Arbitration CAS 2020/A/6922 Tiago Carpes de Bail v. Fédération Internationale de Football Association (FIFA), award of 13 June 2022

Panel: Mr Jan Räker (Germany), Sole Arbitrator

Football
Disciplinary dispute
Scope of (appeal) proceedings
Concept of standing/locus standi
Conditions for the recognition of a right to appeal of a non-addressee of a first instance decision
Creditors' standing to appeal in relation to FIFA Disciplinary Committee's decisions on sporting successions of debtors
FIFA's standing to be sued as sole respondent in appeal proceedings against DC decisions related to sporting succession

1. **When the subject matter of the procedure leading to the appealed decision was not a claim of the appellant but the question as to whether or not disciplinary sanctions should be imposed on another party, no payment to the appellant, be it from such other party or from FIFA, could ever result as a direct consequence from such proceedings. This cannot change within appeal proceedings. A request for the payment of a certain amount of money, which was not the subject matter of the appealed decision, can therefore not be made within an appeal arbitration procedure of disciplinary nature, but would only be admissible in ordinary procedure.**

2. **The concept of standing or *locus standi* describes a party's ability to demonstrate to a court or an arbitral tribunal that it has a sufficient connection to and harm from a challenged decision to support its participation in a case. The basic purpose of the concept is to determine the group of persons who are entitled to, *in casu*, appeal an association's decision. Standing to appeal a decision cannot be recognized with respect to any person remotely affected by a decision. Legal security and the effectiveness of the appeal process command that there should be strict limits on who may be recognized to have standing to appeal, namely those persons having a special interest in the outcome of the case in a manner that clearly distinguishes them from other persons, including the general public.**

4. **The right to appeal to the CAS of a non-addressee of a first instance decision must be admitted in very restricted cases. As a general rule, such appellant's interest must be concrete, legitimate, direct and personal. In addition, the appellant's interest must exist not only at the time the appeal is filed but also at the time when the decision is issued and the decision must affect the appellant with more intensity than others. An interest worthy of protection or a legitimate interest is found to exist if (i) an appellant is sufficiently affected by the appealed decision, and if (ii) a tangible interest of a financial or sporting nature is at stake. Sufficient interest is a broad, flexible concept.**

5. **A creditor's own interest in the FIFA DC's decision about the sporting succession of his/her debtor can be found to be sufficiently high and direct to grant him/her standing to appeal before the CAS against said decision.**

6. **A party has standing to be sued (legitimation passive) if it is personally obliged by the "disputed right" at stake. In other words, a party has standing to be sued and may thus be summoned before the CAS only if it has some stake in the dispute because something is sought against it. In the context of an appeal against a disciplinary decision of FIFA, by which an appellant seeks to obtain a harsher sanction or to revert an acquittal, FIFA is not the only party from which something is sought and the appellant must also name the party on which the sanction shall be imposed as a respondent in his appeal.**

I. INTRODUCTION

1. This appeal is brought by Mr Tiago Carpes de Bail (the "Player" or the "Appellant") against decision number 171212 PST rendered by the Deputy Chairman of the FIFA Disciplinary Committee (the "FIFA DC") of the Fédération Internationale de Football Association ("FIFA") on 7 November 2019 (the "Appealed Decision") in the disciplinary proceeding against Southend Futsal Club, England, ("Southend"), regarding the dismissal of disciplinary sanctions on the Club.

II. PARTIES

2. The Appellant is a professional futsal player, of Brazilian and Italian nationality, who is currently playing for the futsal club Mantova Calcio a 5, Italy, which is associated with the Federazione Italiana Giuoco Calcio (the "FIGC"), which in turn is affiliated with FIFA.

3. FIFA (the "Respondent") is the world governing body of football and futsal, whose headquarters are located in Zürich, Switzerland.

4. The Appellant and the Respondent are referred together as the "Parties".

III. FACTUAL BACKGROUND

5. Below is a summary of the main relevant facts, as established on the basis of the Parties' written submissions on the file, on the relevant documentation produced in this appeal and on the oral presentations of the Parties in the hearing which took place in this matter. Additional facts and allegations found in the Parties' submissions may be set out, where relevant, in connection with the further legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings,

the Award only refers to the submissions and evidence it considers necessary to explain its reasoning.

6. On 1 August 2015, the Player signed a "Work Contract Professional Player" with the English futsal club Baku United F.C. with a duration for the futsal seasons 2015/2016 and 2016/2017.

7. Thereafter, Baku United F.C. informed the Player that the club would be closing down due to financial difficulties, which lead to the termination of the contract by the club.

8. On 22 April 2016, the Player filed a claim against Baku United F.C. with the FIFA Dispute Resolution Chamber (the "FIFA DRC") for termination of the contract without just cause.

9. On 23 March 2017, the FIFA DRC rendered a decision (the "DRC Decision"), in which Baku United F.C. (London Baku United Futsal Club) was ordered to pay to the Player the amount of EUR 21,667 plus 5% *p.a.* interest as from 25 April 2016 and USD 5,000 as procedural costs. The DRC Decision remained unchallenged.

10. After the DRC Decision, the amount awarded to the Player remained unpaid. Consequently, disciplinary proceedings were initiated against Baku United F.C. at the FIFA DC, which rendered a disciplinary decision against Baku United F.C. (London Baku United Futsal Club) on 7 November 2017 (the "First DC Decision").

11. On 11 January 2018, the Player informed FIFA that he had still not been paid and that the club was now named London City F.C.

12. Throughout the time between January 2018 and September 2019, the Player sent various communications to FIFA and made numerous phone calls to FIFA in order to obtain further information on the status of the matter. In such wake, the Player informed FIFA in March 2019 that the Club had changed its name again, this time to Southend Futsal Club.

13. On 13 September 2019, FIFA informed the Player that it had initiated disciplinary proceedings against Southend as the prospective successor of Baku United F.C. for a potential failure to respect the DRC Decision.

