



**Arbitration CAS 2011/A/2670 Masar Omeragik v. Macedonian Football Federation (FFM), award of 25 January 2013 (operative part of 22 June 2012)**

Panel: Prof. Martin Schimke (Germany), President; Mr Clifford Hendel (USA); Mr Alasdair Bell (United Kingdom)

*Football*

*Exclusion of a club's delegate from all football-related activities by the disciplinary committee of the federation*

*Exhaustion of legal remedies*

*Requirements for imposing a disciplinary sanction*

*Principle of legality and predictability of sanctions*

*Contra proferentem principle*

*Principle of proportionality*

1. **Article R47 of the Code of Sports-related Arbitration does not require that a party exhaust “all” legal remedies, but “the” legal remedies available to it under the relevant statutes or regulations prior to the CAS appeal. The wording of Article R47 lends itself to a construction that encompasses ordinary remedies only and not extraordinary remedies.**
2. **Imposing a disciplinary sanction on any member of the “sports family” by a sport federation requires a violation of existing law and/or statutes and a legal basis respectively.**
3. **The “principle of legality” (“*principe de légalité*”) requires that the offences and sanctions must be clearly and previously defined by law and must preclude the “adjustment” of existing rules to enable an application of them to situations or conduct that the legislator did not clearly intend to penalize. Sports organizations cannot impose sanctions without a proper legal or regulatory basis for them and that such sanctions must also be predictable (“predictability test”). The principle of legality and predictability of sanctions requires a clear connection between the incriminated behaviour and the sanction and calls for a narrow interpretation of the respective provision.**
4. **Inconsistencies in the rules of a federation will be construed against the federation.**
5. **The principle of proportionality dictates that the most extreme sanction must not be imposed before other less onerous sanctions have been exhausted.**

## 1. THE PARTIES

- 1.1 Mr Masar Omeragik (the “Appellant”), is a former football player, who (prior to the disciplinary sanction under review in these proceedings) acted as football executive for the Macedonian municipal football union “Strumica” (the “MFU Strumica”) and delegate on behalf of MFU Strumica to the General Assembly of the Football Federation of Macedonia (the “FFM”).
- 1.2 The FFM (the “Respondent”) is an organization established as a legal entity under Macedonian law. It is registered with the Central Registry of the Republic of Macedonia and has its headquarters in Skopje, FYR Macedonia.

## 2. FACTUAL BACKGROUND

- 2.1 Below is a summary of the relevant facts and allegations based on the parties’ written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. Although 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.
- 2.2 On 30 April 2011, the FFM’s General Assembly convened *inter alia* in order to adopt the 2011 FFM Statutes. At that time, the 2008 FFM Statutes were in force. When the General Assembly voted on the 2011 FFM Statutes that were foreseen to come into force on the date of their adoption, the Appellant alleged several irregularities with the General Assembly. The claimed irregularities involved the alleged lack of the required two-thirds majority approval for the adoption of the 2011 FFM Statutes, the alleged voting of unauthorized individuals in favour of the 2011 FFM Statutes, the alleged failure to have sent the 2011 Statutes for UEFA and FIFA approval, their alleged non-compliance with UEFA’s and FIFA’s requirements, and their alleged failure to take into account some recommendations of the working group on the 2011 FFM Statutes. It is the FFM’s position that the 2011 FFM Statutes were validly adopted and properly accepted for filing by the Macedonian Central Registry (the “Central Registry”), a Macedonian administrative institution competent for the registration of trade entities by its decision dated 27 May 2011.
- 2.3 On 8 June 2011, the Appellant lodged with the Central Registry’s Commission for Appeals an appeal against the Central Registry’s 27 May 2011 decision accepting the filing of the 2011 FFM Statutes and recording the change from the 2008 to the 2011 FFM Statutes. In this appeal, the Appellant essentially alleged that the FFM’s General Assembly vote on the 2011 FFM Statutes violated the Macedonian Law on Associations and Foundations Act. In the Central Registry’s Commission for Appeal’s decision dated 17 June 2011, in brief, it was held that it was unclear whether the consolidated text of the 2011 FFM Statutes had been validly

adopted due to several doubts regarding the fulfilment of requirements of form, incorrect application of law and incorrect and incomplete establishment of the factual situation. Accordingly, the Central Registry's 27 May 2011 decision was annulled and the case was returned to the first instance authority for reconsideration of the underlying facts and proper decision-making. Thereupon, the FFM appealed to the Macedonian Administrative Court the Central Registry's Commission for Appeal's decision dated 17 June 2011, essentially alleging that the Appellant had no standing to appeal against the Central Registry's 27 May 2011 decision on the basis of the Macedonian Law one-stop shop system since the FFM (and not the Appellant) had submitted the 2011 FFM Statutes for recording, that the facts determined by the 17 June 2011 decision were incorrect, as well as that Macedonian laws had been applied incorrectly on the merits by the Central Registry's Commission for Appeals. The Macedonian Administrative Court's Decision on this matter is described in 2.7 below.

