered office in Kazan, Russia. Rubin Kazan is currently competing in the Russian Premier League. It is a member of the Russian Football Union ("RFU"), which in turn is affiliated to Fédération Internationale de Football Association ("FIFA").

II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced during these proceedings. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.

4. In February 2009, Mr Gonzalez, Mr Navarro, and Mr Pallarés (collectively, the "Coaches") joined the coaching staff at Rubin Kazan.

5. On 1 January 2013, Mr Gonzalez and Rubin Kazan entered into a new employment contract, valid until 30 June 2015 (the "Contract").

6. On the same date, Mr Gonzalez and Rubin Kazan signed an annex to the Contract (the "Annex"). The Annex set out the salary payment terms, payment schedules, bonuses and other benefits.

7. Article 7.2 of the Contract stipulated the following:

> *"The Trainer and Club agree that if the Trainer would not receive the sporting licence corresponding to the UEFA category which confirms his necessary qualification for the purpose of Club's licensing and participation in the relevant competitions of the football team, the early termination of the present labour contract shall occur according to subparagraph 1 of paragraph 1 of article 77 of the Labour Code of Russia (mutual agreement of both parties) without the payment of any compensation to the Trainer".*

8. Article 8.4 of the Contract in combination with Article 8.2 of the Annex specified that in case of unilateral termination of the contract by Rubin Kazan without one of the reasons stipulated in the Contract and while Mr Gonzalez was in compliance with his obligations, Mr Gonzalez would be entitled to a compensation equivalent to the remuneration stipulated in the Annex until the expiry of the Contract.

9. On 23 January 2014, Rubin Kazan wrote to Mr Gonzalez to inform him that the Contract had been terminated on the basis that Mr Gonzalez did not possess a valid UEFA license, in

accordance of Article 7.2 of the Contract. Rubin Kazan also stated that, pursuant to Article 9.2. of the Contract, *"in case the dispute arises between the parties it should be resolved in the Dispute Resolution Chamber of the Football Union of Russia (FUR) and afterwards in other organs in accordance with the regulations of FUR and FIFA"*.

10. On 24 January 2014, Mr Gonzalez wrote to Rubin Kazan to contest the termination of the Contract. Mr Gonzalez also alleged that he possessed a license issued by the *Real Federación Española de Futbol*, which would allow him to be registered as a UEFA Pro License Coach and further, that Rubin Kazan was aware of this. Additionally, Mr Gonzalez stated that *"the competent Body to resolve any controversy will be FIFA in first instance and CAS in appeal"*.

Proceedings before FIFA

11. On 21 February 2014, Mr Gonzalez lodged a claim against Rubin Kazan before the FIFA Players' Status Committee (the "FIFA PSC"). Mr Gonzalez alleged that Rubin Kazan was in breach of the Contract without just cause. Mr Gonzalez claimed compensation in the amount of EUR 720,000.

12. On 26 January 2016, the FIFA PSC rendered its decision (the "Appealed Decision") as follows:

> *"1. The claim lodged by the Claimant, Raúl Gonzáles Riancho, is inadmissible.*
>
> *2. The final costs of the proceedings in the amount of CHF 12,500 are to be paid by the Claimant, Raúl Gonzáles Riancho, within 30 days as from the date of notification of the present decision. Given that the latter already paid an advance of costs in the amount of CHF 5,000 at the start of the present proceedings, the Claimant, Raúl Gonzáles Riancho, has to pay the amount of CHF 7,500 to the following bank account"*.

13. On 30 September 2016, the Parties were notified of the grounds of the Appealed Decision.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

14. On 21 October 2016, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "CAS Code"), Mr Gonzalez filed a Statement of Appeal against Rubin Kazan challenging the Appealed Decision at the Court of Arbitration for Sport (the "CAS"). The matter was given the reference CAS 2016/A/4836. Mr Gonzalez's Statement of Appeal contained the following requests for relief:

> *"I. to revoke and/or annul the FIFA Decision, dated 26.01.2016.*
>
> *II. to order Player Status Committee to issue a new decision replacing the Decision challenged according to the grounds and request of the Appellant submitted in the FIFA procedure.*
>
> *III. to pay the Respondent the cost of arbitration according to R64 of the present procedure and legal fees of the Appellant and additionally the FIFA costs and legal fees of 25.000 CHF.*

IV. The Division President to concede and notify in written a new time limit to submit the Appeal Brief to the Appellant".

15. In his Statement of Appeal, Mr Gonzalez also requested the following of the President of the CAS Appeals Arbitration Division:

> *"4.- according to R52 to consolidate* [sic] *the Appellant request the President to merge the procedures of Alex Pallarés and Sergio Navarro in a sole procedure as all of them are against the same Respondent and the same request for relief with the same facts and legal arguments".*

16. On 27 October 2016, the CAS Court Office wrote to the Parties informing them that the consolidation of this procedure would not be possible pursuant to Article R52 of the CAS Code, as three different appealed decisions are at stake. The CAS Court Office indicated that it would be possible to submit all three disputes to the same Panel.

17. On 8 November 2016, Rubin Kazan wrote to the CAS Court Office agreeing to submit the three different disputes of the Coaches to the same Panel, on the condition that the Panel be composed of a three-member Panel.

18. On 10 November 2016, the CAS Court Office wrote to the Parties informing them that, pursuant to Article R29 of the CAS Code, the present proceedings would be conducted in English.

19. On 16 November 2016, FIFA wrote to the CAS Court Office to renounce its right to request possible intervention in the present arbitration proceedings.

20. On 21 November 2016, the CAS Court Office wrote to the Parties informing them that, pursuant to Article R50 of the CAS Code, the President of the CAS Appeals Arbitration Division had decided to submit the present procedures of the Coaches to a Panel composed of three arbitrators. The Parties were then asked to nominate an arbitrator from the CAS list.

