



Arbitration CAS 2015/A/4172 Association of Unions of Football Players and Coaches v. Football Union of Russia (FUR), award of 17 August 2016

Panel: Mr Andrés Gurovits (Switzerland), President; The Hon. Michael Beloff QC (United Kingdom); Mr Rui Botica Santos (Portugal)

Football

Validity of elections of Chairman and Deputy Chairman of the Dispute Resolution Chamber (DRC) of a national football association

Competence of CAS and arbitration agreement

Interpretation of statutes and regulations under Russian law

Standing to appeal and exhaustion of available legal remedies

Standing to appeal of unions with regards to elections to national federation dispute resolution chamber

Independence of the members of a national football association's DRC

Publication of a list of potential candidates for the DRC and election to a new function within the DRC as appealable decisions

Quorum requirements in the context of elections

- 1. In accordance with Article 178 para. 2 of the Swiss Private International Law Statute, an arbitration agreement is valid if it complies either with the law chosen by the parties or with Swiss law. According to the latter, an arbitration agreement must be in writing, by means of telegram, telex, telefax or in any other form of communication that allows evidence of the agreement in text. Furthermore, according to standard practice of the Swiss Federal Tribunal, an arbitration agreement can also become valid and effective by affiliation to a federation and reference to an arbitration clause provided in the statutes of a sport federation.**
- 2. Under Russian law, the relevant rules of an association's statutes and regulations must be interpreted by taking into consideration the meaning that reasonable parties acting in good faith would give to the provisions in question.**
- 3. The question of standing to appeal is not an issue of CAS competence or CAS jurisdiction, respectively, but is a question of the merits of a case. Conversely, the question whether or not – prior to reverting to the CAS – an appellant has exhausted the legal remedies available to it within the applicable rules and regulations is a question of jurisdiction of the CAS.**
- 4. It is established CAS jurisprudence that standing to appeal can be given even if an appellant was not party to the previous instance proceedings, provided it is affected by the relevant decision and has a legitimate or sufficient interest in challenging it. *E.g.* a union of football players and coaches which is recognized by FIFPro to nominate the members of the Dispute Resolution Chamber (“DRC”) of a national football federation**

on the players' behalf may have a right to claim that the elections of the Chairman and the Deputy Chairman of the DRC are held in accordance with the applicable rules; and it may therefore be affected by the decision in a way that is worthy of protection by the CAS; this is irrespective of the fact that the union is not directly affected by the results of the election in question insofar as it was not a candidate during the relevant election proceedings. This is even more the case if the Dispute Resolution Regulations ("DRR") of the national football federation in question aim, amongst others, at ensuring impartiality and independence of the arbitrators appointed to the DRC as well as at equal representation of arbitrators appointed by the employers' side (clubs and leagues) and the employees' side (in particular unions of players); in that case the unions of players (and coaches) play an important role in respect of the composition of the DRC. The unions' involvement ensures that the players are equally represented (with the clubs) in the DRC; in other words, the unions have a fiduciary duty on behalf of the players (and coaches) to concern themselves in the proper composition of the DRC which is an important condition for fair and equitable proceedings between the clubs (and leagues) as well as the players (and coaches). In view of the role as fiduciary or trusted representative of the players the unions have a legitimate interest in appealing against the election of the DRC Chairman and/or Deputy Chairman in case of any doubt that the elected persons may not be independent insofar as they are too closely related *e.g.* with the clubs and the national league.

5. If the rules regarding the composition of the DRC of a national football federation foresee specific personal requirements of the members of the DRC, in particular as concerns their impartiality and independence, and provide *e.g.* that the members may not be members of the executive committee of the respective national football federation and may neither occupy the position of executives of the leagues and/or associations (the term "association" being a broadly used term for legal entities which may also, depending on the context, refer to a club), it follows that nobody holding a leading function within a league or a club and who has the competence to give directions in his sphere of competence shall become a member of the DRC in question. Therefore, *e.g.* persons holding the position of director of the legal department of a country's national football league or the position of the deputy general director of a football club do not fulfil the requirements of independence and impartiality as foreseen by the rules regarding the composition of the DRC of the national football federation.
6. According to long-standing CAS jurisprudence, for an act to be a true "decision" so that it can become the subject of an appeal such act must (i) express the *animus decidendi* of the respective sports governing body in respect of a specific topic or legal situation, and (ii) must be communicated to the relevant addressees. It is questionable whether the presentation by the Executive Committee of a list of potential candidates for the position of Chairman and Vice Chairman of the national football federation's DRC is a "decision" in the sense of Article R47 para. 1 of the CAS Code that (rendered ahead of the elections) should be challenged. Insofar as the national association's Dispute Resolution Regulations (DRR) are lacking any specific provision which would give guidance in respect of the procedure of the selection of the candidates, the assessment

of their characteristics and the proper way of communication of their selection, the regulations in question do not permit to conclude that it was the intention of the authors of the DRR to enact a rule pursuant to which a challenge of the Chairman or Deputy Chairman must be lodged when the candidate appears on the list prepared by the Executive Committee. The presentation of the list of candidates is therefore not a separate decision that would be amenable to an appeal. Furthermore, in case the election of an individual to the DRC was not challenged although he did not fulfil the criteria (*e.g.* for lack of independence), the later election to a new function within the DRC, unless there are any new grounds for a challenge that could not already have been raised when the individual was first elected, may not be challenged. Therefore, a CAS panel cannot intervene on the occasion of the change of function and undo an election that should have been challenged earlier.

7. Where the rules regarding the election to the Chairman or Deputy Chairman of the DRC of a national football federation foresee that a candidate to such positions shall be deemed elected if supported by a 2/3 majority of votes cast out of the total number of members of the DRC, but do not stipulate a specific presence quorum, the 2/3 majority quorum cannot be understood as applying to the presence quorum.

I. THE PARTIES

1. The Appellant, the Association of Unions of Football Players and Coaches, is a union of football players and coaches in Russia.
2. The Respondent, the Football Union of Russia (“FUR”), is the national football association of Russia and affiliated to the Fédération Internationale de Football Association (“FIFA”).