- 2.4 By its unsigned decision of 5 August 2011, the Disciplinary Committee of the FFM (the "Disciplinary Committee") held that the Appellant had violated Article 11 para. 1 clauses f, g and h as well as Article 16 para. 1 clauses a, d, e, f, g, h, l and k of the FFM's Statutes and, as a sanction for those violations excluded the Appellant from all football-related activities with immediate effect and without any time-limit, i.e., for life. This decision was ordered to be published in the FFM's Official Gazette "Makfudbal". The Disciplinary Committee reasoned that the Appellant had violated the above-cited provisions of the FFM's Statutes and social sports behaviour, in short, by filing as described in 2.2 above an appeal with the Macedonian Central Registry's Commission for Appeals against the Central Registry's decision accepting the filing of the FFM's 2011 Statutes, which – after the appeal was upheld – triggered another appeal (filed by the FFM) with the Macedonian Administrative Court. In the eyes of the Disciplinary Committee, this directly violated the above-cited provisions of the FFM's Statutes. The redress instructions advised the Appellant that an appeal could be filed to the Commission for Appeals of the FFM (the "Appeals Commission"). The dispositive and the grounds of the Disciplinary Committee's 5 August 2011 decision read as follows in the English translation submitted by the Appellant (mistakes of grammar and spelling or unfinished phrases are not marked with [sic] below):

*"Disciplinary Committee of FFM regarding all evidence offered and submitted as well as the statement by Masar Omeragik number 03-702 from 29.07.2011 [ ] adopted the following:*

#### **DECISION**

- 1. Masar Omeragik – Delegate of the Assembly of FFM from MFL Strumica for disrespect and violation of the Article 11, paragraph 1, line [f, g and h] as well as Article 16 paragraph 1 line [a, d, e, f, g, h, l and k] of the Statute of FFM, IS PUNISHED with disciplinary measure exclusion from the football organization.***
- 2. Disciplinary measure comes into force on the date of adoption.***
- 3. The decision to be submitted for publication in the Official Gazette of FFM - MAK FOOTBALL.***

## **JUSTIFICATION**

*The Disciplinary Committee of FFM acting on the decision by Management Board of FFM number 02-624-16-2 from 08.07.2011 for initiating of procedure against the delegate of the Assembly of FFM from MFL Strumica Masar Omeragik for acting contrary to the Statute of FFM and provisions of the Article 11, paragraph 1, line [f, g and h] as well as Article 16 paragraph 1 line [a, d, e, f, g, h, l and k] made a violation of regulations and social sports behaviour in a way that appealed to the Central Registry for the decision alteration of the statute in the central registry registration number 30120110041151 from 27.05.2011 after which the decision of secondary committee of the central registry was brought for deciding to the Administrative Court in Skopje, which directly violated the provisions envisaged by the Statute of the FFM.*

*After determining the penalty the disciplinary commission appreciated submitted written evidence on behalf of the proposer – the Management Board of FFM as well as the given statement number 03-701 from 29.07.2011 filed by the sport worker.*

*Based on the facts provided and applying the provisions of the Disciplinary rules of the FFM the decision is made as in the operative part. [...]*

- 2.5 On 12 August 2011, the Appellant appealed the 5 August 2011 decision of the Disciplinary Committee to the Appeals Commission. The Appeals Commission, by unsigned decision dated 31 October 2011 (the “Decision”), rejected the Appellant’s appeal as unfounded, fully confirmed the Disciplinary Commission’s 5 August 2011 decision, and pronounced the Decision as final. At the same time, the Decision advised the Appellant in the appeal instructions that a request to the “Commission for Protection of the Legality in FFM” could be filed. The Decision was ordered to be published in the FFM’s Official Gazette “Makfudbal”. The dispositive part and the reasoning of the Decision read as follows, in the English translation provided to the Panel by the Appellant (mistakes of grammar and spelling or unfinished phrases are not marked with [sic] below):

*“The Commission for appeals of Football Federation of Macedonia [...] acting on the appeal submitted by Masar Omeragik no. 03 – 737 from 12.08.2011 [...] brought the following:*

## **DECISION**

- 1. The appeal submitted by Masar Omeragik against the Decision of the Disciplinary Commission no.03 – 737 from 12.08.2011, by which Masar Omeragik – Delegate of the Assembly of FFM from MFA Strumica is punished with disciplinary measure exclusion from the football organization **IS REJECTED AS UNFOUNDED.***
- 2. The decision of the Disciplinary Commission of FFM no.03-709 from 05.08.2011 **IS CONCLUDED.***
- 3. The decision is final and it should be published in Makfudbal.*

## **JUSTIFICATION**

*The Commission for appeals of FFM acting on a appeal of Masar Omeragik – Delegate of the Assembly of FFM from MFA Strumica reviewed the appeal and allegations and concluded the factual situation:*

- *The Disciplinary Commission of FFM acting on decision of the Management Board of FFM gave Disciplinary measure **EXCLUSION FROM THE FOOTBALL FEDERATION**.*
- *It is concluded that the appeal is on time and taxed.*

*The Commission for appeals reviewed the documentation available, the appeal and allegations as well as the material submitted by the First ranged (Disciplinary), the Justification of the President of the Commission as well as the statements from the members of the Commission, in accordance to the provisions of the Disciplinary Rulebook of FFM and concluded as in dispositive”.*

- 2.6 In view of the wording of the English translation of no. 2 of the dispositive of the Decision as cited above, the Panel wishes to note that the Appellant as well as the Respondent both submit that the Decision “confirmed” (instead of “concluded” as used in the English translation) the Disciplinary Commission’s 5 August 2011 decision. At the oral hearing, the Appellant further clarified that the English translation of the justification part of the Decision is incorrect to the extent that it refers to the disciplinary measure as “**EXCLUSION FROM THE FOOTBALL FEDERATION**”. According to the Appellant, the translation correctly reads in the Macedonian original: “**EXCLUSION FROM THE FOOTBALL ORGANIZATION**” (emphasis added).
- 2.7 By its judgment dated 7 May 2012, the Macedonian Administrative Court denied as unfounded the FFM’s appeal against the 17 June 2011 decision of the Central Registry’s Commission for Appeals. In the judgment, the Macedonian Administrative Court *inter alia* determined that the Appellant’s appeal against the Central Registry’s 27 May 2011 decision was admissible inasmuch as Macedonian Constitutional and administrative law entitled him (as a delegate to the General Assembly of the FFM) to file the appeal to the Central Registry, and thus rejected the FFM’s arguments and dismissed the appeal. The Macedonian Administrative Court’s 7 May 2012 judgment includes the appeal instructions that the judgment may be appealed within 15 days from its receipt to the Supreme Administrative Court of the Republic of Macedonia.
- 2.8 At the 15 June 2012 oral hearing before this Panel, the Respondent was made aware of the Macedonian Administrative Court’s 7 May 2012 judgment, which the Appellant had very recently obtained and made available to the Respondent and the Panel. Having read the judgment, the Respondent stated that it would accept it as a judgment rendered by the Macedonian Administrative court and would consider filing an appeal to the Supreme Administrative Court of the Republic of Macedonia. The Panel has not been informed of whether the Respondent indeed filed such an appeal or whether the Macedonian Administrative Court’s 7 May 2012 judgment became final and binding on the question of whether the Appellant had a right to appeal against the Central Registry’s 27 May 2011

