



TAS / CAS

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

Arbitration CAS 2023/A/9611 Al Merrikh Sports Club v. Fédération Internationale de Football Association (FIFA), award of 14 February 2024

Panel: Mr Jacques Radoux (Luxembourg), Sole Arbitrator

Football

Refusal of FIFA to open disciplinary proceedings for failure to comply with CAS awards

Status of party of a complainant requesting the opening of disciplinary proceedings

Legally protected interest of a third party “directly affected” by a measure

Standing to be sued

1. Communications/complaints lodged pursuant to Article 52 para. 2 of the FIFA Disciplinary Code (FDC, 2019 edition) or its predecessor Article 108 para. 2 of the FDC (2017 edition) do not confer any procedural right on the communicator/complainant (including because the latter may be someone who is not subject to the FIFA rules, e.g. a journalist or a spectator). Nor do they guarantee that, FIFA considers a complaint to be relevant and processes the case before the Disciplinary Commission. The FDC recognises but not fosters the participation of third parties in the disciplinary procedure rather their involvement as subjects who should collaborate in the ascertainment of an infringement. The intent is clear, that is, to have as many reports as possible to evaluate, where it is difficult to hypothesize that the FIFA officials can, by themselves, ascertain every supposed breach of regulations against all subjects under Article 3 of the FDC (federations, associations, clubs, players, coaches and any other recipient of these regulations). FIFA has a specific and non-replaceable role in disciplinary proceedings against all the subjects indicated in Article 3, which become parties in such proceedings if opened against them. On the other hand, those who have reported the violation or attempt to violate, (i.e. the so-called whistleblowers) remain outside of the procedure.
2. The condition, set out in Article 58 par. 1 of the FDC, according to which an appellant needs to have *“a legally protected interest in filing the appeal”* appears to attribute standing to sue (appeal) to a party which has a legally protectable and tangible interest in the matter. This corresponds to the Swiss legal notions of *“légitimation active”* or *“qualité pour agir”*. In this respect, it is consistent with the general definition of standing that parties, who are sufficiently affected by a decision, and who have a tangible interest of a financial or sporting nature at stake, may bring a claim, even if they are not addressees of the measure being challenged. Accordingly, when a measure, adopted by an association, affects not only the rights of the addressee, but also and directly those of a third party, that third party is considered *“directly affected”* and thus enjoys standing to sue (appeal). However, there is a category of third-party applicants who, in principle, do not have standing, namely those deemed *“indirectly affected”* by a measure. The burden of proof to demonstrate a personal, direct and tangible legal interest lies with the party asserting standing. The notion of *“directly affected”*, when

applied to third parties who are not the addressees of a measure, must be interpreted in a restrictive manner.

- 3. For an appeal against a disciplinary decision of the FIFA, with which an appellant – in case he/she/it has standing to appeal – seeks to obtain the opening of disciplinary proceedings and/or the imposition of a sanction, the appellant must also name the party against which the disciplinary proceedings should be opened and/or on which the sanction shall be imposed, as a respondent in the appeal.**

I. PARTIES

1. Al Merrikh Sports Club (the “Club” or the “Appellant”) is a professional football club with its registered seat in Omdurman, Republic of the Sudan. The Club is affiliated to the Sudan Football Association (the “SFA”).
2. The Fédération Internationale de Football Association (the “FIFA” or the “Respondent”) is the international governing body of football. FIFA is an association under Articles 60 et seq. of the Swiss Civil Code (“CC”) and has its registered office in Zurich, Switzerland.
3. The Appellant and the Respondent are jointly referred to as the “Parties”.

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts and allegations based on the Parties’ submissions, pleadings and evidence adduced. Additional facts and allegations found in the Parties’ submissions, pleadings and evidence may be set out, where relevant, in connection with the 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, he refers in this award only to the submissions and evidence he considers necessary to explain his reasoning.
5. Between October 2020 and November 2022, there were issues concerning the Club’s executive body, in particular relating to the questions of who was the legitimate president of the Club and which of two different executive boards was the legitimate executive board of the Club.
6. The different issues led the Club to file three different appeals against the SFA in front of the Court of Arbitration for Sport in Lausanne, Switzerland (the “CAS”). These appeals were registered as CAS 2021/A/8371, CAS 2021/A/8413 and CAS 2021/A/8488.
7. On 10 June 2022, the CAS rendered its awards in these three proceedings (together, the “Awards”).

8. The operative part of the award in case CAS 2021/A/8371 reads, in its relevant parts, as follows:
 1. *The appeal filed by Al-Merrikh Sports Club against the Sudan Football Association against the decision rendered by the Appeal Committee of the Sudan Football Association on 19 September 2021 is upheld.*
 2. *The decision rendered by the Appeal Committee of the Sudan Football Association on 19 September 2021 is annulled.*
 3. (...).
 4. (...).
 5. *All other and further motions or prayers for relief are dismissed”.*
9. The operative part of the award in case CAS 2021/A/8413 reads, in its relevant parts, as follows:
 1. *The appeal filed, by the Al-Merrikh Sports Club against the decision rendered by the Board of Directors of the Sudan Football Association on 16 September 2021 is partially upheld.*
 2. *The decision rendered by the Board of Directors of the Sudan Football Association on 16 September 2021 is annulled.*
 3. (...).
 4. (...).
 5. *All other and further motions or prayers for relief are dismissed”.*
10. Finally, the operative part of the award in case CAS 2021/A/8488, *inter alia*, provides:
 1. *The appeal filed by Al-Merrikh Sports Club on 30 November 2021 against the decision rendered by the Electoral Appeal Committee of the Sudan Football Association on 10 November 2021 is upheld.*
 2. *The decision rendered by the Electoral Appeal Committee of the Sudan Football Association on 10 November 2021 is annulled.*
 3. (...).
 4. (...).
 5. *All other and further motions or prayers for relief are dismissed”.*
11. On 5 August 2022, the Club filed a complaint with the FIFA Disciplinary Committee (the “FIFA DC”), arguing that the SFA had not complied with the award in case CAS 2021/A/8413. The Club asked that the SFA be held liable for a breach of Article 15 of

the FIFA Disciplinary Code (ed. 2019) and sanctioned for failing to comply with this CAS award.