21. On 25 November 2016, pursuant to Article R51 of the CAS Code, Mr Gonzalez submitted his Appeal Brief to the CAS Court Office, (which was also for the matters of CAS 2016/A/4837 and CAS 2016/A/4838). The Appeal Brief contained the following requests for relief:

> *"1. To set aside and annul the decisions passed on 26 January 2016 by the FIFA Players Status Committee.*
>
> *2. To return the matters to FIFA and to order that FIFA PSC shall pass the decisions on the merits.*
>
> *3. To establish that Appellants does not have to pay any costs for the proceedings at FIFA.*
>
> *4. To order FC Rubin to bear all the costs incurred with the present procedure.*

5. To order FC Rubin to pay the Appelants [sic] *a contribution towards its legal and other costs, in an amount to be determined at the discretion of the Panel".*

22. On 10 January 2017, pursuant to Article R54 of the CAS Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to this case (and those of the other Coaches) was constituted as follows:

President: Mr Mark Hovell, Solicitor, Manchester, United Kingdom

Arbitrators: Mr Efraim Barak, Attorney-at-law, Tel Aviv, Israel

Mr Michele Bernasconi, Attorney-at-law, Zurich, Switzerland

23. On 24 February 2017, pursuant to Article R55 of the CAS Code, Rubin Kazan submitted its Answer to the CAS Court Office. The Answer contained the following requests for relief:

"I. The appeal filed by Mr Raul Gonzalez Riancho, in this arbitration procedure is inadmissible.

II. In any case, the appeal filed by Mr Raul Gonzalez Riancho, in this arbitration procedure is dismissed.

III. The decision issued by the Player Status Committee of FIFA on 26 January 2016 is confirmed.

IV. Mr Raul Gonzalez Riancho is ordered to sustain all the costs of this arbitration procedure.

V. Mr Raul Gonzalez Riancho is ordered to reimburse Municipal Autonomous Institution Football Club 'Rubin' all the legal fees and other costs suffered in connection with this arbitration procedure, in an amount to be determined at the Panel's discretion".

24. On 11 May 2017, Rubin Kazan returned the duly signed the Order of Procedure to the CAS Court Office.

25. On 14 May 2017, Mr Gonzalez returned the duly signed the Order of Procedure to the CAS Court Office

IV. HEARING

26. A hearing was held on 15 May 2017 in Lausanne, Switzerland. The Parties did not raise any objection as to the composition of the Panel. The members of the Panel were all present and were assisted by Mr Jose Luis Andrade, CAS Counsel. The following persons also attended the hearing:

i. For Mr Gonzalez: Mr Iñigo Landa Aguirre, Mr Mikhail Prokopets and Mrs Darina Nikitina, all Counsel;

ii. For Rubin Kazan: Mr Luca Tettamanti and Mr Federico Venturi Ferriolo, both Counsel.

27. Mr A appeared as a witness for Rubin Kazan *via* the telephone. He was invited by the President of the Panel to tell the truth subject to the sanctions of perjury. The Parties and the Panel had the opportunity to examine and cross-examine the witness. The Parties then were given the opportunity to present their cases, to make their submissions and arguments and to answer questions posed by the Panel. The hearing was then closed and the Panel reserved its detailed decision to this written Award.

28. Upon closing the hearing, the Parties expressly stated that they had no objections in relation to their respective rights to be heard and that they had been treated equally in these arbitration proceedings. The Panel has carefully taken into account in its subsequent deliberation all the evidence and the arguments presented by the Parties, both in their written submissions and at the hearing, even if they have not been summarised in the present award.

V. SUBMISSIONS OF THE PARTIES

29. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Panel however, has carefully considered all the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

A. Mr Gonzalez's submissions

i. The Contract provides an option to proceed at FIFA

30. Mr Gonzalez submitted that Article 9.2 of the Contract states as follows:

> *"In case of dispute between the parties, the Dispute Resolution Chamber of the Russian Football Union will be the competent body, and can subsequently be heard by other bodies in accordance with the Russian Football Union and FIFA".*

31. Mr Gonzalez submitted that this arbitration clause does not oblige the parties to resolve disputes arising from the Contract exclusively in the Dispute Resolution Chamber of the Russian Football Union ("NDRC"), nor does it eliminate the possibility to arbitrate disputes before FIFA. By specifically referring to the RFU and FIFA, Rubin Kazan, as the drafter of the Contract, left open the possibility to proceed in dispute resolution organised either by the RFU or FIFA. It is clear that RFU decisions cannot be appealed to FIFA, so Article 9.2 leaves the parties the possibility to choose a national federation, *i.e.* RFU, or an international federation, *i.e.* FIFA, to resolve their disputes.

32. Mr Gonzalez submitted that the word "FIFA" in Article 9.2 of the Contract must be interpreted by the Panel according to the legal principle of *"ut res magis valeat quam pereat"*. Citing CAS 2006/A/1152, Mr Gonzalez submitted that *"interpretation must give meaning and effect to all the terms of a provision".*

33. Further, according to Swiss law, incomplete, unclear, or contradictory clauses in arbitration agreements do not necessarily void the arbitration agreements, as long as they do not concern any items that are mandatory in an arbitration agreement. Rather, the clause must be interpreted and supplemented *"in accordance with the general rules of contract law, to reach a solution complying with the fundamental will of the parties to submit to arbitral jurisdiction"*.

34. Initially, by looking at the language of Article 9.2, the wording that the dispute *"can subsequently be heard by other bodies in accordance with the Russian Football Union and FIFA"* leaves a possibility for Mr Gonzalez to submit this dispute to FIFA. Articles 22(c), 23(1) and 23(3) of FIFA's Regulations on the Status and Transfer of Players (the "FIFA RSTP") hold that FIFA is competent to deal with an employment-related dispute of an international dimension between a club and a coach. This point is confirmed in the Appealed Decision.

35. Mr Gonzalez submitted that the next step in interpreting Article 9.2 should be to *"enquire as to the real and common will of the parties. Clues to that are not only the contents of the declarations of intent but also the general context, namely all circumstances that make it possible to determine the intent of the parties, whether by statements before the contract was concluded, drafts of the contract, correspondence exchanged, or the attitude of the parties after the contract's conclusion"*.

36. In this respect, Mr Gonzalez noted the fact that he and Rubin Kazan previously entered into separate employment contracts in 2009, 2010, and 2011. Under those contracts, Mr Gonzalez submitted that the jurisdiction over disputes was stipulated as follows:

> *"10.3 In case of disagreement between the Parties it is resolved within the Club.*
>
> *If not resolved within the Club a* ***disagreement between the parties should be resolved in accordance with the regulations of FIFA****, UEFA, RFU and RFPL. If the dispute is not resolved with these regulations or the Employer does not agree with the decision, he has the right to go to court"* [emphasis added by Mr Gonzalez].