II. FACTS

3. The facts leading to the present arbitration as presented by the parties can be summarized as follows.
4. The Appellant is recognized by the World Footballers’ Association (“FIFPro”) as the organization that shall nominate the members of the Dispute Resolution Chamber (“DRC”) of the FUR on the players’ behalf.
5. FIFA encourages the national member associations to establish a national dispute resolution chamber that shall be competent, *inter alia*, to handle disputes between clubs and players regarding employment and contractual stability. The relevant FIFA regulation foresees equal representation of the players and clubs in the national dispute resolution chambers.
6. On 2 December 2013, the Executive Committee of the FUR adopted the current version of the FUR Dispute Resolution Regulations (“DRR”).

7. On 2 July 2015, a meeting of the DRC took place. At the occasion of that meeting, Mr. K.O. Lyakhov was elected as new Chairman and Mr. P.K. Pivovarov was elected as new Deputy Chairman of the DRC.
8. The Appellant decided to challenge the election of the new Chairman and the new Deputy Chairman of the DRC and lodged an appeal with the Court of Arbitration for Sport (“CAS”).

III. PROCEEDINGS BEFORE THE CAS

9. On 31 July 2015, the Appellant lodged its statement of appeal with the CAS, and on 10 August 2015 it submitted its appeal brief. In its statement of appeal the Appellant requested that the case be heard by a sole arbitrator, that the language of the proceedings should be English and that an expedited procedure should apply.
10. By letter dated 12 August 2015, the CAS Court Office forwarded a copy of the statement of appeal and of the appeal brief to the Respondent and requested it to provide, within 20 days from receipt, its answer brief. The Respondent was also asked to inform the CAS Court Office, within two days from receipt, whether it agreed with the Appellant’s request for an expedited procedure. In case of objection or in the absence of an answer of the Respondent no expedited procedure would take place. Moreover, the CAS Court Office asked the Respondent to inform the CAS Court Office, within five days of receipt, whether it agreed to the appointment of a sole arbitrator. Finally, the CAS Court Office informed the Respondent that the language of the arbitration would be English, unless the Respondent filed an objection within three days from receipt of the CAS Court Office’s letter of 12 August 2015.
11. On 18 August 2015 the Respondent informed the CAS Court Office that it disagreed with the submission of the case to a sole arbitrator and with the application of an expedited procedure. It, however, agreed that the language of the proceedings should be English.
12. By letter dated 27 August 2015, the CAS Court Office informed the parties about the decision of the President of the CAS Appeals Arbitration Division that the present dispute shall be referred to a panel of three arbitrators. The CAS Court Office requested the Appellant to nominate an arbitrator from the CAS list of arbitrators and informed the Respondent that, thereafter, it would be invited to nominate an arbitrator, pursuant to Article R53 of the Code of Sports-related Arbitration (the “Code”).
13. On 4 September 2015, the Appellant informed the CAS Court Office that it nominated the Hon. Michael Beloff, QC, as arbitrator, and on 21 September 2015, the Respondent informed the CAS Court Office that it nominated Mr. Rui Botica Santos as arbitrator.
14. On 9 October 2015, the CAS Court Office informed the parties about the formation of the Panel and forwarded a copy of the Respondent’s answer filed on 17 September 2015 to the Appellant. Moreover, the CAS Court Office invited the parties to inform the CAS Court Office whether they preferred a hearing to be held in the present matter.

15. By letter dated 12 October 2015, the Appellant informed the CAS Court Office that it preferred that a hearing take place, and on 15 October 2015 the Respondent informed the CAS Court Office that it also agreed that a hearing take place.
16. On 30 October 2015, the CAS Court Office informed the parties that the Panel had decided that a hearing shall be held and proposed two dates for the hearing. The parties were requested to confirm their availability on these dates within seven days.
17. By letter dated 6 November 2015, the Appellant confirmed its availability for a hearing on 12 January 2016. In the absence of any response by the Respondent, the CAS Court Office confirmed, by letter dated 10 November 2015, that the hearing would take place on 12 January 2016 at the Court of Arbitration for Sport in Lausanne. This letter was sent to the parties by facsimile, email and courier.
18. On 13 November 2015, the Respondent sent an email to the CAS Court Office explaining that it had not received the CAS Court Office's correspondence of 30 October 2015 and 6 November 2015. On the same day, the CAS Court Office resent copies of said correspondence indicating that according to the facsimile reports available at the CAS Court Office such correspondence had been duly sent to and received by the Respondent.
19. By letter dated 17 November 2015, the CAS Court Office, on behalf of the Panel, requested the Appellant to provide the CAS Court Office with copies of the FUR Statutes and the DRR in their original Russian version accompanied by an English translation. It further granted the Appellant a deadline of ten days to file a witness statement of Mr. George Sur in accordance with its request provided in the appeal brief.
20. On 4 December 2015, the Appellant submitted the witness statement, and the CAS Court Office forwarded it to the Respondent on the same day.
21. On 7 December 2015, the Appellant submitted the original Russian version of the DRR together with an English translation, and it asked for an extension of the time limit to submit the FUR Statutes in their original Russian version together with an English translation. On the same day, that letter was forwarded by the CAS Court Office to the Respondent.
22. On 7 December 2015, the Respondent sent a letter to the CAS Court Office asking for a postponement of the hearing due to winter holidays in Russia until at least the end of January 2016. In the same letter the Respondent listed the persons who should be attending the hearing on behalf of the Respondent, including Mr. K.O. Lyakhov who was called as a witness.
23. In its response letter of 9 December 2016, the Appellant asked the CAS to dismiss the Respondent's request to adjourn the hearing. The Appellant, further, requested the Panel to dismiss the Respondent's call for a witness as it had failed to name any witness in its answer brief.

24. By letter dated 11 December 2015, the CAS Court Office informed the parties that for the reasons set out therein the Panel had decided that the hearing would not be adjourned and would take place on 12 January 2016.
25. On 22 December 2015, the CAS Court Office received from the Appellant the FUR Statutes in their original Russian version together with an English translation. The CAS Court Office forwarded the FUR Statutes and the English translation to the Respondent on the same day.
26. By letter dated 6 January 2016, the CAS Court Office sent the Order of Procedure to the parties requesting them to return a signed copy by 8 January 2016. On 8 January 2016 the Appellant signed and returned the Order of Procedure.
27. By letter dated 10 January 2016, the CAS Court Office sent the Order of Procedure signed by the Appellant to the Respondent.
28. The Respondent signed the Order of Procedure at the hearing of 12 January 2016. A hearing was held on the same date in Lausanne, Switzerland. At the outset of the hearing both parties confirmed that they had no objection to the constitution and composition of the Panel. The Appellant was represented by Mr. Vladimir Leonchenko, Mr. Nikolay Grammatikov, Mr. Ilya Bolotskikh and Mr. Dmitry Studenikin. The Respondent was represented by Mr. Denis Rogachev and Mr. Alexander Kuzmin. The hearing was also attended by Mrs. Ekaterina Fedyshina who served as an interpreter, and by Mr. George Sur and Mr. Konstantin Lyakhov, who were heard as witnesses. At the end of the hearing the parties expressly confirmed that their right to be heard and be equally treated was respected.