12. On 26 September 2022, the Club filed another complaint with the FIFA DC, arguing that the SFA had not complied with the award in case CAS 2021/A/8731. The Club asked that the SFA be held liable for this non-compliance and sanctioned for breaching the FIFA Statutes.
13. On 4 October 2022, the Club filed a third complaint with the FIFA DC, claiming that the SFA had not complied with the award in case CAS 2021/A/8488. The Club asked that the SFA be held liable for such non-compliance, sanctioned accordingly, and forced to comply with that award.
14. On 31 March 2023, the Secretariat to the FIFA DC, on behalf of the Chairperson of the FIFA DC, informed the Club, the SFA and the *Confédération Africaine de Football* (the “CAF”) of its decision in relation to the Club’s three complaints (the “Appealed Decision”). In its relevant parts, the Appealed Decision reads as follows:

“In this context, with respect to the Awards issued by the Court of Arbitration for Sport - ref. no(s) CAS 2021/A/8371, CAS 2021/A/8413, and CAS 2021/A/8488 (the CAS Awards) - therein correspondingly requested to be enforced by way of your aforementioned correspondences, on behalf of the Chairperson of the FIFA Disciplinary Committee, we kindly draw your attention to the contents of art. 21 of the FIFA Disciplinary Code, 2023 edition (FDC) pursuant to which it does not appear that the CAS Awards, upon the analysis of the operative part(s) and each respectively, would fulfill the relevant requirements in order for our services to proceed with your aforementioned request(s).

In particular, we wish to point out that the matter(s) at stake would appear to concern internal matter(s) in which the FIFA Disciplinary Committee is not, as a general rule, in a position to act and/or intervene and which would fall under the remits of the [SFA] and/or CAF and be governed by the applicable statutes and regulations of the aforesaid mentioned bodies as well as any pertinent national laws which may apply.

In this respect, please note that we have forwarded your correspondences to the [SFA] and CAF for consideration and potential action”.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

15. On 18 April 2023, in accordance with Articles R47 *et seq.* of the CAS Code of Sports-related Arbitration (the “CAS Code”) (2023 edition), the Appellant filed its Statement of Appeal with the CAS against the Respondent with respect to the Appealed Decision. In its Statement of Appeal, the Appellant requested that the present appeal be submitted to a sole arbitrator.
16. On 3 May 2023, the CAS Court Office notified the Statement of Appeal to the Respondent and invited the Appellant to file its Appeal Brief within the deadline stated in Article R51 of the CAS Code. The Respondent was further invited to inform the CAS Court Office whether it agreed to submit the present proceedings to a sole arbitrator.
17. On 8 May 2023, the Respondent informed the CAS Court Office, *inter alia*, that it agreed to

submitting the present matter to a sole arbitrator under the condition that the latter was selected from the football list.

18. On 30 May 2023, the Appellant informed the CAS Court Office that its Statement of Appeal shall be considered as the Appeal Brief in accordance with Article R51 of the CAS Code.
19. On 31 May 2023, the CAS Court Office invited the Respondent to submit its Answer within the deadline set out in Article R55 of the Code, highlighting that if it failed to do so, the sole arbitrator may nevertheless proceed with the arbitration and deliver an award.
20. On the same date, the Respondent, in accordance with Article R55 par. 3 of the CAS Code, requested that the time limit for filing its Answer be set aside and fixed after the payment of the Appellant's share of the advance of costs.
21. Still on 31 May 2023, the CAS Court Office informed the Parties that the time limit for the Respondent to file its Answer was set aside and that a new time limit would be fixed after the Appellant's payment of its share of the advance of costs.
22. On 6 June 2023, the CAS Court Office sent a copy of the "Arbitrator's Acceptance and Statement of Independence" form completed by the Sole Arbitrator to the Parties and invited them to state, within the deadline foreseen in this respect, whether they challenged the appointment of the arbitrator.
23. On 20 July 2023, the CAS Court Office acknowledged receipt of the payment of the share of the advance of costs by the Appellant and invited the Respondent to submit its Answer within the time limit set out in Article R55 of the CAS Code.
24. On the same date, the Respondent asked to be granted a 30-day extension of that time limit.
25. On 25 July 2023, the CAS Court Office informed the Parties that the Respondent's request for extension of the time limit to file its Answer had been granted in accordance with Article R32 par. 2 of the CAS Code.
26. On 5 September 2023, the Respondent filed its Answer in accordance with Article R55 of the CAS Code.
27. On the same date, the CAS Court Office acknowledged receipt of the Respondent's Answer and informed the Parties that, in accordance with Article R54 of the CAS Code, the Sole Arbitrator appointed to decide the present case was Mr. Jacques Radoux, Référéndaire, Court of Justice of the European Union, Luxembourg. Having pointed out that, unless the Parties agree or the Sole Arbitrator orders otherwise on the basis of exceptional circumstances, Article R56 par. 1 of the CAS Code provides that 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 reply, after the submission of the appeal brief and of the answer, the CAS Court Office invited the Parties to state whether they would prefer a hearing to be held in the present matter. Moreover, the Parties were invited to state whether they requested a case management conference to be held in the present matter.