37. Mr Gonzalez submitted that, in 2013, Rubin Kazan changed the wording of the club's standard contracts, however the wording on the possibility of resolving disputes at FIFA was still included. Both jurisdictional clauses, *i.e.* Article 10.3 contained in the 2009, 2010, and 2011 contracts and Article 9.2 of the Contract, provided for disputes to be submitted at two possible forums. Therefore, the parties have never concluded any contract that provided for an exclusive arbitration clause in favour of an independent arbitral tribunal.

38. As a result and in light of the absence of the use of the expression "exclusivity" in Article 9.2 of the Contract, Mr Gonzalez submitted that the intention of the Parties was not to agree to a sole jurisdiction, but to provide an option.

39. Additionally, in e-mails sent between Mr Gonzalez to Rubin Kazan in January 2014, Mr Gonzalez notified Rubin Kazan of his intention to submit the dispute to FIFA if Rubin Kazan did not remedy what Mr Gonzalez alleged to be breaches of the Contract. Mr Gonzalez argues that in the response of Rubin Kazan, the club made clear that it preferred to resolve the situation

amicably and asked Mr Gonzalez not to submit a claim. Mr Gonzalez submitted that this demonstrates that Mr Gonzalez never intended to proceed in the NDRC, and further, that Rubin Kazan never challenged FIFA's jurisdiction over these disputes until Mr Gonzalez submitted his relevant claims to FIFA.

40. Mr Gonzalez submitted that these circumstances leave no doubt that the real intent of the parties, from the very first contract signed between himself and Rubin Kazan in 2009, *"was to leave the dispute resolution within the system established by the FIFA regulations"*. By replacing the option of pursuing a claim in state court with the NDRC in the Contract, Rubin Kazan attempted to eliminate the possibility of its players and coaches to resolve disputes outside of football's internal dispute resolution systems.

41. Mr Gonzalez submitted that the next step in interpreting Article 9.2 *"is the objective test, i.e. how a third party, reading in good faith, would understand the said clause"*. Mr Gonzalez cited Swiss jurisprudence in support of this argument.

42. Mr Gonzalez submitted that a third party, reading Article 9.2 in good faith, would assume that FIFA was among the competent bodies for which the parties could refer these disputes. FIFA is not an appeal body, and therefore if one interprets the word *"subsequently"* to mean an appeal, this would make the reference to FIFA redundant or without legal effect. This is against the principle of effectiveness, which is a fundamental tenant of legal interpretation. Mr Gonzalez submitted that *"the only logical interpretation for the term 'subsequently', when one of the parties chooses NDRC and leaving FIFA for the other, is a meaning 'besides'"*.

43. Mr Gonzalez cited confidential CAS jurisprudence in support of his argument that when a contractual clause provides for alternative fora, the choice of forum rests with the party initiating litigation against the other.

44. Additionally, Mr Gonzalez submitted that the legal principles of *"in dubio contra stipulatorem"* and *"in dubio pro operario"* shall apply. As it was Rubin Kazan that drafted the Contract, these *"principles require the CAS to consider an interpretation favorable to Mr Gonzalez, which would not eliminate the possibility to arbitrate their dispute before FIFA"*.

ii. The parties did not agree to an independent arbitral tribunal under the Contract

45. Mr Gonzalez and Rubin Kazan did not agree to an independent arbitral tribunal under the Contract. Simply mentioning the NDRC in Article 9.2 does not automatically render the NDRC competent to resolve disputes of an international dimension instead of FIFA. Mr Gonzalez cited CAS 2008/A/1517 & 1518 in support of this argument. Mr Gonzalez submitted that according to such CAS jurisprudence, the general rule is that all employment-related disputes between a club and player that contain an international dimension must be submitted to the FIFA DRC (and in the case of a coach the FIFA PSC). It is only when the following three conditions are met that such a dispute can be settled by a domestic arbitral organ other than the FIFA DRC or PSC:

"(i) there is an independent and impartial arbitration tribunal established on national level;

(ii) the jurisdiction of this independent and impartial arbitration tribunal derives from a clear reference in the relevant employment contract; and

(iii) this arbitration tribunal guarantees fair proceedings and respects the principle of equal representation of players and clubs with an independent chairman".

46. Mr Gonzalez cited CAS 2007/A/1370 & 1376 in support of his argument that for a national arbitral tribunal to be recognised as *"independent and impartial"* under the terms of the FIFA Statutes and the FIFA RSTP, it must pass the "stand-alone test", *i.e.* if the national association ceased to exist, would the deciding body in question continue to exist and perform any function? According to Mr Gonzalez, the Panel in CAS 2007/A/1370 & 1376 held that *"the 'stand-alone test' is the decisive test to reveal whether a given sports justice body pertains in some way to the structure of a given sports organization or not".*

47. Mr Gonzalez submitted that the NDRC is subordinate to the RFU and has been instituted by, and thus owes its legal birth and existence to, the RFU bylaws. The NDRC is an integral part of the organisational structure of the RFU with no legal personality of its own. Additionally, the NDRC is administratively and financially dependent on the RFU. As a result, the NDRC could not legally stand-alone if the RFU did not exist, and therefore fails the "stand-alone test".

48. Accordingly, at least for international purposes, the decisions rendered by the NDRC must be considered to be decisions of the RFU, to which Rubin Kazan is affiliated. Therefore, the NDRC fails to meet the minimum procedural standards to be imposed on an independent and impartial arbitration tribunal at the national level, particularly as relates to guaranteeing fair proceedings, as required by Articles 22(b) and 22(c) of the FIFA RSTP and in conjunction with FIFA Circular 1010 and the FIFA DRC and PSC Standard Regulations.

49. FIFA Circular 1010 sets out among the minimal procedural standards for an arbitration panel to be considered independent and duly constituted, the right of the parties to have equal influence over the appointment of arbitrators.

50. Mr Gonzalez further submitted that following their elections, the Chairman and Deputy Chairman of the NDRC become standing members of the NDRC panels.