14. On 7 November 2019, the FIFA DC rendered the Appealed Decision.

15. In the Appealed Decision, the FIFA DC held as follows:

> *"1. All charges against the club Southend Futsal Club are dismissed.*
>
> *2. The disciplinary proceedings initiated against the club Southend Futsal Club are hereby closed".*

16. The FIFA DC's considerations leading to the Appealed Decisions were expressed as follows:

"4. With regard to the matter at hand, the Deputy Chairman highlights that the disciplinary offense, i.e. the potential failure to comply with the relevant decision of the Dispute Resolution Chamber, was committed before the 2019 FDC entered into force. As a result, he deems that the merits of the present case fall under the 2017 edition of the FDC (hereinafter, "the 2017 FDC").

5. Notwithstanding the above, the Deputy Chairman holds that the procedural aspects of the present matter should be governed by the 2019 FDC.

(…).

8. In this context, the Deputy Chairman first emphasises that based on the information provided by The Football Association on 27 March 2018, it is uncontested that the original Debtor subject of the DRC decision is no longer affiliated to The Football Association.

9. In these circumstances, the Deputy Chairman wishes to recall that, according to art. 53 par. 2 of the FIFA Statutes, the Disciplinary Committee (hereinafter also referred to as "the Committee") may pronounce the sanctions described in the Statutes and the FDC on member associations, clubs, officials, players, intermediaries and licensed match agents.

10. Clubs are affiliated to regional and/or national football associations and these national football associations are members of FIFA. Consequently, football clubs are considered as "indirect members" of FIFA and therefore, are subject to and bound by the FIFA Statutes and all other FIFA rules and regulations as well as by all relevant decisions passed by the FIFA bodies.

11. The aforementioned principle is embedded in art. 14 par. 1 lit. d) of the FIFA Statutes which requires the member associations "to cause their own members to comply with the Statutes, regulations, directives and decisions of FIFA bodies" as well as in art. 60 par. 2 of the FIFA Statutes that states that the member associations, amongst others, "shall take every precaution necessary to ensure their own members, players and officials comply with these decisions". The foregoing is only possible to the extent that the so-called "members" are still affiliated to the member associations of FIFA.

12. Since The Football Association has informed that the original Debtor was no longer one of its affiliated club, the original Debtor has lost its indirect membership to FIFA and the Disciplinary Committee can therefore no longer impose sanctions on it. However, the Deputy Chairman notes that the Creditor subsequently requested the enforcement of the DRC decision, first against the club London City FC and ultimately against the club Southend Futsal Club, which, in his view, should be considered as the successor and/or the same entity as the disaffiliated club, Baku United FC (London Baku United Futsal Club).

(…)

16. In this sense, the Deputy Chairman finds it worthwhile to recall the existing CAS jurisprudence on this particular topic.

17. *To that end, the Deputy Chairman first refers to decisions that had dealt with the question of the succession of a sporting club in front of CAS and in front of FIFA's decision-making bodies. In particular, it has been established that, on the one side, a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it, meaning that the obligations acquired by any of the entities in charge of its administration in relation with its activity must be respected. On the other side, it has been determined that the identity of a club is constituted by elements such as its name, colours, fans, history, sporting achievements, shield, trophies, stadium, roster of players, historic figures, etc. that allow it to distinguish from all the other clubs. Hence, the prevalence of the continuity and permanence in time of the sporting institution in front of the entity that manages it has been recognized, even when dealing with the change of management completely different from themselves.*

18. *In these circumstances, CAS already considered that a "new" club had to be considered as the "sporting successor" of another one in a situation where a) the "new" club created the impression that it wanted to be legally bound by obligations of its predecessor, i.e. the "old" club, b) the "new" club took over the licence or federative rights from the "old" club and c) the competent federation treated the two clubs as successors of one another. By the same token a "sporting succession" is the result of the fact that 1) a new entity was set up with the specific purpose of continuing the exact same activities as the old entity, 2) the "new" club accepted certain liabilities of the "old" club, 3) after the acquisition of the assets of the "old" club, the "new" club remained in the same city and 4) the "new" club took over the licen*[c]*e or federative rights from the "old" club.*

19. *Further, the issue of the succession of two sporting clubs might be different than if one were to apply civil law regarding the succession of two separate legal entities. In particular, the Deputy Chairman recalls that according to CAS, a club is a sporting entity identifiable by itself that generally transcends the legal entities which operate it. Consequently, elements to consider are amongst others the name, the logo and colours, the registration address and/or the managing board of the club.*

20. *For the sake of completeness, the Deputy Chairman wishes to point out that this established jurisprudence from CAS has now been reflected in the 2019 FDC, under art. 15 par. 4 which states that "The sporting successor of a non-compliant party shall also be considered a non-compliant party and thus subject to the obligations under this provision. Criteria to assess whether an entity is to be considered as the sporting successor of another entity are, among others, its headquarters, name, legal form, team colours, players, shareholders or stakeholders or ownership and the category of competition concerned".*

21. *With the above in mind, the Deputy Chairman subsequently analyses the documentation at his disposal in light of the criteria set by the relevant jurisprudence of CAS (now reflected in art. 15 par. 4 of the 2019 FDC) and applied by the Committee in such situations.*

22. *In this sense, the Deputy Chairman observes that the name used by the new Club as well as the logo/crest are different from those used by the original Debtor. The Deputy Chairman further remarks that the Creditor relied solely on Facebook and Twitter postings to support its allegation. In particular, the Deputy Chairman notes that the Creditor did not substantiate its allegation with other elements that it believed would be similar for the new Club and the original Debtor, such as the colours, the stadium, the players, the fans and/or the year of foundation. Finally, the Deputy Chairman notices*

that The Football Association clearly indicated in its correspondence dated 24 April 2019 that the new Club is affiliated as from 2002 under the name Southend Futsal Club and that it had no record of the new Club being affiliated under another name as and from 2002 – 2019.