decision. Furthermore, given that the parties have been provided with the Operative Part of the Arbitral Award already on 22 June 2012 and for lack of any information to the contrary by the parties, the Panel proceeds on the basis that neither the Central Registry to which the respective inquiry and reconsideration of the facts and decision-making has been referred nor another Macedonian authority made a final and binding pronouncement prior to 22 June 2012 on the question of whether the 2011 FFM Statutes were validly adopted or not.

### **3. PROCEEDINGS BEFORE CAS**

- 3.1 The Decision was received by the Appellant on 28 November 2011.
- 3.2 With his letter of 20 December 2011, the Appellant filed his Statement of Appeal and Application for a stay of execution of the Decision dated 19 December 2011 pursuant to Article R48 and Article R37 of the Code of Sports-related Arbitration (the “Code”).
- 3.3 On 9 January 2012, the Appellant filed his Appeal brief within the time extension granted by the CAS Court Office.
- 3.4 On 13 January 2012, the Respondent filed its comments to the Appellant’s application for a stay of execution of the Decision.
- 3.5 On 7 February 2012, the Respondent filed its Answer to the Appellant’s Appeal and Appeal brief dated 27 January 2012.
- 3.6 On 22 February 2012, this Panel was appointed to decide this case pursuant to Article R54 of the CAS Code, and the file was transferred to the Panel.
- 3.7 On 9 March 2012, the *ad hoc* clerk was appointed in this matter.
- 3.8 On 29 March 2012, the Panel issued its Order on Request for Provisional and Conservatory Measures dated 29 March 2012. In this Order, CAS, in brief, denied the Appellant’s application for provisional and conservatory measures and held that the costs of the present order would be determined in the final award.
- 3.9 By letter of the CAS Court Office of 13 April 2012, it was announced that the hearing in this case would take place on 15 June 2012 at the CAS in Lausanne.
- 3.10 The Order of Procedure dated 12 June 2012 was signed by the Appellant and the Respondent.
- 3.11 By its letter of 14 June 2012, the Appellant filed the judgment of the Macedonian Administrative Court dated 7 May 2012, which denied the FFM’s appeal to the Macedonian Administrative Court against the Decision rendered by the Appeals Commission.

- 3.12 The oral hearing in this case was held on 15 June 2012 in the presence of the Appellant and the Respondent. In addition to the *ad hoc* clerk, the Panel was assisted by Ms Louise Reilly, CAS Counsel. At the hearing, the Respondent did not object to the authenticity of the Macedonian Administrative Court's 7 May 2012 judgment and agreed for the judgment to be taken to the file of this case as documentary evidence. Furthermore, the parties mutually declared at the hearing that neither of them would object to the English translations submitted by the other party. In addition, the Appellant declared that as far as the 2011 FFM Statutes are concerned, the Panel needs not refer to the Appellant's free partial translations of provisions of the 2011 FFM Statutes, but may only take into account the Respondent's official English translation of the 2011 FFM Statutes.
- 3.13 By letter of the CAS Court Office of 15 June 2012, the parties were granted time until noon on Wednesday, 20 June 2012 to file their submissions on costs. [...].
- 3.14 At the Appellant's request, in light of a General Assembly convened for 23 June 2012 in respect of which the resolution of this Appeal could affect Appellant's right to attend as a delegate, the parties were provided with the Operative Part of the Arbitral Award on 22 June 2012.

#### 4. JURISDICTION OF CAS

- 4.1 Article R47 of the Code provides that:

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

Pursuant to Article 186.1 of the Swiss Federal Code on Private International Law (the "PILS"), the Panel shall rule on its own jurisdiction. As regards provisional and conservatory measures pursuant to Article R37 of the Code, the Panel held on a *prima facie* basis in its Order on Request for Provisional and Conservatory Measures of 29 March 2012 that CAS had jurisdiction to hear this appeal. The Panel now also conclusively finds that CAS has jurisdiction to hear this appeal.

- 4.2 Firstly, in order for the Appellant to validly (as per R47 of the Code) appeal to CAS, the Statutes or regulations of the FFM must provide for an appeal to CAS or a specific arbitration agreement to that effect must exist, and secondly the Appellant must have exhausted the legal remedies available on the basis of the FFM Statutes or regulations prior to the CAS appeal.
- 4.3 In the present proceedings, CAS jurisdiction is given via the parties' specific agreement and the Respondent's conduct, which is in line with the parties' specific arbitration agreement. Firstly, both parties signed the Order of Procedure dated 12 June 2012. The Order of Procedure states in its Introduction and in its sec. 1:

### **“Introduction**

*In accordance with the terms of the present Order of Procedure, the parties agree to refer the present dispute to the Court of Arbitration for Sport (CAS) with a view to having the matter resolved in accordance with the Code of Sports-related Arbitration (the “Code”). Furthermore, the provisions of Chapter 12 of the Swiss Private International Law Statute (PILS) shall apply, to the exclusion of any other law.*

#### **1. Jurisdiction**

*The Appellant relies on Article 73.3 of the Statutes of the Football Federation of Macedonia (FFM) as granting it a right of appeal to the CAS. The jurisdiction of the CAS is not contested by the Respondent and is confirmed by the signature of the present order.*

*[...]”.*

Pursuant to the above-cited wording of the Order of Procedure, and irrespective of whether or not the 2011 FFM Statutes (hereinafter the “FFM Statutes” or the “2011 FFM Statutes”) – on whose Article 73.3 the Appellant relied for jurisdiction – have been validly adopted, the parties here independently and expressly confirmed the jurisdiction of CAS by their signing of the Order of Procedure. As regards jurisdiction, CAS case law has previously relied on the parties’ signing of the Order of Procedure and the parties’ express and independent agreement on CAS jurisdiction by their signing of the Order of Procedure (cf. CAS 2009/A/1898; CAS 2010/A/2284 para. 33).