28. On 12 September 2023, the Appellant informed the CAS Court Office that it preferred to have a hearing in the present proceedings and that it considered a case management conference not to be necessary.
29. On 21 September 2023, the CAS Court Office informed the Parties, that the Sole Arbitrator, considering the Parties' respective positions on the holding of a hearing, and in view of the fact that the issues in dispute were of a purely legal nature, had decided, pursuant to Article R57 par. 2 of the CAS Code, to render an award based solely on the Parties' written submissions. The Parties were however granted a second round of written submissions strictly limited to the issues of "*lack of standing to be sued*" and "*lack of standing to sue*" raised by the Respondent in its Answer.
30. On 2 October 2023, the Appellant filed its Reply.
31. On 12 October 2023, the Respondent filed its Rejoinder.
32. On 27 October 2023, the CAS Court Office sent to the Parties an Order of Procedure, requesting them to return a signed copy by 3 November 2023. Further, the Respondent was invited, *inter alia*, to provide an English translation of an award it had made reference to in its Rejoinder.
33. On the same date, the Respondent provided the award in question and a translation of the relevant passages into English and returned a signed copy of the Order of Procedure.
34. On 30 October 2023, the CAS Court Office informed the Parties that the evidentiary proceeding was closed.
35. On 31 October 2023, the Appellant returned a signed copy of the Order of Procedure.

IV. SUBMISSIONS OF THE PARTIES

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

A. The Appellant's Position

37. In its Statement of Appeal, which is to be considered as its Appeal Brief, the Appellant stated the following:

"The decision appealed against [...]"

- *Passed by the Chairperson of the FIFA Disciplinary Committee on 31 March 2023 regarding Case. no(s). FDD-12174. In which the respondent rejected the appellant's request regarding the SFA's failure to implement the CAS Awards (CAS 2021/A/8371, CAS 2021/A/8413, and CAS*

2021/A/8488) due to of lack of jurisdiction.

- *In which he decided that: the matter(s) at stake would appear to concern internal matter(s) in which the FIFA Disciplinary Committee is not, as a general rule, in a position to act and/or intervene and which would fall under the remits of the Sudan Football Association and/or CAF and be governed by the applicable statutes and regulations of the aforesaid mentioned bodies as well as any pertinent national laws which may apply.*
- *The appellant receive the decision appealed against via e-mail on 31 March 2023”.*

38. Further, the Appellant developed a few arguments in relation to the jurisdiction of the CAS and to the admissibility of the present Appeal.

39. In its Statement of Appeal/Appeal Brief, the Appellant submitted the following requests for relief:

[1.] Accept this appeal

[2.] Annulment the decision appealed against.

[3.] FIFA Disciplinary Committee is in a position to act and/or intervene and thus oblige the Sudanese Football Association (SFA) to respect the final and binding CAS Awards (CAS 2021/A/8371, CAS 2021/A/8413, and CAS 2021/A/8488) in accordance with the FIFA Disciplinary Code.

[4.] FIFA shall bear all the financial consequences of its decision”.

40. In its Reply, the Appellant described, in some preliminary remarks, its understanding of FIFA’s enforcement system contained in Article 15 of the FIFA FDC (edition 2019). It considers that with this effective enforcement system, the FIFA has the jurisdiction to implement the Awards and impose a sanction against a direct member, in the present matter the SFA, for failing to comply with the Awards.

41. Regarding the issue of “*standing to be sued*” raised by the Respondent, the Appellant considers that the “*Appeal does not lack standing to be sued and should be admissible*”. In support of its position, the Appellant argues, in substance, that:

- (i) it does not ask the CAS to issue an award that would directly affect the SFA’s legal position, in violation of the SFA’s right to be heard. The CAS would not be the competent authority to implement the Awards and therefore the SFA would not be a party in the Appeal. If the CAS decides that the FIFA DC is the competent authority to implement the Awards, it would be up to the FIFA DC to notify the SFA, in accordance with the procedures followed in Article 15 of the FDC, and thus request SFA to clarify its position. SFA’s right to be heard would thus be respected before the competent authority.
- (ii) with its Appeal, it does not seek to obtain a harsher sanction on the SFA or to revert an acquittal or request to impose any sanction on SFA. Thus, it did not have to name the

SFA as a respondent in the Appeal. In the present matter, the mandatory respondent is the association which rendered the Appealed Decision, *i.e.* FIFA.

