



Arbitration CAS 2018/A/5888 Centro Atlético Fénix, Club Atlético Boston River, Club Atlético Cerro, Club Atlético Progreso, Club Atlético River Plate, Danubio Fútbol Club, Defensor Sporting Club, Liverpool Fútbol Club, Cerro Largo FC, Central Español Fútbol Club, Club Atlético Villa Teresa, Racing Club de Montevideo, Club Sportivo Miramar Misiones, Montevideo Wanderers F.C., Club Atlético Juventud v. Fédération Internationale de Football Association (FIFA) & Confederación Sudamericana de Fútbol (CONMEBOL) & Asociación Uruguaya de Fútbol (AUF), award of 25 June 2019

Panel: Mr Efraim Barak (Israel), President; Mr José María Alonso Puig (Spain); Mr José Juan Pintó (Spain)

*Football*

*Governance: appointment of a normalisation committee*

*CAS jurisdiction to adjudicate decisions of the Bureau of the FIFA Council*

*Res judicata*

*Procedural or substantive characterisation of standing to sue/to be sued matters*

*Legitimate interest to appeal a decision*

*Standing to be sued of the national federation*

*Autonomy of associations and CAS power of review*

1. Pursuant to Art. 186, para. 1, of the Swiss Private International Law Act as well as to the principle *Kompetenz-Kompetenz*, a CAS panel is empowered to determine if it has jurisdiction to adjudicate an appeal. As the FIFA Statutes do not provide for any specific legal remedy against the decisions of the Bureau of the FIFA Council, which are therefore definitive and binding within FIFA's legal sphere, CAS has jurisdiction to adjudicate an appeal against a decision of the Bureau of the FIFA Council.
2. With regard to the *res iudicata* authority, this legal principle prevents the judge from entertaining a case that has been already and definitively decided; this mechanism excludes the competence of the second judge. Under Swiss Law *res iudicata* is part of procedural public policy, and it applies both domestically and internationally. There is no *res iudicata* when the decision appealed before the CAS has not been previously reviewed by a judicial court or body, and in which no previous proceedings involving the same object, the same legal grounds and the same parties (i.e. the so-called "triple identity") have been substantiated. A different question is the legal effect arising out of the fact that one of the parties before the CAS did not previously appeal the decision, which certainly entails the preclusion for that party to appeal against it, hence the transformation of the appealed decision in a final and binding resolution exclusively for that party, but not for the other ones.
3. The standing to sue as well as the standing to be sued shall not be qualified as a matter of admissibility of the appeal, but a matter of the merits of the appeal (i.e. related to the

material conditions of the claim). As a result, the potential lack of standing to sue would not lead to the consideration of the appeal as inadmissible, but rather to the dismissal of the appeal on the merits.

4. In general terms standing to sue correspond to any party that in a certain case has a legitimate interest which is worthy of protection. Even though legitimate interest is a broad, flexible and undetermined legal concept, that must be determined and concretized on a case-by-case basis, CAS jurisprudence has clarified that it exists if the party intending to appeal (i) is sufficiently affected by the decision at stake and (ii) has a specific and tangible interest *ad casum*, either of financial or sporting nature. In addition, in order for a party to have standing to appeal, a third prerequisite should be met, which consists of the fact that such party shall be aggrieved by the decision against which it intends to appeal. It is not necessary that the person at issue is the addressee of the decision against which the appeal is filed.
5. As a general rule, in accordance with Art. 75 of the Swiss Civil Code (SCC), under Swiss law standing to be sued rests with the association that has taken the resolution at stake. However, in cases where the appellants are not direct members of the association at stake, but only “indirect members”, Art. 75 of the SCC can be applied by analogy only. If not only the financial situation of a national association, but also its autonomy and its legal situation are at stake in a specific case, the national association is substantively and materially affected by the outcome of the procedure and has standing to be sued.
6. In accordance with the fundamental Swiss legal principle of freedom of association (*Vereinsautonomie*), an association has the right to freely organise itself and establish its own regulatory system, being thus free to establish the provisions that it deems convenient regarding its organisation and membership. This freedom of association involves not only the right to create its own rules, but also the right to apply and enforce these associative rules, being only these rights limited by the due respect to Swiss law and, in particular, to personality rights. It will only be possible for the CAS to review an association’s decision in case it is unlawful because, for example, it entails arbitrariness, a misuse of its discretionary power, leads to discrimination or breaches any relevant mandatory legal principle or if the decision entails a violation of the association’s own statutes and rules. In the framework of such an assessment, the CAS panel will always consider and check whether the decision taken by the association was necessary as a matter of last resort and if the limits of the decision does not go beyond the necessary in order to achieve the legitimate goal of the intervention.

## I. PARTIES

1. Centro Atlético Fénix, Club Atlético Boston River, Club Atlético Cerro, Club Atlético Progreso, Club Atlético River Plate, Danubio Fútbol Club, Defensor Sporting Club, Liverpool Fútbol Club, Cerro Largo FC, Central Español Fútbol Club, Club Atlético Villa Teresa, Racing Club de Montevideo, Club Sportivo Miramar Misiones, Montevideo Wanderers F.C. and Club Atlético Juventud (hereinafter, the “Appellants”) are fifteen Uruguayan professional football clubs affiliated with the Asociación Uruguaya de Fútbol.
2. The Fédération Internationale de Football Association (hereinafter the “First Respondent” or “FIFA”) is an association incorporated under Swiss law with its registered office in Zurich, Switzerland. FIFA is the governing body of international football and exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and players worldwide.
3. The Confederación Sudamericana de Fútbol (hereinafter the “Second Respondent” or “CONMEBOL”) is the continental football federation of South América, headquartered in Luque, Paraguay, which is recognized by FIFA.
4. The Asociación Uruguaya de Fútbol (the “Third Respondent” or “AUF”) is the governing body of football in Uruguay and it is affiliated with CONMEBOL and FIFA.

## II. FACTUAL BACKGROUND

### A. Background Facts

5. Below is a summary of the relevant facts and allegations based on the parties’ written submissions, pleadings and evidence adduced for and at the hearing. Additional facts and allegations found in the parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

#### 1. *An overview on the attempts to amend the Statutes of AUF*

6. On 18 April 2011, within the framework of the FIFA’s Performance Programme, FIFA sent a letter to the AUF recommending the latter to revise its statutes, in order to adapt them to the requirements set forth in the FIFA Standard Statutes. In its relevant part, FIFA’s correspondence reads as follows:

*“(…) Revisión general de los estatutos, reglamentos y organización administrativa; se recomienda a la AUF continuar el proceso de revisión y aprobación de sus estatutos según el modelo de la FIFA. (...)”*

Which can be freely translated into English as follows:

*“General revision of the statutes, regulations and management organization: the AUF is recommended to continue the revision process and approval of its statutes in accordance with the FIFA model (...)”.*

7. On 2 May 2011, FIFA sent a correspondence to the AUF, referring the relevant parts of the AUF Statutes that would have to be amended in order to fulfill with the FIFA standards.
8. On 11 May 2011, the AUF sent a letter to FIFA, confirming its willingness to fulfill the FIFA’s Performance Programme and thus to implement its recommendations.
9. On 2 April 2013, after a number of correspondences exchanged between the parties, FIFA sent a letter to the AUF in which it expressed its gratitude for the cooperation shown by the AUF during the mutual meetings held and highlighted the importance of the revision of its statutes.
10. On 13 November 2013, after a previous exchange of correspondence, FIFA sent a letter to the AUF reminding the latter that pursuant to the decision passed in the 63rd FIFA Congress held in Mauritius, all the member associations had to adopt statutes aligned with the Standard Statutes of FIFA.
11. On 31 March 2014, the AUF informed FIFA that its Executive Committee had withdrawn from its functions and that its General Assembly would have to appoint its new members.
12. On 2 April 2014, CONMEBOL informed FIFA that it had imposed a partial suspension on the AUF, due to its breach of the statutes of CONMEBOL.
13. On 10 April 2014, FIFA sent a letter to CONMEBOL acknowledging receipt of its correspondence of 2 April 2014 and highlighting the importance that all the statutes of its member associations were in line with the FIFA Standard Statutes.
14. On 20 May 2014, CONMEBOL notified the AUF that its Executive Committee had decided to lift the partial suspension previously imposed on the AUF and that, given the circumstances at stake, pursuant to Art. 37.2.c) of the Statutes of CONMEBOL it had decided to initiate a process of revision of the AUF’s Statutes, that would have to take place after the election of the new Executive Committee of the AUF.
15. Also, on 20 May 2014, CONMEBOL informed FIFA that the partial suspension imposed on the AUF had been lifted and that its Executive Committee had initiated the revision of the Statutes of the AUF, in order to adapt them to the Statutes and Regulations of CONMEBOL. Furthermore, in this letter CONMEBOL invited FIFA to participate in the revision process in order to verify that the new Statutes of the AUF complied with the FIFA Statutes and Regulations.
16. On the same day, CONMEBOL sent a letter to the AUF informing that it had decided to start a revision process of AUF’s Statutes, to which FIFA had been also invited to participate.

17. On 10 September 2014, FIFA advised the AUF that its new statutes should be approved and be binding by no later than July 2015.
18. On 17 September 2014, the AUF sent a letter to FIFA in which it took note of the deadline given by FIFA to complete the revision process of its statutes. In this letter the AUF stated that it intended to review its statutes before the end of that year, despite the longer term given by FIFA.
19. On 26 November 2014, FIFA and the AUF held a meeting in which, among other topics, they discussed the revision of AUF's Statutes.
20. On 25 May 2015, the AUF sent a letter to FIFA in which it informed the latter about the status of the revision process of its statutes.
21. On July 2015, the initial term given by FIFA to complete the revision process of AUF's Statutes expired.
22. On 5 August 2015, FIFA granted the AUF a new term until 31 October 2015 to complete the revision process of its statutes.
23. On 29 October 2015, FIFA sent a letter to the AUF in which it took note of the status of the revision process of the AUF Statutes and granted the latter a new deadline until 2 December 2015 to approve a new version of its statutes.
24. On 17 December 2015, after several meetings held between the parties, FIFA sent a letter to the AUF with its comments to the draft of the new statutes that the AUF had submitted to FIFA. In its comments FIFA reported that some of the provisions of the draft did not comply with the FIFA Regulations, and hence they could not be approved.
25. On 11 April 2016, the AUF sent a letter to FIFA answering the latter's comments to the draft of its new statutes.
26. On 13 July 2016, the AUF sent a new draft of its new statutes to FIFA.
27. On 7 September 2016, FIFA sent to the AUF its comments to the last version of the draft of the statutes.
28. On 15 December 2016, the AUF sent a new version of the draft of its statutes to FIFA.
29. On 24 February 2017, the AUF sent a new version of the draft of its statutes to FIFA.
30. On 7 March 2017, the AUF sent "the final and definitive" version of the draft of its new statutes to FIFA, asking for its approval before submitting them to the AUF's Congress.
31. On 8 March 2017, FIFA informed the AUF that "the final and definitive" version of the draft of its new Statutes fulfilled the FIFA Regulations.