- 4.4 CAS’ jurisdiction in this matter is further confirmed by the fact that the Respondent failed to contest CAS’ jurisdiction in accordance with Article 186.2 of the PILS which reads:

*“A plea of lack of jurisdiction must be raised prior to any defence on the merits”.*

Although pursuant to R55 of the Code an Answer must also include “any defence of lack of jurisdiction”, the Respondent did not explicitly object to CAS’ jurisdiction in its Answer but rather confirmed CAS’ jurisdiction in the present case by stating: “*And there is no need for examples for CAS Jurisdiction because we recognize this jurisdiction from our Statutes as seen in Article 73*”.

- 4.5 Therefore, and in light of the arbitration agreement confirmed in the Order of Procedure, the Respondent’s (single) brief remark during the Respondent’s closing statement at the oral hearing stating that this Panel should take into account the Macedonian Administrative Court’s judgment of 7 May 2012 – which in the Respondent’s opinion indicates or implies that the 2011 FFM Statutes are not registered with the Central Registry and therefore the 2008 FFM Statutes (not provided in full to the Panel) are still in force from which it follows that, pursuant to Article 65 of the 2008 FFM Statutes, CAS would not have jurisdiction over this case – cannot be taken into account as a valid legal objection to jurisdiction.
- 4.6 The Panel now turns to the examination of the second prong of R47 of the Code, which requires that the Appellant must have exhausted “*the legal remedies available to him prior to the appeal [to CAS]*” in accordance with the FFM Statutes or regulations. In this respect, the Appellant argues that, although the appeal instructions of the Decision do entitle the

Appellant to submit a request to the Commission for Protection of the Legality in FFM, Article 31 of the 2011 FFM Statutes states that recourse to this Commission is not an ordinary but rather an extraordinary remedy that does not need to be exhausted prior to filing an appeal against the Decision to CAS.

- 4.7 The Panel notes that recourse to the Commission for Protection of the Legality in FFM is indeed characterized as an extraordinary remedy pursuant to the English translation of Article 31 of the 2011 FFM Statutes submitted by the Respondent, which reads:

*“The Commission for Protection of Legality initiates a procedure for protection of the Regulations as an **extraordinary legal remedy** when it comes to Decisions reached by the FFM Executive Committee organs, i.e. those organs whose decisions refer to the leagues. It shall consist of a chairman, a deputy chairman and 3 members who have all legal education”* (emphasis added).

- 4.8 Furthermore, the Panel observes that R47 of the Code does not require the Appellant to exhaust “all” legal remedies but only “the” legal remedies available to him under the FFM Statutes or regulation prior to the CAS appeal. The wording of Article R47 of the Code lends itself to a construction that encompasses ordinary remedies only and not extraordinary remedies. This view is also confirmed by CAS jurisprudence (CAS 2002/A/409 para. 17).

- 4.9 However, accepting that the internal legal remedies have been exhausted, presupposes that the 2011 FFM Statutes (and therefore Article 31 of these) were validly adopted. However, as stated above in para. 2.8, the Panel understands that this has not been concluded in a legally binding way. Further, and as mentioned above in paragraph 4.5, the 2008 FFM Statutes have not been provided in full in this case.

- 4.10 The Panel is nevertheless convinced that it is justified in concluding that, in compliance with R47 of the Code, all legal remedies have been exhausted. This is based on the following facts: The Panel notes that the Decision was pronounced “final” by the Appeals Commission. In its letter of 13 January 2012, including Respondent’s comments with regard to the Appellant’s application for a stay of execution of the Decision, and in its Answer, the Respondent contends that the Decision of the Appeals Commission – as the highest body of the FFM’s Disciplinary Organs – is final pursuant to Articles 68 and 70 of the FFM Statutes. The Panel also notes that the Respondent never objected to the Appellant’s contention that the legal remedies available to the Appellant prior to the appeal to CAS had been exhausted.

- 4.11 Due to the absence of any objection and in light of the parties’ joint statement that the Decision is final and the fact that the parties signed the Order of Procedure without making any reservations, the Panel finds that the Appellant can be deemed to have exhausted all legal remedies he had against the Decision. As regards the function of the Order of Procedure, the Panel at this stage refers to the consistent practice of the Court: the purpose of the said Order is, among other things, to clarify the extent of CAS’ jurisdiction to decide the present dispute by CAS Arbitration and to resolve any other preliminary issues that arise (see for example CAS 2006/A/1114 para. 15).

4.12 In view of the above considerations, the Panel is conclusively satisfied that CAS has jurisdiction to hear this appeal regardless of the question as to whether or not the 2011 FFM Statutes are valid.

## **5. APPLICABLE LAW**

5.1 In the Order on Request for Provisional and Conservatory Measures of 29 March 2012, it was held in accordance with Article R58 of the Code that the substantive law of Macedonia applies to the present case, in addition to the relevant FFM regulations.

5.2 In the aforementioned Order, it was likewise determined that according to S1 and R28 of the CAS Code, the seat of CAS is Lausanne, Switzerland, which is why Swiss procedural law applies in addition to the CAS Code.