IV. THE PARTIES' POSITION

A. THE APPELLANT

29. In its statement of appeal the Appellant requested the CAS:
 - “1. To uphold the present Statement of Appeal against the Minutes of the hearing of the Dispute Resolution Chamber of the Football Union of Russia dated 2 July 2015 and notified to the Appellant on 10 July 2015.
 2. To annul the Minutes of the meeting of the Dispute Resolution Chamber of the Football Union of Russia dated 2 July 2015 in full, and render an award declaring that:
 - (a) Chairman and Deputy Chairman of the Dispute Resolution Chamber of the Football Union of Russia, respectively, who were elected in such capacity contrary to Article 8 of the FUR Dispute Resolution Resolutions, are banned from the performance of their functions in a capacity of Chairman and Deputy Chairman of the DRC of the Football Union of Russia.
 - (b) The Football Union of Russia and/ or Arbitrators of the Dispute Resolution Chamber of the Football Union of Russia are enforced to carry out new elections of the Chairman and Deputy Chairman of the Dispute Resolution Chamber of the Football Union of Russia strictly on the basis of applicable Dispute Resolution Regulations and within the shortest possible time limit.

3. *To condemn the Respondent to the payment of the whole CAS administrative costs, the costs and fees of the arbitrators or, more generally, the final amount of the costs of arbitration as per Article R64.4 of the CAS Code.*
 4. *To condemn the Respondent to the payment of reasonable legal fees incurred by the Claimant”.*
30. In its appeal brief the Appellant requested the CAS:
- “1. *To uphold the present Statement of Appeal against the Minutes of the hearing of the Dispute Resolution Chamber of the Football Union of Russia dated 2 July 2015 and notified to the Appellant on 10 July 2015.*
 2. *To declare all results of the Meeting of Arbitrators of Dispute Resolution Chamber dated 2 July 2015 invalid and null and void.*
 3. *To annul the Minutes of the meeting of the Dispute Resolution Chamber of the Football Union of Russia dated 2 July 2015 in full, and render an award declaring that:*
 - (a) *Chairman and Deputy Chairman of the Dispute Resolution Chamber of the Football Union of Russia, respectively, who were elected in such capacity contrary to Article 7 par. 4, Article 8¹, par. 3, Article 9⁴ par. 10, of the FUR Dispute Resolution Regulations, are banned from the performance of their functions in a capacity of Chairman and Deputy Chairman of the DRC of the Football Union of Russia respectively.*
 4. *To cause the Football Union of Russia and Arbitrators of the Dispute Resolution Chamber of the Football Union of Russia to conduct new elections of the Chairman and Deputy Chairman of the Dispute Resolution Chamber of the Football Union of Russia strictly on the basis of applicable Dispute Resolution Regulations and within the shortest possible time limit.*
 5. *To condemn the Respondent to the payment of the whole CAS administrative costs, the costs and fees of the arbitrators or, more generally, the final amount of the costs of arbitration as per Article R64.4 of the CAS Code.*
 6. *To condemn the Respondent to the payment of reasonable legal fees incurred by the Claimant”.*
31. Whilst the statement of appeal and appeal brief seem to indicate that the Appellant intended to challenge the minutes of the meeting of the DRC of 2 July 2015, the Panel holds that, in essence, the appeal was lodged against the elections of the Chairman and the Deputy Chairman of the DRC that took place on 2 July 2015, and for purposes of this award these elections shall be referred to as the “Challenged Decision”.
32. The Appellant’s submissions may be summarized as follows.
- a. In May 2007, in the course of the FIFA Congress in Zurich, FIFA approved the principles for the FIFA National Dispute Regulation Chambers Standard Regulations and on 29 October 2007 the FIFA Executive Committee approved, for enactment as from 1 January 2008, the FIFA National Dispute Regulation Chambers Standard Regulations.
 - b. On 1 November 2013, within the framework of the so-called “Social Dialogue” representatives of UEFA, European Professional Football Leagues (EPFL), European

Club Association (ECA) and FIFPro had a meeting with the management of the FUR and discussed, among others, implementation of equal representation of the employers (clubs) and employees (players) in the DRC and Players' Status Committee of the FUR.

- c. On 2 December 2013, as a result of the Social Dialogue meeting of 1 November 2013, the FUR Executive Committee adopted the DRR in their current version.
- d. On 22 May 2014, the Appellant was established and on 23 May 2014 it was recognized by FIFPro as the sole appropriate organization to nominate, on the players' behalf, the arbitrators to the DRC and the Players' Status Committee of the FUR.
- e. On 5 December 2014, a meeting of the DRC took place where the Chairman of the DRC was re-elected. 15 out of twenty members (arbitrators) of the DRC were present and constituted the required quorum.
- f. On 2 July 2015, another meeting of the DRC took place where a new Chairman, Mr. K.O. Lyakhov, and a new Deputy Chairman, Mr. P.K. Pivovarov, were elected. At that meeting only twelve arbitrators were present.
- g. The elections of 2 July 2015 violated the relevant rules of the DRR because
 - aa) the new Chairman had not been officially discharged from its previous position as Deputy Chairman of the DRC in accordance with Article 9⁴ of the DRR;
 - bb) the new Chairman and Deputy Chairman do not fully meet the criteria of Article 4 of the DRR;
 - cc) the elections, in particular in light of Article 7.4 of the FUR DRR, violated the "spirit" of the DRR;
 - dd) despite Article 8¹ of the DRR which requires a two thirds majority vote and the presence of two thirds of the members of the DRC, the elections took place with the presence of only 12 members;
 - ee) despite Article 8¹ 4-6 of the DRR, which contemplate only a first and a second round of ballots, the election of the Chairman and the Deputy Chairman were completed in the fourth round only;
 - ff) despite Article 9⁴ 10 of the DRR which requires the establishment of an election committee, no such committee was formed.
- h. An appropriate analysis of Article 8¹ of the DRR leads to the conclusion that a presence of two-thirds of the members of the DRC, *i.e.* 14 members of the DRC, constitute a quorum required for the election of the Chairman and the Deputy Chairman of the DRC. At the elections of 2 July 2015, however, only 12 members were present so that the quorum requirements were not met.
- i. Article 7.4 of the DRR requires that the members of the DRC may not occupy the positions of executives of the leagues and/or associations. As the newly elected Chairman and Deputy Chairman are such executives of a league and association, respectively, their election was not legitimate.