23. *In light of all the above, the Deputy Chairman recalls that, in line with the jurisprudence of CAS and art. 15 par. 4 of the 2019 FDC, the identity of a club is constituted by elements such as its name, colours, logo, fans, history, players, stadium, etc., regardless of the legal entity operating it. As a result, the Deputy Chairman considers that, based on the information and documentation at his disposal, it cannot be established to his comfortable satisfaction that the new Club, Southend Futsal Club, is the legal and/or sporting successor of the original Debtor, Baku United FC (London Baku United Futsal Club).*

24. *Against this background, following the jurisprudence of the FIFA Disciplinary Committee, the Deputy Chairman concludes that since the new Club cannot be regarded as the sporting successor of the original Debtor, all charges against the new Club must be dismissed, as the new Club cannot be considered as a non-compliant party within the meaning of art. 64 of the 2017 FDC, and therefore cannot be subject to the obligations laid down in this article".*

17. The grounds of the Appealed Decision were communicated to the Player on 18 March 2020.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

18. On 6 April 2020, the Player filed a Statement of Appeal with the CAS in accordance with Article 58 of the FIFA Statutes and Articles R47 and R48 of the Code of Sports-related Arbitration (2019 edition) (the "CAS Code"). In the Statement of Appeal, the Club proposed that this dispute be submitted to a sole arbitrator. The Appellant further informed the CAS Court Office that he shall request legal aid for the procedure at hand at the ICAS.

19. On 7 April 2020, the CAS Court Office acknowledged the filing of the Statement of Appeal and invited the Player to provide a proof of payment of the CAS Court Office Fee within three days, failing which the CAS Court Office would not proceed.

20. On 9 April 2020, the CAS Court Office confirmed receipt of such proof and invited the Player to file with the CAS, within ten days following the expiry of the time limit for the appeal, a brief stating the facts and legal arguments giving rise to the appeal. The CAS Court Office further invited FIFA to state whether FIFA consented to the appointment of a sole arbitrator in this case.

21. On 17 April 2020, FIFA expressed its consent with the appointment of a sole arbitrator as long as the arbitrator was nominated by the President of the CAS Appeals Division from the football list of CAS arbitrators.

22. On 1 May 2020, after an agreed extension, the Player filed his Appeal Brief pursuant to Article R51 of the CAS Code.

23. On 1 May 2020, the CAS Court Office acknowledged receipt of the Player's Appeal Brief and invited the Respondent to submit its Answer within 20 days following the receipt of that communication *via* e-filing.

24. On 4 May 2020, FIFA sent a letter to CAS in which FIFA alerted the CAS Court Office to the apparent non-payment of the Appellant's share of the advance of costs and requested that the deadline for FIFA's filing of its Answer be suspended and reset after the payment of the advance of costs by the Appellant further to Article R55 of the CAS Code.

25. By letter of the same date, the CAS Court Office informed the Parties that the time limit for FIFA's Answer was suspended and that a new time limit shall be fixed upon the Appellant's payment of its share of the advance of costs, in accordance with Article R55 of the CAS Code.

26. On 10 June 2020, the Legal Aid Commission of the ICAS pronounced an order by which legal aid was granted to the Appellant.

27. On 11 June 2020, the CAS Court Office granted FIFA a deadline of 20 days to file its Answer.

28. On 18 June 2020, the Parties were furthermore informed that the Arbitral Tribunal appointed by the Deputy President of the CAS Appeals Division to decide the case pursuant to Article R50 of the CAS Code was constituted as follows:

    Sole Arbitrator: Mr Jan Räker, Attorney-at-law, Stuttgart, Germany.

    Furthermore, the Parties were invited to state whether they preferred a hearing to be held or for the Sole Arbitrator to issue the Award on the basis of the Parties' written submissions.

29. On 20 July 2020, FIFA informed the CAS Court Office that it was of the opinion that a hearing in this case was not necessary.

30. On 22 July 2020, the Player informed the CAS Court Office that his preference was to hold a hearing by videoconference.

31. On 10 August 2020, the CAS Court Office informed the Parties that the Sole Arbitrator, taking into consideration the Parties' positions with respect to a hearing, had decided to hold a hearing *via* videoconference in this matter further to Article R57 of the CAS Code.

32. On 27 August 2020, the CAS Court office informed the parties that, pursuant to the mutually agreed procedure calendar, the Sole Arbitrator had determined to convene a hearing on 7 September 2020.

33. On 31 August 2020, the Respondent returned a duly signed copy of the Order of Procedure to the CAS Court Office.

34. On 1 September 2020, the Appellant returned a duly signed copy of the Order of Procedure to the CAS Court Office.

35. A hearing was held on 7 September 2020 *via* CISCO WebEx videoconference. The parties did not raise any objection as to the conduction of the hearing *via* videoconference or the composition of the Panel with the Sole Arbitrator. The Sole Arbitrator was present and was assisted by Mr Fabien Cagneux, Counsel to the CAS. The following persons attended the hearing:

    - Player: Mr Ricardo Oliveras, Mr Dev Kumar Parmar, Mr Luis de Oleza and Mr Manuel Illanes Boguszewski, all counsels; and

    - FIFA: Mr Migiel Liétard Fernández-Palacios, Director of Litigation, Mr Saverio Paolo Spera, Senior Legal Counsel.

36. The Parties were given the opportunity to present their cases, to make their submissions and arguments and to answer questions posed by the Sole Arbitrator. After the Parties' final, closing submissions, the hearing was closed and the Sole Arbitrator reserved his detailed decision to this written award.

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

V. SUBMISSIONS OF THE PARTIES

38. The Appellant's submissions may be summarized as follows:

    - The jurisdiction of the CAS to decide upon the present matter is based on Article 58.1 of the FIFA Statutes and Article 49 of the 2019 edition of the FDC. In addition, the present appeal is admissible as it was initiated within the time limit provided under Article R51 of the CAS Code.

    - As to the applicable law, the Appellant considers that, pursuant to Article R58 of the CAS Code in conjunction with Article 57.2 of the FIFA Statutes, the Sole Arbitrator should apply the regulations of FIFA, mainly the FDC, the FIFA Statutes, the FIFA Rules Governing the Procedures of the [Players' Status Committee] and the DRC and alternatively, if necessary, Swiss law to the merits of the case-at-hand.