5.3 The Panel affirms both of its aforementioned prior determinations.

## **6. ADMISSIBILITY**

6.1 In the Order on Request for Provisional and Conservatory Measures of 29 March 2012, the Appeal was held admissible in accordance with R49 of the Code.

6.2 The Panel affirms its aforementioned prior determination.

## **7. PARTIES' SUBMISSIONS**

### **A. The Appellant's arguments**

7.1 In support of the Appellant's Appeal, the Appellant argues that the Decision violates the pertinent regulations of the 2011 FFM Statutes as well as Macedonian law. The Appellant alleges that the Decision conclusively suspended the Appellant's right to act as a delegate for MFU Strumica at the FFM's General Assembly, and that it further deprives him of the ability to participate in any football-related activities, whether on a national or international basis. The Appellant would thus be unable to work as a coach, director, or other sports executive in Macedonia or abroad. The Appellant is a former football player with a record of more than 300 matches for several Macedonian clubs and previously served on the board of the FFM. The Appellant's exclusion thus has serious consequences for the Appellant's reputation, credibility, and dignity.

7.2 The Appellant further submits that he did not violate either Article 11 or 16 of the 2011 FFM Statutes as cited in the Decision since he did not initiate any "regular court" proceedings as understood by Articles 11 and 16 FFM Statutes, the Central Registry not being a court but an

administrative authority. Even if the Central Registry was a “regular court”, by filing the appeal with the Central Registry, the Appellant only exercised his right to rectify the procedural discrepancies under Macedonian law perceived by the Appellant. In addition, the FFM’s own subsequent appeal to the Macedonian Administrative Court of the Central Registry’s Commission for Appeals’ 17 June 2011 decision reversing the Central Registry’s first instance decision registering the change of Statutes cannot be attributed to the Appellant in support of the sanction pronounced. Finally, the Appellant argues that in view of the decision of the Central Registry’s Commission for Appeal dated 17 June 2011 and a Central Registry’s confirmation letter of 28 September 2011 the 2008 FFM Statutes have not been validly amended and therefore the Appellant’s exclusion from the Macedonian football organization on the basis of the 2011 FFM Statutes is unlawful. The Appellant also alleges that the penalty imposed on him, i.e. exclusion from the Macedonian football organization for life, is excessive in relation to the misconduct that the FFM bodies allege has occurred. This is particularly so in light of the fact that the misconduct that the Appellant is being accused of was the filing of an appeal to the Central Registry, which in the Appellant’s opinion is a right afforded to him by Macedonian law. The Appellant argues that at the very least, the sanction should have been limited to a fixed term, although no sanction at all should have been imposed on him, and certainly not the excessive sanction of immediate and indefinite exclusion of the Appellant from the Macedonian football organization.

- 7.3 The Panel notes that at the oral hearing, the Appellant withdrew all of its objections as to the form and as to the alleged procedural irregularities with respect to the proceedings conducted by the Disciplinary Committee, its resulting decision of 5 August 2011, the proceedings conducted by the Appeals Committee, and the resulting Decision. Therefore, this Panel is not required to pronounce on those individual arguments.

## **B. The Respondent’s arguments**

- 7.4 In support of the Respondent’s position to dismiss the appeal and confirm the Decision, the Respondent contends the following: The Decision is final pursuant to Article 68.6 FFM Statutes. Further, through the misconduct established by the Disciplinary and the Appeals Commission, the Appellant indeed breached Articles 11 and 16 of the FFM Statutes as referred to in the Decision, as well as the “*Macedonian Law on one-stop shop system and on keeping the trade register and register of other legal entities*” and its provisions for filing appeals, which would not have allowed an appeal to the Central Registry by the Appellant. By filing this appeal, the Appellant acted against the interests of the FFM, which qualifies as a breach of the FFM Statutes. The Appellant is entitled to address the regular courts as an individual and to file appeals against other entities, but not however against the FFM. Although it is correct that it was the FFM who filed an appeal to the Macedonian Administrative Court against the Central Registry’s decision of 17 June 2011, which reversed the prior acceptance of the FFM’s filing of the 2011 FFM Statutes with the Central Registry, it was the Appellant who provoked the FFM into making the appeal to the Macedonian Administrative Court, which is why this appeal too is attributable to the Appellant as a breach of Articles 11 and 16 of the FFM

Statutes as referenced in the Decision. The Respondent argues that the sanction imposed on the Appellant is nonetheless appropriate since the FFM suffers major consequences on account of the Appellant's misconduct. Through the Appellant's appeal against the registration of the 2011 FFM Statutes, the Appellant endeavoured to bring about a situation in which the FFM "*has no legal entity*" and in which all actions taken by the FFM bodies would then be questionable, which therefore represents a major offence by the Appellant.

## **8. DISCUSSION ON THE MERITS**

8.1 The Panel considers that the Respondent failed to explain why the FFM would not "*[have] a legal entity*" if the 2011 FFM Statutes were not accepted for registration with the Central Registry or were conclusively declared null and void or were invalidated by the Macedonian authorities. To the contrary, at the oral hearing, the Respondent stated that in the event that the 2011 FFM Statutes would be null and void or invalid, the 2008 FFM Statutes would apply instead. Given that the FFM also acted and qualified as a legal entity under the 2008 FFM Statutes until the 2011 FFM Statutes were purportedly adopted on 30 April 2011, this Panel is thus unable to see why the FFM would now not qualify as a legal entity if it was to proceed again on the basis of the 2008 FFM Statutes instead of the 2011 FFM Statutes.

### **A. Requirement of a legal basis**

8.2 The Panel notes that imposing a disciplinary sanction on any member of the "sports family" by a sport federation requires a violation of existing law and/or statutes and a legal basis respectively.

### **B. Violation of the 2008 FFM Statutes**

8.3 The Panel notes that the Respondent did not allege that the Appellant's conduct, which has been punished by a disciplinary sanction by the Decision, would violate the 2008 FFM Statutes whose respective provisions have not been made available to the Panel. Neither does the Decision refer to or argue the violation of any provisions of the 2008 FFM Statute. Therefore, no violation of the 2008 FFM Statutes can be considered.