51. Mr Gonzalez made reference to CAS 2015/A/4172, as relates to the impartiality and independence of the Chairman and Deputy Chairman of the NDRC. In particular, Mr Gonzalez cited as follows, at para. 109 of the award:

> *"Like Mr Lyakhov* [acting Chairman of the NDRC]*, Mr Pivovarov* [acting Deputy Chairman of the NDRC] *does not fulfil the requirements under Article 7.4 of the DRR* [RFU Dispute Resolution Regulations] *on independence and impartiality. Mr Pivovarov is an executive of an important club. But unlike Mr Lyakhov, Mr Pivovarov became a member of the DRC only on 5 July 2015 so that the above*

considerations regarding the timing of Mr Lyakhov's challenge do not equally apply. As Mr Pivovarov became a member of the DRC only on 5 July 2015 his election could not be challenged before".

52. The Chairman and Deputy Chairman of the NDRC, who also occupied leading positions at the Russian Football National League and Zenit Saint Petersburg were representing the interests of Russian clubs and therefore failed to comply with the requirements on independence and impartiality. As the Chairman and Deputy Chairman led each NDRC panel and had a casting vote, there would never be parity between players/coaches and club representatives in NDRC proceedings.

53. Mr Gonzalez submitted that the panel in CAS 2015/A/4172 reached the same conclusion, citing the award, at para. 107:

"Against this background the Panel concludes that the requirements under the DRR on impartiality and independence of the DRC members and panels can presently never be fulfilled as the current Chairman and current Deputy Chairman fail to fulfil the requirements of Article 7.4 of the DRR".

54. Since the parties did not agree on an independent arbitral tribunal for dispute resolution other than FIFA, the FIFA PSC erred in denying its competence to hear the present dispute between Mr Gonzalez and Rubin Kazan. As a result, Mr Gonzalez submitted that the Appealed Decision should be set aside and the cases be referred back to FIFA in order for the FIFA PSC to render a decision on the merits.

iii. The standing of Rubin Kazan & FIFA

55. At the hearing Mr Gonzalez submitted that Rubin Kazan had standing to be sued. The matter at hand was a contractual dispute and it directly concerned the club.

56. FIFA had not been called as a respondent in the matter at hand, as this is a contractual matter between members of FIFA. It was not a "vertical" matter, rather a "horizontal" dispute between the Parties. FIFA itself was the first instance body, it is a neutral decision making body.

57. Mr Gonzalez cited CAS 2014/A/3489 & 3490 in which that CAS panel dismissed Panathinaikos' claim that not summoning FIFA as a party to that case was *"a fatal mistake"*. Noting that FIFA, by virtue of its own rules has to comply with decisions of the CAS, even if it was not summoned as a respondent in the CAS arbitration.

58. Further, in the matter at hand, FIFA had been invited to participate, but declined to do so on 16 November 2016 in its letter to the CAS Court Office.

59. Finally, Mr Gonzalez pointed out that it was no longer possible for him to take this dispute to the NDRC. The 2 year limitation period had expired. Indeed, it expired during the period that FIFA was deciding whether it had jurisdiction or not.

B. Rubin Kazan's submissions

i. Only FIFA, not Rubin Kazan, has standing to be sued in the present proceeding

60. Rubin Kazan submitted that it is well established under CAS jurisprudence that a party has standing to be sued, and may thus be summoned before the CAS, only when that party has a stake in the dispute, *i.e.* when something is sought against the party. Rubin Kazan cited CAS 2006/A/1189, CAS 2006/A/1192, and CAS 2006/A/1206 in support of its position.

61. Citing CAS 2006/A/1189, CAS 2007/A/1329-1330, and CAS 2008/A/1517, Rubin Kazan submitted that *"standing to be sued is an issue pertaining to the merits of this dispute or to the admissibility of an appeal"*.

62. Article 75 of the Swiss Civil Code ("SCC") states as follows:

> *"Any member who has not consented to a resolution which infringes the law or the articles of association is entitled by law to challenge such resolution in court within one month of learning thereof"* [free English translation].

63. Rubin Kazan submitted that the purpose of Article 75 SCC *"is to protect the individual in its membership related sphere from any unlawful infringements by the association"* [emphasis added by Rubin Kazan]. Therefore, Article 75 SCC encompasses any final and binding decision of any organ of an association, including, as in the present proceedings, FIFA.

64. Referring to CAS 2008/A/1639, Rubin Kazan submitted that Article 75 SCC provides that *"the members of an association have standing to appeal against a resolution of an association whereas only the association itself has standing to be sued"* [emphasis added by Rubin Kazan]. As applied to the present proceedings, Rubin Kazan submitted that the only party having standing to be sued in matters covered by Article 75 SCC is the association, *i.e.* FIFA, and therefore Mr Gonzalez is not permitted to direct an appeal primarily against a member of the association, *i.e.* Rubin Kazan.

65. Pursuant to Article 57 and Article 58 of the FIFA Statutes, the CAS is exclusively competent to deal with appeals against FIFA decisions, and therefore assumes the same role of the otherwise competent Swiss ordinary courts. Therefore, the question on standing to be sued, absent any FIFA regulations on this point, should be answered while applying the principles contained in Article 75 SCC. Rubin Kazan cited CAS 2008/A/1639 and CAS 2014/A/3489 & 3490 in support of its position.

66. Rubin Kazan distinguished between "horizontal disputes" and "vertical disputes" while submitting that it *"is aware that some scholars limit the scope of application of article 75 SCC by restricting the protected membership related sphere"*. CAS jurisprudence has created this distinction between horizontal and vertical disputes when dealing with cases involving the failure to summon FIFA as a respondent and possibly encompassing the framework of Article 75 SCC.

67. In the context of the present proceedings, horizontal disputes are those disputes between two or more direct or indirect members of FIFA in which a FIFA body issued a decision which

concerns their contractual relationship, and in which FIFA itself has nothing directly at stake. Rubin Kazan cited CAS 2014/A/3489 & 3490 in support of its position.

68. In the context of the present proceedings, vertical disputes are those disputes related to the membership sphere of FIFA, where FIFA applied its own regulations.

69. In a vertical dispute, being *"a pure regulatory matter",* Rubin Kazan submitted that where there is an appeal against a decision dealing with a membership related dispute, FIFA must always be summoned. If FIFA is not summoned, the appeal is inadmissible and/or shall be dismissed.