- j. The elections also violated Article 3.1 of the FIFA National Dispute Regulation Chambers Standard Regulations which requires that a chairman and deputy chairman be chosen by consensus by the player and club representatives as well as FIFA Circulars no. 1129 and 1010 which require that the national dispute resolution chambers be composed of an equal number of player and club representatives.

B. THE RESPONDENT

33. In its answer the Respondent requested the CAS:

- “1. To dismiss the Appeal; - and –*
- 2. To oblige the Appellant to (i) fully cover all arbitration costs and (ii) pay in full or in part all judicial costs and other expenses borne by the Russian Football Union in connection with these proceedings”.*

34. The Respondent’s submissions may be summarized as follows.

- a. On 2 December 2013, the FUR Executive Committee approved the current edition of the DRR. The Appellant does not dispute that the DRR comply with the FIFA Statutes, the FIFA National Dispute Regulation Chambers Standard Regulations as well as FIFA Circulars no. 1010 and 1129.
- b. On 2 June 2014, Mr. K.O. Lyakhov was elected Deputy Chairman of the DRC. As the Chairman, elected on 5 December 2014, hardly ever worked as the DRC Chairman and resigned on 25 May 2015 the DRC in practice operated without a Chairman from the former date until 2 July 2015 but only with a Deputy Chairman, Mr. K.O. Lyakhov.
- c. At the meeting of 2 July 2015 Mr. K.O. Lyakhov was elected Chairman and Mr. P.K. Pivovarov was elected Deputy Chairman of the DRC. Starting from 3 July 2015 the new Chairman and Deputy Chairman of the DRC took part in many cases, also jointly with arbitrators nominated by the Appellant.
- d. The CAS has no jurisdiction on the present appeal since the Appellant and the Respondent never entered into an arbitration agreement and since the Appellant is not any of the subjects that, pursuant to Article 46 of the FUR Statutes, are entitled to appeal against a decision of the FUR before the CAS. In particular, the Appellant is no “other football subject” as defined in Article 1.1 (14) of the FUR Statutes.
- e. The contested minutes of the meeting of 2 July 2015 cannot be the subject of an appeal pursuant to the FUR Statutes, the UEFA Statutes and the Code, in particular because the decisions of said meeting were not taken with respect to the Appellant and are not legally binding on the Appellant.
- f. The Chairman and the Deputy Chairman were elected in compliance with the DRR. Article 9⁴ of the DRR was not applicable. The elections had rather to be conducted in accordance with Article 8¹ of the DRR.

- g. The Chairman and Deputy Chairman of the DRC meet the requirements under the DRR. Mr. K.O. Lyakhov occupies the position of a Director on Legal and General Matters, while Mr. P.K. Pivovarov is an employee of Zenit Football Club CJSC.
- h. The Appellant's contention that at the meeting of 2 July 2015 there was no appropriate quorum is based on an incorrect interpretation of Article 8¹ of the DRR. In addition, the Appellant's representatives were duly notified of the meeting of 2 July 2015, but failed to participate in it without good reason and did not ask for its postponement. Moreover, the DRR do not prohibit the holding of more than two rounds of balloting when the Chairman and Deputy Chairman are elected.
- i. Since 3 July 2015, the DRC, chaired either by the new Chairman or the new Deputy Chairman, considered more than 100 cases. These cases include those where arbitrators appointed by the Appellant sat in the panels. No objection was ever raised so that one has to conclude that the Appellant practically recognized the powers of the Chairman and Deputy Chairman.

V. JURISDICTION

A. JURISDICTION AND STANDING TO APPEAL

- 35. In its Answer the Respondent argued that the CAS had no jurisdiction over the appeal. It repeated its position when it signed the Order of Procedure to which it added the following handwritten remark: *"We think that the CAS has no jurisdiction to hear this specific matter"*.
- 36. The arguments of the Respondent as to why the CAS would lack jurisdiction in the present matter are provided in Section 2 of the Answer, headed *"2. No CAS jurisdiction over the Appeal"*. This Section 2 is divided into sub-section 2.a, headed *"The Appellant is not a subject to apply to the CAS against the decisions of election of the Chairman and the Deputy Chairman of the RFU DRC"*, and sub-section 2.b, headed *"The Contested Minutes cannot be a subject of an appeal according to the RFU Charter, the UEFA Charter and the CAS Code"*.
- 37. In sub-section 2.a of the Answer the Respondent explains that the Appellant and the Respondent did not enter into any arbitration agreement which could serve as a basis for arbitration. The Respondent next argues that the Appellant has also no right to file an appeal with the CAS on the basis of the FUR Statutes as the Appellant is not to be considered an entity that is, according to Article 46.1 of the FUR Statutes, permitted to lodge a claim with the CAS. In particular, the Appellant is, as the Respondent argues, no such so-called "other football-related person" as would have a right to appeal. In essence, this means that according to the Respondent, the Appellant has no standing to appeal.
- 38. However, the Panel notes that standing to appeal is not an issue of competence or jurisdiction, respectively, but is rather a question of the merits of a case. The Panel, therefore, holds that even if the Appellant was not a person that according to the FUR Statutes would have a right to file a claim or appeal with the CAS, this would not affect CAS' competence to hear the present matter if CAS had, in principle, jurisdiction. As a consequence, the Panel will analyze

the Appellant's standing to appeal later in this award in the context of the merits of the case, but not in this chapter where the question of jurisdiction of the CAS is analyzed.

