Arbitration CAS 2022/A/8737 Hellas Verona FC S.p.A v. FC Sellier and Bellot Vlasim & Udinese Calcio S.p.A & Fédération Internationale de Football Association (FIFA), award of 7 March 2023

Panel: Mr Lars Hilliger (Denmark), President; Mr Michael Nicholson (United Kingdom); Mr Patrick Lafranchi (Switzerland)

Football
Solidarity contribution
Legal interest
Standing to be sued
Claim for reimbursement of solidarity contribution opposing two clubs of the same national football association

1. **Pursuant to Art. 59 of the Swiss Procedural Code (SPC) *"[t]he court shall consider an action or application provided the procedural requirements are satisfied"*, amongst which that *"the plaintiff or applicant has a legitimate interest"*. Pursuant to Art. 60 of the SPC, the court must examine *ex officio* whether the procedural requirements of Article 59 of the SPC are satisfied or not. The legal interest must already exist at the time an appeal is filed and must still exist when the judgment is issued.**

2. **Although the wording of Art. 75 of the Swiss Civil Code (SCC) is ambiguous with regard to challenges against decisions made by an association other than resolutions of a general assembly, it is uncontested that the said provision applies *mutatis mutandis* to decisions of other organs of the association. The wording of Art. 75 of the SCC implies that an appeal, in principle, must be directed against the association that rendered the challenged decision. However, CAS jurisprudence allows for an exception to the above rule where the sports association merely acts as an adjudicatory body in relation to a dispute between its members. Thus, when deciding who is the proper party to defend an appealed decision, CAS panels proceed by a balancing of the interests involved and by taking into account the role assumed by the association in the specific circumstances. Consequently, one must ask whether a party *"stands to be sufficiently affected by the matter at hand in order to qualify as a proper respondent within the meaning of the law"*.**

3. **The fact that an alleged claim for reimbursement of solidarity contribution originates from a claim for solidarity contribution from a Czech football club against an Italian club regarding a transfer of a player of Czech nationality does not give to a dispute between two Italian clubs, both affiliated with the Federazione Italiana Giuoco Calcio, a sufficient international dimension with regard to the possible jurisdiction of FIFA and the application of FIFA rules applicable to clubs belonging to different associations. When a dispute has a national or internal nature, *"the rules and regulations of the association concerned must be applied to the matter and the deciding bodies in***

accordance with the relevant provisions to rule on the issue". **If FIFA's deciding body would deal with such an internal matter, the internal competence of a FIFA member association would be violated.**

I. THE PARTIES

1. Hellas Verona FC S.p.A. ("Hellas Verona" or the "Appellant") is a professional Italian football club affiliated with the Federazione Italiana Giuoco Calcio (the "FIGC"), which in turn is affiliated with the Fédération Internationale de Football Association ("FIFA").

2. FC Sellier and Bellot Vlasim ("Sellier" or the "First Respondent") is a professional Czech football club affiliated with the Football Association of the Czech Republic (the "FACR"), which in turn is affiliated with FIFA.

3. Udinese Calcio S.p.A. ("Udinese" or the "Second Respondent") is a professional Italian football club affiliated with the FIGC.

4. FIFA (the "Third Respondent") is the world governing body of football, based in Zurich, Switzerland.

5. Collectively, Sellier, Udinese and FIFA are referred to as the "Respondents". Hellas Verona, Sellier, Udinese and FIFA are referred to as the "Parties".

II. FACTUAL BACKGROUND

6. The facts set out below are a summary of the main relevant facts as established by the Panel on the basis of the decision rendered by the Dispute Resolution Chamber of the FIFA Football Tribunal (the "FIFA DRC") on 11 February 2022 (the "Appealed Decision") and based on the Parties' written and oral submissions and evidence. Additional facts and allegations found in the Parties' submissions 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.

7. On 17 September 2020, Udinese, with which the professional football player [A.] of Czech nationality (the "Player") was under a permanent contract, and Hellas Verona concluded a loan agreement (the "Loan Agreement") regarding the loan of the Player from Udinese to Hellas Verona as from 17 September 2020 until 30 June 2021.

8. The Loan Agreement included an obligation for Udinese to accept to convert the loan of the Player into a permanent transfer of the Player to Hellas Verona if certain conditions were subsequently met.

9. On 1 July 2021, the Player became permanently registered with Hellas Verona in exchange for the payment of *"EUR 3,000,000 at the start of the season 21/22; and EUR 3,000,000 at the start of season 22/23"*.

10. According to the player passports issued by the FACR and the FICG on 5 January 2022, the Player was registered as a professional (on loan) with Sellier from 24 July 2014 to 25 January 2015 and again from 19 February 2015 to 30 June 2015, *i.e.* 318 days of the season of his 20th birthday, which is not disputed among the Parties.

11. On 23 March 2022, and thus after the initiation of the CAS procedures, the Appellant paid the then outstanding solidarity contribution in the amount of EUR 13,064.42 to Sellier in accordance with the Appealed Decision.

III. PROCEEDINGS BEFORE THE DISPUTE RESOLUTION CHAMBER OF THE FIFA FOOTBALL TRIBUNAL

12. On 31 December 2021, Sellier lodged a claim against Hellas Verona, requesting, *inter alia*, solidarity contribution payment in connection with the transfer of the Player from Udinese to Hellas Verona.

13. Sellier held that it was entitled to EUR 27,226.03 corresponding to 8.7% of the due solidarity contribution in respect of the loan and permanent transfer fee regarding the Player, *i.e.* of the total amount of EUR 6,250,000.

14. On 11 January 2022, the FIFA administration submitted a proposal to the parties to the dispute before the FIFA DRC to settle the matter, which was accepted by Sellier.

15. On 25 January 2022, Hellas Verona requested a copy of Sellier's claim and requested that its deadline to respond to the claim be suspended.

16. On 26 January 2022, Hellas Verona rejected the proposal and maintained its position as to receive a copy of the claim and that the deadline be suspended.

17. By letter dated 31 January 2022, Hellas Verona acknowledged Sellier's entitlement to solidarity contribution in connection with the temporary transfer and subsequent permanent transfer of the Player to Hellas Verona and provided in that respect proof of payment of solidarity contribution to Sellier in the amount of EUR 2,178.08 made on 25 March 2021.

18. Furthermore, Hellas Verona stated, *inter alia*, that it was entitled and obligated – according to the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP") – to deduct the

relevant solidarity contribution of 5% from the compensation paid to Udinese in connection with the permanent transfer of the Player to Udinese, since the Loan Agreement did not stipulate the transfer compensation to be net of solidarity contribution.

19. However, Hellas Verona further argued that the deduction of solidarity contribution was precluded due to the FIGC regulations and the national "clearing house" system, after which the entire transfer compensation had to be transferred into the FIGC "clearing house" for onward transfer to Udinese.

20. Consequently, and in application of the FIFA RSTP's prescriptions on the solidarity contribution system applicable to domestic transfers, Hellas Verona requested, *inter alia*, that Udinese was called upon as an intervening party to the present matter and should be ordered to reimburse it for the relevant proportion of the (overpaid) transfer compensation that was not deducted for the solidarity contribution, in accordance with FIFA's established jurisprudence.

21. Hellas Verona further held that if Udinese was not included in the proceedings, then FIGC should be involved instead because it had failed to regulate this specific matter.

22. On 8 February 2022, Sellier confirmed having received the payment of solidarity contribution in connection with the temporary transfer of the Player from Udinese to Hellas Verona in the amount of EUR 2,178.08.

23. The FIFA DRC initially confirmed its competence and the application of the August 2020 edition of the FIFA RSTP.

24. The FIFA DRC further noted that the obligation to pay solidarity contribution on national transfers with an international dimension was introduced with the June 2020 edition of the FIFA RSTP, which came into force on 1 July 2020, and according to Article 26 (2) of the applicable FIFA RSTP, solidarity contribution disputes *"shall be assessed according to the regulations that were in force when the contract at the centre of the dispute was signed, or when the disputed facts arose"*.

25. The Loan Agreement was concluded on 17 September 2020 and indicated that the loan would become permanent at the first Serie A point scored by Hellas Verona during the 2020/2021 season as from 2 February 2021. In this regard, it is uncontested that the transfer of the Player had become permanent without further intervention of the parties to the Loan Agreement.