- (iii) the decision sought before the CAS would not contain a sanction of the SFA as this is not part of the Appellant's requests for relief. The CAS is only asked to rule that the FIFA DC is in a position to intervene and to revert the case back to the latter in order to apply Article 15 of the FDC.
42. Concerning the issue of "*standing to sue*", also raised by the Respondent, the Appellant considers that it has such standing in the present matter. In support of its position, the Appellant maintains, in substance, that:
- (i) when raised in the framework of an appeal against a disciplinary decision rendered on basis of Article 15 of the FDC, the issue of standing to sue shows specific features as the person who has an interest in seeing the decisions, in this case the Awards, enforced must be considered as being sufficiently affected by the Appealed Decision. Further, in the present matter, the Appellant would have an "*interest as he a party is the addressee of [sic]*" the Appealed Decision and would have a tangible interest of financial or sporting nature at stake. As it was the main party in the proceedings CAS 2021/A/8371, CAS 2021/A/8413, and CAS 2021/A/8488, it would be keen to protect the legal interests it draws from these Awards by seeking their implementation through Article 15 of the FDC.
 - (ii) it is clear that the Appellant was a party to the procedure before the FIFA DC as it was an original party in the litigation before the CAS that preceded the stage of the implementation of the Awards before the FIFA DC. The Appellant is, accordingly, the main party in the implementation of the Awards and, therefore, filed complaints, on the basis of Article 15 of the FDC, to protect its legal interests. The Respondent's claim that the Appellant was not a "party" before the FIFA DC must be rejected as this fact was only due to the Respondent itself, as it rejected the Appellant's complaint for lack of jurisdiction.
 - (iii) the Appellant is, as follows from the Awards, a judgement creditor of the SFA (in particular for the "proceedings costs and legal fees") and Article 15 of the FDC applies not only to financial decisions but also to non-financial decisions. If the Appellant's complaint in front of the FIFA DC did not fulfil all the formal requirements, FIFA should have invited the Appellant to complete its complaint.
 - (iv) it has direct rights deriving from the framework of disciplinary proceedings, in particular in application of Articles 52 (1) and 15 of the FDC and in consideration of the fact that it was the main party in the three proceedings that led to the Awards the enforcement of which it requested before the FIFA DC.
43. Still in its Reply, the Appellant provided some explanations as to why it considered that the FIFA DC was wrong in declining to deal with the Appellant's complaint.
44. In its reply, the Appellant submitted the following requests for relief:

- “1. *Rejecting the requests for relief sought by the respondent[.]*
2. *Annulment the Appealed Decision.*
3. *FIFA Disciplinary Committee is in a position to act and/or intervene and thus oblige the Sudanese Football Association (SFA) to respect the final and binding CAS Awards (CAS 2021/A/8371, CAS 2021/A/8413, and CAS 2021/A/8488) in accordance with the FIFA Disciplinary Code.*
4. *Ordering the respondent to bear the full costs of these arbitration proceedings and to a contribution to the appellant’s costs and expenses[.]”.*

B. The Respondent’s Position

45. In its Answer, the Respondent notes, as a preliminary point, that the Appellant has not made any substantive argument on the merits of its appeal in the Statement of Appeal/Appeal Brief. By doing so, the Appellant has not proven its case in the matter at hand and this should lead to the rejection of the Appeal.
46. The Respondent goes on by arguing that the Appeal must be rejected in the absence of the SFA as respondent. In this regard, the Respondent notes that the Appellant has failed to name the SFA as a respondent, despite asking CAS to (i) annul the Appealed Decision which affected the SFA directly by not opening a disciplinary case against it, and (ii) determine that the FIFA DC may oblige the SFA to respect the Awards in accordance with the FDC. However, upon notification of the Appealed Decision, which copied the SFA, the latter had a legitimate expectation that no disciplinary proceedings would be opened against it. Without having been included in the Appeal as a respondent, the SFA further has a legitimate expectation that the Appealed Decision is final and binding. The present case would be a clear-cut situation of lack of standing to be sued and, specifically, a lack of passive mandatory joinder or “*consortité passive nécessaire*” which, according to constant CAS jurisprudence, would lead to the rejection of the Appeal.
47. Further, the Respondent considers that, in the present case, the Appellant does not have standing to sue/appeal. According to the Respondent, the Appellant filed a complaint before FIFA DC without becoming a party to the proceedings. This would be even more obvious when considering that the Appellant is not a judgment creditor of the SFA in the matter at hand, and therefore does not obtain any direct rights in the framework of disciplinary proceedings (including the right to become a party) from the mere filing of a complaint. This would be confirmed by constant CAS jurisprudence (CAS 2020/A/6921 & 7297). Given the above, the Appellant would lack standing to sue/appeal, and the appeal should be dismissed for this reason too.
48. The Respondent adds, for the sake of completeness, that the FIFA DC was right when it declined to deal with the Appellant’s complaint. In this respect, the Respondent highlights, first, that the dispute between the Appellant and the SFA is of a purely domestic nature, as it relates to the recognition of the Club’s board of directors by the SFA. As such, the Respondent would however, in principle, not have disciplinary jurisdiction under Article 2 par. 1 of the

FDC. Second, while Article 15 of the FDC, on which the Appellant founded its complaints, confers disciplinary power to the FIFA to sanction failures to comply with non-financial decisions passed, *inter alia*, by the CAS, FIFA would only be able to enforce the operative part of a CAS award, as this is the only part that has *res indicata* effect (SFT 4A_536/2018 of 16 March 2020, consid. 3.1.1). However, the operative parts of the Awards all consisted in (partial or total) upholding of the appeals and the annulment of the appealed decisions in each case. As such, the Awards merely annulled the appealed decisions and issued no order to the SFA. In legal and in practical terms, there would thus be nothing to properly “enforce” in the present matter and it was not possible for FIFA to consider that there has been a failure to respect Awards that merely annulled the appealed decisions. In view of the above, the Respondent concludes that the FIFA DC rightfully declined to entertain the Appellant’s complaints.