39. Likewise, the arguments that the Respondent advances in sub-section 2.b of its Answer are about the merits of the case, and not about jurisdiction. Whether the Challenged Decision was, as the Respondent contends, not directly made in respect of the Appellant and is not legally binding on it and that, for this reason, the Appellant has no right to file the present appeal is not a question that has to be reviewed in the context of jurisdiction. The Panel will, thus, discuss this issue also in the context of the merits of the case.
40. In sum, the Panel holds that the arguments that the Respondent brings forward under Section 2 of its Answer do not, in essence, challenge jurisdiction of the CAS. They rather challenge the Appellant's standing to appeal which is, as already pointed out, a matter of the merits and which will, therefore, be analyzed later in this award.

B. COMPETENCE OF THE CAS

41. The present arbitration is an international arbitration in Switzerland and the *lex arbitri* is, therefore, Swiss law, to be found, in particular, in the 12th chapter of the Swiss Private International Law Statute (PIL). In accordance with Article 178 para. 2 of the PIL, an arbitration agreement is valid if it complies with the law chosen by the parties or if it complies with Swiss law. According to Swiss law, an arbitration agreement must be in writing, by means of telegram, telex, telefax or in any other form of communication that allows evidence of the agreement in text.
42. In the matter at hand, the parties have not signed a separate, specific arbitration agreement and the Appellant does not argue that such separate, specific arbitration agreement was signed. The Appellant rather argues that CAS is competent by virtue of Article 67 I of the FIFA Statutes, Article 46 I of the FUR Statutes and Article R47 of the Code.
43. According to standard practice of the Swiss Federal Tribunal, an arbitration agreement can also become valid and effective by affiliation to a federation and reference to an arbitration clause provided in the statutes of a sport federation. The Swiss Federal Tribunal, for instance held in its decision of 9 January 2009 (ATF 4A_460/2008, no. 6.2) that a Brazilian football player was bound by the arbitration clause set out in the FIFA Statutes conferring jurisdiction to the CAS by virtue of the reference provided in the statutes of the national Brazilian Football Federation to the FIFA Statutes. The player was seen as bound by these provisions in his capacity as professional football player in Brazil. The Swiss Federal Tribunal, therefore, held on the basis of the FIFA Statutes, the statutes of the Brazilian Football Federation and Article R47 of the Code, that the CAS had jurisdiction.
44. The Panel holds that, for the following reasons, these considerations are to be similarly applied in the present case.
45. According to Article R27 of the Code "*These Procedural Rules [the ones of the Code] apply whenever the parties have agreed to refer a sports-related dispute to CAS. Such reference may arise out of an arbitration clause*

contained in a contract or regulations or by reason of a later arbitration agreement (ordinary arbitration proceedings) or may involve an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies, or a specific agreement provide for an appeal to CAS (appeal arbitration proceedings).

Such disputes may involve matters of principle relating to sport or matters of pecuniary or other interests relating to the practice or the development of sport and may include, more generally, any activity related or connected to sport”.

46. In addition, Article R47 para. 1 of the Code provides that *“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 him prior to the appeal, in accordance with the statutes or regulations of that body”.*
47. Article 67.1 of the FIFA Statutes provides that *“Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question”.*
48. On national level in Russia Article 46.1 of the Statutes of the FUR provides that *“Unless otherwise stipulated [...] the RFU, its members, as well as the leagues, the clubs, the players, officials, agents of the matches and agents of players, other football-related persons recognizing the present Statutes, may not refer any disputes to the regular courts. Any disagreement shall fall under jurisdiction of FIFA, UEFA or FUR. As of last instance such disputes shall be adjudicated by Russian arbitration tribunal referred to in appropriate article of these Statutes or by CAS”* and Article 47.1 of the Statutes of the FUR provides that *“In accordance with the specific provisions of FIFA Statutes, UEFA Statutes and FUR Statutes any appeal against final and legally binding decision passed by FIFA, UEFA and FUR may be heard by the CAS. This court of arbitration for sport, however, shall not hear appeals on the categories of disputes as defined by FIFA, UEFA, FUR or against the decisions rendered by the independent and duly constituted Russian arbitration tribunal referred to in Article 45 of these Statutes”.*
49. The FUR Statutes provide, in other words, that, *inter alia*, “other football related persons” shall be bound by the arbitration clause provided in the FUR Statutes and FIFA Statutes. Pursuant to Article 1.1 (14) of the FUR Statutes, “football-related” persons include, *inter alia*, “unions on the football sphere” and “other persons that recognize the rules set by the FUR and whose activity is connected with the competitions held under FUR jurisdiction”.
50. The Panel, therefore, finds that, on the basis of Article R27 and Article R47 para. 1 of the Code as well as Article 67.1 of the FIFA Statutes in connection with Article 46.1 and Article 47.1 of the FUR Statutes, the CAS is, in principle, competent to hear the present case as the Appellant must arguably be considered as a union “on the football sphere” or another “person that is connected with the competitions held under FUR jurisdiction”. The relevant regulations of the FUR, FIFA and CAS, thus, not only permit, but even oblige the Appellant to bring its appeal against the FUR before the CAS if it considers itself another football-related person. Whether the Appellant is actually such football-related person or whether it is not, as the Respondent argues, will be analyzed in the section on the Appellant’s standing to appeal.