### **C. Violation of the 2011 FFM Statutes (Article 11 para. 1 clauses f, g and h)**

8.4 In the event that the 2011 FFM Statutes are invalid, it goes without saying that the Decision confirming a sanction on the basis of the 2011 FFM Statutes would likewise be invalid for lack of any legal basis for such sanction.

8.5 Even if the 2011 FFM Statutes are valid, the Panel finds that the action of the Appellant for which he was sanctioned cannot have violated Article 11 of the 2011 FFM Statutes as referred to in the Disciplinary Commission's 5 August 2011 decision, which was confirmed by the Appeal Commission's Decision.

8.6 The pertinent sections of Article 11 of the 2011 FFM Statutes on which the Decision is based read in Respondent's uncontested English translation:

*"Conditions for Acquiring the Status of Member*

1. *In order to become a member of FFM, each MFU must submit a written application to the General Secretariat of FFM.*

2. *The application must contain the following information:*

*[...]*

*lit f) Statement confirming that the MFU candidate consents to accept and observe the Statutes, regulations and other acts of FFM, FIFA and UEFA, that it will observe the possible amendments, as well as that it will observe the Statutes and other acts, directives and decisions of FFM, FIFA and UEFA (including the IFAB Laws of the Game and the FIFA Code of Ethics);*

*lit g) Statement confirming that all of its members shall also observe, and undertake the provisions of item f) of this Article;*

*lit h) Statement confirming that the candidate has irrevocably accepted the competence of the Court of Arbitration of FFM, in respect to all legal hearings which include the MFU members and that it and its clubs and members are banned from instituting any lawsuits and disputes to the Ordinary Courts and that they shall be obliged to institute any disagreements and disputes to the jurisdiction of FFM, UEFA and FIFA or CAS as it is specified in the relevant provision of the UEFA and FIFA Statutes".*

8.7 Article 11 of the 2011 FFM Statutes in no way (neither directly nor indirectly) prohibits the Appellant's conduct in dispute. It merely defines the preconditions to be fulfilled and the certificates to be filed in order to apply for membership with the FFM. Given that the charges brought against the Appellant do not include any accusation that relates to an application for membership, Article 11 of 2011 FFM Statutes may generally not serve as a basis upon which the present disciplinary measure against the Appellant can be based.

**D. Violation of the 2011 FFM Statutes (Article 16 para. 1 clauses a, d, e, f, g, h, l and k)**

8.8 The pertinent sections of Article 16.1 of the 2011 FFM Statutes on which the Decision is based read in Respondent's uncontested English translation:

*“Member Obligations*

*Each member has the following obligations:*

*lit a) To care for, and protect the interests of FFM, and in any case to refrain from any activities contrary to the interest of FFM;*

*[...]*

*lit d) To provide notices and information regarding the amendments to its acts, as well as a list of all its official representatives and signatures;*

*lit e) To accept, implement and observe all acts (Statutes, regulations, directives and decisions) of FFM, FIFA and UEFA;*

*lit f) To adopt a statutory clause specifying that any dispute of national and international dimension arising from or related to the application of the Statutes, regulations, directives of FFM or any decision taken under them may only be referred to the independent and impartial Arbitration Court as defined by this Statutes, which will definitively settle the dispute to the exclusion of any Ordinary Court, unless expressly prohibited by the legislation in force in the Republic of Macedonia.*

*lit g) To insure that their own members recognize and accept the obligations mentioned under items g) and e), as well as items k) and m);*

*lit h) To pass a statutory provision accepting the exclusive competence of the Court for Arbitration of FFM and the Court for Arbitration in Lausanne, Switzerland (CAS) regarding all legal actions in relation to the FFM, FIFA and UEFA acts on behalf of its members, and to accept the jurisdiction of the Court for Arbitration of Sport (CAS) in Lausanne, Switzerland as it is specified by the relevant provisions of FIFA and UEFA Statutes;*

*[...]*

*lit k) To guarantee free and independent elections of members of the executive organ and of any other bodies and organs at its General Assembly;*

*lit l) Not to maintain and to revoke any relations and activities of sports nature with unrecognized entities or with members who have been suspended or excluded”.*

8.9 Firstly, Article 16.1 of the 2011 FFM Statutes also does not explicitly mention or sanction the Appellant’s conduct in question. Furthermore, Article 16 of the 2011 FFM Statutes applies in its terms to FFM members only. Considering that this Article confines the obligations spelled out to FFM members only, a violation of them can only justify the sanction imposed on the Appellant if the Appellant qualifies as a member of FFM.

8.10 Article 6 of the 2011 FFM Statutes defines the members of the FFM. In the uncontested English translation submitted by the Respondent, Article 6 reads:

*“Members*

1. *The FFM is comprised of Municipal Football Unions (hereinafter MFU) as members, which must fulfil the conditions stipulated in this Statutes, as well as in accordance with the decision for acceptance by the General Assembly of the FFM.*
2. *The football clubs that compete in the competitions organized by FFM are affiliated and registered members of an MFU and are not direct members of FFM. Their affiliation to one of the Municipal Football Unions of FFM is based on the geographical criteria and according to the legal seat of the football club concerned.*
3. *The FFM offers furthermore membership to duly established legal entities of:*
  - a) *National football stakeholder organisations/ unions representing coaches, referees and players;*
  - b) *National organisations representing different categories of football like women’s Futsal and Beach soccer;*
  - c) *Leagues representing the football clubs participating in the two top leagues within FFM”.*

8.11 According to Article 6 of the 2011 FFM Statutes, MFUs are direct members of the FFM, football clubs are not direct members of the FFM, and football stakeholders or national organisations and unions as well as leagues may be offered membership. The Appellant as an individual and a delegate to the MFU Strumica qualifies neither as an MFU nor as a football club nor as a football stakeholder, nor does he qualify as any of the other organisations or unions identified by Article 6 of the 2011 FFM Statutes.