70. Rubin Kazan submitted that in the present proceedings, the Appealed Decision does not concern a contractual dispute between the parties, nor has Mr Gonzalez requested that the CAS decide on the merits of this dispute. Rather, Mr Gonzalez's Appeal is only directed against the outcome of the Appealed Decision, whereby the FIFA PSC declined its jurisdiction over the dispute between Mr Gonzalez and Rubin Kazan.

71. Rubin Kazan submitted that Mr Gonzalez requesting to the CAS to send the case back to FIFA is akin to requesting that the CAS ascertain that FIFA had jurisdiction in the first instance procedure, and that, ultimately, FIFA misapplied its own regulations when deciding otherwise in the Appealed Decision. Rubin Kazan further submitted that FIFA has the duty to administer and provide for the settlement of international disputes arising from its members, subject to the limitations set out in Article 59.3 of the FIFA Statutes, Article 22 of the FIFA RSTP and FIFA Circular 1010.

72. Rubin Kazan submitted that *"the capacity of FIFA to deal with its own competence and/or jurisdiction stems out from its own Statutes and regulations and falls within the type of membership related decisions (resolutions) that a member, the Appellant in casu, can appeal against FIFA as its association pursuant to article 75 SCC"* [emphasis added by Rubin Kazan].

73. Rubin Kazan submitted that Mr Gonzalez himself emphasised that the contractual dispute between the Parties is not the issue of the present proceedings and that his Appeal is only directed against the decision of the FIFA PSC declining jurisdiction over the dispute filed by Mr Gonzalez with FIFA. As a result, the present proceedings involve a vertical dispute, which concerns a membership related decision, and Mr Gonzalez's Appeal should have therefore been directed solely against FIFA, rather than Rubin Kazan.

74. For the reasons listed above, Rubin Kazan submitted that it has no standing to be sued in the present proceedings.

ii. The Contract does not provide an option to proceed at FIFA

75. Rubin Kazan submitted that the essence of Mr Gonzalez's argument is that the jurisdiction clause contained in Article 9.2 of the Contract does not contain an *exclusive* reference to the NDRC, but rather, provides an *alternative* jurisdiction of the NDRC and FIFA to adjudicate

potential disputes. Rubin Kazan rejected this argument, initially on the basis that Mr Gonzalez's argument was based on an incorrect and misleading translation of Article 9.2 of the Contract.

76. In its original Spanish version, Article 9.2 of the Contract states as follows:

> *"En caso de controversia entre las partes, será resuelta por consideración del club. Si no se resuelve la disputa entre las partes, será resuelta (sobre la base de las normas reglamentarias pertinentes establecidas por la FIFA, UEFA, RFS) por La Cámara de resolución de disputas de RFS, y posteriormente por otros organismos, de acuerdo con las actas reglamentarias de RFS y la FIFA".*

77. Rubin Kazan submitted that its free English translation from the original Russian version states as follows:

> *"In case of disagreement between the parties, it is resolved within the club. In case the parties fail to resolve the dispute, the dispute shall be solved (taking into account the FIFA, UEFA and FUR Regulations), by the Dispute Resolution Chamber of the FUR and subsequently by other judicial bodies, according to regulations of the FUR and FIFA".*

78. Rubin Kazan noted Mr Gonzalez's free English translation of Article 9.2 of the Contract, which is as follows:

> *"In case of dispute between the parties, the Dispute Resolution Chamber of the Russian Football Union will be the competent body, and can subsequently be heard by other bodies in accordance with the Russian Football Union and FIFA".*

79. Rubin Kazan submitted that the wording of Article 9.2 of the Contract proposed by Mr Gonzalez's is *"grossly incomplete and inconsistent"*. As a result of the incorrect translation, Rubin Kazan submitted that Mr Gonzalez argued that *"the reference to FIFA would be linked to the possibility of 'subsequently' hear disputes after the FUR NDRC by either 'other bodies in accordance with the Russian Football Union' and (or) 'FIFA'. As FIFA cannot act as an appeal body [Article 9.2 of the Contracts' would be a so called 'pathological clause' and therefore the reference to 'FIFA' had to be interpreted as FIFA could even act as first instance body as alternative jurisdiction to the FUR NDRC"*. Rubin Kazan submitted that this is incorrect and an *"artificial legal construction"* put forth by Mr Gonzalez based on an inaccurate translation of Article 9.2 of the Contract.

80. Rubin Kazan submitted that Article 9.2 of the Contract is clear and does not require interpretation. However, should interpretation be necessary, under the approach to interpretation favoured by Mr Gonzalez under Article 18 of the Swiss Code of Obligations ("SCO"), the result would not change.

81. Rubin Kazan submitted that in correspondence with the CAS Court Office on 31 January 2017, Mr Gonzalez provided correct English translations of the Contract. Rubin Kazan submitted that the English translation of Article 9.2 submitted by Mr Gonzalez stated as follows:

"In case of disagreement between the parties it is resolved within the Club. In case the parties fail to resolve the dispute, the dispute shall be solved (taking into account the FIFA, UEFA, and RFU Regulations), by the Dispute Resolution Chamber of the RFU and subsequently by other judicial bodies, according to the regulation [sic] *of the RFU and FIFA".*

82. Rubin Kazan submitted that it is therefore evident that Mr Gonzalez himself, upon the Panel's request, eventually produced a correct English translation of Article 9.2 of the Contract which contradicts Mr Gonzalez's own argument based on his previous incorrect translation. The correct translation provided by Mr Gonzalez supports Rubin Kazan's position. Further, Mr Gonzalez's argument based on his previous incorrect translation fails by virtue of simply reading the correct translation.

83. Rubin Kazan presented an argument based on the language of Article 9.2 of the Contract in the original Spanish in support of its contention that the true intention of the parties was to establish the NDRC as the first instance body to resolve any disputes arising out of the Contract, *"with the possibility to have an appeal before the competent bodies established by the regulations of FUR and FIFA"*. Rubin Kazan submitted that *"in practice, this was an indirect way to set CAS as the ultimate appeal body because at that time article 53 of the FUR Regulations for Dispute Resolution (…) provided the competence in second instance of FUR PSC against decisions of the FUR NDRC with a possible last third instance before CAS"*.