49. Finally, as regards the arbitration costs, the Respondent argues, mainly, that it should not be condemned to cover any part of the arbitration costs derived from the present proceedings. Alternatively, in case the Sole Arbitrator would find that the Appellant is to succeed in its appeal, and this based on a document, argument or factual consideration which was not brought forward in front of the FIFA DC, the Respondent requests that it be exonerated from paying any arbitration costs nor contribution to legal fees
50. In view of all the above considerations, the Respondent, in its prayers for relief, requested the Sole Arbitrator to issue an award:
 - “(a) *Rejecting the requests for relief sought by the Appellant;*
 - “(b) *Confirming the Appealed Decision;*
 - “(c) *Ordering the Appellant to bear the full costs of these arbitration proceedings;*
 - “(d) *Ordering the Appellant to pay a contribution to FIFA’s costs and expenses”.*
51. In its Rejoinder, the Respondent observes that, in its Reply, the Appellant has addressed the substantive issues of the merits of the case and, thus, has not respected the scope of the second round of written submissions set by the Sole Arbitrator. The arguments exceeding this scope would be inadmissible and should be disregarded.
52. The Respondent continues by arguing that the Appellant’s position on the “*standing to be sued*” issue cannot be followed as: (i) asking the for a declaratory award – which is inadmissible – determining that the FIFA DC is in a position to oblige the SFA to respect the Awards is tantamount to asking that the SFA be sanctioned for their alleged non-compliance – which is contested; (ii) by not including the SFA as a respondent to these proceedings, the Appellant has created the expectation on the SFA that the Appealed Decision was final and, therefore, that no disciplinary proceedings would be opened against it. By requesting that the Appealed Decision be annulled and therefore that disciplinary proceedings be opened against the SFA, the Appellant is asking for relief that directly affects the SFA’s rights. In absence of the SFA as a respondent, the Appeal must be rejected based on lack of standing to be sued.

53. As regards the Appellant's arguments in relation to the alleged "*lack of standing to sue*", the Respondent reiterated its view that the Appellant lacks such standing in the present case. In particular, the Respondent observes:
- (i) that according to constant CAS jurisprudence (CAS 2017/A/5001 & 5002, CAS 2018/A/A/5746, CAS 2020/A/6921 & 7297), it is clear from the content of Article 52 par. 2 of the FDC, that a person reporting a conduct on the basis of this provision does not acquire any procedural right(s) and certainly not the right to participate in any possible disciplinary proceedings that the FIFA DC may freely decide to initiate, or the right to be informed of the status of eventual disciplinary proceedings, or even the right to request the grounds of an eventual decision issued by the FIFA DC. On the contrary, FIFA's long-standing practice shows that disciplinary proceedings are, in general, proceedings that only concern the accused parties. Therefore, when a person lodges a complaint based on Article 108 of the FDC, this action has the sole consequence of warning the FIFA about a possible disciplinary infringement but is not accompanied by the acquisition of any procedural right(s).
 - (ii) that the Appellant is not a "creditor" under Article 15 par. 2 of the FDC given that this provision only applies to financial decisions. However, the Appellant has never complained of any breach by the SFA with respect to the alleged financial obligations contained in the Awards, *i.e.* payment of CAS costs and legal fees. Despite denouncing a violation of Article 15 of the FDC, the Appellant's complaints (of 5 August 2022, 26 September 2022 and 4 October 2022) were filed on the basis of Article 52 of the FDC, since only a creditor in the sense of Article 15 par. 2 of the FDC thereof could arguably obtain rights deriving from an eventual disciplinary proceeding, and the Appellant was not such a creditor. Thus, the Appellant would not have become a "party" to the proceedings if disciplinary proceedings had been opened against the SFA.
 - (iii) that the Appellant has not proven to have "a tangible interest of a financial or sporting nature at stake" as the operative parts of the Awards, which are the only parts of an award that may be "enforced", merely annulled the appealed decisions and did not order anything on the SFA – except for the procedural and legal costs which the Appellant never referred to in its complaints. The simple fact that the FIFA DC found itself to be not competent to deal with the complaints has no incidence on the fact that, in the present matter, the Appellant has no legal interest worthy of protection and no standing to sue as the opening or not of disciplinary proceedings remains a discretion of FIFA's judicial bodies, and that a complainant does not derive any right from a refusal to open such disciplinary proceedings on justified grounds.
 - (iv) that the Appellant's lack of interest is further demonstrated by the fact that the Appellant itself admits that even if disciplinary proceedings were to be opened against the SFA – *quod non* – there would be no guarantee that any sanctions would be imposed on the latter.
54. In view of these considerations, the Respondent, in its Rejoinder, referred to its requests for relief set out in its Answer.

V. JURISDICTION OF THE CAS

55. Article R47 par. 1 of the CAS Code provides – in its relevant parts:

“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”.

56. According to Article 57 par. 1 of the FIFA Statutes:

“Appeals against a final decision passed by the 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”.

57. The Appellant relies on Article 57 par. 1 of the FIFA Statutes, as conferring jurisdiction on the CAS. In the present case, it is undisputed that the Appealed Decision is, pursuant to Article 57 of the FDC (2019 edition), a final decision passed by a FIFA legal body and that the Appellant has exhausted all internal legal remedies. Further, the Parties have not only not contested the jurisdiction of the CAS but have expressly confirmed such jurisdiction by their signature of the Order of Procedure.

58. It follows that the CAS has jurisdiction to hear this dispute.

VI. 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 Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties”.

60. In the present case, as already mentioned above, Article 57 par. 1 of the FIFA Statutes provides that appeals shall be lodged with CAS *“within 21 days of receipt of the decision in question”.*

61. The Appealed Decision was rendered and notified to the Appellant on 31 March 2023. The Appellant filed its Statement of Appeal on 18 April 2023.

62. By doing so, the Appellant manifestly respected the 21-day period set out in Article 57 par. 1 of the FIFA Statutes. The Statement of Appeal further complies with all the other requirements set forth by Article R48 of the CAS Code.

63. In the light of the foregoing, the Sole Arbitrator finds that the appeal has been filed on a timely basis and is admissible.

VII. APPLICABLE LAW

64. Pursuant to Article R58 of the CAS Code:

“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”.

65. The Appealed Decision having been rendered by a legal body of the FIFA, the dispute shall be decided according to its rules and regulations.

66. In this regard, Article 56 par. 2 of the FIFA Statutes provides:

“The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.