32. On 30 March 2017, the AUF held an Extraordinary General Assembly, which scope was the consideration and possible adoption of the new statutes of the AUF, and in which all its representatives unanimously agreed to postpone the vote for 90 days.
33. On 27 June 2017, the AUF sent to FIFA a new version of the draft of its new statutes, with several modifications.
34. On 29 June 2017, FIFA sent to the AUF its comments to the last version of the draft of its new statutes.
35. On 30 June 2017, the AUF held a new General Assembly to adopt its new statutes, in which it decided however to postpone the vote for 120 days.
36. On 4 July 2017, considering that *“it was quite evident that the GA of AUF intend to delay this process as much as possible”*, FIFA submitted the case of the AUF to the FIFA Members Associations Committee (hereinafter, “FIFA MAC”).
37. On 12 July 2017, FIFA informed the AUF that the FIFA MAC had decided that the AUF should adopt its new statutes by no later than 31 October 2017 and that otherwise the case would be submitted to the FIFA Council for its consideration and potential imposition of sanctions, including the one of suspension.
38. On 6 October 2017, the AUF sent a new version of the draft of its new statutes to FIFA, with some new amendments.
39. On 23 October 2017, FIFA sent to the AUF its comments to the last version of the draft of its new statutes.
40. On 31 October 2017, the AUF held an Extraordinary General Assembly for the adoption of its new statutes, in which it was decided to postpone the decision and to request FIFA a new extension until 6 April 2018.
41. On 13 November 2017, the AUF informed FIFA about the decision that its General Assembly took on 31 October 2017.
42. On 4 December 2017, the case of the AUF was submitted again to the FIFA MAC in order to take a decision regarding the postponement of the deadline for the approval of the new statutes of the AUF.
43. On 19 December 2017, FIFA informed the AUF that in its meeting of 4 December 2017, the FIFA MAC had decided that the AUF had to adopt its new Statutes by no later than 6 April 2018 and that otherwise the case would be submitted to the FIFA Council for its consideration and potential imposition of sanctions, including the suspension of AUF from FIFA.
44. On 5 March 2018, the AUF submitted to FIFA a new draft of its new Statutes.

45. On 22 March 2018, FIFA sent to the AUF a revised version of the draft of the AUF's new statutes to be submitted to its General Assembly for its consideration.
46. On 6 April 2018, a General Assembly of the AUF was held in which it was decided to postpone again the decision regarding the approval of the new statutes of the federation.
47. On 10 April 2018, the *Organización del Fútbol del Interior*, an affiliate to the AUF, sent a letter to the FIFA MAC informing about the result of the General Assembly of the AUF and requesting FIFA MAC “to protect the minimum rights envisaged in the document agreed (*Statutes AUF 2018 FIFA Conmebol*) with regard to the *Organización del Fútbol del Interior*, hence protecting great part of the Uruguayan football” (in its original Spanish version: “resguarde los derechos mínimos contemplados en documento consensuado (*Estatuto AUF 2018 FIFA Conmebol*) respecto de la *Organización del fútbol del Interior*, resguardando de esa forma gran parte del fútbol uruguayo”).
48. On 27 April 2018, the AUF informed FIFA about the decision of its General Assembly of 6 April 2018.
49. On 31 May 2018, the AUF held another General Assembly in which it was decided to hold another General Assembly on 18 September 2018 in order to vote a new amended edition of the statutes of the AUF.
50. On 4 June 2018, the AUF informed FIFA that its General Assembly had decided to postpone the decision about its new statutes until 18 September 2018.

**2. *The electoral process within the AUF for the mandate 2018/2022 & the appointment of the Normalisation Committee***

51. On 2 July 2018, the AUF initiated an internal election process for its Presidency for the mandate 2018/2022. In its relevant part, the official communication of the AUF reads as follows:

*“Por disposición del Estatuto de AUF vigente, corresponde realizar elecciones de Presidente del Consejo Ejecutivo de nuestra Asociación el próximo 31 de julio del corriente año.*

*En consecuencia, corresponde informar que todos los candidatos que decidan postularse para dicho cargo, deberán rendir el denominado “Examen de Idoneidad” (...) de CONMEBOL (...).”*

Which can be freely translated into English as follows:

*“As a result of the provisions of the current AUF Statutes, elections for President of the Executive Council of our Association are called to be held on the next 31 July of the current year.*

*Consequently, it is informed that all candidates who will decide to put forward their candidacy for such position, will have to successfully pass the so-called “Eligibility Check” (...) of CONMEBOL (...).”*

52. On 23 July 2018, Mr Arturo del Campo communicated his interest in standing as a candidate for the election and sent to CONMEBOL all the documentation for the “Eligibility Check”.
53. On 24 July 2018, Mr Eduardo Abulafia also communicated his interest in standing as a candidate for the election, stating that he would not undergo the Eligibility Check because the Statutes of the AUF did not establish such requirement.
54. On 25 July 2018, the Executive Committee of the AUF convened an Extraordinary General Assembly to be held on 31 July 2018 in order to elect its President for the term 2018/2022.
55. On 30 July 2018, and despite his initial opposition to undergo the Eligibility Check, Mr Eduardo Abulafia filed with CONMEBOL the relevant documentation for conducting such Eligibility Check.
56. On 30 July 2018, the President of the AUF, Mr Wilmar Valdez, resigned from the presidency and declared that he would not stand for the next elections. Consequently, Mr Edgar Welker, Vice-President of the AUF, took the role of presiding the federation until a new President will be elected.
57. On 31 July 2018, the *Subcomisión de Control* of CONMEBOL (hereinafter, the Sub-commission of Control) informed the AUF that it did not have sufficient time to conduct the Eligibility Checks of Mr Abulafia and Mr Del Campo and that *“in order to have a transparent football, it is recommended to postpone the AUF elections and that the only candidates Messrs. Arturo del Campo and Eduardo Abulafia be undergo the eligibility checks and obtain their results before the election in order to guarantee an appropriate candidate for the AUF Presidency”* (free translation of the original Spanish statement: *“a efectos de contar con un fútbol transparente, recomendamos el aplazamiento de las elecciones de la AUF y que los únicos dos candidatos Sres. Arturo del Campo y Eduardo Abulafia se sometan al examen de idoneidad y tengan los resultados previo al acto eleccionario a efecto de garantizar un candidato idóneo para la Presidencia de la AUF”*).
58. On 31 July 2018, a General Assembly of the AUF was held with the purpose of electing its new President. However, following the recommendation made by the Sub-commission of Control, the Assembly called for a recess (*i.e.* the so-called *“cuarto intermedio”*) and the electoral process was suspended until 21 August 2018.
59. On the same day, the Bureau of the FIFA Council granted the AUF a final deadline until 2 December 2018 to approve its new statutes in accordance with the FIFA directives and warned it that otherwise, the AUF would be suspended with immediate effect:

*“(…) el Bureau del Consejo de la FIFA decidió (…) conceder de plazo a la AUF hasta el próximo 2 de diciembre de 2018 para aprobar unos estatutos basados en el documento normativo enviado a la AUF por la FIFA el 22 de marzo de 2018; de no ser así, la AUF será suspendida con efecto inmediato. Dicha suspensión no se levantaría hasta que la AUF aprobase unos estatutos basados en el documento normativo enviado a la AUF por la FIFA (…).”*

Which can be freely translated into English as follows:



*“(...) the Bureau of the FIFA Council decided (...) to grant the AUF a deadline until next 2 December 2018 to approve the statutes based on the normative document sent by FIFA to the AUF on 22 March 2018; If this was not be the case, the AUF will be suspended with immediate effect. Such suspension will not be lifted until the AUF will approve the statutes based on the normative document sent by FIFA to the AUF (...)”.*

60. On 1 August 2018, the AUF informed CONMEBOL about its decision to suspend the election process, in the following terms:

*“En relación a la convocatoria de la Asamblea General para la “elección de Presidente de AUF mandato 2018/2022” y ante la sugerencia de la Sub Comisión de Control de CONMEBOL del 31/07/18, la Asamblea General resolvió por mayoría reglamentaria, pasar a cuarto intermedio hasta el próximo 21 de agosto del corriente fecha en que se procederá a realizar el acto eleccionario correspondiente”.*

Which can be freely translated into English as follows:

*“With regards to the General Assembly called for the “election of President for the AUF’s mandate 2018/2022” and upon the recommendation made by CONMEBOL’s Sub-commission of Control dated 31/07/18, the General Assembly had decided by statutory majority to recess the assembly until 21 August of the current year, date on which the relevant election will be held”.*

61. On 3 August 2018, Mr Ignacio Alonso presented his candidacy for the AUF’s presidency.
62. On 13 August 2018, Mr Fernando Daniel Nopitsch presented his candidacy for the AUF’s presidency.
63. On 16 August 2018, the “Asociación uruguaya de Árbitros de Fútbol” (“AUDAF”), the “Organización del Fútbol del Interior” (“OFI”), the “Mutual Uruguaya de Futbolistas Profesionales”, and the captains of the Uruguayan national team, sent a letter to CONMEBOL requesting that FIFA and CONMEBOL intervene the AUF in order to adopt new statutes aligned with the FIFA Directives and to guarantee free and democratic elections in the federation.
64. On 19 August 2018, the Sub-commission of Control informed Mr Alonso and Mr Nopitsch that they had successfully passed their Eligibility Checks and that they were eligible to stand for the election.
65. On 20 August 2018, the Sub-commission of Control notified Mr Abulafia and Mr Del Campo the negative outcome of their respective Eligibility Checks.
66. On 21 August 2018, given the above-mentioned circumstances, CONMEBOL communicated FIFA its serious concerns about the electoral process in the AUF and its apparent lack of transparency. The relevant paragraphs of such communication read as follows:

*“(...) La CONMEBOL se encuentra preocupada por lo que está ocurriendo en Uruguay. (...)”*

*En fecha 31 de julio se encontraba convocada la Asamblea General de la AUF a efectos de elegir al próximo Presidente de dicha Asociación Miembro. Existían en principio, tres candidatos, el Señor*

WILMAR VALDEZ, el Señor EDUARDO ABULAFIA y el Señor ARTURO DEL CAMPO.

(...)

*La Asamblea del 31 de julio, llamo a un cuarto intermedio a efectos que todos los candidatos tengan resuelto el examen de idoneidad. La Asamblea debe reanudarse el día de hoy.*

*En forma posterior al cuarto intermedio, se han presentado otros candidatos a Presidente, como ser el Señor IGNACIO ALONSO e IGNACIO NOPITSCH [sic].*

*Sin embargo, estos dos candidatos no se habían presentado al inicio de la ASAMBLEA del 31 de julio. Jurídicamente el cuarto intermedio, continúa el proceso iniciado en la Asamblea inicial, y por lo tanto los candidatos presentados en forma posterior podrían ser impugnados por la presentación fuera de fecha.*

*Tenemos información que hoy se volverá a presentar un candidato a presidente, y si es así, este no ha sido sometido al Examen de Integridad.*

*El proceso establecido en la AUF para la elección del Presidente no reúne los requisitos establecidos en los estatutos de la FIFA y de la CONMEBOL de un proceso electoral transparente, además que los miembros de la asamblea no representan a todos los intereses.*

*Consideramos que en este momento están dadas las condiciones para establecer una Comisión Normalizadora con el fin único de cambio de estatutos y posterior Elección de Autoridades”.*

Which can be freely translated into English as follows:

*“(...) CONMEBOL is concerned about what is happening in Uruguay (...)*

*On 31 July, the General Assembly of the AUF was convened to elect the next President of said Member Association. In principle, there were three candidates, Mr WILMAR VALDEZ, Mr EDUARDO ABULAFIA and Mr ARTURO DEL CAMPO.*

(...)

*The Assembly of 31 July, called for a recess with the aim that all candidates had the results of the appropriateness test. The Assembly must be resumed today.*

*Following the recess of the Assembly, other candidates have presented their candidacy for President, such as Messrs. IGNACIO ALONSO and IGNACIO NOPITSCH.*

*Nevertheless, these two candidates did not present their candidacy at the beginning of the Assembly of 31 July. Legally speaking, the recess continues the process initiated at the original Assembly and therefore the candidates presented on a later stage could be challenged due to the presentation out of date.*

*We have information that today a candidate for president will be presented again, and if this occurs, he has not conducted the Appropriateness Test.*

*The process established at the AUF for the election of President does not fulfill the requisites of a transparent electoral process established in the FIFA and CONMEBOL statutes; furthermore, the members of the Assembly do not represent all the interests.*

*We consider that, at this moment, the conditions for establishing a Normalisation Committee, with the only aim to change the statutes and afterwards the Election of Authorities, are met”.*

67. On this same day, 21 August 2018, and with the previous conformity of the President of CONMEBOL (which was given by email to FIFA’s Secretary General), the Bureau of the FIFA Council requested all its members to approve the appointment until 28 February 2019 of a normalisation committee for the AUF (hereinafter, the “Normalisation Committee” or the “NC”) with immediate effect, aimed at the following objectives:

“[...]