84. Rubin Kazan submitted that Mr Gonzalez was well aware of the Russian system of dispute resolution, having been employed by Rubin Kazan for almost four years and having signed three previous employment contracts with the club. Additionally, Mr Gonzalez accepted Article 9.2 of the Contract in his native Spanish language. Further, Article 9.2 of the Contract was a modified version of the jurisdiction clause contained in the three previous employment contracts he signed with Rubin Kazan. As a result, Mr Gonzalez cannot now contend that the Contract was drafted by Rubin Kazan and not shared, reviewed and agreed between the Parties before Mr Gonzalez signed it.

85. For the reasons listed above, Rubin Kazan submitted that the Contract does not provide an option to proceed at FIFA.

iii. The Contract refers to the NDRC, which fully complies with FIFA regulations

86. Rubin Kazan submitted that the NDRC fully complies with the necessary conditions, set out in Article 22 of the FIFA RSTP and FIFA Circular 1010, for a national arbitration tribunal to hear employment-related disputes of an international dimension and to be considered "independent" and "duly constituted".

87. Rubin Kazan submitted that FIFA Circular 1010 sets out the minimum procedural standards that a national arbitration tribunal needs to fulfil in order to meet the criteria of "independent" and "duly constituted" as follows:

"(i) Principle of parity when constituting the arbitration tribunal; (ii) Right to an dependent [sic] *and impartial tribunal; (iii) Principle of a fair hearing; (iv) Right to contentious proceedings; (v) Principle of equal treatment"*.

88. Rubin Kazan submitted that the Appealed Decision took each and every element of FIFA Circular 1010 into account when arriving at the conclusion that the NDRC meets the minimum procedural standards for independent arbitration tribunals guaranteeing fair proceedings as set out in Article 22(c) of the FIFA RSTP, and further that the Single Judge of the FIFA PSC was not competent, under Article 22(c) to consider the substance of the matter.

89. Rubin Kazan submitted that Mr Gonzalez's position that the NDRC is not competent to adjudicate the present proceedings is based on two ill-grounded reasons, which are set out as follows:

1. The NDRC fails the stand-alone test, as defined in CAS 2007/A/1370 & 1376, and is therefore a body that does not meet the minimum procedural standards for independent and impartial arbitration tribunals as required by Article 22 of the FIFA RSTP.

2. The NDRC does not respect the principle of parity, equal representation and fair proceedings as allegedly demonstrated in CAS 2015/A/4172.

1. The stand-alone test

90. Rubin Kazan submitted that Mr Gonzalez's reference to CAS 2007/A/1370 & 1376 and the "stand-alone" test is immaterial to the present proceedings. Rubin Kazan quoted CAS 2007/A/1370 & 1376 in relevant part as follows:

"[t]he STJ is a justice body which, although independent in its adjudicating activity, must be considered part of the organizational structure of the CBF. (…) The 'stand-alone test' is the decisive test to reveal whether a given sports justice body pertains in some way to the structure of a given sports organization or not. If it appears that, would the sports organization not exist, the sports justice body would not exist and would not perform any function, then then sports justice body has no autonomous legal personality and may not be considered as a Respondent on its own in a CAS appeal arbitration concerning one of its rulings. Consequently, the procedural position of the sports justice body before the CAS must be encompassed within that of the sports organization" [emphasis added by Rubin Kazan].

91. Rubin Kazan submitted that CAS 2007/A/1370 & 1376 was the first case in which the CAS had a *"flexible approach"* to the application of Article R47 of the CAS Code as relates to deciding whether it had jurisdiction against a decision issued by a national tribunal that, within that tribunal's rules, did not have a clause referring to a possible appeal to the CAS. As the national tribunal in CAS 2007/A/1370 & 1376 appeared to be an internal body of the Brazilian Football Association ("CBF"), that national tribunal failed the "stand-alone" test. As the CBF Statutes did contain a jurisdiction clause which provided the possibility to appeal to the CAS, the CAS confirmed its jurisdiction in the matter. Rubin Kazan further submitted that it is evident that the "stand-alone" test has nothing to do with the necessary analysis FIFA undertakes to decide

whether a national dispute resolution forum, such as the NDRC, complies with the relevant criteria in its adjudicating activity.

92. Rubin Kazan submitted that FIFA itself, under Article 59.3 of the FIFA Statutes, encourages national associations to recognise, under their own national rules, an independent and duly constituted tribunal. Rubin Kazan submitted that this is exactly what the RFU did in its own Statutes as relates to the NDRC.

93. Rubin Kazan submitted that Mr Gonzalez wrongly claimed that a national tribunal lacks impartiality and independence when it is linked to the national association or even an internal body of the same association. Rubin Kazan submitted that this argument is groundless because Article 22(b) of the FIFA RSTP *"states that the national tribunal replacing FIFA must be established 'within the framework' of the association"*.

94. Rubin Kazan submitted that *"the concepts of independency and impartiality must be examined according to the common standards in international arbitration, which refers to the particular position that arbitrators may face vis-à-vis the parties of a dispute and not the position of the deciding body within an association"*. Rubin Kazan cited a number of FIFA DRC decisions in support of its contention that FIFA accepts the existence of national dispute resolution chambers created within the framework of national associations.

95. Rubin Kazan submitted that the question to assess is not the relationship between the NDRC and the RFU, but rather on the independent exercise of the NDRC's adjudicatory power by the arbitrators appointed by the parties.

2. The principle of parity

96. Rubin Kazan submitted that Mr Gonzalez's argument that the NDRC does not respect the principle of parity set out in FIFA Circular 1010 is unfounded. Rubin Kazan noted that Mr Gonzalez made reference to CAS 2015/A/4172, and submitted that CAS 2015/A/4172 is irrelevant as relates to the present proceedings.

97. Rubin Kazan submitted that Mr Gonzalez filed his claim before FIFA on 6 February 2014, whereas the award in CAS 2015/A/4172 referred to the nominations of Mr Lyakhov as Chairman of the NDRC and Mr Pivovarov as Deputy Chairman of the NDRC on 2 July 2015, over a year after Mr Gonzalez opened his case. As neither Mr Lyakhov nor Mr Pivovarov were appointed in their positions when Mr Gonzalez should have filed his claim before the NDRC, the award in CAS 2015/A/4712 was irrelevant.