26. Although Hellas Verona did not contest Sellier's entitlement to receive solidarity contribution in connection with both the temporary transfer and permanent transfer, it did reject the claim of the latter arguing that:

> *"a) it had not been provided with 'the correspondence from* [Sellier] *to FIFA uploaded in TMS on 31 December 2021';*

b) it had already paid [Hellas Verona's] *share of solidarity contribution in respect of the loan fee paid to* [Udinese]*; and*

c) because of the national regulations and payment system in place at the time of the payment of the loan fee, it could not comply with the deduction of the 5% solidarity contribution as per [the FIFA RSTP]*, and it should therefore be reimbursed by the former club of the relevant proportion of the loan compensation that was not deducted for the solidarity contribution".*

27. Taking into account the documentation presented by Sellier, *i.e.* the documentation uploaded in the *"Grounds for the claim"* section of the TMS, the FIFA DRC concluded that Hellas Verona was in possession of Sellier's correspondence and its annexes within the context of its claim for the solidarity contribution.

28. Moreover, and taking into consideration Article 1 (1) of Annexe 5 of the Regulations, the FIFA DRC found that Sellier was entitled to 8.71% of any solidarity contribution generated by the transfer of the Player for the training and education provided to the Player during the 318 days of the season of his 20th birthday, on which the Player was registered with Sellier.

29. Article 1 (1) of Annexe 5 of the FIFA RSTP provides that 5% of any compensation paid by the new club to the former club must be deducted and distributed by the new club as solidarity contribution.

30. As such, the FIFA DRC noted that it was uncontested that Hellas Verona paid a loan fee of EUR 500,000 to Udinese and that the Player was registered on a permanent basis with Hellas Verona on 1 July 2021, which implied that the first instalment of the transfer fee amounting to EUR 3,000,000 fell due on 1 July 2021 as per the Loan Agreement.

31. Consequently, the FIFA DRC concluded that the total solidarity contribution generated by the loan and permanent transfer of the Player from Udinese to Hellas Verona corresponds to 5% of EUR 3,500,000 *i.e.* EUR 175,000 of which Sellier was entitled to receive 8.71%, equivalent to EUR 15,242,50.

32. As Sellier *de facto* acknowledged having received EUR 2,178.08 the FIFA DRC decided that the total amount of solidarity contribution to be paid to Sellier was EUR 13,064.42.

33. Having concluded on the total amount of solidarity contribution to be paid to Sellier, the FIFA DRC reminded that Article 13 (5) of the Procedural Rules Governing the Football Tribunal, October 2021 edition, indicates that a party that asserts a fact has the burden of proving it.

34. The FIFA DRC then concluded that Hellas Verona had not provided evidence in support of its allegations that it had been prevented from deducting 5% solidarity contribution from the loan compensation because of the regulations and payment system in place at national level at the time of issuing the payment of the loan compensation to the former club, *i.e.* Udinese, and

that it should therefore be reimbursed by the former club for the relevant proportion of the loan compensation that was not deducted for the solidarity contribution.

35. Furthermore, and in accordance with the jurisprudence of the FIFA DRC, the FIFA DRC noted that a player's new club is ordered to remit the relevant proportion(s) of the 5% solidarity contribution to the club(s) involved in the player's training in strict application of Articles 1 and 2 of Annexe 5 of the FIFA RSTP even if the new club and the former club agreed otherwise in the relevant transfer or loan agreement.

36. As such, the FIFA DRC noted that a potential reimbursement by Udinese could not be discussed, particularly not since the Loan Agreement did not contain a clause according to which Hellas Verona and Udinese agreed to shift the distribution of the relevant solidarity contribution to Udinese.

37. Finally, the FIFA DRC rejected Hellas Verona's request to involve the FIGC in the proceedings before the FIFA DRC.

38. On 11 February 2022, the FIFA DRC rendered the Appealed Decision and decided that:

> *"1. The claim of* [Sellier] *is partially accepted.*
>
> *2.* [Hellas Verona]*, shall pay to* [Sellier] *EUR 13,064.42 as solidarity contribution.*
>
> *3. Any further claim of* [Sellier] *is rejected.*
>
> *4. Full payment (including all applicable interest) shall be made to the bank account indicated in the enclosed Bank Account Registration Form.*
>
> *5. Pursuant to article 24bis of the Regulations on the Status and Transfer of Players if full payment (including all applicable interest) is not paid within 45 days of notification of this decision, the following consequences shall apply:*
>
> *1.* [Hellas Verona] *shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of three entire and consecutive registration periods.*
>
> *2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not paid by the end of the of the* [sic] *three entire and consecutive registration periods.*
>
> *6. The consequences shall only be enforced at the request of* [Sellier] *in accordance with article 24bis of the Regulations on the Status and Transfer of Players.*
>
> *7. The final costs of the proceedings in the amount of USD 3,000 are to be paid as follows:*

a. The amount of USD 500 shall be paid by [Sellier]*;*

b. The amount of USD 2,500 shall be paid by [Hellas Verona]*;*

c. The above costs shall be paid to FIFA with reference to case no. TMS 9640 (cf. note relating to the payment of the procedural costs below)".

39. On 28 February 2022, the grounds of the Appealed Decision were notified to the Parties.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

40. On 18 March 2022, the Appellant filed its Statement of Appeal in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration, 2021 edition (the "CAS Code"). In addition, the Appellant nominated Mr Michael Nicholson as an arbitrator in this matter.

41. On 31 March 2022, the Respondents jointly nominated Mr Patrick Lafranchi as an arbitrator in this procedure.

42. On 11 April 2022, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.

43. On 11 April 2022, the First Respondent filed its Answer in accordance with Article R55 of the CAS Code.

44. On 28 April 2022, the CAS Court Office informed the Parties that the Appellant had paid the total of the advance of costs and fixed a deadline of twenty (20) days for the Respondents to file their respective Answers in accordance with Article R55 of the CAS Code.

45. By letter dated 18 May 2022, the Parties were informed by the CAS Court Office that the Panel had been constituted as follows:

President: Mr Lars Hilliger, Attorney-at-Law in Copenhagen, Denmark.

Arbitrators: Mr Michael Nicholson, Solicitor in Glasgow, United Kingdom;

Mr Patrick Lafranchi, Attorney-at-Law in Bern, Switzerland.

46. By letter of 19 May 2022, Udinese requested, *inter alia*, for an interlocutory award on its standing to be sued.

47. By letter dated 20 May 2022, Udinese was informed by the CAS Court Office that its request for an interlocutory award on its standing to be sued was denied by the Panel *"as the issues raised*

regarding its standing to be sued in this procedure is a matter of substantive law which will be addressed by the Panel in its final award".

48. On 27 May and 30 May 2022, the Third Respondent and the Second Respondent, respectively, filed their Answers in accordance with Article R55 of the CAS Code.

49. On 9 June 2022, the Parties were informed that the Panel had decided to hold a hearing in this matter and that the hearing should be conducted by videoconference.

50. On 20, 21 and 27 July 2022, respectively, all Parties signed and returned the Order of Procedure.

51. On 26 September 2022, the Appellant informed the CAS Court Office, *inter alia*, as follows:

> *"Furthermore, ahead of the hearing, we also enclose documentation referred to by the Second Respondent in its Answer.*
>
> *We note that the Second Respondent highlighted the fact that Enclosures IV and V of the Appeal Brief did not include English translations. Please accept our apologies for this oversight. We enclose such translations with this letter and kindly request that the Panel adds these to the case file.*
>
> *We also note that the Second Respondent highlighted the fact that a copy of the relevant transfer agreement between the Appellant and the Second Respondent was not included with the Appeal Brief. Such document is however in the case file, given that it is part of Exhibit 2 of the Third Respondent's Answer. The relevant provisions of the transfer agreement were also provided by the Third Respondent to the First Respondent during the proceedings that led to the FIFA Decision, and were therefore available to all parties at all times. Nevertheless, for the sake of good order, and for the benefit of the Panel, we enclose with the present letter a copy of the transfer agreement, together with an English translation. We kindly request that the Panel also adds such documentation to the case file".*

52. On 3 October 2022, the Second Respondent requested the Panel *"not to admit on the record the new documentation submitted by the Appellant on 26 September 2022".*

53. However, by letter of 10 October 2022, and since, *inter alia*, the documents in questions were translations of evidence already on file and since the late submission of these translations were not considered to have been made in bad faith, the Parties were informed, *inter alia*, that the Panel had decided that *"[t]he translations provided by the Appellant are admissible, in principle. Accordingly, the Respondents are invited to comment on the accuracy of translations, if so needed, within tree (3) days (…). The Parties are invited to inform the CAS Court Office, within three (3) days whether they wish to maintain the hearing schedules for 14 October 2022 based on the above circumstances".*

54. None of the Parties submitted any request for the rescheduling of the hearing, and on 14 October 2022, a hearing was held *via* Cisco WebEx.