- *To run the AUF’s daily affairs;*
- *To review the AUF statutes and ensure their compliance and amendment in line with the requirements of FIFA’s and CONMEBOL’s statutes, and;*
- *Once the AUF statutes met the requirements of FIFA’s and CONMEBOL’S’s statutes, to organize and conduct elections of a new AUF executive committee on the basis of the new, revised AUF statutes.*

[...]”.

68. Also, on 21 August 2018, FIFA notified the AUF the decision of the Bureau of the FIFA Council to appoint a Normalisation Committee for the AUF with immediate effect until 28 February 2019 (hereinafter “the Appealed Decision”).
69. On 21 August 2018, the General Assembly of the AUF that was opened on 31 July 2018 was resumed and, as a result of the letter received from FIFA notifying the decision to intervene the AUF, the members of the General Assembly decided to suspend it.
70. Later that same day, the AUF sent a letter to FIFA objecting the appointment of the Normalisation Committee and requesting to revoke this measure.
71. That same day, 21 August 2018, CONMEBOL sent a letter to FIFA providing further information with regard to the situation of the AUF.
72. On 23 August 2018, the President of the AUF and its legal counsel held a meeting with CONMEBOL, requesting the latter to reconsider with FIFA the intervention of the AUF.
73. On 29 August 2018, FIFA sent a letter to the AUF in which it notified the composition of the Normalisation Committee appointed by the Bureau of the FIFA Council, whose members assumed their functions “with immediate effect”.

74. On 28 October 2018, the FIFA Council held a meeting in which the decisions of the Bureau of the Council of 30 July and 21 August 2018 to give the AUF until 2 December 2018 to approve statutes based on the guidelines sent to the AUF by FIFA on 22 March 2018, and to appoint a Normalisation Committee with immediate effect for the AUF whose mandate will expire on 28 February 2019, were ratified by the FIFA Council.

**3. *The call for a General Assembly by the Normalisation Committee***

75. On 15 November 2018, the Normalisation Committee called for an AUF Extraordinary General Assembly to be held on 30 November 2018 in order to vote and approve a new set of AUF Statutes, based on directives prepared by FIFA.

76. On the same day, 15 November 2018, the Appellants submitted an alternative draft for the new statutes before the Normalisation Committee, to be also included, discussed, and potentially voted on and approved in the Extraordinary General Assembly of 30 November 2018.

77. Also, on 15 November 2018, the Legal Secretariat of the AUF sent a letter to the Normalisation Committee confirming that the Appellants indeed had the right to submit their proposed draft of the statutes to the Extraordinary General Assembly to be also included in the agenda of the Assembly to be discussed and voted.

78. This same day, 15 November 2018, the Normalisation Committee sent an email to all the members of the General Assembly of the AUF informing them that a new item had been included in the agenda for the General Assembly of next 30 November 2018, consisting also of the consideration and voting of the draft of the new Statutes that had been submitted by the Appellants to the Normalisation Committee.

79. On 27 November 2018, Liverpool Fútbol Club (one of the Uruguayan clubs that forms part of the Appellants) sent a letter to the Normalisation Committee stating that its acceptance of the “Basis for the Approval of the Statute of the AUF” (*“Bases para la Aprobación del Estatuto de la AUF”*, in its original Spanish version) did not imply the recognition of the legitimacy of the Normalisation Committee, nor any admission, renunciation, withdrawal or acceptance within this CAS procedures.

80. On 28 November 2018, Danubio Fútbol Club (one of the Uruguayan clubs that forms part of the Appellants) sent a letter to the Normalisation Committee stating that its acceptance of the “Basis for the Approval of the Statute of the AUF” (*“Bases para la Aprobación del Estatuto de la AUF”*, in its original Spanish version) did not imply the recognition of the legitimacy of the Normalisation Committee, nor any admission, renunciation, withdrawal or acceptance within this CAS procedures.

81. On 30 November 2018, the General Assembly of the AUF was held in which all its members present at the Assembly unanimously approved the new statutes of the association.

82. On 1 December 2018, on behalf of the AUF, its Normalisation Committee informed FIFA that the new statutes of the association had been approved unanimously and that this new version fulfilled with the standards established by FIFA and CONMEBOL.
83. On 28 December 2018, the Ministry of Culture and Education of Uruguay passed a resolution by which the new Statutes of the AUF were officially approved.

### III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

84. On 4 September 2018, pursuant to Article R48 of the CAS Code of Sports-related Arbitration (the “CAS Code”), the Appellants filed before the CAS a Statement of Appeal against the Appealed Decision, requesting to conduct the procedure on an expedited manner.
85. On 12 September 2018, following the Respondent’s letters of 11 September 2018, the CAS notified the Appellants that the Respondents had not accepted that the procedure was to be conducted on an expedited manner, and hence that the deadlines established by the CAS Code were applicable to the present procedure.
86. On 17 September 2018, pursuant to Article R51 of the CAS Code, the Appellants filed their Appeal Brief with the following requests for relief:

*“a) Accept this Appeal against the decision of the FIFA Bureau of Council issued on 21 August 2018;*

*b) Fully revoke the decision issued by FIFA that determined an intervention in the Asociación Uruguaya de Fútbol and annul all acts of the normalization committee appointed by FIFA, immediately restoring the autonomy of the Asociación Uruguaya de Fútbol, of the Appellant clubs and of the General Assembly for the continuity of the electoral process interrupted on 21 August 2018, according to the current Statute;*

*c) Alternatively, only in case the previous request is not accepted, to revoke the decision issued by FIFA that determined an intervention in the Asociación Uruguaya de Fútbol, only annulling the acts of the normalization committee appointed by FIFA that are related to the electoral process and to the reform of the statute, keeping the other administrative acts in force, immediately restoring the autonomy of the Asociación Uruguaya de Fútbol, of the Appellant clubs and of the General Assembly for the continuity of the electoral process interrupted on 21 August 2018, according to the current statute.*

*d) Alternatively, only in case that none of the previous requests are accepted, that this Court confirms the validity of the intervention determined by FIFA and the implementation of the normalization committee, but guaranteeing to the affiliates and members of the General Assembly of the AUF (article 16 of the Statute) the right to continue the electoral process initiated on 2 July 2018 as established in the current Statute, since there are not sufficient reasons for its interruption;*

*e) Condemn the Respondents to pay CHF 15,000 for the legal expenses of the Appellants, as well as all expenses incurred by the Appellants during this procedure and, finally, reimbursing the entire advance of costs;*

*f) Grant the right of the Appellants to present any new evidence that it may consider appropriate during the course of this case”.*

With its Appeal, the Appellants requested the Panel to order the Respondents to produce certain documents.

87. On 28 September 2018, the CAS invited the Respondents to provide their position with regard to the Appellants' request for production of documents.
88. On 4 October 2018, the Third Respondent produced to the CAS one of the documents that were requested by the Appellants in their Appeal Brief.
89. On 5 October 2018, the Second Respondent produced to the CAS one of the documents that were requested by the Appellants in their Appeal Brief.
90. On this same day, 5 October 2018, the First Respondent sent a correspondence to the CAS requesting that the Appellants' request for production of documents be rejected, on the basis that it did not meet the requirements established by Art. R44.3 of the CAS Code.
91. On 17 October 2018, the CAS invited the parties to complete a Redfern Schedule with regard to the Appellants' request for production of documents.
92. On 19 October 2018, the Appellants filed before the CAS the Redfern Schedule, duly filled in.
93. On 26 October 2018, both FIFA and CONMEBOL filed their Redfern Schedule duly filled in.
94. On 31 October 2018, the AUF filed its Answer to the Appeal, in accordance with Article R55 of the CAS Code, submitting the following prayers for relief:

***FIRST:** To be considered as duly appeared with the answer to the Appeal Brief filed by the Appellants against FIFA's decision taken on 21 August 2018.*

***SECOND:** That the following be forthwith declared: a) That the Appellants have no standing to sue in this matter and b) that AUF has no standing to be sued in this appeal.*

***THIRD:** That in the event that it is otherwise provided, the appeal thus filed is fully dismissed anyway, confirming the decision taken by FIFA on 21 August 2018, as well as all the subsequent acts of the Normalization Committee.*

***FORTH:** [Sic] That the Appellants be held liable for paying to AUF all the court costs and fees, if applicable".*

95. On 5 November 2018, FIFA filed its Answer to the Appeal, in accordance with Article R55 of the CAS Code, submitting the following prayers for relief:

*Prayer 1: CAS shall rule that it has no jurisdiction to hear this case.*

*Subsidiary to Prayer 1:*

*Prayer 1A: The Appeal shall be declared inadmissible.*

*Subsidiary to Prayer 1A:*

*Prayer 1B: The Appeal shall be rejected and the decision under Appeal shall be confirmed.*

*Prayer 2: In any event, the Appellants shall be ordered to jointly bear the costs of the arbitration and the Appellants shall be jointly ordered to contribute to the legal fees incurred by Respondent 1 at an amount of CHF 25,000”.*

96. On the same day, 5 November 2018, CONMEBOL filed its Answer to the Appeal, in accordance with Article R55 of the CAS Code, submitting the following prayers for relief:

*“a) CAS shall rule that it has no jurisdiction to bear this case.*

*Subsidiarily to Prayer a)*

*b) The Appeal shall be declared inadmissible;*

*Subsidiarily to Prayer b)*

*c) To dismiss the Appeal in full and to confirm the decision under appeal;*

*d) In any event, to charge the costs of arbitration to Appellants;*

*e) In any event, to order Appellants to pay CHF 2’000.00 as contribution to the expenses incurred by Second Respondent within the frame of the present CAS proceedings”.*

97. On 9 November 2018, the CAS Court Office notified the parties that the Panel appointed to decide the present case had been constituted as follows:

- Mr Efraim Barak, attorney-at-law in Tel Aviv (Israel), as President of the Panel;
- Mr José María Alonso Puig, attorney-at-law in Madrid (Spain), as the arbitrator jointly appointed by the Appellants; and
- Mr José Juan Pintó, attorney-at-law in Barcelona (Spain) as the arbitrator jointly appointed by the Respondents.

98. On 20 November 2018, following the call for the General Assembly for 30 November 2018, the Appellants filed before the CAS a request for provisional measures.

99. On 21 November 2018, the CAS Court Office invited the Respondents to provide their position with respect the Appellants’ application for provisional measures by 26 November 2018.

100. On 26 November 2018, the CAS invited the Appellants to submit their comments with regard to the jurisdiction of CAS in the present case, as well as with regard to the admissibility of their Appeal, that had been challenged by the Respondents.
101. This same day, all the Respondents filed their position regarding the Appellants' application for provisional measures, requesting the Panel to reject it.
102. On 29 November 2018, the CAS notified to the parties the Operative Part of the Order on the Request for Provisional Measures, pursuant to which the Appellants' request was dismissed.
103. Also, on 29 November 2018, the Appellants filed their submissions with regard to the jurisdiction of CAS and the admissibility of their Appeal.
104. On 10 December 2018, FIFA sent a correspondence to the CAS reporting that on 30 November 2018 the General Assembly of the AUF had unanimously approved the new statutes of the association. With its letter, FIFA submitted some new documents.
105. This same day, the CAS invited the parties to submit their position with regard to the admissibility of the new documents filed by FIFA.
106. On 13 December 2018, CONMEBOL informed the CAS that it agreed with the admissibility of the new documents filed by FIFA.
107. On 19 December 2018, the Appellants filed its position regarding the new documents that had been produced by FIFA, objecting their admissibility and, at the same time, producing 2 new documents.
108. On 20 December 2018, the CAS Court Office sent the Order of Procedure to the parties, which was duly countersigned by the parties.
109. On 28 December 2018, the CAS notified to the parties which of the last submissions and documents presented by all the parties had been admitted to the file. In this same letter the CAS requested the AUF to produce to the Panel the official minutes of the General Assembly held on 30 November 2018.
110. On 31 December 2018, the AUF submitted to the CAS a copy of the official minutes of the General Assembly that the AUF held on 30 November 2018.
111. On 9 January 2019, FIFA sent a letter to the CAS enclosing a new document, consisting of the resolution of the Ministry of Culture and Education of Uruguay passed on 28 December 2018 by virtue of which it formally approved the new Statutes of the AUF.
112. This same day, 9 January 2019, the CAS invited the parties to comment on the admissibility of the new document that FIFA had submitted to the Panel.