    - The Appellant considers Southend Futsal Club to be the legal successor of Baku United FC.

    - For the legal assessment of such claim, the Appellant refers to Article 15.4 of the 2019

edition of the FDC and the criteria listed therein. With respect to the at best semi-professional situation of futsal in the UK, the Appellant asserts that hardly any futsal club can rely on a permanent home ground in which they play and most clubs do not have their own website, but instead rely on social media to spread official information. Hence, the Appellant argues that little weight must be attributed to the home grounds of futsal clubs in assessing succession and much weight should be given to social media as the official news outlets of futsal clubs.

- The Appellant submits that the club known as Baku United FC in the 2014/2015 season was known as London Baku United in the 2015/2016 season. The Appellant pointed to the fact that 5 out of 20 players remained identical between the two playing squads of Baku United 2014 and London Baku 2015.

- In the 2016/2017 and 2017/2018 seasons, the Appellant states that, Baku United disappeared from the league despite being its leader and was replaced by a new team, London City Futsal Club, whereas all other teams remained the same. London City Futsal Club used the same venue as Baku United.

- In the 2018/2019 season again, London City Futsal Club disappears and its place is take by Southend Futsal Club. The Appellant points to the Facebook account @southendfutsalclub, which used to be the official account of Southend Futsal Club, but still showed "London City" in the title of the page, showed players using jerseys with the London Baku colours and logo and used the logo of Baku United also on the account site. Also, various previous London City players went on to play for Southend. On 4 June 2018, on that account a post was made stating *"We are now Southend Futsal Club"*, while using the logo of Baku United and "London City" in the page title.

- Finally, for the 2019/2020 season, Southend Futsal Club changed its name again, to London Baku United Futsal Club. Notably, the Appellant asserts, the new Facebook Account @bakufutsal in April 2019 still referred to matches played as Southend Futsal Club.

- The Appellant asserts, that the FDC erred in stating that Southend Futsal Club was not the successor of Baku United. The FDC in particular failed to take into account the following essential facts:

    - the involvement of Mr Oleksandr (Alex) Saliy as the founder and driving force of the clubs;

    - a big sponsorship deal in 2012 with the British Azerbaijan sports project, according to which the club was renamed to *"Baku"*, which is the name of Azerbaijan's capital;

    - the reference on the Southend Futsal Club's website to titles achieved by Baku United, which are still referred to by the now-current club London Baku United Futsal Club, and

- the entirely lack of any club named Southend Futsal Club before the 2018/2019 season.

- The Appellant considers the above to provide sufficient evidence for the existence of an unbroken list of successions between Baku United and Southend.

- The Appellant acknowledges that he bears the burden of proof, but requests to take into account the specificity of his situation which requires him to operate with limited information, given the at best semi-professional state of futsal.

- On the other side, the Appellant asserts, FIFA acted with a complete lack of assistance and transparency. The Appellant contends that the proceedings at FIFA lasted for an unreasonable amount of time, due to FIFA allowing the English FA unreasonable extensions for its feedback to FIFA.

- The Appellant expounds that, even though the original decision was made in March 2017, it took FIFA until October 2017 to open proceedings against Baku United. The Appellant also duly informed FIFA about the various name changes which subsequently occurred.

- Even though the DRC Decision only gave 30 days to Baku United to pay the amount, FIFA failed to enforce its own decision for more than two years, which constitutes a gross transgression of the enforcement system of Article 64 of the 2017 edition of the FDC.

- FIFA should therefore be liable for the consequences of such failure.

39. The Appellant submitted the following requests for relief:

"1. Admit this appeal;

2. Require the Respondent to be liable for the Compensation and, therefore, bear the full liability of the failure of the enforcement proceeding that has caused direct damage to the Player, namely that of not receiving the Compensation awarded already by the Respondent against the Club.

Alternatively, to set aside the Appealed Decision, and return the matter to FIFA (and the relevant bodies), ordering that the relevant bodies reengage in the enforcement proceeding again and do so with intention to obtain full and final Compensation as per the Original Decision, and no later than a fixed date which the Panel will be invited to confirm. Failing this, FIFA itself shall be held fully liable for the Compensation and any additional costs.

3. To declare that this proceeding is free of cost.

Alternatively, to order FIFA to pay all costs of this proceeding.

4. *To order to FIFA to pay the Appellant a contribution for an amount of CHF 7.500,00 (seven thousand and five hundred Swiss francs) towards costs and expenses incurred in connection with this proceeding and the previous FIFA proceedings, to cover attorney's fees, translator's fees, courier fees and other expenses the Appellant may have occurred in connection with this proceeding, including, if applicable, CAS administration costs and Arbitrator fees".*

40. During the hearing the Appellant specified that he requests from FIFA compensation in the amount of awarded to him in the DRC Decision, *i.e.* EUR 21,667 plus 5% interest as from 25 April 2016.

41. The Respondent's submissions, in essence, may be summarised as follows:

- The Respondent contends that in January 2018, two months after the First DC Decision, the Appellant informed the Respondent that the original debtor had changed its name to London City FC.

- On 27 March 2018, following a request from the Respondent, the English FA informed the Respondent that it was not aware of any relationship between the original debtor and London City FC.

- Throughout the years 2018 and 2019, the Respondent sent various further requests regarding the status of London City FC and Southend FC to the English FA.

- On 24 April 2019, the English FA finally replied to the Respondent, stating that Southend was affiliated to the English FA already since 2002 and that it was not known under any other name between 2002 and 2019.

- The FIFA DC accordingly rendered the Appealed Decision, denying a legal succession between the original debtor and Southend.

- The Respondent accepts that CAS has jurisdiction in relation to the Appeal of the Appealed Decision in accordance with Article R58.1 of the CAS Code.

- The Respondent agrees that, per Article 57.2 of the FIFA Statutes and Article R58 of the CAS Code, the regulations of FIFA, namely the FDC and subsidiarily Swiss law shall apply.