55. In addition to the members of the Panel, Mr Björn Hessert, Counsel to the CAS, and the following persons attended the hearing:

For the Appellant: Mr Paolo Lombardi, Attorney-at-Law; Mr James Mungavin, Attorney-at-law; Mr Ian Laing, Attorney-at-Law; Mr Ross McLaren, Intern;

For the First Respondent: Mrs Markéta Vochoska Haindlová, Attorney-at-Law; Mr Jakub Porsch, Attorney-at-Law; Mr Ryan Parker, Attorney-at-Law; Mr Petr Lajda, Chairman; Mr Jan Jícha, Vice-Chairman;

For the Second Respondent: Mr Gianpaolo Monteneri, Attorney-at-Law; Mrs Anna Smirnova, Attorney-at-Law;

For FIFA: Mr Miguel Liétard Fernández-Palacios, Director of Litigation; Mrs Cristina Pérez González, Senior Legal Counsel.

56. At the outset of the hearing, the Parties confirmed that they had no objections to the appointment of the Panel.

57. The Parties were afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the Panel.

58. After the Parties' final submissions, the Panel closed the hearing and reserved its final award. The Panel took into account in its subsequent deliberations all the evidence and arguments presented by the Parties although they may not have been expressly summarised in the present Award.

59. Upon the closure of the hearing, the Parties expressly stated that they had no objections in respect of their right to be heard and to have been treated equally and fairly in these arbitration proceedings.

60. On 8 November 2022, the Second Respondent provided the CAS Court Office with a breakdown of its costs and expenses incurred in connection with the matter at hand.

V. THE PARTIES' SUBMISSIONS AND REQUESTS FOR RELIEF

61. The following outline of the Parties' requests for relief and positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Panel has, however, carefully considered all the submissions and evidence filed by the Parties with the CAS, even if there is no specific reference to such submissions or evidence in the following summary.

A. The Appellant

62. In its Statement of Appeal of 18 March 2022 and in its Appeal Brief of 11 April 2022, the Appellant requested the CAS:

> *"I. to review the present case as to the facts and to the law, in compliance with article R57 of the CAS Code;*
>
> *II.*
>
> *(i) to set aside the FIFA Decision, and issue a new decision:*
>
> *a) CONFIRMING that Udinese shall bear the financial burden of the solidarity contribution in connection with the transfer of the Player from Udinese to Hellas Verona;*
>
> *and as a result,*
>
> *b) ORDERING Udinese to reimburse to Hellas Verona any and all amounts paid or due to be paid by Hellas Verona to Sellier and Bellot Vlasim as solidarity contribution in connection with the transfer of the Player from Udinese to Hellas Verona;*
>
> *or alternatively,*
>
> *(ii) to set aside the FIFA Decision and*
>
> *c) ORDER FIFA to open a new procedure involving Udinese, Sellier and Bellot Vlasim and Hellas Verona regarding the financial burden of the solidarity contribution in connection with the transfer of the Player from Udinese to Hellas Verona;*
>
> *III. to order the Second Respondent and Third Respondent to jointly bear all costs of these proceedings and to pay a contribution towards the legal fees of the Appellant pursuant to Article R64.5 of the CAS Code".*

63. In support of its requests for relief, the Appellant submitted, *inter alia*, as follows:

- The factual facts of this dispute are uncontested, including the fact that the Player was registered with Sellier during two periods, *i.e.* 318 days, of the season of his 20th birthday, within the period from 24 July 2014 to 30 June 2015.

- The regulations extending FIFA solidarity contribution to domestic transfers with an international dimension were introduced in the June 2020 edition of the FIFA RSTP, which came into force on 1 July 2020, *i.e.* before the conclusion of the Loan Agreement, which agreement subsequently resulted in the permanent transfer of the Player from Udinese to the Appellant.

- As such, Sellier was entitled to claim solidarity contribution in connection with the said transfer.

- However, at the time of the Player's transfer, the FIGC had not made any provisions for the change in the FIFA regulations regarding solidarity contribution, in particular, not instructing Italian clubs on how to conduct themselves in relation to FIFA solidarity contribution for domestic transfers.

- This area was only regulated by the FICG as from 1 July 2021, and such FIGC regulations now provide that all transfer compensations amount must be calculated net of solidarity, which is actually contrary to the FIFA RSTP.

- As such, at the time of the transfer of the Player, the national "clearing house" system in place for the payment of transfer fees between Italian clubs for a domestic transfer did not allow any deduction for solidarity contribution, which is why the Appellant had to pay the entire compensation to Udinese, without any deduction of the solidarity contribution, in order to comply with FIGC regulations.

- The Appellant did in fact contact Udinese in order to be reimbursed by the said club, however, this was always refused by Udinese.

- In this regard, Udinese should be confirmed as a party to these proceedings, even if the club was not a party before the FIFA DRC, since, according to the applicable FIFA regulations, it is Udinese, as the Player's former club, that should bear the relevant financial burden of the solidarity contribution to Sellier.

- In case FIFA lacks jurisdiction to hear such dispute, this constitutes a *lacuna* in the applicable rules, which should be filled by FIFA and/or CAS jurisprudence.

- The inclusion of Udinese in these proceedings falls within the scope of the present appeal, given that one of the Appellant's requests for relief during the FIFA proceedings was for FIFA to call Udinese as a party to the matter. However, FIFA ignored this request in its legal considerations.

- Moreover, the inclusion of Udinese in these proceedings is also justified by compelling reasons of procedural economy, since it is eventually Udinese who has to bear the financial burden of any and all solidarity contribution due to Sellier in connection with the transfer of the Player from Udinese to the Appellant.

- As such, in its review of the matter in accordance with Article R57 of the CAS Code, the Panel must confirm that FIFA was wrong in not admitting Udinese as a party to the first instance proceedings and order the said club to reimburse the Appellant for the relevant proportion of the transfer compensation that was not, but should have been deducted in accordance with FIFA's established jurisprudence in similar cases.

- The Panel has the power to refer the case back to FIFA and order FIFA to open a new procedure in the first instance which includes Udinese, however, the inclusion of Udinese in the present proceedings will avoid further delays and serve justice in a more efficient manner.

- With regard to the inclusion of FIFA in the appeal, it must be stressed that this dispute is not a simple horizontal dispute between two clubs, since FIFA refused to include Udinese in the FIFA proceedings and since such refusal led to the Appealed Decision, which is tantamount to denial of justice.

- As such, FIFA failed to apply its own longstanding jurisprudence in similar matters by not involving the Player's former club and ordering it to reimburse the Appellant in order for the financial burden of the solidarity contribution to be correctly attributed to Udinese rather than the Appellant.

- In any case, the Appellant acknowledges that the relevant solidarity contribution was due to Sellier and that the club has already made the payment of the amount due.

- And although the Appellant also acknowledges that it is obligated to distribute the relevant solidarity contribution to Sellier, it is not the Appellant that is ultimately required to bear the financial burden of such contribution, as, according to Article 1 (1) of Annexe 5 of the FIFA RSTP, *"5% of any compensation paid within the scope of this transfer (…) shall be deducted from the total amount of this compensation and distributed by the new club as a solidarity contribution"*.

- In this regard, it must be noted that in the Loan Agreement, the Appellant and Udinese did not agree that the relevant transfer compensation was to be net of solidarity contribution.