113. On 14 January 2019, the Appellants submitted their position with regard to the new document produced by FIFA, stating that such document was not admissible because there were no exceptional circumstances that would entail for its admission and because it was not relevant to the present case.
114. Also on 14 January 2019, CONMEBOL filed its position with regard to the admissibility of the new document produced by FIFA, requesting the Panel to admit this new piece of evidence.
115. On 17 January 2019, the Appellants requested the Panel to render the operative part of the award, without grounds, before 25 January 2019.
116. On 18 January 2019, the CAS informed the parties that the Panel would decide at the end of the hearing whether to render the operative part of the award before 25 January 2019, or not.
117. The hearing of the present procedure took place in Lausanne, on 21 January 2019. The Appellants were represented by their counsel, Mr Eduardo Carlezzo. The First Respondent, FIFA, was represented by their counsels, Mr Jaime Cambreleng and Mr Jan Kleiner. The Second Respondent, CONMEBOL, was represented by its counsel, Mr Luca Tarzia. Finally, the Third Respondent, the AUF, was represented by its counsel, Mr Horacio González Mullin. In addition, Mr Antonio de Quesada, Head of CAS Arbitration Services, and Mr Yago Vázquez Moraga, *ad hoc* clerk, assisted the Panel at the hearing.
118. At the outset of the hearing, both parties confirmed that they had no objections with regard to the constitution and composition of the Panel. Then the Panel gave the parties the opportunity to state their position regarding the admissibility of the new document that FIFA had filed on 9 January 2019. The Panel decided that the issue of the admissibility of this new document would be decided in the final award (See section VIII.C below). The Panel thereupon requested the parties to state their position regarding the petition of rendering the operative part of the award before 25 January 2019, which would be decided by the Panel at the end of the hearing.
119. Before the opening statements, the Panel put some questions to the parties concerning the facts in dispute. Afterwards, all the parties presented their opening statements and then the following persons were heard by the Panel:
  - Mr Edgar Welker, President of the AUF at the time of the events.
  - Mr Fernando Nopitsch, General Secretary of Montevideo who stood for the elections of the AUF of august 2018.
  - Mr Jose Luís Palma, president of the Uruguayan club Liverpool Fútbol Club.
120. During the hearing, the parties had the opportunity to present their case, to submit their arguments, examine the witnesses and answer the questions posed by the Panel. During the hearing and with all the parties' agreement, the Panel decided to admit a request from the Appellants, consisting of asking FIFA to confirm, by means of the corresponding

documentary evidence, that the Appealed Decision was ratified by the FIFA Council at its 1<sup>st</sup> meeting after 21 August 2018.

121. After the parties' final pleadings, the Panel informed the parties that it had decided not to communicate the operative part of the award before 25 January 2019, as it found there were no grounds to admit the Appellants' petition. Finally, at the end of the hearing, all the parties expressly declared that they did not have any objection with respect to the procedure and that their right to be heard had been fully respected.
122. This same day, 21 January 2019, the CAS sent a correspondence to the parties inviting FIFA to produce the requested evidence regarding the ratification by the FIFA Council of the Appealed Decision and granting all the parties the relevant deadlines agreed in the hearing in order to file their position on this issue once FIFA had responded to the Panel's request.
123. On 22 January 2019, the CAS notified the parties the Order on request for Provisional Measures with grounds that had been previously rendered.
124. On 23 January 2019, FIFA sent a correspondence to the CAS confirming that the Appealed Decision had been ratified by the FIFA Council on 26 October 2018, producing a copy of the respective agenda and the minutes of the FIFA Council in which such decision was taken.
125. On 25 January 2019, the Appellants filed their comments with regard to the evidence produced by FIFA regarding the ratification by the FIFA Council of the Appealed Decision.
126. On 31 January 2019, the Respondents filed their replies to the Appellants submissions of 25 January 2019.
127. On 13 February 2019, the AUF sent a correspondence to the CAS by virtue of which it produced 5 new documents, requesting its admission to the file.
128. On 22 February 2019, FIFA sent a letter to the CAS requesting to be allowed to submit new documentation with regard with some events that would have taken place after the hearing.
129. On 26 February 2019, the CAS informed the parties that the new documents produced by the AUF on 13 February 2019 were not admitted to the file.

#### **IV. SUBMISSIONS OF THE PARTIES**

##### **IV.1. The Appellants**

130. The Appellants consider that the Appealed Decision is null and void because it was based upon wrong facts and information that were provided by CONMEBOL in its letter of 21 August 2018, which contained clearly incorrect and incomplete information. *Inter alia:*

- CONMEBOL stated that Mr Wilmar Valdez was standing for the elections of July/August 2018, which is not true, as Mr Valdez resigned from office on 30 July 2018 and simultaneously renounced to stand for the next elections.
  - CONMEBOL affirmed that one of the candidates, Mr Abulafia, did not want to undergo the Eligibility Check, despite that he indeed underwent this test.
  - CONMEBOL referred that the General Assembly of the AUF of 31 July 2018 was suspended (the so-called “*cuarto intermedio*”), which is indeed true, but in its letter it omitted the fact that it was suspended upon the recommendation of CONMEBOL, who this same day sent a letter to the AUF recommending to suspend the General Assembly in order to get some time to perform the Eligibility Checks of all the candidates.
  - In its letter CONMEBOL affirms that the candidacies of Mr Ignacio Alonso and Mr Ignacio Nopitsch were presented untimely, which is totally wrong. On the contrary, the Statutes of the AUF in force at that time, it did not establish any specific term for the submission of candidacies and the specific Procedural Manual ruling the electoral process (“*Manual de Procedimiento*”) allowed for the presentation of new candidates up until the beginning of the General Assembly. Therefore, the candidacies of Mr Alonso and Mr Nopitsch that were presented on 3 and 13 August 2018, respectively, were admissible for the electoral process to be held on 21 August 2018.
  - CONMEBOL omits that the first two candidates, Mr Del Campo and Mr Abulafia, did not pass the Eligibility Check and, as a result, it was necessary to have new candidates for the elections. In this regard, both Mr Alonso and Mr Nopitsch passed their respective Eligibility Check with CONMEBOL, hence being eligible for the Presidency of the AUF. Therefore, both candidates were entitled to stand for the elections, as their candidacy were filed in a timely manner and both were eligible for this position.
  - The statement that a new candidate for the Presidency was going to be presented for the elections is groundless and untrue.
  - CONMEBOL affirms that the electoral process was not transparent and that it did not met the requirements established by FIFA and CONMEBOL, which is not true. The electoral process was transparent, and it fulfilled with all the requirements established by the regulations of FIFA and CONMEBOL.
131. As a result of the above, the Appellants consider that the intervention of the AUF ordered by FIFA was arbitrary. The Appellants affirm that the electoral process that was being conducted in July/August 2018 fulfilled all the requirements and conditions on integrity and transparency established by the regulations of FIFA and CONMEBOL. In this regard, the fact that on 31 July 2018 FIFA had granted the AUF a term until 2 December 2018 to amend its Statutes and approve a new version aligned with the FIFA regulations, it clearly proves that FIFA agreed with the holding of elections for the Presidency of the AUF under the Statutes of the AUF that were in force at that time. Therefore, the intervention of the AUF on 21 August 2018 ordered by FIFA on the basis that this electoral process was not transparent is groundless and

in contradiction with its previous decision to extend the term for the amendment of the Statutes of the AUF until 2 December 2018. Nobody can be sanctioned for something that is not obliged to do yet.

132. In addition, the Appellants sustain that the Appealed Decision is also null and void because:
- a. It was passed in clear breach of the principles of due process and violating the Appellants' right to be heard, because FIFA never gave the AUF the opportunity to submit its position regarding the intervention of the association.
  - b. The members of the Normalisation Committee that had been appointed by FIFA are senators or congressmen in Uruguay, which is a breach of FIFA's obligation to be and remain neutral in matters of politics.
  - c. FIFA has not proved that the members of the Normalisation Committee passed their Eligibility Checks to hold their positions. If this requirement was essential to become a member of the Executive Committee of the AUF, it must be also an essential requirement to become a member of the Normalisation Committee.
  - d. The General Secretary of CONMEBOL, who sent on 21 August 2018 the letter to FIFA requesting the intervention of the AUF, is not competent under the Statutes of CONMEBOL to request such intervention. Only CONMEBOL's Council is entitled to investigate its affiliate members for the potential violation of its Statutes or regulations.
  - e. The competence to decide to intervene an affiliated member belongs to the Bureau of the Council of FIFA, which must follow certain rules. This Bureau is composed by the President of FIFA plus 6 other members (i.e. the presidents of the respective confederations affiliated with FIFA). However, when the decision was taken the Bureau only had 6 members, hence making the decision of the Bureau null and void.
133. Moreover, the Appellants affirm that the decision adopted by the Bureau of the Council of FIFA in this case is inconsistent and incongruous with the precedents in which FIFA has decided to intervene an affiliate member and to appoint a Normalisation Committee. In this regard, the Appellants sustain that in all the previous cases the relevant decision was taken and addressed to guarantee the independence and autonomy of the affiliated member and to prevent the risk of having any kind of governmental influence within the corresponding federation. In the Appellants' view, this is not the case herein.
134. Finally, the Appellants consider that (i) CAS has jurisdiction to rule the present case, (ii) they have the necessary standing to appeal the Appealed Decision and (iii) all the Respondents have standing to be sued.

#### **IV.2. FIFA**

135. As a preliminary issue, the First Respondent contends that CAS has no jurisdiction to hear this case because the only party which was legally affected by the Appealed Decision (i.e. the

AUF) did not appeal it and, as a result, such decision became *res iudicata* and cannot be reviewed by the CAS.

136. In second place, FIFA considers that even in case CAS declares itself competent to hear the present case, the Appellants' appeal is not admissible, because the Appellants do not have standing to appeal, as they have no legal interest in the outcome of the present dispute. FIFA considers that this is due to the fact that the Appealed Decision did not affect the Appellants' legal situation, as it did not retain or limit the rights of the AUF members. In particular, the Appellants still have their voting and electoral rights as well as all their membership rights, which remain unaffected by the Appealed Decision. In FIFA's view, this clearly proves that the Appellants' appeal is not legitimate as it has been filed by purely political motives.
137. Furthermore, FIFA sustains that the Appealed Decision is proportionate, reasonable and justified, and it was not based on wrong or false facts. FIFA affirms that the factual background that the Appellants have presented is completely different to the real background of the Appealed Decision. Since 2011 FIFA has been requesting the AUF to revise its Statutes to bring them in line with the requirements of the FIFA Standard Statutes. However, during these years, despite having three direct threats of sanctions and despite having granted to the AUF deadline extensions on five different occasions, the AUF did not complete the revision process.
138. The events unfolding on 21 August 2018 were the culmination of a long series of delays and failures of the AUF to revise its Statutes and, ultimately, to hold transparent and democratic elections. FIFA recalls that on 31 July 2018, upon the petition from the AUF of 4 June 2018 grounded on the fact that on 31 July 2018 they were holding elections for the presidency of the federation, FIFA granted a final deadline to the AUF until 2 December 2018 to revise its Statutes. In this regard, the AUF affirmed that the electoral process was the last hurdle to take before revising the Statutes. However, some days later, serious problems with regard to the electoral process appeared, putting at risk not only the electoral process but also the long-needed Statutes revision process, with the potential suspension of the AUF in case this would have happened. In this scenario, the most reasonable solution was to intervene the AUF and appoint a Normalisation Committee, in order to ensure that the revision process and the AUF election would stay on track, and that the federation was not going to be suspended.
139. In addition, based on the principle of "*Vereinsübung*", by virtue of which an association is bound by its own practice, FIFA was legally obliged by Swiss law to treat this case not differently from it had previously treated others. Given that there were countless precedents where in similar situations FIFA consistently decided to appoint a Normalisation Committee, in this case FIFA was also obliged to take the same decision.
140. FIFA also submits that it has discretion to assess whether or not there are exceptional circumstances that justify the appointment of a Normalisation Committee, as part of its autonomy as an association. In this regard, even though the Appealed Decision is not a sanction but a mechanism to remediate a flawed situation within a Member Association and to grant institutional support, in this case it would be also applicable the CAS jurisprudence

regarding the review of disciplinary sanctions, pursuant to which sanctions can only be reviewed if they are grossly and evidently disproportionate, which is not the case.