98. Rubin Kazan submitted that, at the time Mr Gonzalez filed his claim before FIFA, the Chairman of the NDRC was a former lawyer at a bank who did not have any interest within football. Therefore, he was completely independent and impartial. Mr Lyakhov was the Deputy Chairman of the NDRC at that time, and in support of its argument that Mr Lyakhov was also independent and impartial, Rubin Kazan submitted that Mr Lyakhov's appointment was never challenged by the players' union in Russia.

99. Rubin Kazan submitted that the RFU specifically amended the previous 2012 version of the RFU Regulations for Dispute Resolution ("RFU RDR") by a decision of the RFU Executive Committee on 2 December 2013, *"following a long preparation and constant social dialogue between FUR, UEFA, ECA, EPFL and FIFPro"*. Rubin Kazan quoted the general secretary of FIFPro and cited a number of provisions contained in the RFU RDR in support of its argument that the FIFA PSC correctly admitted the jurisdiction of the NDRC and further, that the NDRC in full compliance with the set of criteria deemed essential by FIFA. At the hearing Mr A gave evidence to support these submissions.

100. Rubin Kazan rejected Mr Gonzalez's argument that the principle of parity is unbalanced as relates to coaches, given that there is no possibility of coaches' representatives to be elected to the NDRC, and rather, coaches must rely on the players' elected representatives to protect their interests. Rubin Kazan submitted that the FIFA PSC does not have any members elected by a coaches' union either, but this does not mean that the FIFA PSC does not respect the principle of parity.

101. At the hearing, Rubin Kazan pointed to its evidence that 16 foreign coaches had used the NDRC and 84% of the decisions rendered were in favour of the coaches.

102. For the reasons listed above, Rubin Kazan submitted that the NDRC is in full compliance with FIFA's criteria as relates to the establishment of an independent and impartial national arbitral tribunal.

VI. JURISDICTION OF THE CAS

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

> *"An appeal against a decision of a federation, association or sports related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the Statutes or regulations of that body"*.

104. The jurisdiction of the CAS, which is not disputed, derives from Article 67.1 of the FIFA Statutes (2015 edition) as it determines that:

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

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

106. It follows that the CAS has jurisdiction to decide on the present dispute.

VII. ADMISSIBILITY

107. The Appeal was filed within the 21 days set by Article 67.1 of the FIFA Statutes (2015 edition). The Appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.

108. It follows that the Appeal is admissible.

VIII. APPLICABLE LAW

109. Article R58 of the CAS Code states:

> *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

110. Article 57(2) of the FIFA Statutes (2016) states:

> *"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".*

111. The Parties were in agreement that the various statutes and regulations of FIFA should apply, with Swiss law on a subsidiary basis.

112. The Panel agrees that the various statutes and regulations of FIFA (notably the FIFA RSTP) should apply, with Swiss law on a subsidiary basis.

IX. LEGAL DISCUSSION

A. Merits

113. While the issues surrounding whether Article 9.2 of the Contract provides the Parties with a choice of taking their disputes to the NDRC in Russia or to FIFA; and whether the NDRC is compliant with the requirements of FIFA have been raised by the Parties, the Panel notes that the first matter it must consider is whether Rubin Kazan has standing to be sued in the matter at hand.

1. The relief sought by Mr Gonzalez

114. In both his Statement of Appeal and his Appeal Brief, Mr Gonzalez asks the Panel to annul the Appealed Decision (that it lacked jurisdiction to hear his underlying claim for damages for the

alleged breach of the Contract by Rubin Kazan) and to send the matter back to the FIFA PSC to hear the matter.

115. Mr Gonzalez submits that this is a "horizontal" dispute between himself and Rubin Kazan, whereas Rubin Kazan says the matter at hand concerns only FIFA and its decision to decline jurisdiction to hear the contractual dispute. In Rubin Kazan's opinion, that makes this matter at hand for the Panel a "vertical" one.

2. Standing to be sued

116. As established above, Article 67.1 of the FIFA Statutes dictates that any appeals against decisions of a body such as the FIFA PSC should be lodged with the CAS. It does not specify which party the appeal should be brought against *i.e.* which party has standing to be sued. This lacuna can be filled using Swiss law and in particular article 75 of the SCC:

> *"Any member who has not consented to a resolution which infringes the law or the articles of association is entitled by law to challenge such resolution in court within one month of learning thereof".*

117. The Panel notes the views of Prof. Haas, in his article and presentation on the "Standing to Appeal and Standing to be Sued" given at the joint conference of the Swiss Bar Association and CAS, held in Lausanne on 2 and 3 September 2016, which reviews the Swiss law aspects (with emphasis added by the Panel):

> *"[9] This provision [Article 75 SCC] aims at restricting the autonomy of associations by awarding individual members an instrument of legal protection against violations of the law and the association's rules and regulations[1]. The scope of application of this provision is – if read literally – rather restricted, since it only deals with appeals against resolutions of one specific organ of the association, the general assembly. However, the majority view holds that the individual member must also be granted legal protection against (final) decisions of other organs of the association. In accordance with this prevailing opinion, Article 75 SCC is applied "by analogy" to (final) decisions that have been issued, for instance, by the board of the association or an association tribunal[2]. Furthermore, it is undisputed that the parties may agree (by executing a valid arbitration agreement) that the challenge within the meaning of Article 75 SCC shall be brought before an arbitral tribunal instead of a (state) court[3].*

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1 FENNERS, Der Ausschluss der staatlichen Gerichtsbarkeit im organisierten Sport, 2006, no. 213; BSK-ZGB/HEINI/SCHERRER, 5th ed. 2014, Art. 75 no. 2; CHK-ZGB/NIGGLI, 2nd ed. 2012, Art. 75 no 1; HEINI/PORTMANN/SEEMANN, Grundriss des Vereinsrechts, 2009, no. 228; *cf.* also ATF 108 II 15, E. 2; CAS 2008/A/1639, no. 29.

2 ATF 132 III 503, E. 3; SCHÜTZ, Decision-Making and Appeals against Resolutions of (Sports) Associations, 2016, no. 307; RIEMER, Vereins-und Stiftungsrecht (Art. 60-89bis ZGB), Art. 75 no. 8; HAAS/KÖPPEL, Abwehransprüche des Sportlers gegen (angeblich rechtswidriges) Verbandsverhalten vor dem Court of Arbitration for Sport (CAS/TAS), in jusletter 16. July 2012, no. 5.