8.12 In any case, “delegates” or “representatives” (these are the two legal classifications that the Appellant could possibly qualify as in the case at hand) are not mentioned in Article 6 of the 2011 FFM Statutes. In the absence of evidence to the contrary, it can be assumed that the word “members” in Article 16 refers to “members” as defined in Article 6 of the 2011 FFM Statutes. Rather, the 2011 FFM Statutes speak of “members” and “representatives/delegates” in separate ways. For example, Article 13 FFM Statutes states that “members have a status of associations of citizens or any other legal form...” (a natural person can by no means have the status of “association of citizens”). Furthermore, Art. 15 a) speaks of the rights of members to be invited to the General Assembly and to participate through their representatives (delegates) and to exercise the right to vote. Therefore if members may only act through their delegates/representatives then such members cannot be natural persons themselves. Finally, Art. 16 c) speaks of the obligation of a member to maintain the sporting activity and participate in competitions organised by FFM or its members. Thus far, it is far from clear that the Appellant falls within the scope of application of Article 16 FFM Statutes. However, even if one assumed that Article 16, regardless of the definition in Article 6, was to be interpreted in a broader sense – which would mean that the Appellant would qualify as a member – it remains unclear under which circumstances a delegate or representative (that represents or can be appointed to a delegation such as the MFU Strumica) can be held liable for acts committed in this capacity. Given the inaccuracy of the FFM Statutes, and in light of the fact that the Appellant acted on behalf of a delegation whose aim it was to represent collective interests, it is totally unclear why he personally was considered to be the legitimate –

and even the sole – target of a serious penalty (lifelong exclusion) and the MFU Strumica was not sanctioned in any way whatsoever.

- 8.13 As held by CAS case law in CAS 2008/A/1545, the “principle of legality” (*“principe de légalité”*) requires that the offences and sanctions must be clearly and previously defined by law and must preclude the “adjustment” of existing rules to enable an application of them to situations or conduct that the legislator did not clearly intend to penalize. CAS awards have consistently held that sports organizations cannot impose sanctions without a proper legal or regulatory basis for them and that such sanctions must also be predictable (“predictability test”). This principle is further confirmed by CAS 2007/A/1363, which holds that the principle of legality and predictability of sanctions requires a clear connection between the incriminated behaviour and the sanction and calls for a narrow interpretation of the respective provision. Finally, CAS case law (for example CAS 2007/A/1437 para. 8.1.8) has held that inconsistencies in the rules of a federation will be construed against the federation (*contra proferentem* principle).
- 8.14 Applying a narrow interpretation to the above-analysed sections of Articles 11 and 16 of the 2011 FFM Statutes (on which the sanction against the Appellant is based) as required by CAS case law and interpreting them in conjunction with Article 6 of the 2011 FFM Statutes (definition of FFM membership), neither the sections referred to in Article 11 nor the sections of Article 16 of the 2011 FFM Statutes are capable of providing a valid basis for justifying the sanction imposed on the Appellant. Also, the principle of legality and predictability of sanctions as discussed above prevents any broad interpretation of Article 16 of the 2011 FFM Statutes in conjunction with the definition of FFM membership as laid down in Article 6 of the 2011 FFM Statutes.
- 8.15 At this stage of its reasoning, the Panel also refers to CAS 2010/A/2284 (para. 70) where the court explicitly states: *“Good governance is important in sport, and thus a member of the BoD of a federation should be able to raise questions without the fear of being immediately sanctioned”*. On the issue of said member’s recourse to the civil court, the Panel held in the same CAS decision (para. 73) as follows: *“The Panel is of the view that, particularly in the absence of an explicit provision prohibiting such conduct, a member of the BoD should not be sanctioned for resorting to a court when she has no internal means to protect her rights. In general, unless there are clear and valid statutory rules providing for such a sanction, a person should not be penalized or discriminated against for merely exercising his/her legitimate rights”*.
- 8.16 Finally, the Panel notes that the alleged violation of the Statutes of the FFM for which the Appellant was sanctioned with a life ban centres on the prohibition of recourse to the ordinary courts, in particular, as that prohibition is set out in Article 16 (lit f) of the 2011 FFM Statutes. In this respect, however, the Panel also draws attention to the fact that the exclusion of the ordinary courts applies *“unless expressly prohibited by the legislation in force in the Republic of Macedonia”*. The Panel further observes that the Macedonian Administrative Court, in its ruling of 7 May 2012, confirmed that the Appellant had a right to file an appeal to the Central Registry’s commission for Appeals on the basis of Macedonian law. In these circumstances, therefore, the Panel must also conclude that Article 16 (lit f) of the 2011 FFM Statutes (which

appears to be the most relevant article for the purposes of the present procedure) also provided no valid legal basis for the imposition of the sanction on the Appellant (even assuming he could be described as a “member” of the FFM) because the law of the Republic of Macedonia, as interpreted by the Macedonian Administrative Court, did prohibit the exclusion of the right to appeal to the Central Registry’s Commission for Appeals in this particular case.

- 8.17 In view of the above examination, and irrespective of the validity of the 2011 FFM Statutes as of 22 June 2012, there is no valid legal basis whatsoever justifying the sanction imposed on the Appellant.

**E. Whether the Appellant’s conduct of filing an appeal with the Central Registry’s Appeal Commission violates the Macedonian law on one-stop shop system**

- 8.18 The Respondent’s argument before CAS is that, based on Article 44.1 of the Macedonian Law on one-stop shop system and its provisions on filing appeals, the Appellant was not entitled to file his appeal against the Central Registry’s Appeals Commission, and therefore the sanction imposed by the Decision is justified.