C. IS THE CHALLENGED DECISION FINAL?

51. The Panel also notes that for the CAS to have jurisdiction the Appellant must have exhausted all instances within the FUR, if any, in order for the Challenged Decision to be final in accordance with Article 47 of the Code. In contrast to the standing to appeal, which is a question of the merits, the question whether or not the Appellant has exhausted all instances within the FUR before reverting to the CAS is a question of jurisdiction and shall, therefore, be analyzed at this juncture (cf. MAVROMATI/REEB, *The Code of the Court of Arbitration for Sport*, 2015, p. 383; ATF 4A_682/2012, no. 4.3).
52. When reviewing the question as to whether or not the Appellant exhausted all avenues available within the FUR the Panel noted that the Appellant for its part did not explain whether such avenues would have been available, and that the Respondent for its part never raised the objection that the Challenged Decision would not be appealable because of the existence of avenues within the FUR which had not been exhausted – in other words, the Respondent did not raise any objection against the present appeal on the basis that the Challenged Decision was not final.
53. This notwithstanding, the Panel, in application of Article R55 para. 4 of the Code, analyzed whether the Challenged Decision can be considered final.
54. In that context the Panel examined chapter 3 of the DRR which is headed “*Jurisdiction of the Chamber and the Committee*”.
55. Article 13 of the DRR sets out that the DRC shall review and adjudicate disputes in the context of registration, employment as well as transfer of players and coaches. Article 14 of the DRR deals with the Players’ Status Committee (“PSC”) and provides that the PSC is the jurisdictional body adjudicating on the appeals against the decisions rendered by the DRC on all matters falling within its jurisdiction.
56. This dichotomy of competences of the DRC and the competences of the PSC is repeated, in essence, in Articles 41 and 42 of the Statutes of the FUR. Article 41 of the FUR Statutes provides that “1. *The Dispute Resolution Chamber is competent to handle extrajudicial resolution of disputes to which clubs, players, coaches, agents of players and other football-related persons under the Regulations on the Status and Transfer of Players are the parties and shall apply disciplinary sanctions for breach of Regulations on the Status and Transfer of Players and other regulations (rules) when so explicitly determined therein.* 2. *The decisions rendered by the Dispute Resolution Chamber on the categories of disputes as defined in the relevant regulations (provisions) may be appealed against before the Players’ Status Committee*”. In accordance with Article 42.1 of the FUR Statutes, the “*Players’ Status Committee shall determine the status of players, including resolutions of disputes connected with players’ status*” and “*shall hear appeals against decisions rendered by the Dispute Resolution Chamber and shall monitor compliance with the regulations on the Status and Transfer of Players*”.
57. By contrast, the Chairman and the Deputy-Chairman of the DRC shall be elected in accordance with chapter 2 of the DRR (“*Organizational Basis of the Chamber and the Committee*”), in particular with Article 8¹ of the DRR.

58. Interpreting Article 8¹ of the DRR in conjunction with chapter 3 of the DRR the Panel concludes that elections do not fall within the scope of decisions of the DRC pursuant to Article 13 of the DRR that are open to appeal with the Players' Status Committee in accordance with Article 14 of the DRR. The Respondent did not argue otherwise.
59. Moreover, chapter 2 of the DRR that deals with the organizational basis of the DRC (only) does not provide any specific provision as to how elections of members of the DRC can be challenged and does not, in particular, identify any appeal instance within the FUR with which such challenge could be filed.
60. The Panel, therefore, holds that there is no specific legal remedy available within the FUR in case of a challenge to the election of a Chairman or a Vice Chairman of the DRC. In particular, the Players' Status Committee would not be competent to hear any such challenge or appeal, respectively. Therefore, any such appeal must be addressed to the CAS in accordance with Article 47.1 of the FUR Statutes.

D. CONCLUSION

61. For these reasons, the Panel holds that the Challenged Decision is a final decision in the sense of Article R47 para. 1 of the Code, and that the CAS has jurisdiction to hear the present dispute.

VI. ADMISSIBILITY

62. Article R49 of the Code provides as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against [...]”.

63. The Challenged Decision was rendered on 2 July 2015 and notified to the Appellant on 10 July 2015. The Appellant filed its statement of appeal on 31 July 2015. Therefore, the 21-day deadline to file the appeal was respected. Likewise, the appeal brief was timely filed on 10 August 2015.
64. The Panel, therefore, holds that the appeal is admissible.

VII. APPLICABLE RULES OF LAW

65. Pursuant to Article R58 of the Code, the dispute must be decided *“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”.*
66. The parties have not expressed themselves on the laws applicable. The case at hand is about a dispute between a Russian union of football players and coaches and the FUR, *i.e.* the Russian

football union which is domiciled in Russia. The “applicable regulations” in the sense of Article R58 of the Code are, therefore, the statutes and regulations of the FUR which is the Respondent. The Panel thus holds that the dispute is to be determined by applying the statutes and regulations of the FUR and, absent any express choice of law by the parties, Russian law.

VIII. MERITS

A. SCOPE OF THE PANEL’S REVIEW

67. Pursuant to Article R57 of the Code, the Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance.

B. THE BURDEN OF PROOF

68. According to general principles of law, each party must provide evidence for any fact on which it intends to rely.
69. This means, in the case at hand, that the Appellant has the burden of proof to demonstrate, in particular, that it has grounds to request the CAS to annul the Challenged Decision, *i.e.* the election of Mr. Lyakhov as Chairman and Mr. Pivovarov as Deputy Chairman of the DRC.

C. LEGAL ANALYSIS

C.1 The legal issues at hand

70. The Panel has identified and analysed the following main legal questions.
- (i) Does the Appellant have standing to appeal, *i.e.* is it entitled to challenge the Challenged Decision and to act as appellant in the present proceedings?
 - (ii) Are Mr. Lyakhov and Mr. Pivovarov impartial and independent in accordance with the relevant rules of the DRR?
 - (iii) When does a challenge of the election of a Chairman or Deputy-Chairman have to be filed?
71. The Panel took note that the Appellant also contended that the elections of 2 July 2015 violated the quorum requirements under Article 8¹ of the DRR as well as Article 9⁴ of the DRR. These issues will be discussed further below.

C.2 Interpretation of the DRR

72. The DRR and the FUR Statutes do not provide any specific rule that would explain the method of interpretation that is to be applied in case of any ambiguity of the DRR or the FUR Statutes.

73. At the hearing, the parties confirmed that also under Russian law, and, in particular, in respect of the DRR and the FUR Statutes, the principle applies that the relevant rules must be interpreted by taking into consideration the meaning that reasonable parties acting in good faith would give to the provisions in question.
74. When interpreting the DRR and the FUR Statutes the Panel followed this principle.

C.3 Does the Appellant have standing to appeal?