- The Respondent recalls that in accordance with Article R58 of the 2019 edition of the FDC, only parties to the disciplinary proceedings may lodge an appeal with the Appeal Committee.

- The Respondent argues that the Appellant never became a party to the disciplinary proceedings against the original debtor or Southend. Therefore, the Appellant lacks standing to appeal the Appealed Decision.

- This applies regardless of his right to file a complaint to FIFA or to be informed about the outcome of the proceedings. The right to report non-compliance with a relevant decision, may lead to disciplinary proceedings in the vertical relation between FIFA and the alleged offender, but not to the reporting person or entity becoming a party to the disciplinary proceedings.

- The Appellant does at most have an indirect interest in the outcome of the "enforcement proceedings", whose purpose is not to ensure the settlement of the creditor's claims, but to ensure compliance with a FIFA decision or CAS award. Furthermore, the result of such proceedings can at any time only be a sanction imposed on the debtor, but not the settlement of the creditor's claims.

- Even though the "enforcement proceedings" might be akin to enforcement, they do not constitute such as any such power was a prerogative of the state.

- Even more importantly, the Appellant failed to include Southend as a respondent in the current proceedings, even though the Appellant requests an award which would directly affect the legal interests of Southend. Due to the according lack of a passive "*litis consortium*", FIFA also lacks standing to be sued in the Appeal.

- Furthermore, as Southend was not named as a Respondent in this matter and as Southend did not appeal the Appealed Decision by itself, the Appealed Decision has become final and binding in favour of Southend.

- The Respondent insists that FIFA acted diligently in favour of the Appellant, persistently trying to obtain the information required for the assessment of the Appellant's requests, by sending no less than 9 letters and reminders to the English FA between January 2018 and January 2019. The Respondent refuses any liability for the possibly tardy responses from the English FA and maintains that, on the basis of such responses, the Appealed Decision is correct.

- Even if the conduction of the disciplinary proceedings by FIFA had constituted a violation of the Appellant's rights, such violation would be cured in the scope of the current arbitration proceedings in line with Article R57 CAS Code and the *de novo* power of review of the Sole Arbitrator.

- Furthermore, FIFA does not have standing to be sued for any claim for damages. It could rely on the information provided by the English FA as the entity which was in the best position to provide reliable information on the matter.

- The Respondent insists that the Appellant's requests under no. 2 of his prayers for relief was excessively broad and therefore inadmissible, *inter alia* as the Appellant did not state, to which body the Appealed Decision should be referred back, as the Appellant wrongly titled the proceedings *"enforcement proceedings"* which should be carried out with the *"intention to obtain full and final Compensation"*, even though within the disciplinary procedure

only a sanction may be imposed.

- The Respondent furthermore claimed that the specification of the amount requested under no. 2 of the Appellant's requests for relief, was late.

- The Respondent asserts that the Appellant did not support his argument with any legal or factual basis on which a liability of FIFA might be construed.

42. The Respondent submitted the following requests for relief:

"(a) rejecting the reliefs sought by the Appellant;

(b) confirming the Appealed Decision; and

(c) ordering the Appellant to bear the full costs of these arbitration proceedings".

VI. JURISDICTION

A. Jurisdiction of the CAS

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

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

44. The jurisdiction of CAS derives from Article 58 (1) of the FIFA Statutes (2019 edition) which reads:

"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".

45. The FIFA DC is a legal body of FIFA. Therefore, the Appeal against the Appealed Decision fulfils the requirements of Article 58 (1) of the FIFA Statutes (2019 edition).

46. Also in respect of the compensation claim of the Appellant, the jurisdiction of the CAS is not contested by either Party and is also confirmed by the Parties' signing of the Order of Procedure.

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

B. Scope of review

48. Article R57 of the Code provides as follows

"The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance".

49. The Sole Arbitrator notes that the Appellant has filed a claim for compensation for the first time during the CAS proceedings and that the Respondent argues that such claim is inadmissible, because the requested amount was not specified in due time, but only within the hearing which was held in these proceedings and because CAS was not the proper forum to request such relief within an appeal against a decision made by the FIFA DC. The Respondent further argues that the final request under which CAS is sought to declare FIFA liable in case of its failure to reengage in the enforcement proceeding against Southend.

50. The Sole Arbitrator first turns his attention to the relevant requests for relief of the Appellant:

"2. Require the Respondent to be liable for the Compensation and, therefore, bear the full liability of the failure of the enforcement proceeding that has caused direct damage to the Player, namely that of not receiving the Compensation awarded already by the Respondent against the Club.

Alternatively, to set aside the Appealed Decision, and return the matter to FIFA (and the relevant bodies), ordering that the relevant bodies reengage in the enforcement proceeding again and do so with intention to obtain full and final Compensation as per the Original Decision, and no later than a fixed date which the Panel will be invited to confirm. Failing this, FIFA itself shall be held fully liable for the Compensation and any additional costs".

51. In doing so, the Sole Arbitrator notes that the Appellant primarily requests the payment of compensation from FIFA, as he explicitly confirmed during the hearing.

52. When assessing this request, the Sole Arbitrator notes that the Appellant requests the Respondent to be held liable for his damages, which are specified as *"the Compensation awarded already by the Respondent against the Club"*, without however specifying the amount requested. Only during the hearing, the Appellant confirmed that this should be understood to mean an amount of EUR 21,667 plus 5% interest as from 25 April 2016.

53. Article R56 of the CAS Code, which applies to the appeal arbitration procedure, reads as follows:

"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".

54. The Sole Arbitrator notes that the Appellant's request to be paid compensation was not a subject of the Appealed Decision. Rather, the Appellant bases his claim on the outcome of the

Appealed Decision, for which he requests financial compensation from FIFA as the originator of such decision.

55. However, the nature of an appeal procedure against a decision is that the decision which is appealed is legally scrutinized by the appeal body, which then either confirms the appealed decision or upholds the appeal by either overturning it with a new decision or by referring it back to the original deciding body for a new decision.