- As such, the Appellant was entitled, and in fact obliged, to deduct the relevant solidarity contribution from the compensation paid to Udinese, however, due to the FICG regulations as set out above, the Appellant was unable to make such a deduction and was forced to pay the entire compensation to Udinese in order to comply with the FIGC system.

- As confirmed by the FIGC, both the Appellant and Udinese have to respect the rules relating to solidarity contribution contained in the FIFA RSTP, and the FIGC has also confirmed that domestic solidarity contribution is entirely regulated by FIFA.

- The Appealed Decision is wrong in stating that the Appellant did not provide evidence of the issues with the FIGC systems, but in any event, the reason for not deducting the 5% solidarity contribution is irrelevant.

- The simple fact that the Appellant paid 100% of the transfer compensation to Udinese, which is uncontested, instead of 95% as provided for by the FIFA RSTP, is sufficient to prove that Udinese is obliged to reimburse the overpaid transfer compensation to the Appellant. This is in line with FIFA jurisprudence in so-called "100 minus 5" cases.

- In any case, Udinese has unjustly enriched itself, and the concept of reimbursement of an undue payment in order to rectify unjust enrichment is known throughout the world's legal systems, including Swiss law.

- Pursuant to Article 62 of the Swiss Code of Obligations (the "SCO") *"*[a] *person who has enriched himself without just cause at the expense of another is obliged to make restitution".*

- The very same principle is confirmed in the Commentary to the FIFA RSTP, and there is no reason why FIFA should not have treated the proceedings that led to the Appealed Decision as provided for by its own longstanding jurisprudence and confirmed by its own doctrine, as there can be no doubt that Udinese has been unjustly enriched by receiving an overpayment of transfer compensation.

- As such, the Panel must order Udinese to reimburse the Appellant for any and all amounts paid or due to be paid by the Appellant to Sellier as solidarity contribution in connection with the transfer of the Player between the two clubs.

- Alternatively, the Panel should order FIFA to open a new procedure involving Udinese, Sellier and the Appellant regarding the financial burden of the said solidarity contribution.

- Finally, and as Sellier is not at fault in this matter, Udinese and FIFA must be ordered to jointly bear all costs of these proceedings and to pay a contribution to the Appellant's legal fees and expenses incurred in connection with these proceedings.

B. The First Respondent

64. In its Answer of 11 May 2022, the First Respondent requested the CAS to rule as follows:

"1) The Appellant, Hellas Verona, has no legitimate interest in pursuing the present appeal procedure and thus the appeal is inadmissible, and it is dismissed without entering into the substance of the case.

Alternatively, to ruling no. 1), ruling de novo:

2) The Appeal of the Appellant, Hellas Verona, is fully rejected.

In any event:

3) The challenged decision of the FIFA Dispute Resolution Chamber passed on 11 February 2022 is confirmed.

4) The Appellant, Hellas Verona, is ordered to pay the entire CAS administration costs and the arbitration fees and to reimburse the First Respondent, FCSB Vlasim, for any and all expenses it incurred in connection with this procedure.

5) The Appellant, Hellas Verona, is ordered to pay the First Respondent, FCSB Vlasim a contribution towards its legal costs amounting CHF 10,000".

65. In support of its requests for relief, the First Respondent submitted, *inter alia*, as follows:

- As Hellas Verona has already fulfilled its payment obligation towards the First Respondent by its payment of EUR 13,064.42 on 23 March 2022, the said club has no legal and legitimate interest in the appeal, which is therefore absolutely inadmissible.

- Furthermore, and in any case, the appeal does not contain any prayers for relief against the First Respondent, and the Appealed Decision as such therefore cannot be amended by means of these proceedings.

- Moreover, it is not possible for the Panel to allow the inclusion of Udinese as a party in these proceedings, since Udinese would then lose its right to a two-instance procedure, nor can the Panel be asked to order FIFA to open a new procedure as it should be Hellas Verona that should initiate such a procedure, if needed.

- In any case, the First Respondent should never be a part of such a procedure, not least when Hellas Verona itself confirms the legitimacy of the First Respondent's claim for payment of solidarity contribution as set out in the Appealed Decision.

- Based on the above, the Panel does not even have to enter into the merits of the case.

- However, and in any case, the Appealed Decision is factually correct and grounded, since the solidarity contribution in question, which amount is not contested, was to be paid by Hellas Verona to the First Respondent in accordance with the rules set out in the FIFA RSTP.

- Hellas Verona itself confirmed this when it complied with its payment obligation as set out in the Appealed Decision.

- Moreover, Hellas Verona never submitted any evidence proving that it was not obligated to deduct the 5% solidarity contribution from the compensation pursuant to the FIGC rules and regulations, and the Loan Agreement between the two clubs did not contain a clause according to which Hellas Verona and Udinese agreed to shift the distribution of the relevant solidarity contribution.

- Furthermore, it must be noted that Hellas Verona in its Appeal Brief confirms the entitlement of the First Respondent to payment of solidarity contribution in the amount decided by the FIFA DRC in the Appealed Decision.

- If Hellas Verona considers that someone other than itself is ultimately responsible for the payment of the said solidarity contribution, it should seek reimbursement for the relevant amount in proceedings to which the First Respondent is not a party.

C. The Second Respondent

66. In its Answer of 30 May 2022, the Second Respondent requested the CAS:

"1. To establish that Udinese Calcio has no standing to be sued in the present procedure;

2. To dismiss the claims of Hellas Verona against Udinese Calcio;

In the event that above is not accepted,

3. To establish that Hellas Verona has no legitimate interest in the present procedure;

4. To decide that the appeal of Hellas Verona is inadmissible;

In the event that above is not accepted,

5. To dismiss or reject the appeal,

6. To uphold the Challenged Decision;

And under all circumstances,

7. To condemn Hellas Verona to the payment in favour of Udinese Calcio of all the legal expenses incurred;

8. To establish that the costs of the arbitration procedure shall be borne by Hellas Verona".

67. In support of its requests for relief, the Second Respondent submitted, *inter alia*, as follows:

- The Second Respondent was not a party to the proceedings before the FIFA DRC that led to the Appealed Decision and learnt about the dispute only because of the present procedure before CAS.

- The Second Respondent has never given and does not give its consent to participate in the present proceedings.

- Under applicable Swiss law, a defending party has standing to be sued (*légitimation passive*; *Passive legitimation*) only if it is personally obliged by the *"disputed right at stake"*.

- The Second Respondent was never a party to the FIFA proceedings, which a) were not directed against the Second Respondent; b) did not deal with the conduct of the Second Respondent; and c) was only meant to establish the obligation of Hellas Verona as the new club of the Player to pay the solidarity contribution to Sellier as per the clear provisions of the FIFA RSTP.

- Neither the FIFA Statutes nor any other applicable FIFA regulations contain any specific procedural provisions that would allow Hellas Verona to join and/or implead the Second Respondent by a process analogous to a third-party notice.

- It is hence clear that the Second Respondent does not have standing to be sued, and as such cannot be identified as a respondent in the present arbitration, and the appeal should consequently be dismissed.

- In any case, the precondition for any appeal procedure is, *inter alia*, a legitimate interest of the party appealing the challenged decision.

- Pursuant to Article 59 par. 1 of the Swiss Procedural Code (the "SPC") *"*[t]*he court shall consider an action or application provided the procedural requirements are satisfied"*, and in par. 2(a) of the same article, *i.e. "the plaintiff or applicant has a legitimate interest"*, is set out as a procedural requirement, which, pursuant to Article 60, the court must examine *ex officio* whether it is satisfied or not.

- As a process requirement, the lack of legitimate interest leads to the appeal being inadmissible, and not to the dismissal of the appeal.

- Furthermore, and as confirmed by the SFT, the legitimate interest must already exist at the time the appeal is filed and must still be there when the judgment is issued. If the legitimate interest that initially existed ceases to exist during the course of the process, in particular if the discussed claim is satisfied during the course of the process, the application becomes groundless and can no longer be admitted.

- As Hellas Verona has complied with the operative part of the Appealed Decision by fulfilling its payment obligation towards Sellier, Hellas Verona has no legitimate interest in contesting the Appealed Decision, and also never in its requests for relief addressed a single request against Sellier.