141. Finally, with regard to the arguments brought forward by the Appellants pursuant to which the members of the Normalisation Committee are allegedly not politically neutral, such allegation is not relevant for the present dispute and, ultimately, the reality is that all the members of the Normalisation Committee performed an Eligibility Check, on a voluntary basis, hence dispelling any doubt about their suitability for holding a position in the Committee.

### IV.3. CONMEBOL

142. The Second Respondent considers that since 2011, both FIFA and CONMEBOL have been trying without success to assist the AUF to approve new Statutes compliant with the international rules (FIFA and CONMEBOL's statutes). However, this process has not been concluded until today due to the delaying tactics of certain members of the AUF, that are trying to preserve their predominant political position in Uruguayan football.
143. This obstructive and dilatory behaviour reached its peak in summer 2018, when the General Assembly of the AUF decided to postpone the vote on the new statutes, deciding to hold new elections instead. Furthermore, the period around the election of 31 July 2018 was characterized by uncertainty and non-transparency. In particular:
- Just few days before the elections, the President of the AUF, Mr Wilmar Valdez, unexpectedly withdrew from his candidacy.
  - The General Assembly of 31 July 2018, in which two candidates (Mr Arturo del Campo and Mr Eduardo Abulafia) had presented their candidacy, was recessed until 21 August 2018, in order for CONMEBOL's *Subcomisión de Control* to carry out the mandatory eligibility checks on the candidates.
  - This first two candidates, Mr Arturo del Campo and Mr Eduardo Abulafia, did not pass the eligibility checks.
  - Just few days after the General Assembly was recessed, two additional persons presented in an untimely manner -in CONMEBOL's opinion- their candidacies (Mr Ferando Nopitsch and Mr Ignacio Alonso).
  - The factual and legal situation regarding the electoral process of the AUF was completely unclear and there were rumours that additional candidates, who would have not undergone the eligibility check, would stand for the elections.
  - During this recess period, several stakeholders of the AUF (i.e. the "*Mutual Uruguay de Futbolistas Profesionales*", the "*Capitanes de la Selección Mayor de Fútbol XI de Uruguay*", the "*Asociación Uruguaya de Árbitros de Fútbol*" and the "*Organización del Fútbol Interior*") sent

several letters to CONMEBOL reporting their concerns about the situation within the AUF and asking for the intervention of the federation.

144. As a result, CONMEBOL considers that the day of the electoral process the AUF was in an extremely precarious and uncertain situation, where it was not clear which would be the candidates that would be running for the Presidency and there were serious doubts about the transparency of the whole process. Therefore, in order to avoid the potential suspension of the association, CONMEBOL informed FIFA about the situation and expressed its opinion that, in its view, the prerequisites for the appointment of a Normalisation Committee were met.
145. On the other hand, CONMEBOL sustains that CAS has no jurisdiction to entertain this Appeal because the Appealed Decision is *res iudicata*, as the AUF, who was its only addressee and the party affected by it, did not appeal the decision.
146. Furthermore, CONMEBOL sustains that the Appellants have no standing to sue, because the Appealed Decision did not personally and directly affect their membership rights, including their voting rights, hence not having any legal interest worthy of protection. As a result, CONMEBOL sustains that the Appeal is not admissible, since the Appellants lack of the necessary standing to sue.
147. Finally, CONMEBOL claims that it has no standing to be sued, because it is FIFA and not CONMEBOL the sole competent body to appoint a Normalisation Committee. In this regard, CONMEBOL simply expressed its opinion to FIFA regarding the necessity of intervening the AUF, but it did not pass the Appealed Decision. Therefore, CONMEBOL is not obliged by the disputed right at stake and do not have standing to be sued.

#### **IV.4. AUF**

148. The AUF affirms that the Appellants do not have standing to sue, as the Appealed Decision was solely addressed to the AUF. The AUF sustains that the Appellants do not have any tangible financial or sporting interests in the present matter. In its view, if the Appellants clubs did not agree with this decision, they would have had to adopt this decision within the AUF, through its General Assembly. The Appealed Decision removed the Executive bodies of the AUF, but it did not affect to the rights of the Clubs or of its General Assembly. Indeed, they could have done this on the General Assembly of 21 August 2018, when the Appealed Decision was notified, or within the following 8 days after such notification, day in which the members of the Normalisation Committee were appointed. With their appeal the Appellants are trying to replace the will of the General Assembly of the AUF, as an institution, for the will of 15 football clubs.
149. On the other hand, the AUF considers that it has no standing to be sued, because the decision was exclusively adopted by FIFA and because, indeed, the AUF was the subject matter of the decision.

150. The AUF is of the opinion that the Appealed Decision is lawful, because FIFA was expressly empowered to remove the Executive Body of the AUF as it considered that there were exceptional circumstances to do so, upon the previous consultation with the relevant confederation, i.e. CONMEBOL.
151. The AUF affirms that there are no flaws or defects that could entail the nullity of the Appealed Decision, which is totally valid and has effect. In addition, taking into account that in their request the Appellants ask for the “revocation” of the Appealed Decision and not for its annulment or nullity, it is not possible to annul the acts that the Normalisation Committee have adopted, as the Appellant’s simultaneously submit in their prayers for relief.

## V. JURISDICTION

152. Article R47 of the Code provides as follows:

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

153. The Appellants rely on Arts. 57 and 58 of the FIFA Statutes to confer jurisdiction to the CAS, which reads as follows:

### ***“57 Court of Arbitration for Sport (CAS)***

1.  
*FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents.*

2.  
*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.*

### ***58 Jurisdiction of CAS***

1.  
*Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question.*

2.  
*Recourse may only be made to CAS after all other internal channels have been exhausted.*



3.

*CAS, however, does not deal with appeals arising from:*

*(a) violations of the Laws of the Game;*

*(b) suspensions of up to four matches or up to three months (with the exception of doping decisions);*

*(c) decisions against which an appeal to an independent and duly constituted arbitration tribunal recognised under the rules of an association or confederation may be made.*

*[...]*”.

154. The First and Second Respondents contest the jurisdiction of CAS. In particular, concerning CAS jurisdiction, the First and Second Respondents submit that as the AUF did not appeal the Appealed Decision, it became *res iudicata* and hence, in their view, CAS would not have jurisdiction in the present matter. Furthermore, the three Respondents contest the admissibility of the appeal, as they consider that the Appellant lacks the necessary standing to sue. In this regard, the Panel deems convenient to clarify that the issue of the standing to sue indeed refers to the merits of the case and hence it will be analysed and settled by the Panel in the corresponding section of the present award.
155. With regard to this challenge of jurisdiction, pursuant to Art. 186, para. 1, of the Swiss Private International Law Act (hereinafter “PILA”) as well as to the principle *Kompetenz-Kompetenz*, the Panel is empowered to determine if it has jurisdiction to adjudicate the present appeal.
156. In this regard, the Panel firstly observes that in general terms, under Art. 57 of the FIFA Statutes, “FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents”. Furthermore, in its Art. 58, the FIFA Statutes establish that appeals against final decisions passed by FIFA’s legal bodies can be lodged with CAS, provided that the aggrieved party has exhausted all the internal remedies available and that the decision at stake does not fall under any of the exceptions established by section 3 of Art. 58 of the FIFA Statutes.
157. In the present case, the Appealed Decision was passed by the Bureau of the FIFA Council which, in accordance with Art. 38 in relation with Art. 24 of the FIFA Statutes, is a legal body of FIFA with the power and authority to deal with all matters within the competence of the FIFA Council that demand for an immediate decision with immediate legal effect. Furthermore, the Panel observes that the FIFA Statutes do not provide for any specific legal remedy against the decisions of the Bureau, which are therefore definitive and binding within FIFA’s legal sphere. In addition, the Appealed Decision does not fall under any of the cases listed in Art. 58.3 of the FIFA Statutes. As a result, the Panel finds that CAS has jurisdiction to adjudicate the present appeal.
158. Notwithstanding this, the Panel observes that the First and Second Respondent consider that CAS lacks jurisdiction to rule the present appeal, as they understand that in this procedure, a *res iudicata* situation exists. In particular, the Respondents ground this procedural exception on the fact that the AUF, who in their view was the only party with the necessary legal standing to appeal the Appealed Decision, did not appeal the decision of the Bureau of the FIFA’s Council, that therefore became final and binding and with *res iudicata* effect.

159. The Panel is aware that, in some circumstances (depending on the legal effects at stake arising out of the *res iudicata*), the existence of a previous decision or judgment will entail the lack of jurisdiction of a subsequent Court or Tribunal. In particular, pursuant to the jurisprudence Swiss Federal Tribunal, “*Quant à l’autorité de chose jugée, ce principe interdit au juge de connaître d’une cause qui a déjà été définitivement tranchée; ce mécanisme exclut définitivement la compétence du second juge*” (ATF 127 III 279), which could be freely translated into English as follows: “*With regard to the res iudicata authority, this legal principle prevents the judge from entertaining a case that has been already and definitively decided; this mechanism excludes the competence of the second judge*”. Indeed, under Swiss Law *res iudicata* is part of procedural public policy, and it applies both domestically and internationally (4A\_633/2014).
160. In particular, in accordance to the jurisprudence of the Swiss Federal Tribunal, “*il y a autorité de la chose jugée lorsque la prétention litigieuse est identique à celle qui a déjà fait l’objet d’un jugement passé en force (identité de l’objet du litige). Tel est le cas lorsque, dans l’un et l’autre procès, les mêmes parties ont soumis au juge la même prétention en se basant sur les mêmes faits*” (which could be freely translated into English as follows: “*there is res iudicata when the claim in dispute is identical to that which was already the subject of an enforceable judgment (identity of the subject matter of the dispute). This is the case when in both litigations the same parties submitted the same claim to the court on the basis of the same facts*”).
161. Therefore, in order for the Panel to establish whether *res iudicata* exist in the present case or not, the Panel shall determine if, as the First and Second Respondent sustain, the Appealed Decision became final and binding as a result of the fact that the AUF did not appeal it. In this regard, the Panel observes that the First and Second Respondent base their claim of lack of jurisdiction due to *res iudicata* reasons, referring to a judgment of the Swiss Federal Tribunal (Judgment of August 28, 2014, 4A\_6/2014) in which a CAS award was partially annulled for violation of the *res iudicata* principle. However, regarding the issue at stake, the Panel disagree with the First and Second Respondents and also finds that this jurisprudence is not applicable to the present case.
162. In the Panel’s view, in the present case *res iudicata* do not exist, as it would require the existence of a previous and final decision with such legal effect, that would have been previously passed in a legal procedure in which the present dispute would have been already litigated between the same parties and adjudicated by a different Court (either arbitral or judicial). Otherwise, no *res iudicata* could exist, as nothing would have been adjudicated yet.
163. In this regard, the Panel shall note that the Swiss precedent referred by the Respondents (4A\_6/2014), in which the Swiss Federal Tribunal considered the effects that *res iudicata* should have in cases of plurality of parties (i.e. joint defendants), is totally different and has nothing to do with the case at stake. In the referred case, the Swiss Federal Tribunal declared that the *res iudicata* effect of a judgment must be examined separately for each joint defendant. In particular, that case concerned two joint defendants (a club and a player) that had been found by the Dispute Resolution Chamber of FIFA (“DRC”) as jointly liable for the payment of a certain amount to the former club of the player. Even though the decision of the DRC was initially appealed by both defendants, the player did not pay the advance of costs of his appeal and thus the CAS deemed his appeal withdrawn. In its Judgment, the Swiss Federal Tribunal considered that the players’ withdrawal had *res iudicata* effect between him and the

first instance claimant, declaring that “*the withdrawal of the Player’s appeal, followed by the appeal proceedings CAS/2012/2916 being struck out, put an end to this appeal procedure so that the decision of first instance was henceforth res indicata as to the Player and the Appellant. In other words, the CAS arrogated to itself a jurisdiction razione personae that it no longer had as a consequence of the withdrawal of the appeal when it annulled a decision already enforceable as to one of the joint Defendants and henceforth untouchable, irrespective of the fate of the appeal of the other joint Defendant and of the risk of contradictory awards*”<sup>1</sup>.