- 8.19 Article 44.1 of the Macedonian Law on one-stop shop system reads in the uncontested English translation submitted by Respondent:

*“The submitter of the application for entry exercises the right on appeal against the decision for entry”.*

- 8.20 In the Respondent’s opinion, as argued before CAS, what amounts to a violation of law sanctionable by the FFM’s Disciplinary Commission is the mere fact that the Appellant (allegedly) violated a provision of Macedonian state law defining the right to appeal. This provision explicitly allows the party who applies to the Central Registry for a certain matter to also file an appeal against the decision on such matter to the Central Registry’s Appeals Commission (and thus to a Macedonian state authority of general jurisdiction completely unrelated to a sports organization in general or to a football organization in particular). It must be mentioned that the Respondent’s reasoning upon which the imposing of the sanction is based was not included in the Decision or in the decision of the Disciplinary Committee of 5 August 2011, which was upheld in the Decision.

- 8.21 Firstly, as held in the judgment of the Macedonian Administrative Court of 7 May 2012, notwithstanding Article 44.1 of the Macedonian Law on one-stop shop system, the Appellant had a right to file an appeal to the Central Registry’s Commission for Appeals on the basis of Macedonian general administrative procedural and constitutional law. Therefore the Respondent’s argument, as set out in para. 8.18 above, is for this reason already without merit. Furthermore, the assessment of whether or not the Appellant violated a provision of Macedonian state law completely unrelated to sports in general and to football in particular and the potential sanctioning of the Appellant for a violation of Article 44.1 of the Macedonian Law on one-stop shop system is completely outside the powers of the FFM and

its Disciplinary Commission. Apart from the fact that the judgment of the Macedonian Administrative Court of 7 May 2012 holds that the Appellant was indeed entitled to appeal the Central Registry's decision of 27 May 2011, which is why the Respondent's argument on this already fails, the powers of the Disciplinary Commission are further defined as follows by Article 69 2011 FFM Statutes:

*"The Disciplinary Commission takes care for [sic!] **the application of the measures and the procedure of punishing** football and professional organizations, their clubs and associations, unions, other organizations and organs belonging to these, as well as **individuals that violate the Laws of the Game and sportsmanship conduct or the ones who violate this Statutes and Regulations of FFM, or in any other way violate discipline and injure the image of football as a sport. [...]**" (emphasis added).*

- 8.22 This Panel is of the firm opinion that a violation of Article 44.1 of the Macedonian Law on one-stop shop system, being a regulation that determines standing to file an appeal to a Macedonian state authority of general jurisdiction, is not a disciplinary matter related to football. Such a violation cannot by definition – not even in the broadest interpretation of Article 69 of the 2011 FFM Statutes – qualify as a violation of a football-related discipline or as an injury to the image of football as a sport. An unlawful appeal made to the Central Registry by the Appellant could very well have been denied by the respective Macedonian state authority, but it could never have formed the basis for justifying a disciplinary sanction in football by the Disciplinary Commission on the basis of the 2011 FFM Statutes (if they were applicable at all).

## F. Conclusion

- 8.23 In light of the foregoing, the Panel holds that the Decision must be set aside. In addition, and by way of precaution, the Panel would like to clearly state that in its opinion the sanction in dispute here, i.e. lifelong exclusion, is disproportionate to the extreme. The Panel would like to draw attention to the principle of proportionality adhered to in CAS' consistent case law, which dictates that the most extreme sanction must not be imposed before other less onerous sanctions have been exhausted. This is particularly the case when the regulations that have supposedly been violated are of a general nature, i.e. what is prohibited and what is not is not clearly defined in them, like in the case at hand. In such a situation, the person accused of violating such regulations should, in the spirit of the principle of proportionality, at least be given a warning that the specific act in question is deemed a violation. In other words, any other sanctioning measures available must be exhausted before the "ultimate solution" is imposed (see for example CAS 2010/A/2284 para. 67). However, the question in the present case as to whether the extreme disproportionality of the sanction at issue (perhaps along with the total absence of any specific reasoning in the Decision) would render the lifelong sanction completely invalid or would merely justify a modification (*i.e.* a reduction) of it can be left undecided due to the fact that there is, as explained above, a complete lack of any valid legal basis whatsoever for the sanction.

**G. Reinstatement of Appellant in his delegate position at MFU Strumica**

- 8.24 The Appellant requests reinstatement in his position as a delegate of MFU Strumica. In this respect, it must be pointed out that on various occasions the Appellant mentions that the FFM's disciplinary measures "*led to the suspension of Appellant's function as a Delegate to the General Assembly of FFM*". This view was confirmed by the Respondent at the oral hearing.
- 8.25 Article 48 of the 2011 FFM Statutes in the uncontested English translation submitted by Respondent provides that "[ ] *the term of a delegate can be terminated (ex officio) in case of a [...] d) Stated disciplinary measure of a ban on the performance of the duty of delegate for a period of more than six (6) months, by the FFM organs*". Since the Appellant was *de facto* banned by the Decision from all football related activities for life, then an "*(ex officio) termination*" of his position of delegate of the MFU Strumica is deemed to have been made. However, because the sanction was imposed on the Appellant without valid grounds and because the Decision has been set aside by this Award, the Appellant, in order to put him back in the position he held prior to the unfounded Decision, is to be reinstated as a delegate of the MFU Strumica.

**ON THESE GROUNDS**

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

1. The appeal filed by Masar Omeragik against the decision taken by the Appeals Commission of the Macedonian Football Federation dated 31 October 2011 is upheld.
  2. The decision taken by the Appeals Commission of the Macedonian Football Federation dated 31 October 2011, confirming the decision of the Disciplinary Commission of the Macedonian Football Federation dated 5 August 2011, is set aside, and is replaced by the following:
  3. Masar Omeragik is reinstated to his position as a delegate of MFU Strumica.
- (...)
6. All further and other claims for relief are dismissed.