- As it is evident that Hellas Verona has no legitimate interest in the present appeal proceedings, the Panel is requested to establish that the appeal is inadmissible.

- In any case, the appeal is not substantiated as Hellas Verona has failed to substantiate its case and prove its arguments.

- If a party fails to comply with its obligation to substantiate its case so that the court ultimately cannot subsume the facts under the relevant legal norm and take the evidence, the resulting consequence is that the action or the appeal must be dismissed by a factual judgment without conducting evidentiary proceedings.

- With regard to the Appealed Decision, FIFA correctly established its lack of competence to consider the alleged dispute between Hellas Verona and the Second Respondent.

- First of all, it was not possible for FIFA to consider the inclusion of the Second Respondent in the FIFA proceedings due to lack of legal basis.

- Moreover, pursuant to Article 22 (d) and (e) FIFA RSTP, FIFA is competent to hear the disputes relating to the solidarity contribution between clubs belonging to the same association provided that the player at the basis of the dispute is transferred between clubs belonging to different associations, which condition is not fulfilled in the present case, since the Player was in fact transferred between to Italian clubs.

- As such, FIFA neither had a legal basis nor jurisdiction to consider the alleged dispute between Hellas Verona and the Second Respondent in relation to the transfer of the Player.

- With regard to the question of who should ultimately bear the financial burden of the solidarity contribution in question, it is essential to note that the Italian clearing house system has remained the same at all times, both before 1 July 2021 and afterwards, *i.e.* to the effect that 100% of the transfer compensation is payable by the acquiring club to the selling one.

- Pursuant to Article 2 (1) of Annexe 5 of the FIFA RSTP, *"the new club shall pay the solidarity contribution to the training clubs"*, and Hellas Verona, as the new club, does not have the possibility to shift the financial burden to the Second Respondent. This is not provided for in the applicable regulations of the FIGC, which is the football association authorised and responsible for establishing the regulations with respect to the arrangement on the transfers at the Italian national level.

- This follows, *inter alia*, from Article 2 (2) of the FIFA RSTP, according to which, *inter alia*, *"[t]he transfer of players between clubs belonging to the same association is governed by specific regulations issued by the association concerned in accordance with article 1 paragraph 3 below, which must be approved by FIFA"*.

- As such, the transfer compensation between two Italian clubs is always paid through the Italian clearing house, and the amount effectively agreed and inserted in the transfer

agreement is always the amount effectively to be received by the selling club, namely 100%.

- It is not allowed to make any deduction from the transfer compensation inserted in the transfer contract, *i.e.* it is always net of solidarity contribution and of other levies. This means that every amount due to a third club as solidarity contribution must be paid by the acquiring club in addition to the transfer compensation, *i.e.* + 5%.

- It is not only now that the FIGC regulations require this, and the same practice existed since the enforcement of the Italian clearing house, and therefore it was the standard approach when FIFA introduced the new rules regarding the applicability of the solidarity mechanism to the national transfers, which is confirmed by the FIGC.

- In this regard, the Second Respondent was never unjustly enriched since there is no fault in acting in compliance with the applicable regulations.

- The Italian clearing house is not acting in contradiction to the applicable FIFA regulations, but it is making use of its discretionary power to decide that the transfer compensation between two Italian clubs is always net of solidarity contribution.

D. FIFA

68. In its Answer of 27 May 2022, FIFA requested the CAS:

"a. To reject the reliefs sought by the Appellant;

b. To confirm the Appealed Decision;

c. To order the Appellant to bear the full costs of these arbitration proceedings; and

d. To order the Appellant to make a contribution to FIFA's legal costs".

69. In support of its requests for relief, FIFA submitted, *inter alia*, as follows:

- As far as FIFA's involvement in these procedures is concerned, the case revolves exclusively around the issue as to whether the FIFA DRC had jurisdiction to deal with Hellas Verona's request that Udinese be ordered to bear the financial burden of paying the solidarity contribution awarded to Sellier, through the reimbursement of the said contribution allegedly *"overpaid"* by the first club.

- In this regard, the Appealed Decision correctly addressed the reasons why Hellas Verona's request could not be discussed in the matter at hand, pointing out a) that Verona had failed to provide evidence in support of its allegations that it had been prevented from deducting the 5% solidarity contribution of the loan compensation because of the

regulations and payment system in place at national level at the relevant time, and b) that the Loan Agreement did not contain any clause providing for a shift in the distribution of the relevant solidarity contribution.

- In any case, since the request for reimbursement only concerned two Italian clubs, consequently lacking the necessary international dimension for FIFA to hear the dispute, the FIFA DRC would not have been competent to hear and, ultimately, decide on Hellas Verona's request for reimbursement.

- In other words, the dispute between two Italian clubs that belong to the same association, aside from lacking a legal basis, lacks the necessary international dimension.

- Hellas Verona itself recognises that the matter should have been dealt with by the FIGC and that it is aware of the necessity of an international dimension for FIFA to hear a dispute involving two Italian clubs.

- With regard to the financial responsibility for the payment of solidarity contribution, it must be recalled that pursuant to Article 1 (2) of Annexe 5 of the RSTP, the solidarity contribution *"shall be deducted from the total amount of compensation and distributed by the new club (…) to the club(s) involved in his training and educations over the years"*.

- As there is no evidence that Hellas Verona and Udinese agreed that the latter should carry the financial burden of the payment of the solidarity contribution, there is, *in casu*, no room for deviation from the very clear wording of the above-mentioned article.

- It is correct that in an international dispute in which the parties to the transfer agreement have truly agreed to shift this financial obligation, the FIFA DRC can render a decision in which it would order the former club to reimburse the solidarity compensation it might have received from the Player's new club.

- However, and as set out in the Appealed Decision, *"a potential reimbursement by the former club cannot be discussed"* because, *inter alia*, Hellas Verona failed to prove that it was prevented from deducting the solidarity contribution due to the regulations and payment system in place at national level at the relevant time.

- In any case, such practice only applies when the relevant clubs belong to different national associations, which is not the case in this matter, and FIFA was therefore not competent to hear the dispute under Article 22 (f) of the FIFA RSTP or any other provision of the said regulations.

- Regardless of the fact that both the Player and Sellier belong to another association, it must be recalled that, pursuant to the constant practice of FIFA and the CAS, when the dispute has a national or internal nature *"the rules and regulations of the association concerned*

must be applied to the matter and the deciding bodies in accordance with the relevant provision to rule on the issue".

- In other words, should FIFA have decided to deal with the internal matter between the two Italian clubs, the internal competence of the FIGC could have been violated.

- It is worth highlighting that, although FIFA is not competent to deal with such a claim in the context of a domestic dispute, Hellas Verona has several options at its disposal to address this purely national matter, such as the FIGC or any other national body or court entitled to deal with such a dispute.

- Consequently, since FIFA is not competent to deal with the dispute between two clubs belonging to the same association, the FIFA DRC could only dismiss the request of Hellas Verona.

- In view of the foregoing, together with the fact that Hellas Verona is not requesting anything from Sellier, it seems evident that Hellas Verona has called Sellier to be a party to the present proceedings with the only intention of artificially creating an international dimension that would entitle the CAS to decide on its claims against Udinese.

- In this regard, it is further recalled that, as confirmed by the CAS panel in CAS 2019/A/6646, *"[a] party has standing to be sued in CAS proceedings only if it has some stake in the dispute because something is sought against it in front of the CAS"*, and as such, Sellier has no standing to be sued.

- Finally, FIFA does not deny that in some situations a former club can be obliged to refund the relevant amount that corresponds to the proportion of the solidarity contribution when there is a legal basis to this effect pursuant to the applicable FIFA regulations. However, it must be recalled that this approach is only to be followed in disputes where the international element is present, which is not the case here.

VI. JURISDICTION

70. Article R47 of the CAS Code states, *inter alia*, 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".*

71. With respect to the Appealed Decision, the jurisdiction of the CAS derives from Article 57 (1) of the FIFA Statutes, which reads as follows:

"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".

72. Neither of the Parties objected to the jurisdiction of the CAS, which was furthermore confirmed by the Parties signing the Order of Procedure.