164. As it can be easily inferred from the above, the legal doctrine cited by the Respondents is not applicable to the present case, in which the Appealed Decision had not been previously reviewed by a judicial court or body, and in which no previous proceedings involving the same object, the same legal grounds and the same parties (i.e. the so-called “triple identity”) had been substantiated, which would obviously preclude the possibility of adjudicating again this dispute. A different question is the legal effect arising out of the fact that the AUF did not appeal the Appealed Decision, which certainly entail the preclusion for the Third Respondent to appeal against it, hence the transformation of the Appealed Decision in a final and binding resolution exclusively for the AUF, but not for the Appellants. As a result, in the present case the exception of *res indicata* that the First and Second Respondent have raised shall be dismissed.
165. In light of the above and pursuant to Art. R47 of the CAS Code in connection with Arts. 57 and 58 of the FIFA Statutes, the Panel considers that CAS has jurisdiction to hear the present appeal.

## VI. ADMISSIBILITY

166. Article R49 of the Code provides 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. [...]”*

167. In line with this, Art. 58 of the FIFA Statutes establishes that “*Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question*”.
168. The Appealed Decision was notified on 21 August 2018, and the Statement of Appeal was filed by the Appellants on 4 September 2018, hence within the deadline of 21 days set by Art. 58 of the FIFA Statutes. The appeal also complies with the rest of requirements set by Art. R48 of the CAS Code, being hence admissible.

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<sup>1</sup> In its original French version reads as follows: “*le retrait de l’appel du joueur, suivi de la radiation de la procédure d’appel CAS/2012/A/2916, avait mis un terme à cette procédure d’appel, si bien que la décision de première instance était, depuis lors, revêtue de l’autorité de la chose jugée à l’égard du joueur et du recourant. En d’autres termes, le TAS s’est arrogé une compétence razione personae qu’il ne possédait plus, suite au retrait de l’appel, en annulant une décision déjà en force pour l’un des deux consorts défendeurs et désormais intangible indépendamment du sort réservé à l’appel de l’autre consort défendeur et du risque de sentences contradictoires*”.

169. The Panel notes that all the Respondents contest the "admissibility" of the appeal, as they challenge the Appellants' capacity to appeal against the Appealed Decision, considering that the Appellants lack the necessary standing to sue or to appeal this resolution or that some of the Respondents lack the necessary standing to be sued. Notwithstanding this, as it has been already said, in accordance with the jurisprudence of the Swiss Federal Tribunal (i.a. ATF 126 III 59 c. 1a) as well as the CAS jurisprudence (i.a. CAS 2010/A/2056), the standing to sue as well as the standing to be sued shall not be qualified as a matter of admissibility of the appeal, but a matter of the merits of the appeal (i.e. related to the material conditions of the claim). As a result, the potential lack of standing to sue would not lead to the consideration of the appeal as inadmissible, but rather to the dismissal of the appeal on the merits. Therefore, this question shall be dealt with by the Panel when discussing the merits of the present appeal section of this award, and not in the present section.

170. Accordingly, the appeal is declared admissible.

## VII. APPLICABLE LAW

171. Article R58 of the Code provides as follows:

*"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".*

172. Pursuant to Art. 57.2 of the FIFA Statutes, when adjudicating appeals against decisions passed by the FIFA legal bodies, CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law. Therefore, the Panel finds that the present dispute must be decided according to the FIFA Regulations and, additionally, to Swiss Law.

## VIII. PRELIMINARY ISSUES

### A. The Appellants' standing to sue

173. The Appellants ground their standing to sue (*rectius*; to appeal) in Art. 75 of the Swiss Civil Code ("SCC"), pursuant to which *"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"*. However, the Respondents contest the Appellants capacity to challenge the Appealed Decision, as they consider that they do not have the necessary standing to sue. In particular, the Respondents consider that the Appellants have no legal interest in the outcome of the present dispute, because their rights were not affected by the Appealed Decision. Furthermore, the Third Respondent sustains that if the Appellants did not agree with the Appealed Decision, they would have had to promote the adoption of a resolution within the General Assembly of the AUF in which it was decided to appeal this decision. However, given

that they did not do this and that on the contrary, the AUF consented the Appealed Decision, the appeal filed by the Appellants is not admissible.

174. As a result of this, the Panel must determine if the Appellants have the necessary standing to sue and to legitimately appeal the Appealed Decision before the CAS. In this regard, the Panel observes that the FIFA Statutes do not list the parties that, under these applicable regulations, are to be considered to have a protectable interest conferring them standing to appeal decisions passed by the Bureau of the FIFA's Council. Notwithstanding this, in general terms standing to sue correspond to any party that in a certain case has a legitimate interest which is worthy of protection. In particular, even though this legitimate interests is a broad, flexible and undetermined legal concept, that must be determined and concretized on a case-by-case basis, CAS jurisprudence has clarified that this legitimate interest exists if the party intending to appeal (i) is sufficiently affected by the decision at stake and (ii) has a specific and tangible interest *ad casum*, either of financial or sporting nature.
175. In summary, *“Third parties generally have standing before the CAS in two cases. First, when a regulation explicitly confers it. Secondly, when an association’s measure affects not only the rights of the addressee, but also and directly those of a third party, that third party is considered “directly affected” and thus enjoys standing to sue. 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 & CAS 2017/A/4943). In addition, in order for a party to have standing to appeal, a third prerequisite should be met, which consists of the fact that such party shall be aggrieved by the decision against which it intends to appeal. Otherwise, this party would not have any interest at stake worthy of protection through an appeal procedure.
176. Furthermore, pursuant to the CAS jurisprudence, in order to hold this *locus standing*, it is not necessary that the person at issue is the addressee of the decision against which the appeal is filed. On the contrary, in line with what has been declared by CAS jurisprudence (see CAS 2008/A/1658), *“a football club which is not the addressee of a FIFA decision which was only notified to the national football federation to which the club is affiliated but which is materially affected by the decision [...] should have standing to appeal before the CAS against the FIFA decision”* (DE LA ROCHEFOUCAULD E.; Standing to sue, a procedural issue before the CAS, in CAS Bulletin 1/2011, p. 17).
177. Contrary to what the Respondents sustain, the Panel finds that in the present case the Appellants do indeed have sufficient and legitimate interest in appealing the Appealed Decision because the Appealed Decision had tangible and immediately direct consequences for them. Therefore, in the Panel's view it is not true that it did not have an effect on the legal situation of the Appellants or that they do not have legal interest in these proceedings. The Panel considers that the Appealed Decision had several legal effects on the Appellants, and that in a certain manner their membership rights were affected by the establishment of the Normalisation Committee. In particular, and among other issues, as a result of the intervention of the AUF and the establishment of the NC:

- A revision process of the Statutes of the AUF was conducted, which was managed by the NC and addressed to approve a new version of its Statutes in order to comply with the requirements of FIFA and CONMEBOL. In this regard, taking into account that being the Appellants members of the AUF, the Statutes of the national association are the fundamental document and the most essential regulatory framework to which the Appellants are submitted, which establishes, *inter alia*, their fundamental rights and obligations as direct members of the AUF and determines their participation, its rights and obligations, within the FIFA & CONMEBOL spheres, and given the scope of the intervention of the Appealed Decision, the Panel considers that the Appellants were clearly affected by such decision and that in the present case they have an interest which is worth of protection.
  - The electoral process within the AUF was suspended and hence the Appealed Decision deprived the Appellants from their *a-priori* right to conduct this election process at the time they have so decided before the amendment of the statutes of the AUF as well as to exercise their voting rights within the elections that were being held in the federation.
  - Given that the purpose of the NC was to review the AUF statutes to ensure their compliance with the requirements of FIFA and CONMEBOL, and that this would affect to the weight of the votes that the members of the AUF had at that time, ultimately the Appealed Decision had a direct impact and affected the representativeness of the Appellants within the AUF and the weight of their voting rights.
178. In this regard, it is true that, as the Third Respondent observes, in accordance with Art. 8, para. 2, of the FIFA Statutes, the Appealed Decision only removed the executive bodies of the AUF (i.e. its “*Consejo Ejecutivo*”) but it did not suspend the effectiveness of its members’ membership rights. Therefore, it could be sustained that on the same date in which the Appealed Decision was taken and notified, a date in which all the members of the AUF were convened in a General Assembly, the Appellants could have promoted the adoption of the resolution to appeal such decision. Indeed, at least theoretically, the Appellants would have had further opportunities to convene the General Assembly and adopt this resolution to challenge the decision before the CAS. In particular, as from the date of the receipt of the Appealed Decision (i.e. 21 August 2018) until the date in which the members of the NC were appointed and assumed their responsibilities and functions (i.e. 29 August 2018), pursuant to Art. 17 of the Statutes of the AUF in force at that time, it was theoretically possible for the Appellants to call for a General Assembly in order to adopt such agreement. Indeed, the Panel is of the opinion that pursuant to this thesis, the Appellants would have been entitled to call for this General Assembly even after the NC took office.
179. However, the Panel considers that in the present case this theoretical assumption cannot affect or limit the Appellants’ standing to appeal. First of all, because of the non-determination and uncertainty of the Appealed Decision, which did not clearly state how it was affecting to the rights of the members of the AUF, giving also room to uncertainty with regard to its effectiveness date, because even though the intervention of the AUF was declared “*with immediate effect*” (i.e. with effect as from 21 August 2018), the members of the NC were not appointed until 8 days later (i.e. on 29 August 2019). Therefore, as it was recorded in the

minutes of the General Assembly of 21 August 2018, it is reasonable that when the Appellants received the Appealed Decision, there were serious doubts about the possibility of passing a resolution within the AUF in order to appeal this decision and about the reaction that the NC would have had in case this General Assembly was not suspended and such resolution was passed (including the eventuality of being sanctioned by FIFA). For this reason, as it is recorded in these minutes, the Appellants decided to comply with the Appealed Decision and suspend the General Assembly.

180. This being said, the Panel considers that even if this thesis was correct and for the reasons explained above (see para. 177), the Appellants individually had, out of the sphere of the AUF, standing to appeal this decision. And, ultimately, in line with the legal principle *in dubio pro actione*, given the uncertainty brought by the Appealed Decision due to its vagueness in explaining the effects that such intervention would have over the AUF's members, recognizing the Appellants' standing to appeal is, in the Panel's view, the most thorough interpretation in order to make the Appellants' rights of access to justice and to appeal effectiveness. Notably bearing in mind that pursuant to Art. 59.2 of the FIFA Statutes, recourse to ordinary courts is prohibited under the applicable regulations, hence being an appeal to the CAS the sole recourse that the Appellants had in order to defend and protect their legal interests.
181. Finally on this issue, with regard to the argument submitted by the First Respondent pursuant to which the behaviour of the Appellants after filing their appeal would be contradictory with their appeal, as they have been cooperating with the NC appointed by FIFA, this is in the Panel's opinion not relevant to decide whether in the present case, the Appellants have standing to appeal or not, which has nothing to do with the conduct of the Appellants after the filing of the appeal.
182. Therefore, having concluded that the Appellants have the necessary standing to appeal the Appealed Decision, the Panel dismisses the submissions of the Respondents with regard to the alleged non-admissibility of the appeal on the grounds of this alleged lack of standing to sue.