67. The Sole Arbitrator notes that, although it appears from their written submissions that the Parties seem to agree on the fact that the provisions of the FDC (2019 edition) are applicable to the matter at hand, the edition of the FDC referred to in the Appealed Decision is the “2023 edition”, which entered into force on 1 February 2023.

68. The Sole Arbitrator notes that the wording of relevant provisions, *i.e.* on the one hand, Article 15 of the FDC (2019 edition) and Article 21 of the FDC (2023 edition), and, on the other hand, Article 52 par. 2 of the FDC (2019 edition) and Article 55 par. 2 of the FDC (2023 edition), have not substantially changed. In consideration of the fact that the Appellant’s complaints were all filed before the 2023 edition of the FDC entered into force and in application of the principle *tempus regit actum*, the Sole Arbitrator holds that the 2019 edition of the FDC applies to the issues in dispute between the Parties.

69. In view of the above, the Sole Arbitrator will apply the various regulations of the FIFA, in particular the FIFA Statutes and the FDC (2019 edition), and, subsidiarily, Swiss law.

70. Pursuant to Article 15 of the FIFA FDC (2019 edition):

“1. Anyone who fails to pay another person (such as a player, a coach or a club) or FIFA a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of FIFA or a CAS decision (financial decision), or anyone who fails to comply with another final decision (non-financial decision) passed by a body, a committee or an instance of FIFA, or by CAS:

a) will be fined for failing to comply with a decision; in addition:

b) will be granted a final deadline of 30 days in which to pay the amount due or to comply with the non-financial decision;

[...]

d) in the case of associations, upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period stipulated, additional disciplinary measures may be imposed;

[...]

2. With regard to financial decisions passed by a body, a committee or an instance of FIFA, or CAS, disciplinary proceedings may only commence at the request of the creditor or any other affected party, who will have the right to be notified of the final outcome of the said disciplinary proceedings”.

71. Article 52 of the FDC (2019 edition) provides:

“1. Proceedings are opened by the secretariat of the Disciplinary Committee:

[...]

f) on the basis of article 15 of this Code;

[...]

h) ex officio.

2. Any person or body may report conduct that he or it considers incompatible with the regulations of FIFA to the FIFA judicial bodies. Such complaints shall be made in writing”.

72. Pursuant to Article 57 par. 1 of the FDC (2019 edition):

“An appeal may be lodged with the Appeal Committee against any decision passed by the Disciplinary Committee, unless the disciplinary measure pronounced is:

[...]

e) decisions passed in compliance with article 15 of this Code”.

73. Article 58 par. 1 of the FDC (2019 edition) 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”.

VIII. MERITS

74. In its Answer, the Respondent has raised several preliminary issues on the merits arguing, in particular, that the Appellant was lacking standing to sue (appeal) and that the Appeal lacked standing to be sued in the absence of the SFA as a respondent.

75. As regards the issue relating to the Appellant's standing to appeal, it follows from Article 58 par. 1 of the FDC (2019 edition), that such standing is attributed to anyone who has been "*a party to the proceedings*" before the DC, "*provided*" that this party has "*a legally protected interest in filing the appeal*".
76. Thus, the first question to be answered is whether the Appellant was a "party" in the proceedings before the FIFA DC or, given that the FIFA DC decided "*not to proceed with*" the requests contained in the Appellant's complaints, whether the Appellant would have become a "party" to the proceedings if the FIFA DC had decided to proceed with said requests.
77. In this respect, the Sole Arbitrator notes that in all three of its complaints, the Appellant expressly based its requests exclusively on Article 15 par. 1 of the FDC (2019 edition) and not on Article 15 par. 2 of the FDC. In fact, the Appellant did not even mention the latter provision. Further, in its complaints, the Appellant has not alleged that the SFA had not respected the financial aspects of the Awards, *i.e.* to pay the Club CHF 1'000 as contribution towards the legal fees and other expenses incurred in connection with each of the three proceedings before the CAS. Hence, it is clear that the Appellant's complaints were not filed (and handled) on basis of Article 15 par. 2 of the FDC (2019 edition) according to which "*disciplinary proceedings may only commence at the request of the creditor or any other affected party, who will have the right to be notified of the final outcome of the said disciplinary proceedings*". Had this provision been used, the Appellant would have been, in the Sole Arbitrator's view, in a better position to argue that he was or would have become a party to the proceedings before the DC. However, this was not the case, and it remains, thus, to be examined whether the Club would have become a "party" to the proceedings if the latter had been opened under Article 15 par. 1 of the FDC (2019 edition).
78. In this regard, the Sole Arbitrator recalls that according to Article 52 par. 1 of the FDC (2019 edition), proceedings are opened by the secretariat of the DC, *inter alia*, "*f) on the basis of article 15 of this Code; [...] h) ex officio*". Article 52 par. 2 of the FDC (2019 edition) provides that "*[a]ny person or body may report conduct that he or it considers incompatible with the regulations of FIFA to the FIFA judicial bodies. Such complaints shall be made in writing*".
79. The Sole Arbitrator further recalls that, in relation to this provision, the Panel in CAS 2020/A/6921 & 7297 held that "*it is clear that, let alone the ex officio investigative power of the FIFA disciplinary bodies, the FIFA Disciplinary Code [...] recognises but not fosters the participation of third parties in the disciplinary procedure rather their involvement as subjects who should collaborate in the ascertainment of an infringement. The intent is clear, that is, to have as many reports as possible to evaluate, where it is difficult to hypothesize that the FIFA officials can, by themselves, ascertain every supposed breach of regulations against all subjects under [Article] 3 of FIFA DC (federations, associations, clubs, players, coaches and any other recipient of these regulations)*". That Panel went on to find that the FIFA has a "*specific and non-replaceable role in disciplinary proceedings against all the subjects indicated in [Article] 3, which become parties in such proceedings if opened against them. On the other hand, those who have reported the violation or attempt to violate, (i.e. the so-called whistleblowers) remain outside of the procedure*".
80. The Sole Arbitrator fully adheres to the interpretation of, *inter alia*, Article 52 of the FDC (2019 edition) by the Panel in CAS 2020/A/6921 & 7297 and notes that this interpretation is corroborated by the one retained by the Panel in CAS 2017/A/5001 & 5002 in relation to