73. It follows that the CAS has jurisdiction to decide on the Appeal.

VII. ADMISSIBILITY

74. The grounds of the Appealed Decision were notified to the Appellant on 28 February 2022.

75. The Appellant filed its Statement of Appeal on 18 March 2022, *i.e.* within the statutory time limit set forth by Article 57 (1) of the FIFA Statutes, which is not disputed.

76. Furthermore, the Statement of Appeal complied with all the requirements of Article R48 of the CAS Code.

VIII. LEGAL INTEREST

77. While the First and the Second Respondents do not contest the jurisdiction of the CAS in relation to the appeal filed by the Appellant, the said parties, however, dispute the admissibility of the appeal in this case.

78. The Panel initially notes that pursuant to Article 59 par. 1 of the SPC *"The court shall consider an action or application provided the procedural requirements are satisfied"*. Furthermore, Article 59 par. 2(a) of the SPC sets out the procedural requirement that *"the plaintiff or applicant has a legitimate interest"*, which, pursuant to Article 60 of the SPC, the court must examine *ex officio* whether the procedural requirements of Article 59 of the SPC are satisfied or not.

79. The Panel notes that the criterion of legal interest is matter of admissibility. In other words, an appeal shall be deemed inadmissible if the Appellant lacks legal interest in accordance with Article 59 par. 2(a) of the SPC.

80. Legal interest as an admissibility condition has also been confirmed by CAS jurisprudence. In this regard, the CAS panel in CAS 2016/A/4602 held as follows:

"In principle, a request is inadmissible, if it lacks legal interest ('Rechtsschutzinteresse', 'intérêt à agir'). This condition of admissibility is explicitly provided for in Art. 59 (2) lit. a of the [SPC]. *Thus, a reasonable legal interest is a condition for access to justice. A court shall only be bothered to decide the merits of a request, if the applicant has a sufficient legal interest in the outcome of the decision. If – on the contrary – the request is not helpful in pursuing the applicant's final goals, the scarce judicial resources shall not be wasted on such matter.*

The condition of sufficient legal interest serves first and foremost public interests, i.e. to restrict the case load for the courts by striking 'purposeless' claims from the court's registry. This public interest is clearly evidenced by the fact that the courts examine this (procedural) condition sua sponte (Art. 62 CCP). Even if aspects of public interest before state courts are not easily transferable mutatis mutandis to arbitration proceedings (cf. GIRSBERGER/VOSER, International Arbitration, 3rd ed. 2016, no. 1194), this Panel holds that a claim shall be deemed inadmissible if it clearly does not serve the purpose of the Appellant".

81. Furthermore, the Panel notes that such a legitimate interest must already exist at the time the appeal is filed and must still exist when the judgment is issued, as confirmed by the Swiss Federal Tribunal (cf. SFT 146 III 416, consid. 7.4; SFT 111 Ib 182 consid. 2a; SFT 109 II 165 consid. 2). If a legitimate interest that initially existed ceases to exist during the course of the process, the application or appeal becomes groundless and is to be dismissed as without relevance (*als gegenstandslos abgeschrieben*).

82. The First and Second Respondents submit that since Hellas Verona complied with the operative part of the Appealed Decision during these appeal proceedings, the said club has no legitimate interest in contesting the Appealed Decision.

83. The Second Respondent further submits that the appeal was never sufficiently substantiated.

84. Based on that, the First and Second Respondents request the Panel to establish that the appeal is inadmissible.

85. However, the Panel notes that, based on the Appellant's submissions, it understands that the appeal is (at least in essence) directed against the findings of the FIFA DRC on whether or not to include Udinese in the proceedings before the FIFA DRC.

86. In this regard, it is not disputed by the Parties that the Appellant did in fact request FIFA to include Udinese in the FIFA proceedings as an intervening party and to order the said club to reimburse it for the relevant proportion of the transfer compensation that was not deducted for the solidarity contribution.

87. However, such a request was not upheld by the FIFA DRC since, *inter alia*, as explained by FIFA during these proceedings, the dispute between the Appellant and the Second Respondent fell outside the competence of the FIFA DRC.

88. As such, the Panel finds that the primary scope of the appeal is in fact the alleged jurisdiction of the FIFA DRC.

89. Based on the above, the Panel finds that the Appellant indeed has a legitimate interest with regard to the question concerning the competence of the FIFA DRC, which falls within the scope of the appeal.

90. As such, it follows that the appeal is admissible.

IX. APPLICABLE LAW

91. Article R58 of the CAS Code states 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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

92. The Panel further notes that Article 56 par. 2 of the FIFA Statutes reads as follows:

> *"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".*

93. Finally, it follows from Article 26 par. 2 of the FIFA RSTP that disputes regarding, *inter alia*, the solidarity mechanism *"shall be assessed according to the regulations that were in force when the contract at the centre of the dispute was signed, or when the disputed facts arose".*

94. Based on the foregoing, and in accordance with the submissions of the Parties, the Panel is satisfied to accept the application of the various regulations of FIFA, in particular the August 2020 edition of the FIFA RSTP, and, subsidiarily, Swiss law.

X. MERITS

95. Under Article 57 par. 1 of the CAS Code, the Panel has full power to review the facts and the law and may issue a *de novo* decision superseding, entirely or partially, the Appealed Decision

96. Initially, the Panel notes that the factual circumstances which led to this dispute are generally uncontested by the Parties.

97. As such, it is undisputed that on 17 September 2020, Udinese, with which the Player of Czech nationality was then under a permanent contract, and Hellas Verona concluded the Loan Agreement regarding the loan of the Player to Hellas Verona as from 17 September 2020 until 30 June 2021. The loan fee agreed between the two clubs was EUR 500,000 which amount Hellas Verona subsequently paid to Udinese.

98. It is further undisputed that on 1 July 2021, the Player became permanently registered with Hellas Verona in exchange for the payment of *"EUR 3,000,000 at the start of the season 21/22; and EUR 3,000,000 at the start of season 22/23"*. The first instalment of EUR 3,000,000 which fell due *"at the start of the season 21/22"*, was paid in full by Hellas Verona to Udinese through the FIGC clearing house.

99. Finally, it is beyond dispute that the Player was registered as a professional (on loan) with Sellier from 24 July 2014 to 25 January 2015 and again from 19 February 2015 to 30 June 2015, *i.e.* 318 days of the season of his 20th birthday, which is why Sellier, as set out in the Appealed Decision, was/is entitled to receive 8.7% of any due solidarity contribution in respect of any loan or permanent transfer of the Player.

100. On 11 February 2022, and following Sellier's claim against Hellas Verona for the payment of the due solidarity contribution in connection with the above-mentioned transfer of the Player and Hellas Verona's request before FIFA that Udinese be included in the said procedure, the FIFA DCR, without having included Udinese in the procedure, rendered the Appealed Decision, which states:

> *"1. The claim of* [Sellier] *is partially accepted.*
>
> *2.* [Hellas Verona] *shall pay to* [Sellier] *EUR 13,064.42 as solidarity contribution.*
>
> *3. Any further claim of* [Sellier] *is rejected.*
>
> *4. Full payment (including all applicable interest) shall be made to the bank account indicated in the enclosed Bank Account Registration Form.*
>
> *5. Pursuant to article 24bis of the Regulations on the Status and Transfer of Players if full payment (including all applicable interest) is not paid within 45 days of notification of this decision, the following consequences shall apply:*
>
> *1.* [Hellas Verona] *shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of three entire and consecutive registration periods.*
>
> *2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not paid by the end of the of the three entire and consecutive registration periods.*
>
> *6. The consequences shall only be enforced at the request of* [Sellier] *in accordance with article 24bis of the Regulations on the Status and Transfer of Players.*
>
> *7. The final costs of the proceedings in the amount of USD 3,000 are to be paid as follows:*
>
> *a. The amount of USD 500 shall be paid by* [Sellier]*;*
>
> *b. The amount of USD 2,500 shall be paid by* [Hellas Verona]*;*
>
> *c. The above costs shall be paid to FIFA with reference to case no. TMS 9640 (cf. note relating to the payment of the procedural costs below)".*

101. On 23 March 2022, Hellas Verona paid the then outstanding solidarity contribution in the amount of EUR 13,064.42 to Sellier as set out in the Appealed Decision.