## **B. The Second and Third Respondent standing to be sued**

183. The Second and Third Respondent submit that in the present case, they do not have standing to be sued. With regard to this issue, the Panel shall start its reasoning noting that under Swiss law and CAS jurisprudence, a party has standing to be sued in a specific procedure when it can be obliged or affected by the disputed rights at stake (CAS 2006/A/1206) or when it has some interest in the dispute because something is sought against it (CAS 2015/A/4071). To settle this question, the Panel will address separately the situation of the Second and Third Respondent with regard to their alleged lack of standing to be sued.

**a. CONMEBOL**

184. CONMEBOL sustains that it has no standing to be sued, because it did not take the decision of intervening the AUF and appointing a Normalisation Committee. In its view, pursuant to Art. 75 of the SCC, a decision by an association may be challenged by its members, provided that they have not consented to it and that they are affected by it. However, in its opinion such challenge must be made against the association that passed the decision at stake, and not against a third party. Therefore, CONMEBOL considers that in the case at hand it does not have standing to be sued.
185. The Panel agrees with the Second Respondent. First of all because, as a general rule, in accordance with Art. 75 of the SCC, under Swiss law standing to be sued in these cases rests with the association that had taken the resolution at stake. However, the Panel takes into account that in this case, Art. 75 of the SCC can be applied to this procedure by analogy only, because the Appellants are not a direct members of the association at stake (as the official members of FIFA are the national associations), but “indirect members” (see CAS 2016/A/4924 & CAS 2017/A/4943, and CAS 2016/A/4602), and thus the extent of the standing to be sued shall not be analysed only under the umbrella and literality of Art. 75 of the SCC, but considering the broader legal framework established by Art. 57 and 58 of the FIFA Statutes.
186. In turn, in order for the Panel to determine whether the Second Respondent has standing to be sued or not, the Panel considers that it shall find out whether CONMEBOL meets the general prerequisites for having standing to be sued (i.e. if it would be obliged or affected by the disputed rights at stake or if it has some interest in the dispute because something is sought against it). In this regard, the Panel notes that CONMEBOL did not pass the Appealed Decision, and simply informed FIFA about the situation that the AUF was facing with regard to its electoral process, requesting it to intervene the AUF. Moreover, in the decision-making process, the intervention of CONMEBOL was limited to be consulted by FIFA regarding the latter’s intention to intervene the AUF, as established by Art. 8, para. 2, of the FIFA Statutes, and it did not participate in the adoption of the decision which was exclusively passed by the Bureau of the FIFA Council.
187. In addition, in the present appeal the Appellants do not seek anything against CONMEBOL, and none of their prayers for relief is addressed to it. In this regard, CONMEBOL can neither restore the autonomy of the AUF nor execute any of the other reliefs sought by the Appellants. And, in line with this, ultimately in no way CONMEBOL will become obliged or affected by the present award, hence being it clear for the Panel that it lacks the necessary standing to be sued in the present procedure. Therefore, from a procedural perspective, given CONMEBOL’s lack of standing to be sued, and not having CONMEBOL requested its participation in the present procedure as a third party or even as an *amicus curiae*, the Second Respondent cannot be a part of in the present arbitration procedure.
188. For all these reasons the Panel finds that CONMEBOL does not have standing to be sued.



**b. The AUF**

189. The AUF submits that it lacks standing to be sued, because it did not pass the Appealed Decision and that, on the contrary, it was indeed the subject matter of this decision. In this respect, as it has been previously said (see paras. 186 & 187), Swiss legal literature and jurisprudence unanimously hold that, pursuant to Art. 75 of the SCC, in general terms standing to be sued rests solely with the association itself. However, given the particularities of the present case, the Panel shall assess if the prerequisites that in general terms must be fulfilled to consider that a party holds standing to be sued (i.e. to have a direct, personal and actual interest in the outcome of the case and/or when something is sought against it in the proceedings) are met in the present case.
190. In this regard, the Panel is of the opinion that the AUF has a direct and actual interest in the outcome of this case, as it can affect not only to its financial situation (if the reliefs sought by the Appellants to annul all the acts executed by the NC are granted by the Panel), but also to its autonomy and its legal situation, as both its Statutes and the electoral process that it was holding in August 2018 are at stake. Therefore, in the Panel's view the AUF is substantively and materially affected by the outcome of this procedure that justifies the Third Respondent's standing to be sued.
191. Furthermore, the Panel considers that this interpretation is the most respectful and protective with the AUF's rights and the one that guarantees better its right to be heard and, ultimately, to state its position regarding a dispute in which it is probably the most interested party.
192. Therefore, the Panel finds that the AUF has standing to be sued.

**C. Inadmissibility of the new documents produced by FIFA on 9 January 2019 and of its petition for the production of documents of 22 February 2019**

193. As stated in para. 111, on 9 January 2019, FIFA sent a letter to the CAS enclosing a new document, consisting of the resolution of the Ministry of Culture and Education of Uruguay passed on 28 December 2018 by virtue of which it formally approved the new Statutes of the AUF. Furthermore, on 22 February 2019, FIFA requested the Panel to be allowed to submit new documents to the file, related with some new events that would have taken place on 15 February 2019 in connection with the duration of the NC's mandate. In this regard, the First Respondent considers that the prerequisites under Art. R56 of the CAS Code for the admission of these petitions are met.
194. Pursuant to Art. R56 of the CAS Code, "*Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer*". Therefore, in order for the Panel to admit new exhibits, the interested party would have to demonstrate the grounds justifying this late submission and, in particular, that exceptional circumstances allowing for its admissibility exist.

195. In the present case, and for the same reasons by which a similar request from the Appellants was dismissed on 26 February 2019, the Panel shall reject this petition. First of all, because it considers that the proposed evidence is not relevant for the present dispute, as it does not relate or affect to the lawfulness or illegitimacy of the Appealed Decision. In second place, because FIFA has not proved any exceptional circumstance that would justify the admissibility of this piece of evidence. Therefore, FIFA's petition of 22 February 2019 is rejected.

#### **IX. MERITS**

196. The matter in dispute ultimately refers to the legitimacy or unlawfulness of the decision of the Bureau of the FIFA Council to intervene the AUF and to appoint a Normalisation Committee took on 21 August 2018. This decision was grounded on Art. 8, para 2, of its Statutes, pursuant to which:

*“Executive bodies of member associations may under exceptional circumstances be removed from office by the Council in consultation with the relevant confederation and replaced by a normalisation committee for a specific period of time”.*

197. In this regard, the Appellants submit that the Appealed Decision is null and void not only because it was based on wrong facts and information that were provided by CONMEBOL but also for its arbitrariness as, in its view, there were no valid grounds to intervene the AUF. In line with this, the Appellants sustain that this decision is not consistent with the previous precedents of FIFA. In addition, the Appellants consider that the Appealed Decision also has several flaws that makes it null and void. On the other hand, FIFA sustains that in this case, the exceptional circumstances requested by Art. 8 para. 2 of its Statutes to intervene a member association were met, and hence that it had discretion to adopt this decision. In this regard, FIFA considers that the Appealed Decision was justified, reasonable and entirely proportionate. In line with this and for similar reasons, the AUF submits that the Appealed Decision is lawful, and that FIFA had the capacity to take this decision.
198. In order to determine whether the Appealed Decision was lawful or not, the Panel must establish under what circumstances FIFA is entitled to remove from office the Executive Committee of an affiliated member association. In this regard, the Panel shall bear in mind that FIFA is an association incorporated and governed under Swiss law, which holds a wide degree of independence and self-governance. In particular, in accordance with the fundamental Swiss legal principle of freedom of association (*Vereinsautonomie*), as an association it has the right to freely organise itself and establish its own regulatory system, being thus free to establish the provisions that it deems convenient regarding its organisation and membership. Furthermore, the Panel notes that under Swiss law this freedom of association involves not only the right to create its own rules, but also the right to apply and enforce these associative rules, being only these rights limited by the due respect to Swiss law and, in particular, to personality rights.
199. In the present case, the Panel observes that Art. 8 para 2 of the FIFA Statutes grants FIFA the power and authority to intervene in the management of a member association, removing

its Executive Bodies and replacing them by a Normalisation Committee for a specific period of time, provided that “*exceptional circumstances*” so justify. In particular, in light of the literality of this statutory provision, if these exceptional circumstances occur, FIFA has discretion (i.e. it may do it or not) to take such decision. The Panel notes that the FIFA Statutes neither clarify the meaning of this concept (i.e. exceptional circumstances), nor define which conditions should be met to consider that “exceptional circumstances” indeed occurs. Therefore, this is an undetermined legal concept that shall be concretized in each specific case, in which such concept would acquire the relevant meaning. FIFA shall thus proceed accordingly in each particular case, assessing the circumstances at stake to infer whether the prerequisite of exceptional circumstances exists or not (*tertium non datur*).

200. In addition, considering the freedom of association that governs Swiss associations and hence the wide margin of autonomy, organization and self-government of FIFA, when reviewing FIFA’s ascertainment of the concurrence in a particular case of these exceptional circumstances, CAS must act in a moderate manner, with certain respect towards FIFA’s discretion and margin of assessment to the extent possible, that is to say intervening and annulling FIFA’s decision if it is clearly incorrect or inappropriate in light of the circumstances that FIFA finds as “exceptional circumstances” justifying its intervention. Furthermore, in accordance with this statutory provision, once established by FIFA that these exceptional circumstances are met in the case at stake, FIFA will have discretion to decide whether to enforce its power of intervention (hence removing the member association’s Executive Bodies and replacing it by a Normalisation Committee) or not (“*Executive bodies of member associations may under exceptional circumstances be removed [...]*”). In this regard, once these exceptional circumstances are met, the opportunity and convenience of enforcing this statutory provision will exclusively belong to FIFA, being only possible for the CAS to review FIFA’s decision in case it is unlawful because, for example, it entails arbitrariness, a misuse of its discretionary power, leads to discrimination or breaches any relevant mandatory legal principle or if the decision entails a violation of FIFA’s own Statutes and Rules.
  
201. When assessing the validity of such decision of FIFA, the Panel must balance between the very wide discretionary power of FIFA under Art. 8 of its Statutes and the clear will of the association, accepted by its members, to leave it to FIFA to decide if indeed the circumstances at stake meet the undefined requirements of the term “exceptional circumstances”, while at the other hand, taking into account the fact that the appointment of a normalisation committee to replace the executive bodies of a FIFA member and deprive them from their powers and authorities is a very severe – for sure one of the most severe – means that FIFA can take. In such assessment the Panel should also consider the specific effect of the decision of FIFA and if the Normalization Committee took over the responsibility of managing the member association without limitations in respect of scope and time or if the powers of the Normalisation Committee were limited in a reasonable way by FIFA in establishing, within the decision, the scope and time frame of the appointment of the normalization committee. In the framework of such an assessment the Panel will always consider and check whether the decision taken by FIFA was necessary as a matter of last resort and if the limits of the decision does not go beyond the necessary in order to achieve the legitimate goal of the intervention.