75. In the Respondent's view the Appellant is not entitled to file the present appeal. It argues that the Appellant is not a "football-related person" as defined in Article 1.1 (14) of the FUR Statutes, while the Appellant, on the other hand, argues that it has such capacity.
76. As already pointed out, according to Article 1.1 (14) of the FUR Statutes the term "football-related persons" includes, among others, "*unions on the football sphere*" as well as "*other persons who recognize the rules set by the FUR and whose activity is connected with the competitions held under the FUR jurisdiction*". The Panel holds that the Appellant is undoubtedly a "union on the football sphere", and notes that the Respondent did not argue otherwise.
77. In addition, the Appellant's activity "*is connected with the competitions held under FUR jurisdiction*" since the Appellant is involved in the nomination of the members of the DRC who shall adjudicate disputes relating to, *inter alia*, "*infringement of the terms and conditions of registration [...] of football players and coaches [...] of transfer contracts, of employment contracts with football players and coaches*" or on "*availability or absence of a 'foreigner' status with a football player*" (Article 13.1 of the DRR). As the DRC has the power to determine issues in relation to competitions held under the FUR's jurisdiction and as the Appellant has the power to nominate arbitrators or members of the DRC the Panel has no difficulty in concluding that the Appellant is a "*football-related person*" as defined in accordance with Article 1.1 (14) of the FUR Statutes.
78. For these reasons, the Panel does not accept the Respondent's contention that the Appellant's activities are not in any way related to any competition held under the auspices of the FUR and that the Appellant does not recognize the norms set by the FUR. As has been shown above, the Appellant's activities are connected with the competitions held by the FUR. In addition, the fact that the founder of the Appellant, the Union of Football Players and Coaches of Russia, has, as the Respondent contends, still not reimbursed the disputed expenses that the Respondent incurred in another arbitration before the CAS, does not, in the Panel's view, demonstrate that the Appellant does not respect the FUR Statutes.
79. However, as the Appellant was not directly affected by the Challenged Decision, in the sense that the Appellant was not a candidate during the relevant election proceedings, the Panel also analyzed whether the Appellant was affected by the Challenged Decision in a way that justifies hearing its appeal before the CAS, *i.e.* whether the Appellant has a right to claim that the elections are held in accordance with the applicable rules which is worthy of protection by the CAS (cf. CAS 2012/A/3140, no. 8.3).

80. The parties do not differ in respect of the policy underlying the enactment of the current version of the DRR, including the aim to ensure impartiality and independence of the arbitrators as well as equal representation of arbitrators appointed by the employers' side (clubs and leagues) and the employees' side (in particular unions of players). This basic goal is also reflected in Article 4 of the DRR which provides *"The hearing shall be made on the basis of principles of legitimacy, confidentiality, independency and impartiality of members of the Chamber, optionality, competitiveness and equality of the parties, equal balanced representation of Arbitrators from professional football clubs and unions of players"*.
81. The unions of players (and coaches), thus, play an important role in respect of the composition of the DRC and, more generally, in respect of the jurisprudence of the FUR legal bodies. Their involvement ensures that the players are equally represented (with the clubs) in the DRC. In other words, the unions, including the Appellant, have a fiduciary duty on behalf of the players (and coaches) to concern themselves in the proper composition of the DRC which is an important condition for fair and equitable proceedings between the clubs (and leagues) as well as the players (and coaches). The Appellant would frustrate the trust that the players gave it if the Appellant did not take action against decisions in respect of the composition of the DRC which are, or which the Appellant deems to be, in violation of the FUR regulations to the detriment of the Players.
82. The Appellant argues that Mr. Lyakhov and Mr. Pivovarov are not independent because they are too closely connected with the clubs and the national league. In view of the role of the Appellant as fiduciary or trusted representative of the players the Panel has no difficulty in accepting that the Appellant has a legitimate interest in appealing against the Challenged Decision as it undoubtedly has practical and important effects on the Appellant. Should the newly elected Chairman and Deputy-Chairman of the DRC not be independent because they are too closely related with the clubs and the national league as the Appellant contends, the entire system under the DRR envisaged at ensuring impartiality, independence and representation of clubs and players would be at stake. The Panel, thus, concludes that the Appellant has an interest worthy of protection and has a right to have the Challenged Decision reviewed by the CAS, even if the Appellant was not a formal party to the elections that led to the Challenged Decision. The CAS already confirmed in other cases that standing to appeal can be given even if the appellant was not party to the previous instance proceedings, provided it is affected by the relevant decision and has a legitimate or sufficient interest in challenging it (cf. CAS 2012/A/3140, no. 8.3; CAS 2011/A/2354, no. 12).

C.4 Do Mr. Lyakhov and Mr. Pivovarov fulfil the requirements on impartiality and independence?

83. After having discussed whether or not the Appellant has standing to appeal the Panel analyzed whether at the date of their election on 2 July 2015 Messrs. Lyakhov and Pivovarov were impartial and independent in accordance with the relevant rules under the DRR.
84. In analyzing this issue the Panel first noted that Article 7 of the DRR provides the legal framework for the composition of the DRC. In accordance with Article 7.1 of the DRR, the DRC shall be composed of (i) the Chairman, (ii) the Deputy Chairman, (iii) ten representatives

from the professional football players, and (iv) ten representatives from the professional football clubs. The members of the DRC shall be nominated in the manner as described in Article 8 of the DRR.

85. In respect of personal qualifications and personal requirements Article 7.4 provides that *“Members of the Chamber shall be citizens of the Russian Federation and may not be members of the FUR Executive Committee, the Committee, as well as occupy the position of Executives of the Leagues and/or associations. Members of the Chamber are forbidden to be representatives of the parties in cases (disputes) adjudicated by the Chamber”* (emphasis added) and Article 5.5 provides that the *“Chairman and Deputy Chairman of the Chamber shall have high legal educational background and practical experience in a legal sphere of no less than five (5) years”*.
86. The Appellant contends that the current Chairman and Deputy Chairman of the DRC occupy leading functions in the national league and a club, respectively. The Panel has, therefore, to assess whether Mr. Lyakhov and Mr. Pivovarov are executives of a league or an association pursuant to the terms of Article 7.4 of the DRR.
87. The terms “executive” and “association” are not defined in the DRR. During the hearing it was, however, confirmed that the term used in the original Russian version of the DRR for “executive” is “Руководитель”, and the term used for “association” is “Ассоциация”. In response to the Panel’s question it was confirmed that “Руководитель” describes a person who can give directions irrespective of the level of the entity’s hierarchy and is, in particular, not limited to identify a leading function on the top hierarchy level. And in respect of “Ассоциация” it was confirmed that this is a broadly used term for legal entities and that it also may, in the given context, refer to a club. None of the parties raised any objection to the Panel’s use of these definitions. The Panel, therefore, concludes that according to Article 7.4 of the DRR nobody shall become a member of the DRC if he or she holds a leading function within a league or a club and has the competence to give directions in his sphere of competence.
88. During the hearing, the Respondent and Mr. Lyakhov, who was heard as the Respondent’s witness, confirmed that Mr. Lyakhov is the Director of the Legal Department of the National Football League, and it is also undisputed that Mr. Pivovarov is the Deputy General Director of the football club Zenit Saint Petersburg. The Panel has, therefore, no difficulty in determining that both, Mr. Lyakhov and Mr. Pivovarov, are “executives” of a “league” (Mr. Lyakhov) or an “association” (Mr. Pivovarov), respectively. The positions of a director of the legal department of the national football league of Russia as well as a deputy general director of a football club like Zenit Saint Petersburg are undoubtedly to be seen as conferring on the relevant holder of the position the right to give directions to others and being a leader or manager of the relevant arm of the league or club, respectively.
89. Consequently, as both Mr. Lyakhov and Mr. Pivovarov are executives of a league or club they do not fulfil the requirements for their independence and impartiality pursuant to Article 7.4.