56. The Appellant however requests a third option in the case at hand, which is the payment of damages in place of the revocation of the Appealed Decision. The Sole Arbitrator further notes that, within the procedure leading to the Appealed Decision, the subject matter was not a claim of the Appellant, but the question, whether or not disciplinary sanctions should be imposed on another party, Southend. Therefore, the Sole Arbitrator concludes, that no payment to the Appellant, be it from Southend or FIFA, could ever result as a direct consequence from such proceedings.

57. This however, cannot change within appeal proceedings. A request for the payment of a certain amount of money, which was not the subject matter of the Appealed Decision, can therefore not be made with an appeal arbitration procedure of disciplinary nature, but would only be admissible in ordinary procedure. The Appellant did however not choose to initiate proceedings against FIFA in ordinary procedure, which in any event FIFA would have had to agree to in order to create jurisdiction for CAS.

58. The Sole Arbitrator holds that the Appellant's request to hold FIFA liable for his damages is outside the scope of the current appeal arbitration proceedings.

VII. ADMISSIBILITY

59. Article R49 of the CAS 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. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Sole Arbitrator, if a Sole Arbitrator has already been constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Sole Arbitrator renders her/his decision after considering any submission made by the other parties".*

60. Article 58.1 of the FIFA Statutes states:

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

61. Further, Article 64.5 of the FDC states:

> *"Any appeal against a decision passed in accordance with this article shall be lodged with CAS directly".*

62. The grounds of the Appealed Decision were notified to the Parties on 18 March 2020. The Statement of Appeal was filed on 6 April 2020 and, thus, within the deadline of twenty-one days set in Article 58.1 of the FIFA Statutes referred to in the Appealed Decision itself.

63. Therefore, the appeal was timely submitted.

64. The Respondent however argues that the Appellant's request to revert the case to FIFA was also inadmissible, due to the Appellant's failure to name the competent body, the Appellant's request to do so with the intent of obtaining final and full compensation which is not possible within disciplinary proceedings, due to the unacceptability of the deadline which the Appellant requests to impose on FIFA for such further proceedings.

65. With respect to the alternative claim to set aside the Appealed decision, the Sole Arbitrator notes that the Appellant does not request the Sole Arbitrator to replace the Appealed Decision with a new one, but rather to refer the case back to FIFA, *"ordering that the relevant bodies reengage in the enforcement proceeding again"*.

66. In this regard, the Sole Arbitrator does not concur with the Respondent's view that such request is overly broad. Indeed, in accordance with Article R57 (1) of the CAS Code, it is within the power of the Sole Arbitrator to refer the case back to the previous instance if he considers this to be the right option. Furthermore, the Sole Arbitrator is of the view that it is sufficiently comprehensible that the Appellant requests the case to be resubmitted to the FIFA DC as the competent (or 'relevant') body of FIFA and that the decision sought from the FIFA DC is that a sanction should be imposed on Southend.

67. Therefore, the Sole Arbitrator considers the Appellant's alternative request to refer the case back to FIFA as admissible. This also applies to his request, that the Sole Arbitrator shall fix a deadline for the subsequent decision of the FIFA DC, regardless of the Sole Arbitrator's power or lack thereof to render an according award.

VIII. APPLICABLE LAW

68. Article R58 of the CAS 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".*

69. The matter at stake relates to an appeal against a FIFA decision and reference must hence be made to Article 57.2 of the FIFA Statutes, which provides that:

"The arbitral tribunal shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to the rules of law with which the dispute has the closest connection".

70. Therefore, the FIFA rules and regulations shall be applied primarily. Swiss law applies subsidiarily to the merits of the dispute.

71. In the present case, the *"applicable regulations"* for the purposes of Article R58 of the CAS Code are the FDC. As the 2019 edition of the FDC entered into force after the alleged disciplinary offense was committed, but before the disciplinary procesure against Southend was initiated, it remains to be examined, which edition of the FDC shall apply to the case.

72. Article 4 of the 2019 edition of the FDC states:

"1. This Code applies to all disciplinary offences committed following the date on which it comes into force.

2. This Code also applies to all disciplinary offences committed prior to the date on which it comes into force, subject to any milder sanction that would apply under previous rules".

73. Therefore, given that the alleged disciplinary offense was committed already before the 2019 edition of the FDC entered into force on 15 July 2019, the 2017 edition of the FDC might apply to the case, but only as far it foresees a milder sanction that would apply under the 2017 edition of the FDC. For all other matters, the 2019 edition of the FDC shall therefore apply.

IX. MERITS

74. The Sole Arbitrator, upon his analysis of the facts and the legal arguments presented by the Parties reached the conclusion that the main issues to be resolved by the Sole Arbitrator are:

A. Does the Appellant have a standing to sue?

B. If so, does the Respondent have a standing to be sued as a sole Respondent?

C. If so, should Southend be considered to be the sporting successor of Baku United F.C.?

A. Does the Appellant have a standing to sue?

75. The Respondent argues that the Appellant does not have standing to sue in this case for his request to refer the case back to the FIFA DC, because the Appellant was not a party to the disciplinary procedure conducted by FIFA against Southend, because the Appellant never became a party to the disciplinary proceedings against the Baku United F.C. or Southend. Furthermore, the Respondent argues that the Appellant only had an indirect interest in the outcome of the proceedings leading to the Appealed Decision, as such proceedings subject

matter was only a possible sanction on Southend in the vertical relation between FIFA and Southend, but not a payment claim of the Appellant against Southend. Such disciplinary procedure does in the opinion of the Respondent not constitute an enforcement procedure in favour of a creditor, but rather sanction non-compliance with FIFA decisions and CAS awards.

76. The concept of standing or *locus standi* describes the ability of a party to demonstrate to a court or an arbitral tribunal that it has a sufficient connection to and harm from the challenged decision to support its participation in the case. The basic purpose of the concept of standing is to determine the group of persons who are entitled to, in the present case, appeal the decision of an association. The Sole Arbitrator recalls, that standing to appeal a decision cannot be recognized with respect to any person remotely affected by a decision. Legal security and the effectiveness of the appeal process against a decision command that there should be strict limits on the potential circle of persons who may be recognized to have standing to appeal, namely those persons having a special interest in the outcome of the case in a manner that clearly distinguishes them from other persons, including the general public.