Article 108 of the FDC (2017 edition), which was the predecessor of Article 52 of the FDC (2019 edition), according to which, *inter alia*, “1. *Disciplinary infringements are prosecuted ex officio.* 2. *Any person or body may report conduct that he or it considers incompatible with the regulations of FIFA to the judicial bodies. Such complaints shall be made in writing*”. Indeed, the Panel in CAS 2017/A/5001 & 5002 held following:

“En cambio, el artículo 108 del CDF, al tratarse de una actuación discrecional de la FIFA, no confiere ningún derecho procesal al comunicador/denunciante (inclusive porque este podría ser alguien que no está sometido a las reglas de la FIFA, ej. un periodista o un espectador). El artículo 108 no garantiza que la FIFA considere una denuncia como relevante y tramite el expediente ante la Comisión Disciplinaria. Tampoco garantiza que el comunicador/denunciante tenga derecho a participar en el procedimiento disciplinario, si lo hubiera. Al contrario, la práctica de la FIFA, como explicó en sus cartas a las FFC y FPF del 5 de octubre de 2016 [...], es que los procedimientos disciplinarios conforme al artículo 108 del CDF son, en regla general, procedimientos que solo atañen a las partes acusadas y no al comunicador/denunciante de la infracción. Por tanto, cuando una federación interpone una comunicación/denuncia a través del artículo 108 del CDF, esta actuación sirve únicamente para alertar a la FIFA de una posible infracción disciplinaria, dejándole a la FIFA la discreción de iniciar o no un procedimiento y de dictar o no una decisión [...]. Dicho de otra manera, las comunicaciones/denuncias presentadas conforme al artículo 108, apdo. 2 del CDF no otorgan ningún derecho procesal al comunicador/denunciante y no modifican la naturaleza jurídica ‘de oficio’ del expediente disciplinario que la FIFA tiene la potestad discrecional de iniciar y tramitar conforme al apdo. 1 del mismo artículo”.

Free translation:

“On the other hand, Article 108 of the FDC, since it is a discretionary action of the FIFA, does not confer any procedural right on the communicator/complainant (including because the latter may be someone who is not subject to the FIFA rules, e.g. a journalist or a spectator). Article 108 does not guarantee that FIFA considers a complaint to be relevant and processes the case before the Disciplinary Commission. Nor does it guarantee that, where appropriate, the communicator/complainant has the right to participate in the disciplinary proceedings, if any. On the contrary, FIFA’s practice, as explained in its letters to the FFC and FPF of 5 October 2016 [...], is that the disciplinary proceedings under Article 108 of the FDC are, as a general rule, proceedings that only concern the accused parties and not the communicator/complainant of the infringement. Therefore, when a federation files a communication/complaint according to Article 108 of the FDC, this action serves only to alert FIFA of a possible disciplinary infringement, leaving FIFA the discretion as to whether or not initiate a procedure and as to whether or not issue a decision [...]. In other words, communications/complaints lodged pursuant to Article 108 par. 2 of the FDC do not confer any procedural right on the communicator/complainant and do not modify the ‘*ex officio*’ legal nature of the disciplinary case which FIFA has the discretion to initiate and process in accordance with par. 1 of the same Article”.

81. In view of the above, in particular the fact the Appellant’s complaints were filed according to Article 15 par. 1 of the FDC (2019 edition), the Sole Arbitrator concludes that the Appellant was not and would not have become a “party” to the proceedings before the DC in the sense of Article 58 par. 1 of the FDC (2019 edition).

82. However, the Sole Arbitrator considers that the examination of the issue of standing to sue (appeal) does not end there. Indeed, the condition, set out in Article 58 par. 1 of the FDC, according to which an appellant needs to have “*a legally protected interest in filing the appeal*” appears to attribute standing to sue (appeal) to a party which has a legally protectable and tangible interest in the matter. This corresponds, as the Panel in CAS 2018/A/5746 has observed, “*to the Swiss legal notions of ‘légitimation active’ or ‘qualité pour agir’, as confirmed by the case law of the Swiss Federal Tribunal (Decision of 3 April 2002 in the case 4P.282/2001)*”. In this respect, it has been held that it “*is consistent with the general definition of standing that parties, who are sufficiently affected by a decision, and who have a tangible interest of a financial or sporting nature at stake, may bring a claim, even if they are not addressees of the measure being challenged*” (CAS 2018/A/5746 and CAS 2020/A/6921 & 7297). Accordingly, when a measure, adopted by an association, affects not only the rights of the addressee, but also and directly those of a third party, that third party is considered “*directly affected*” and thus enjoys standing to sue (appeal). However, there is a category of third-party applicants who, in principle, do not have standing, namely those deemed “*indirectly affected*” by a measure.
83. Thus, in the case at hand, the question is whether the Appellant was directly affected by the Appealed Decision and has a tangible interest of a financial or sporting nature.
84. In this respect, it must be recalled that the burden of proof to demonstrate a personal, direct and tangible legal interest lies with the party asserting standing, on basis of Article 8 of the CC, which provides: “[*u*]nless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact”. The case law of the CAS reaffirms this principle, underlining at the same time that the notion of “*directly affected*”, when applied to third parties who are not the addressees of a measure, must be interpreted in a restrictive manner (CAS 2020/A/6921 & 7297).
85. The Sole Arbitrator notes that in its Statement of Appeal/Appeal Brief, the Appellant has not brought forward any arguments in order to establish its standing to sue (appeal). However, in its Reply, the Appellant, firstly, argues that it was the main party before the CAS in the proceedings that led to the Awards and that it is the main party in the proceedings that are aiming to implement these Awards. Accordingly, it would have a legally protectable and tangible interest at stake in the present dispute as it wants to ensure that the rights it draws from the Awards are enforced. Secondly, it maintains that, according to the operative parts of the Awards, it is a judgement creditor of the SFA regarding financial and non-financial decisions of the CAS. Finally, the Appellant claims that, as it was the main party in the proceedings that led to the Awards and requested the competent FIFA body to enforce these Awards on basis of Article 15 of the FDC (2019 edition), it “*has direct rights in [the] framework of disciplinary proceedings (including the right to become a party)*”.
86. As regards the first of the Appellant’s arguments, the Sole Arbitrator notes that this argument has already been examined and dismissed above.
87. As to the Appellant’s second argument, as also explained above, it is clear from the Appellant’s complaints that these were not raised in relation to an alleged infringement by the SFA of its financial obligations deriving from the Awards. The complaints were not filed on basis of Article 15 par. 2 of the FDC and the Appellant cannot be considered as “*creditor*” or “*another*”