102. However, while Hellas Verona acknowledges that the relevant solidarity contribution was due to Sellier and that Hellas Verona was obligated to distribute it to Sellier, Hellas Verona submits that it is not for it to ultimately bear the financial burden since it should be deducted from the total amount of compensation paid to Udinese. As such, FIFA erred in not including Udinese in the procedure before the FIFA DRC in order to make Udinese pay the solidarity contribution to Sellier.

A. Do the First and the Second Respondents have standing to be sued?

103. As a preliminary issue, the Panel notes that both the First and the Second Respondents have requested to have the appeal dismissed as they submit that neither the First Respondent nor the Second Respondent has standing to be sued in these proceedings.

104. In this regard, the First Respondent submits, *inter alia*, that since Hellas Verona has already fulfilled its payment obligations towards the First Respondent as set out in the Appealed Decision by its payment of EUR 13,064.42 on 23 March 2020, and as the appeal does not contain any prayers for relief against the First Respondent, the First Respondent has no standing to be sued, not least when the Appellant itself confirms the legitimacy of the First Respondent's claim for payment of solidarity contribution as set out in the Appealed Decision.

105. The Second Respondent submits, *inter alia*, that under applicable Swiss law, a defending party has standing to be sued only if it is personally obliged by the *"disputed right at stake"*. The Second Respondent was never a party to the FIFA proceedings, which a) were not directed against it, b) did not deal with its conduct, and c) were only meant to establish the obligation of the Appellant as the Player's new club to pay the solidarity contribution to Sellier as per the clear provisions of the FIFA RSTP. Finally, the Second Respondent has never given its consent to participate in these appeal proceedings.

106. The Appellant, on the other hand, submits, *inter alia*, that even if it already fulfilled its payment obligations towards the First Respondent, as set out in the Appealed Decision, by its payment of EUR 13,064.42 on 23 March 2020, the second instalment pursuant to the Loan Agreement has now fallen due, and the Parties are consequently faced with the same issue regarding the distribution and ultimate payment of the relevant solidarity contribution to Sellier. As such, also the First and Second Respondents are affected by the dispute and thus have standing to be sued.

107. The Panel initially notes that the question of whether or not a party has standing to be sued (or to sue) is – according to well-established CAS jurisprudence (cf. CAS 2020/A/6694; CAS 2016/A/4602; CAS 2013/A/3047; CAS 2008/A/1639) – an issue of substantive law.

108. As such, the Panel refers to Article 75 of the Swiss Civil Code (the "SCC"), which reads as follows:

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

109. Although the wording of Article 75 of the SCC is ambiguous with regard to challenges against decisions made by an association other than resolutions of a general assembly, it is uncontested that the said provision applies *mutatis mutandis* to decisions of other organs of the association. The wording of Article 75 of the SCC implies that an appeal, in principle, must be directed against the association that rendered the challenged decision (cf. BGE 136 III 345, no. E.2.2.2; RIEMER H. M., BK-ZGB, Art. 75, no. 60; SCHERRER/BRÄGGER, BSK-ZGB, Art. 75, no. 21).

110. However, CAS jurisprudence allows for an exception to the above rule, in particular where the appealed decision is not of a disciplinary nature, *i.e.* where the sports association merely acts as an adjudicatory body in relation to a dispute between its members. Thus, when deciding who is the proper party to defend an appealed decision, CAS panels proceed by a balancing of the interests involved and by taking into account the role assumed by the association in the specific circumstances. Consequently, one must ask whether a party *"stands to be sufficiently affected by the matter at hand in order to qualify as a proper respondent within the meaning of the law"* (cf. CAS 2017/A/5227, para. 35). Similarly, the CAS panel in 2015/A/3910 held as follows:

> *"*[T]*he Panel holds that in the absence of a clear statutory provision regulating the question of standing to be sued, the question must be resolved on basis of a weighing of the interests of the persons affected by said decision. The question, thus, is who (…) is best suited to represent and defend the will expressed by the organ of the association"* (para. 138).

111. In the present case, and as already mentioned in para. 85 above, the Panel understands that the appeal is (at least in essence) directed against the finding of the FIFA DRC on whether or not to include Udinese in the proceedings before the FIFA DRC.

112. In this regard, and as the Appellant did already fulfil its payment obligations towards the First Respondent, as set out in the Appealed Decision, by its payment of EUR 13,064.42 on 23 March 2020, and as the appeal does not contain any prayers for relief against the First Respondent, the Panel finds that the First Respondent is not affected by the matter at hand in such a way that it qualifies the said club as a proper respondent.

113. The Panel further finds that the circumstance that the First Respondent is probably entitled to receive a solidarity contribution originating from the second instalment of the transfer compensation, as set out in the Loan Agreement, is not sufficient to qualify the club as a proper respondent in the present dispute.

114. As such, the Panel finds that the First Respondent has no standing to be sued.

115. With regard to the Second Respondent, the Panel initially notes that the said club was never a party to the FIFA proceedings, which did not deal with the conduct of the club and which procedure was only initiated by Sellier in order to establish the obligation of the Appellant as the Player's new club to pay the solidarity contribution to Sellier in accordance with the provisions of the FIFA RSTP.

116. And even though the Appellant's requests for relief during these appeal proceedings are to some extent directed against the Second Respondent, the relevance of such requests directed against the Second Respondent is, in any case, depending on whether the Panel ultimately finds that the FIFA DRC was wrong in not including the Second Respondent in the procedure before it, which, according to the Appellant, is the real scope of these appeal proceedings.

117. Furthermore, and even if the Panel was to uphold the Appellant's appeal in this regard, the Panel notes that it would probably find that the prudent thing to do in such case would then be to refer the dispute back to the FIFA DRC in order to give the Second Respondent the opportunity to state its case also before FIFA.

118. Based on the above, the Panel finds that the Second Respondent is not directly affected by the matter at hand in such a way that it qualifies the club to act as a proper respondent in these appeal proceedings.

119. Furthermore, and in line with the considerations set out above in para. 113, the Panel finds that the circumstance that a similar issue regarding the question of distribution and reimbursement of the solidarity contribution originating from the second instalment of the transfer compensation as set out in the Loan Agreement might arise is not sufficient to change this.

120. As such, the Panel finds that the Second Respondent has no standing to be sued.

B. Was the FIFA DRC correct in dismissing the Appellant's request to have Udinese included in the FIFA proceedings?

121. The Panel initially notes that the Appellant does not dispute that Sellier was entitled to claim solidarity contribution in connection with the Player's transfer from Udinese to Hellas Verona and that the FIFA DRC was correct in deciding that Hellas Verona was obliged to pay the amount of EUR 13,064.42.

122. However, the Appellant submits that since, pursuant to the applicable FIFA RSTP, it is Udinese, as the Player's former club, that must, ultimately, bear the relevant financial burden of the solidarity contribution to Sellier, the FIFA DRC was wrong in not including the said club in the first instance proceedings, also from a procedural economy point of view.

123. The Appellant further submits that as such FIFA failed to apply its own longstanding jurisprudence in similar matters by not involving Udinese and ordering it to reimburse the relevant amount, thus failing to rectify the unjust enrichment of the said club, in which regard

it must also be noted that the Loan Agreement did not provide for the relevant transfer compensation to be net of solidarity contribution.

124. It is further to be stressed that the reason for Hellas Verona not deducting the relevant amount from the transfer compensation before paying it to Udinese *via* the Italian clearing house [is] not of any relevance to the issue of the competence of the FIFA DRC.

125. FIFA, on its side, submits that the FIFA DRC correctly addressed the reasons why Hellas Verona's request could not be discussed pointing out a) that the said club had failed to provide evidence in support of its allegations that it had been prevented from deducting the 5% solidarity contribution from the loan compensation because of the regulations and payment system in place at national level at the relevant time, and b) that the Loan Agreement did not contain any clause providing for a shift in the distribution of the relevant solidarity contribution.

126. Furthermore, and in any case, since the request for reimbursement only concerned two Italian clubs consequently lacking the necessary international dimension for FIFA to hear the dispute, the FIFA DRC was not competent to hear and, ultimately, decide on the request for reimbursement.