77. The Sole Arbitrator notes, that the FDC does not provide much guidance on the manner in which these groups should be distinguished. In particular, the Sole Arbitrator stresses that there is no provision in the FDC expressly stating that the victim of an alleged violation, like the creditor [recte. of] a party failing to comply with a payment order issued by the DRC or CAS, would have the right to appeal a decision of the FIFA DC. Likewise, neither the FDC expressly offer such right to an entity who reports such failure to the FIFA DC and requests the initiation of disciplinary proceedings.

78. The only mention of legal standing in the FDC is to be found in Article 58.1 of the 2019 edition of the FDC reads as follows:

> *"Anyone who has been a party to the proceedings before the Disciplinary Committee may lodge an appeal with the Appeal Committee, provided this party has a legally protected interest in filing the appeal"*.

79. The Sole Arbitrator notes that, in appeals against decisions of the FIFA DC which are brought to the Appeal Committee of FIFA, legal standing is restricted to parties to the proceedings before the FIFA DC. However, the Sole Arbitrator notes that no comparable rule exists in relation to appeals to CAS. While this does constitute a guideline as to which level of proximity is regarded required by FIFA to constitute legal standing to appeal, the lack of an according provision in relation to appeals to CAS necessitates further scrutiny by the Sole Arbitrator beyond the issue whether an Appellant was a party to the FIFA DC proceedings.

80. In CAS 2002/O/373, one of the earliest decisions on the issue of standing, a CAS Panel held that a party must invoke a substantive right of its own or have an interest worthy of protection in order to be recognized standing to appeal. The concept of an *"interest worthy of protection"* was defined as encompassing the situation where *"the appellant is factually and directly affected by the litigious decision in a fashion that can be eliminated by its annulment and if the appellant did not have the opportunity to be heard in the first instance"* (see CAS/2002/O/373, paras. 20-25).

81. A narrow interpretation was also confirmed in CAS 2015/A/3874 in which the CAS Panel found, in relation to Article 62(2) of the UEFA Statutes, that the appellant was not *"directly affected"* as the victim of racist and discriminatory chants during a match: *"Moreover, the Panel finds that the Appellant is also not directly affected as the "victim" of the racist and discriminatory chants, at least in the sense of the established case law. According to CAS 2008/A/1583 & 1584, this could only be envisaged if the UEFA rules provided a specific right for a victim to appeal, which they do not. Indeed Article 62 para. 2 of the UEFA Statutes links the "directly affected" requirement to the disciplinary decision and not to the conduct giving rise to the disciplinary proceedings ("directly affected by the decision" emphasis added). Without such a right, the mere fact that an individual is a victim does not as such establish a standing to appeal a sanction imposed on the offender. Such an interpretation would have far-reaching consequences and could lead to the possibility of appeals from a potentially very large group of persons. Under such an interpretation, for instance, any player who is injured by a dangerous tackle or is bitten by another player would be able to appeal if he were unhappy with the sanction imposed on the offender"* (CAS 2015/A/3874, para. 182).

82. With respect to the right to appeal of a non-addressee of a first instance decision, another CAS Panel held that such a right must be admitted *"in very restricted cases. As a general rule, the appellant's interest must be concrete, legitimate, and personal. A purely theoretical/indirect interest is not sufficient. In addition, the decision being challenged must affect the appellant directly, concretely, and with more intensity than others. Finally, the interest must exist not only at the time the appeal is filed but also at the time when the decision is issued. CAS jurisprudence found that in order to have standing to sue, the appellant must have an interest worthy of protection or a legitimate interest. This is found to exist if (i) the appellant is sufficiently affected by the appealed decision, and if (ii) a tangible interest of a financial or sporting nature is at stake. Only an aggrieved party who has something at stake and thus a concrete interest in challenging a decision adopted by a sports body may appeal against that decision to CAS. Sufficient interest is a broad, flexible concept free from undesirable rigidity and includes whether the appellant can demonstrate a sporting and financial interest"* (CAS 2016/A/4903 paras. 76 ff.).

83. The Sole Arbitrator understands that the Player has spent in vain numerous years trying to enforce the DRC Decision against Baku United F.C. and its alleged legal successors. The FDC is a tool which has been of tremendous benefit over the last years to football creditors, providing a serious inducement to their respective debtors to pay all debts on time in order to avoid increasingly severe sanctions.

84. In the case of the Player and Baku United F.C., this system proved to be insufficient for help the Player, because Baku United F.C. was discontinued as a club and – possibly – succeeded by a variety of new clubs, continuing Baku United's legacy without being willing to take responsibility for Baku United's debt. Despite it being acknowledged by previous FIFA DC jurisdiction and stipulated in Article 15.4 of the 2019 edition of the FDC that new clubs can be held liable for the debts of former clubs, if they are to be considered as their sporting successors, the FIFA DC held that this was not the case for Southend in relation to the Player's claim.

85. It is that substance of the Appealed Decision which causes the grief which lead to the Player's appeal.

86. Appeals lodged by creditors in relation to disciplinary proceedings against debtors who failed to respect according FIFA decisions were dealt with differently by various CAS panels in the recent past: Some panels dealt with such appeals on the merits without bringing up the issue of standing to sue at all (CAS 2020/A/6745). In some cases, the standing to sue was confirmed (CAS 2020/A/6873) and in some it was explicitly rejected (CAS 2019/A/6287).

87. The Sole Arbitrator acknowledges that indeed, as claimed by the Respondent, the Appellant's legal position was not immediately and directly affected by the Appealed Decision. The disciplinary system created in the FDC is a system which is aimed at ensuring compliance of all direct and indirect FIFA members with the laws and regulations of FIFA and the decisions of FIFA's bodies. This system exclusively works on the basis of sanctions against offenders, but offers no single tool which a creditor could use to directly enforce a payment claim against his debtor. Such enforcement tools are restricted to the public authorities of the respective states.