affected party” within the meaning of this provision. This argument must thus also be dismissed.

88. Regarding the Appellant’s third argument, the Sole Arbitrator considers that the Appellant has, in light of all the elements of the present matter, no “direct rights” in the context of the disciplinary proceedings it requested FIFA to launch against the SFA and was not directly affected by the Appealed Decision. Moreover, in the Sole Arbitrator’s view, the Appellants’ legal situation would not have been directly affected if FIFA had decided to open a case on the merits and, ultimately, decided to impose sanctions on the SFA. Indeed, first, as the Appellant acknowledged in its Reply, the *“notification of the opening [of] a disciplinary procedure [does] not mean that the SFA will be sanctioned automatically, the case may be closed upon reply by the SFA”*. Hence, it is clear that even if disciplinary proceedings had been opened against the SFA, this would not automatically have led to a sanction being imposed on the SFA. Furthermore, and in any event, although a potential sanction against the SFA may have had effects on the Appellant, these effects would, at the utmost, have been indirect in nature and would not have affected the Appellant’s legal situation. Thus, in the present matter, the Appellant has not established that it is “directly affected” by the Appealed Decision within the meaning of the above-mentioned jurisprudence.
89. It must be added that, in any event, the Appellant also failed to establish that it has a *“tangible interest of a financial or sporting nature at stake”*. As regards, a potential tangible *“financial”* interest, it has already been held that it is clear from the Appellant’s complaints that the Appellant did not raise any financial claim. As to potential tangible *“sporting”* interests, the Sole Arbitrator notes that, before the CAS, the Appellant has not even alleged that such interests exist in the case at hand.
90. In the light of the above considerations, the Sole Arbitrator finds that the Appellant lacks standing to appeal the Appealed Decision. As a result, the Appeal must be dismissed.
91. For the sake of completeness, the Sole Arbitrator observes that, as rightly pointed out by the Respondent, there is, in the present matter, also an issue of lack of standing to be sued as the Appellant has not directed its Appeal against the SFA. In the Sole Arbitrator’s view, the Appellants’ third request for relief, by which it asks the CAS to rule that *“FIFA [DC] is in a position to act and/or intervene and thus oblige the [SFA] to respect the final and binding [Awards] in accordance with [the FDC]”* (emphasis added), would, if accepted, lead to an award obliging the FIFA DC to not only open disciplinary proceedings against the SFA but to oblige the SFA to respect the Awards, *i.e.* to sanction the SFA in case the latter would not already have respected the Awards. Hence, if this request for relief were to be granted, the Appealed Decision would be set aside and the SFA would be subject to the risk of being sanctioned. Accordingly, it is obvious that the SFA is directly affected by the Appellant’s third request for relief and had a legitimate interest in defending its case before (not only the FIFA but also) the CAS. The SFA should thus have been named as a respondent in the present appeal. This is even more obvious when considering that the Appellant’s complaints before the FIFA DC were directed against the SFA and that the latter would have become, in the opposite of the Appellant, a party to the disciplinary proceedings if such proceedings had been opened in the present matter.
92. In view of the above, and in accordance to what has been held in CAS 2020/A/6922, the Sole Arbitrator considers that for an appeal against a disciplinary decision of the FIFA, with which

an appellant – in case he/she/it has standing to appeal – seeks to obtain the opening of disciplinary proceedings and/or the imposition of a sanction, the appellant must also name the party against which the disciplinary proceedings should be opened and/or on which the sanction shall be imposed, as a respondent in the appeal.

93. It follows that, in the present matter, there is an issue of passive mandatory *litisconsortium* as the SFA was not named as a respondent and as the FIFA does not have standing to be sued as sole respondent. Accordingly, the Appeal has also to be dismissed on this ground.
94. In view of all the above considerations, the Sole Arbitrator finds that the Appeal must be dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Al Merrikh Sports Club on 18 April 2023 against the Fédération Internationale de Football Association (FIFA) with respect to the decision rendered by the FIFA Disciplinary Committee on 31 March 2023 is dismissed.
2. (...).
3. (...).
4. All other and further motions or prayers for relief are dismissed.