202. Led by these fundamental guidelines of the assessment of the decision, and in order to determine if these exceptional circumstances are met in the present case, the Panel deems it convenient to assess the background of the case and the conditions in which the Appealed Decision was taken. In this regard, the Panel observes that since 18 April 2011, as part of the Performance Programme that FIFA had implemented to improve the organization of its members associations, it recommended the AUF to review and amend its Statutes in order to adapt them to FIFA standards. Since then, FIFA sent to the AUF on a regular basis letters in which it warned the latter about the necessity of adapting its Statutes to the regulations and standards of CONMEBOL and FIFA. Indeed, as it was notified by FIFA to the AUF on 13 November 2013, in its 63<sup>rd</sup> Congress, FIFA amended its Statutes expressly establishing the obligation of its members associations to ratify statutes that were in accordance with the requirements of the FIFA Standard Statutes. As a result, as from this date and through the exchange of several correspondence, FIFA reiterated to the AUF the necessity of amending its Statutes, in order to fulfil its membership obligations. Finally, upon the decision taken by the Executive Committee of CONMEBOL on 20 May 2014, a formal process of revision of the AUF's Statutes was opened, that was conducted by the AUF in coordination with FIFA and CONMEBOL.
203. As from the start of this revision process, FIFA granted the AUF up to 6 deadlines for the approval of the new version of its Statutes (i.e. July 2015, 31 October 2015, 2 December 2015, 31 October 2017, 6 April 2018 and, finally, 2 December 2018). Furthermore, in three of these occasions it warned the AUF about the imposition of sanctions that would take place in case it did not approve its new statutes within the deadline given by FIFA. Such warnings included the immediate suspension of the AUF, in accordance with Art. 14, para 2, of the FIFA Statutes. Notwithstanding this, despite the assistance and the countless opportunities given by FIFA to the AUF, during these seven years, involuntarily or deliberately, the AUF was unable to approve new statutes in accordance with the FIFA standards.
204. In this context, after having missed the penultimate deadline given by FIFA (i.e. the 6 April 2018), in clear breach of its commitments with FIFA (including in breach of Art.14 (1) (a) of the FIFA Statutes), the General Assembly of the AUF unilaterally decided to postpone the voting of its new statute until 18 September 2018, in order to have time to hold elections for its Presidency before the voting of its new Statutes, that were convened to 31 July 2018. This same day (i.e. 31/07/2018), considering the circumstances stated by the AUF, FIFA granted the latter the last extension of the deadline to complete the statutes' revision process, giving the AUF until 2 December 2018 to approve its new statutes.
205. However, once again, on 31 July 2018 and upon recommendation of CONMEBOL, after presenting the sole two candidates that had stand for the elections, the AUF's members decided to suspend the General Assembly and to postpone it (i.e. "*cuarto intermedio*") until 21 August 2018, in order to allow the two candidates that were standing for the elections (Mr Arturo del Campo and Mr Eduardo Abulafia) to undergo the Eligibility Checks of CONMEBOL. In this regard, the Panel observes that, as it is recorded in the minutes of this General Assembly and as it results from CONMEBOL's letter of 31 July 2018, on 10 July 2018 (i.e. more than 20 days before the General Assembly) CONMEBOL had already warned the AUF about the necessity of conducting Eligibility Checks on the candidates.

206. Until 21 August 2018 and in this 21-day period, certain events occurred that led FIFA to intervene the AUF and appoint a NC. In particular:
- i. two new candidates, Mr Ignacio Alonso and Mr Fernando Daniel Nopitsch, submitted their candidacies for the elections;
  - ii. the initial candidates, Mr Del Campo and Mr Abulafia, did not pass their Eligibility Checks, hence being declared ineligible for the elections;
  - iii. four institutions (i.e. the “*Asociación uruguaya de Árbitros de Fútbol*” (AUDAF), the “*Organización del Fútbol del Interior*” (OFI), the “*Mutual Uruguaya de Futbolistas Profesionales*”, and the captains of the Uruguayan national team), requested CONMEBOL to intervene the AUF in order to adopt new statutes aligned with the FIFA Directives and to guarantee free and democratic elections in the federation;
  - iv. there were rumours that were published by the press that it was possible that the General Assembly convened for the 21 August 2018 was going to be suspended again and that a new candidate (apparently Mr Leonardo Goicoechea, President of the Uruguayan club Danubio Fútbol Club) was going to submit his candidacy this same day, when resuming the General Assembly that had started on 31 July 2018;
  - v. CONMEBOL sent a letter to FIFA sharing its concerns about the validity and transparency of the electoral process, in which it requested the appointment of a Normalisation Committee within the AUF.
207. In the majority’s Panel’s view, these facts and the doubts around the electoral process, that led to think that it may not possible that a valid candidate was elected by the members of the AUF in a reasonable term in order to allow the new Executive Committee of the AUF to complete the revision of its statutes before the deadline given (i.e. 2 December 2018) which would entail the immediate suspension of the federation, together with the fact that, regardless of all the opportunities given by FIFA the AUF had not amended its statutes within a 7-year period, could have been reasonably and legitimately considered as exceptional circumstances leading to the enforceability of Art. 8, para. 2, of the FIFA Statutes.
208. The majority of the Panel finds that at that moment of time, it was not clear for an independent observer if the electoral process was valid. In particular, it was not clear if in accordance with the AUF Statutes that were in force at that time, new candidates (i.e. different to those that had been presented at the beginning of the General Assembly of 31 July 2018) could take part in the elections, and if new candidates could submit their candidacies until the same day of the elections. This interpretation was also reinforced with the complaint sent to CONMEBOL by the AUDAF, the OFI, the “*Mutual Uruguaya de Futbolistas Profesionales*”, and the captains of the Uruguayan national team, requesting to intervene the AUF in order to guarantee free and democratic elections in the federation (*inter alia*). Furthermore, the fact that the sole candidates that had submitted its candidacy before the beginning of the General Assembly of 31 July 2018 (i.e. Mr Del Campo and Mr Abulafia) were declared by CONMEBOL not eligible for the Presidency of the AUF, together with the fact that in case

new candidacies were received up to the start of the General Assembly of 21 August 2018 it would have not been possible for CONMEBOL to conduct the relevant Eligibility Checks.

209. As a result, the majority of the Panel finds that, bearing in mind all the events and facts previously occurred in connection with the amendment of the statutes of the AUF since 2011 until this moment of time, and considering the events that happened between 31 July 2018 and 21 August 2018, the circumstances of the matter at stake indeed can be considered as “exceptional circumstances” as required by Art. 8, para 2, of the FIFA Statutes, to remove the Executive Committee of the AUF and replace it for a specific time and for a very specific purpose by a Normalisation Committee, and that FIFA was right in its assessment of the situation. Indeed, in the Panel’s view, the adoption of this measure by FIFA was addressed to protect the AUF’s rights and interests, as it was the best form to prevent the upcoming imposition of sanctions to the association and in particular its suspension, given that it was foreseeable, considering the circumstances at stake, that if FIFA would have not intervened in the management of AUF, the latter would again not have met the deadline given by FIFA to amend its statutes, hence being the AUF immediately and indefinitely suspended. This being said, the Panel deems it necessary to note that, even though the Appealed Decision was reasonable, fair and legitimate, given the severity of the measure adopted, it would have been desirable and expected also as a matter of respect towards its member, the AUF, and its indirect members, the Appellants, that FIFA had included a further development of its reasoning in the Appealed Decision, instead of giving rather laconic ground to justify the measure, clearly stating which were the exceptional circumstances that FIFA found in order to take this decision. Notwithstanding this, given that these exceptional circumstances were met, the Panel finds, also considering the restraint and respect that the Panel should apply (see *supra* 198 & 200) that FIFA indeed had the right to apply its discretion to intervene the AUF and appoint a Normalization Committee. In turn, the Panel considers that the Appealed Decision was not arbitrary or disproportionate and did not find any flaw or defect in the Appealed Decision that could entail its nullity, hence being completely valid and lawful.
210. Finally, regarding the reasons submitted by the Appellants in support of the nullity of the Appealed Decision, the Panel considers that it does not have any of the flaws that the Appellants claim it has and, in particular:
- a) The measure adopted by the Appealed Decision is not a sanction, but an administrative measure envisaged by the FIFA Statutes that it does not demand for a controversial procedure in which the addressee of the measure would have to be previously heard, in order to adopt this measure. Therefore, the Appealed Decision cannot be null and void on this ground.
  - b) All the claims brought by the Appellants with regard to the aptness and eligibility of the members of the Normalisation Committee appointed by FIFA are not relevant in order to determine the lawfulness of the Appealed Decision, which does not depend on the correctness of these appointments. Indeed, both resolutions (the Appealed Decision and the appointment of the NC members on 29 August 2018) constitute two different and independent decisions. Therefore, in case the Appellants do not agree with the aptness of

the NC members that were appointed by FIFA, it would have had to appeal this decision by means of an independent appeal. Therefore, this submission shall be dismissed.

- c) The submission with regard to the lack of competence of the General Secretary of CONMEBOL to request the intervention of the AUF is groundless because, pursuant to Art. 41, para. 2 a) and i) of the Statutes of CONMEBOL, its General Secretary is competent (a) to execute the decisions and resolutions of its legal bodies (including the Congress and the Council) and (i) to receive and send all the correspondence of CONMEBOL, which is what ultimately happened in the present case. In addition, even if it was true *-quod non-* that the General Secretary was not competent to request to FIFA the intervention of the AUF, this circumstance do not affect to the validity of the Appealed Decision, which was not passed by CONMEBOL and which internal processes and formalities cannot affect to the validity of the decisions of FIFA's legal bodies. Indeed, the only requirement established by Art. 8, para. 2, of the FIFA Statutes, that requested the intervention of CONMEBOL (i.e. the "*consultation with the relevant confederation*") was fulfilled, as the proposal of the Bureau of the FIFA's Council was sent to the President of CONMEBOL who by email of this same day 21 August 2018, gave his agreement to the adoption of such measure by FIFA. Therefore, from a formal perspective the Appealed Decision did not have any procedural flaw and fulfilled all the relevant formalities.
- d) In line with constant FIFA's practice, the decision was adopted by the Bureau, which is the competent legal body to deal with all matters within the competence of the Council of FIFA which require immediate decision (Art. 38 of the FIFA Statutes). In this regard, the Appealed Decision was correctly approved by all the active members of the Bureau of the FIFA Council, and was later ratified by the FIFA Council, in its meeting of 26 October 2018, in which it was decided the "*Ratification of the decisions of the Bureau of the Council of 30 July and 21 August 2018 to give the Uruguayan Football Association (AUF) until 2 December 2018 to approve statutes based on the guidelines sent to the AUF by FIFA on 22 March 2018, and to appoint a normalisation committee with immediate effect for the AUF, whose mandate will expire on 28 February 2019*".
211. The Panel shall also reject the Appellants argument that the Appealed Decision is not consistent and is incongruous with the precedent FIFA practice, not only because this statement is not true as a matter of fact and evidence, but also because the exceptional circumstances envisaged by Art. 8, para. 2, of the FIFA Statutes could be revealed in very different manners, and the purpose and necessity of the appointment of a Normalisation Committee can be of a very different nature, hence having FIFA discretion to decide, on a case-by-case basis, which is the most convenient and the right decision in each particular case, taking into account its mission and objectives, as established by its Statutes.
212. As a consequence of the foregoing, the Panel finds that the Appealed Decision is fair and that the measure adopted by FIFA was lawful, in accordance with Art. 8, para. 2, of the FIFA Statutes. It then follows that the Appeal filed by the Appellant shall be dismissed.

## ON THESE GROUNDS

### **The Court of Arbitration for Sport rules that:**

1. The CAS has jurisdiction to hear the appeal filed by Centro Atlético Fénix, Club Atlético Boston River, Club Atlético Cerro, Club Atlético Progreso, Club Atlético River Plate, Danubio Fútbol Club, Defensor Sporting Club, Liverpool Fútbol Club, Cerro Largo FC, Central Español Fútbol Club, Club Atlético Villa Teresa, Racing Club de Montevideo, Club Sportivo Miramar Misiones, Montevideo Wanderers F.C. and Club Atlético Juventud on 4 September 2018 against the decision of the Bureau of the FIFA Council of 21 August 2018.
2. The appeal filed by Centro Atlético Fénix, Club Atlético Boston River, Club Atlético Cerro, Club Atlético Progreso, Club Atlético River Plate, Danubio Fútbol Club, Defensor Sporting Club, Liverpool Fútbol Club, Cerro Largo FC, Central Español Fútbol Club, Club Atlético Villa Teresa, Racing Club de Montevideo, Club Sportivo Miramar Misiones, Montevideo Wanderers F.C. and Club Atlético Juventud, on 4 September 2018 against the decision of the Bureau of the FIFA Council of 21 August 2018 is dismissed.
3. The decision of the Bureau of the FIFA Council of 21 August 2018 is upheld.
4. (...).
5. (...).
6. All other motions or prayers for relief are dismissed.