127. FIFA does not dispute that in international disputes in which the parties to a transfer agreement have truly agreed to shift the financial obligation of the solidarity contribution, and where it is requested to do so, the FIFA DRC can render a decision in which it would order the former club to reimburse the solidarity compensation it might have received from the Player's new club.

128. However, such practice only applies when the relevant clubs belong to different national associations, which is not the case in this matter, which is why FIFA submits that it was not competent to hear the dispute under Article 22 (f) of the FIFA RSTP or any other provisions of the said regulations. In this regard, it must further be recalled that pursuant to the FIFA RSTP, when a dispute has a national or internal nature, *"the rules and regulations of the association concerned must be applied to the matter and the deciding bodies in accordance with the relevant provisions to rule on the issue"*.

129. Initially, the Panel acknowledges the wordings of Article 20 and Article 22 of the FIFA RSTP, which states, *inter alia*, as follows:

> *"20. Solidarity mechanism*
>
> *If a professional is transferred before the expiry of his contract, any club that has contributed to his education and training shall receive a proportion of the compensation paid to his former club (solidarity contribution). The provisions concerning solidarity contributions are set out in Annexe 5 of these regulations.*
>
> *(…).*

22. Competence of FIFA

Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear:

a) disputes between clubs and players in relation to the maintenance of contractual stability (articles 13-18) where there has been an ITC request and a claim from an interested party in relation to said ITC request, in particular regarding the issue of the ITC, sporting sanctions or compensation for breach of contract;

b) employment-related disputes between a club and a player of an international dimension; the aforementioned parties may, however, explicitly opt in writing for such disputes to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement.

Any such arbitration clause must be included either directly in the contract or in a collective bargaining agreement applicable on the parties. The independent national arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of players and clubs;

c) employment-related disputes between a club or an association and a coach of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings exists at national level;

d) disputes relating to training compensation (article 20) and the solidarity mechanism (article 21) between clubs belonging to different associations;

e) disputes relating to training compensation (article 20) and the solidarity mechanism (article 21) between clubs belonging to the same association provided that the transfer of a player at the basis of the dispute occurs between clubs belonging to different associations;

f) disputes between clubs belonging to different associations that do not fall within the cases provided for in a), d) and e)".

130. Moreover, in Annexe 5(1) (1) of the same regulations, it is set out*, inter alia*, that

"[i]f a professional moves during the course of a contract, 5% of any compensation paid within the scope of this transfer, not including training compensation paid to his former club, shall be deducted from the total amount of this compensation and distributed by the new club as a solidarity contribution to the club(s) involved in his training and education over the years".

131. In this regard and based on the facts of the case, the Panel finds that the dispute between the Appellant and the Second Respondent, both before the FIFA DRC and before the CAS, was/is in essence a dispute regarding a claim for reimbursement of the solidarity contribution, which the Appellant never disputed Sellier's entitlement to.

132. Moreover, the Panel notes that since both the Appellant and the Second Respondent are Italian clubs affiliated with the FIGC, the said dispute is only of a national or internal dimension.

133. The fact that the alleged claim for reimbursement originates from a claim for solidarity contribution from a Czech football club against an Italian club regarding a transfer of a player of Czech nationality does not give the present dispute between two Italian clubs, both affiliated with the FIGC, a sufficient international dimension with regard to the possible jurisdiction of FIFA and the application of FIFA rules applicable to clubs belonging to different associations.

134. As such, and pursuant to Article 22 (f), and even pursuant to Article 22 (d) and (e), if the dispute was to be considered a dispute relating to solidarity contribution, the Panel finds that FIFA was in fact not competent to hear and decide on the dispute between the Appellant and the Second Respondent.

135. The Panel notes that the Appellant submits that the FIFA DRC did not base its dismissal of the Appellant's request to have the Second Respondent included in the FIFA proceedings on the (alleged) lack of competence, but only referred to a) the Appellant not having *"provide*[d] *evidence in support of its allegations that it had been prevented from deducting the 5% solidarity contribution"*, which is in any case irrelevant, and b) that the Loan Agreement did *"not contain a clause according to which the* [Appellant] *and* [Second Respondent] *agreed to shift the distribution of the relevant solidarity contribution from the former to the latter"*.

136. In this regard, the Panel notes that FIFA confirms that in international disputes in which the parties to a transfer agreement have truly agreed to shift the financial obligation of the solidarity contribution, and where it is requested to do so, the FIFA DRC can render a decision in which it would order the former club to reimburse the solidarity compensation that it might have received from the Player's new club.

137. As it is undisputed that the Loan Agreement does not include any provision according to which the parties to the Loan Agreement agreed to shift the obligation to distribute the relevant solidarity contribution to Sellier, and since the Panel does not find any applicable FIFA provision that would in any case allow to implead the Second Respondent by a process analogous to a third party notice, the Panel appreciates why the FIFA DRC apparently based its dismissal of the Appellant's request, *inter alia*, on the lack of contractual basis for the reimbursement.

138. As the FIFA DRC, already because of such lack of contractual basis, was not in a position to include the Second Respondent, the Panel appreciates why the FIFA DRC decided that it did not have to analyse whether the requisition of an international dimension in order to give FIFA competence to hear and decide the dispute was in fact fulfilled.

139. In addition to the above, the Appellant submits that in case FIFA does not have jurisdiction to hear the present dispute between two clubs affiliated with the same national association

pursuant to the FIFA RSTP, this constitutes a *lacuna* in the applicable rules, which must be filled by FIFA and/or the CAS.

140. The regulations extending FIFA solidarity contribution to domestic transfers with an international dimension were introduced in the edition of the FIFA RSTP that came into force on 1 July 2020.

141. As domestic transfers with an international dimension were included in the system of FIFA solidarity contribution, FIFA should also be competent to hear and decide on disputes in relation hereto, not least in order to safeguard the principle of procedural economy.

142. As such, in any case, the Appellant submits that FIFA DRC erred when dismissing the request to include the Second Respondent in the first instance procedure.

143. FIFA, on its side, submits that there is no *lacuna* in the rules, as the amended applicable rules are very clear. It is also important for FIFA to stress that, as confirmed by the CAS, when a dispute is considered to be of a national or internal nature, one of the consequences is that the rules and regulations of the association concerned must be applied to the matter and the deciding bodies in accordance with the relevant provisions are to rule on the issue. If FIFA's deciding body would deal with such an internal matter, the internal competence of a FIFA member association would be violated.

144. Moreover, FIFA is not *"the only remedy"* for clubs in such disputes without a sufficient international dimension.

145. Based on the Parties' submissions, the Panel is not convinced that there exists a *lacuna* in the applicable rules regarding the competence of FIFA to hear disputes between two national clubs regarding the possible reimbursement of solidarity contributions.

146. In this regard, the Panel agrees with the Sole Arbitrator in CAS 2016/A/4441 that one of the consequences of the dispute being of a national/internal dimension is that *"the rules and regulations of the association concerned must be applied to the matter and the deciding bodies in accordance with the relevant provisions are to rule on the issue. If FIFA's deciding body would deal with such an internal matter, the internal competence of a FIFA member association would be violated"*.

147. If FIFA was to be competent to hear and decide on such disputes between clubs affiliated with the same national association, in addition to violating the internal competence of the member association, it would also have as a consequence that the national provisions regarding solidarity contribution might not be applied, which, at least in the Panel's view, is not the intention.

148. Based on the above, the Panel finds that the FIFA DRC was correct in dismissing the Appellant's request for inclusion of the Second Respondent in the first instance procedure before FIFA.

149. As such, the Panel finds no grounds to deal with the alleged unjust enrichment of the Second Respondent or on the issue of whether the FIGC provisions regarding solidarity contribution are in conflict with the FIFA regulations on the same issue.

150. Finally, and for the sake of good order, the Panel notes that the dismissal of the appeal does not have as a consequence that the Appellant is also excluded from seeking reimbursement from the Second Respondent before any competent national judicial body or court.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 18 March 2022 by Hellas Verona FC S.p.A. against the decision rendered by the Dispute Resolution Chamber of the FIFA Football Tribunal on 11 February 2022 is dismissed.

2. The decision rendered by the Dispute Resolution Chamber of the FIFA Football Tribunal on 11 February 2022 is confirmed.

3. (…).

4. (…).

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