3 BERNASCONI/HUBER, Die Anfechtung von Vereinsbeschlüssen: Zur Frage der Gültigkeit statutarischer Fristbestimmungen, SpuRt 2004, p. 268; HEINI/PORTMANN, Das Schweizerische Vereinsrecht, 3rd ed. 2005, no. 285; HEINI/PORTMANN/SEEMANN, Grundriss des Vereinsrechts, 2009, no. 239; CHK-ZGB/NIGGLI, 2nd ed. 2012, Art. 75 no. 16.

(…)

[41] The basic constellation for which Article 75 SCC was enacted deals with a challenge by a member of the resolution of a general assembly (see supra). Contrary to the legal situation in relation to (Swiss) public limited companies, Article 75 SCC is silent on who is the appropriate defendant of a "Vereinsbeschluss" (resolution of the general assembly)[4]. The respective provision for public limited companies, by contrast, specifically provides in Article 706 Code of Obligations (CO) as follows:

"The board of directors and every shareholder may challenge resolutions of the general meeting which violate the law or the articles of association by bringing action against the company before the court".

[42] This principle enshrined in Article 706 CO is applied by the unanimous view in legal literature equally to Article 75 SCC[5]. In particular the SFT[6] holds that the sole proper defendant of a challenge filed by a member according to Article 75 SCC is the association. CAS follows this jurisprudence insofar as a resolution of the general assembly constitutes the matter of the challenge (subject to the condition that Swiss law applies to the merits)[7]. This holds even true if squashing the resolution in the wake of an appeal by one member were to materially affect the status and legal sphere of a co-member. Also in such event the proper party having standing to be sued is solely the association".

118. The Panel concurs with the views of Prof. Haas. Mr Gonzalez has standing to bring a challenge against the Appealed Decision to the CAS, however, that should be directed at the association itself, *i.e.* FIFA, when considering "vertical" disputes.

119. That said, not all disputes are "vertical". The position is different with "horizontal" disputes, as noted by the CAS panel in CAS 2014/A/3489 & 3490:

"if a party to an horizontal dispute adjudicated by a FIFA body – i.e., a dispute between two or more direct or indirect members of FIFA (such as clubs, players, agents or coaches) which does not involve FIFA's disciplinary powers and where FIFA has nothing directly at stake – appeals to the CAS without summoning FIFA, the appointed CAS panel may still proceed to examine the matter and adjudicate the dispute. This is so because a decision adopted by a FIFA body on a dispute between its direct or indirect members, being a decision of an association, is not an award but it has a contractual value for the members of the association".

120. The issue is less clear when more than one issue is at stake. Where both "vertical" and "horizontal" issues are involved in the same decision. The "classic" case is a breach of contract case between a player and a club. The FIFA DRC renders a decision, awarding compensation to party A, but also issues sporting sanctions against party B. Here there exists a horizontal dispute between party A and party B (relating to the breach of contract and the compensation), but also a vertical dispute between FIFA and party B (being the sporting sanctions).

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4 CAS 2015/A/3910, no. 136; CAS 2016/A/4602, no. 72.

5 *Cf.* BK-ZGB/RIEMER, 1990, Art. 75 no. 60; BSK-ZGB/HEINI/SCHERRER, 5th ed. 2015, Art. 75 no. 21; SCHÜTZ, Decision-Making and Appeals against Resolutions of (Sports) Association, 2016, no. 347.

6 SFT 136 III 345, E. 2.2.2: *"Die Parteirollen (…) ergeben sich folgerichtig aus Art. 75 ZGB, da bei der Anfechtungsklage immer nur der Verein, und nicht etwa ein anderes am Beschluss interessiertes Mitglied passivlegitimiert ist".*

7 MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, 2015, Art. 48 no. 68.

121. The Panel notes the reference by Mr Gonzalez to CAS 2014/A/3489 & 3490. That case is a little clearer than the matter at hand. The FIFA DRC (as the contractual claim was between a player, not a coach, and a club) took jurisdiction of the case and rendered a decision on the merits, one that was ultimately appealed by both player and club. The CAS panel in that case was able to determine that the matter did not *"involve FIFA's disciplinary powers and where FIFA has nothing directly at stake"*, so was able to conclude that FIFA did not need summoning as a party.

122. In CAS 2014/A/3489 & 3490 there were no sporting sanctions, hence the CAS panel treated the matter as a "horizontal" dispute.

123. Prof. Haas notes above that certain decisions such as sporting sanctions or purely disciplinary issues, along with eligibility or registration matters (such as in CAS 2008/A/1639*,* as cited by Rubin Kazan*)*, fall clearly within the "vertical" criteria. The issue at hand does not concern sporting sanctions, *etc*., however, there was not an underlying decision taken by FIFA on the merits either.

124. The Panel takes the view that the matter at hand is clearly directed at FIFA. The contractual claim is not before this Panel. Mr Gonzalez was quite particular with his prayers for relief. It was that the FIFA PSC was wrong to decline jurisdiction, that the Panel should overturn FIFA's decision, tell FIFA that it does have jurisdiction and to take the case back to deal with it on the merits.

125. This is clearly a "vertical" issue – a dispute between Mr Gonzalez and FIFA. The Panel can see that Rubin Kazan has an indirect interest, but it would be able to advance its position on the merits before the FIFA PSC, should the matter have returned there. Article R57 of the CAS Code does provide the Panel with *de novo* powers and perhaps if both FIFA and Rubin Kazan had been summoned as respondents, then all parties may have asked the Panel to consider jurisdictional issues and subsequently the merits, but this can remain moot, as FIFA were not summoned.

B. Conclusion

126. The Panel is satisfied that Mr Gonzalez should have summoned FIFA in the matter at hand and that Rubin Kazan lacks the standing to be sued in respect of Appellant's primary prayers for relief. This leaves only his prayers for relief regarding costs, which are dealt with below.

127. Based on the foregoing the Panel dismisses the appeal of Mr Gonzalez.

128. Any further claims or requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Raúl Gonzalez Riancho on 21 October 2016 against the decision issued on 26 January 2016 by the FIFA Players' Status Committee is rejected.

2. The decision issued by the FIFA Players' Status Committee on 26 January 2016 is confirmed.

3. (…).

4. (…).

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