88. The disciplinary system of FIFA, while having a very helpful and welcome side-effect on the interests of creditors in football, is therefore neither designed nor suited to enforce such claims.

89. However, it must also be noted that the Appellant does in fact have an own interest at stake in the outcome of the Appealed Decision which distinguishes him from the wider public which is excluded by the concept of *locus standi*. The Sole Arbitrator must therefore consider whether such distinction is severe enough to warrant a deviation from the general rule, that a direct interest must exist. The Sole Arbitrator agrees with the Panel in the case CAS 2016/A/4903 that, for such deviation to be justified and required, the Appellant must demonstrate to have a tangible interest of economic or sporting nature that sufficiently affects him.

90. In doing so, the Sole Arbitrator first considers the Appellant's interest which is affected by the Appealed Decision. The Appellant craves the payment of a salary amount which was promised to him, but never paid. The Sole Arbitrator notes that the salary is the amount that employees, such as the Appellant, rely on to be paid for the coverage of their living expenses and their entire livelihood. The settlement of the overdue amount is therefore of high personal importance to the Appellant.

91. While not having a direct effect, a different decision of the FIFA DC would have had a substantial indirect effect on the Appellant's situation. Had the FIFA DC imposed the usual disciplinary sanction on Southend, then the only means available to Southend in order to avoid or end a ban from registering players, a points deduction and/or a relegation would have been the payment of the overdue amount to the Appellant. Accordingly, an according decision by the FIFA DC would have been widely equivalent to a legal compulsion in favour of the Appellant. The Sole Arbitrator considers this to be a particularly strong indirect effect.

92. Finally, the Sole Arbitrator also acknowledges that, from a procedural point of view, the Appellant had only limited regular options to participate in the proceeding which led to the Appealed Decision. While the Respondent had to or chose to rely on the information received by one of its member associations, that showed little interest in a speedy solution of the matter, the Appellant was not formally part of the procedure and was therefore not formally able to provide evidence and arguments to the proceeding. If the Appellant did not have a standing to

sue for an appeal, he could at no point defend or promote the aforementioned substantial interests by proving factual statements and proof that speaks in his favour. He would depend entirely on the ability and willingness of others to gain and provide the necessary information.

93. In light of the aforementioned, the Sole Arbitrator therefore holds that the legal interest of the Appellant in the Appealed Decision is sufficiently high and direct to grant him a standing to appeal against the Appealed Decision.

B. Does the Respondent have a standing to be sued as a sole respondent?

94. The Respondent did not only claim that the Appellant had no standing to appeal the Appealed Decision, but also that the Respondent had not standing to be sued as a sole respondent in this matter. The Appellant should, in the opinion of the Respondent, also have included Southend as an additional respondent into the present proceedings. Upon the Appellant's failure to do so, the Respondent claims, the Appealed Decision became final and binding on Southend, leaving no room for setting the Appealed Decision aside with effect on Southend.

95. The FDC do not give any advice regarding the standing to be sued. The question of the standing to be sued is a question of the merits which means that in case the standing to be sued is denied, an appeal has to be dismissed (see MAVROMATI/REEB, supra, R48, no. 65; CAS 2008/A/1639, no. 26; CAS 2007/A/1329 & 1330).

96. The CAS has developed well-established jurisprudence to the effect that a party has standing to be sued ("légitimation passive") if it has some stake in the dispute because something is sought against it. In this respect, the Panel in CAS 2007/A/1329 & 1330, para. 27, stated as follows: *"Under Swiss law, applicable pursuant to Articles 60.2 of the FIFA Statutes and R58 of the CAS Code, the defending party has standing to be sued (legitimation passive) if it is personally obliged by the "disputed right" at stake (see CAS 2006/A/1206). In other words, a party has standing to be sued and may thus be summoned before the CAS only if it has some stake in the dispute because something is sought against it (cf. CAS 2006/A/1189; CAS 2006/A/1192)".*

97. In CAS 2012/A/3032, the Panel confirmed that FIFA had standing to be sued for an appeal against a decision by means of which disciplinary sanctions were imposed in a party (CAS 2012/A/3032, para. 43).

98. However, in the present case, for the purpose of the Appeal against the Appealed Decision, FIFA is not the only party from which something is sought. As outlined previously, the Appellant's standing to sue derives from his personal and important interest to gain an amount of money from Southend. This interest is pursued by a request to FIFA to impose sanctions on Southend and FIFA rejected to impose such sanctions on Southend in the Appealed Decision.

99. Southend would therefore also be immediately affected if the Appealed Decision was set aside, even if the case was only referred back to the FDC, because it would lose the acquitting effect of the Appealed Decision and be subject to the risk of being sanctioned and being held liable again.

100. Just like the Appellant has a legitimate interest in being able to present and argue his case in this forum, Southend would also have had a legitimate interest in defending its case. If the Sole Arbitrator decided to set aside the Appealed Decision, Southend would be directly affected, but without being granted a right to be heard and defend its position.

101. Accordingly, the Sole Arbitrator holds that for an appeal against a disciplinary decision of FIFA, with which the Appellant seeks to obtain a harsher sanction or to revert an acquittal, the Appellant must also name the party on which the sanction shall be imposed, as a Respondent in his appeal.

102. In the present case therefore, the Sole Arbitrator holds that FIFA does not have standing to be sued as a sole Respondent.

103. Consequently, the answer to the question whether or not Southend shall be considered the sporting successor of Baku United F.C. has become moot. Based on the foregoing, the Sole Arbitrator finds that the Appeal shall be dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Tiago Carpes de Bail against the Fédération Internationale de Football on 5 April 2020 with respect to the decision rendered by the FIFA Disciplinary Committee on 7 November 2019 is dismissed.

2. The decision issued on 7 November 2019 by the FIFA Disciplinary Committee is confirmed.

3. (…).

4. (…).

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