C.5 When does a challenge of the election of a Chairman or Deputy-Chairman have to be filed?

a. Issues at hand

90. After determining that Mr. Lyakhov and Mr. Pivovarov hold executive functions within a league or club, the Panel had to analyze whether it was appropriate for the Appellant to submit its appeal after the elections of 2 July 2015 or whether the appeal was late as the Respondent contended during the hearing.
91. In analyzing this question the Panel noted that the DRR do not set out detailed rules on the election process and do not describe a specific procedure in case of a challenge of the Chairman or Deputy Chairman of the DRC.
92. During the hearing it was established that prior to 2 July 2015, *i.e.* the day when the election of Mr. Lyakhov as Chairman and Mr. Pivovarov as Deputy Chairman took place, Mr. Lyakhov was already a member of the DRC holding the function of the Deputy Chairman, while Mr. Pivovarov was no member of the DRC. While Mr. Lyakhov was elected Deputy-Chairman of the DRC on 5 December 2014, Mr. Pivovarov became a member of the DRC only on 2 July 2015 when he was elected Deputy Chairman. In light of these differences between the history of Mr. Lyakhov and Mr. Pivovarov, the Panel decided to analyze the present question for Mr. Lyakhov and Mr. Pivovarov separately.

b. The challenge of Mr. Lyakhov

93. The parties confirmed that when Mr. Lyakhov was elected Deputy Chairman of the DRC in December 2014 no challenge was lodged. Therefore, the Panel has to determine whether the DRR suggest that the right to challenge Mr. Lyakhov's appointment as a member of the DRC was forfeited given that he became Vice Chairman of the DRC in December 2014 and no challenge against his membership in the DRC had ever been lodged before the present appeal was filed. The Panel also analyzed whether it is appropriate, under the DRR, to challenge a Chairman (or Deputy Chairman) after the elections or whether a challenge must be raised at an earlier point in time.

b.1. Was the Appellant prevented from challenging the Chairman and to lodge the appeal after the elections?

94. The Panel notes that Article 8.7 of the DRR provides that the "FUR Legal Committee shall check the fitness of the candidates to the requirements applicable to the members of the Chamber. The requirements applicable to the members of the Chamber shall be approved by the FUR Executive Committee". This provision equally applies to ordinary members of the DRC (arbitrators) as well as to the Chairman and Deputy Chairman. In respect of the selection of potential candidates for the position of the Chairman and Vice Chairman Article 8¹ 1 of the DRR provides that "A list of candidates to the position of Chairman of the Chamber composed out of 5 individuals and candidates to the position of Deputy Chairman of the Chamber composed out of 5 individuals shall be approved by the Executive Committee after taking into account views of football-related persons".

95. During the hearing, it was established that one list with five candidates was presented for the election of the Chairman and that such list also served for the election of the Vice Chairman. As the Chairman was elected first a list of five candidates was actually available so that the Panel takes the view that Article 8¹ 1 of the DRR was complied with when the Chairman was elected. It will be discussed later whether these requirements under Article 8¹ 1 of the DRR were also fulfilled when the Deputy Chairman was elected.
96. In its next step the Panel analyzed whether the presentation of the list of candidates by the Executive Committee was a “decision” in the sense of Article R47 para. 1 of the Code that (rendered ahead of the elections) the Appellant should have challenged. In this context the Panel also considered previous practice of the CAS regarding the concept of a “true decision” of a sports governing body that is subject to appeal.
97. The Panel noted that in CAS 2008/A/1634 the CAS held that “*an appealable decision of a sport association or federation is normally a communication of the association directed to a party and based on an ‘animus decidendi’, i.e. an intention of a body of the association to decide the matter*” (no. 11 with reference to relevant literature). Already in CAS 2004/A/748 the CAS held in respect of “decisions” that “*In principle, for a communication to be a decision, this communication must obtain a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties*” (no. 14 with reference to CAS 2005/A/899). In CAS 2004/A/659 the panel held that “*A decision is a unilateral act, sent to one or more determined recipients and is intended to produce legal effects*” (no. 10). These decisions are in line with the definition provided by the Swiss Federal Tribunal in respect of orders or decisions, respectively.
98. Against the above background, it can be concluded that for an act to be a true “decision” so that it can become the subject of an appeal such act must (i) express the *animus decidendi* of the respective sports governing body in respect of a specific topic or legal situation, and (ii) must be communicated to the relevant addressees.
99. The Panel is of the opinion that Article 8¹ 1 in conjunction with Article 8.7 of the DRR cannot be read in a way as to justify the conclusion that by presenting the list of candidates the Executive Committee rendered a “true decision” ruling that the candidates fulfilled the criteria under Article 7.4 of the DRR. Lacking any specific provision in the DRR that would give guidance in respect of the procedure of the selection of the candidates, the assessment of their characteristics and the proper way of communication of their selection, the Panel holds that the current version of the DRR does not permit it to conclude that it was the intention of the authors of the DRR to enact a rule pursuant to which a challenge of the Chairman or Deputy Chairman must be lodged when the candidate appears on the list prepared by the Executive Committee. The Panel, rather, concludes that Article 8¹ 1 and Article 8.7 of the DRR are of an administrative nature and aim at preparing the elections without, however, conferring on the Executive Committee the competence to render a “true decision” with regard to the conformity of the candidates with the requirements under Article 7.4 of the DRR.
100. Therefore, the Panel holds that on the basis of the current DRR a challenge of the Chairman or Deputy Chairman cannot be lodged before the elections have taken place. The presentation

of the list of candidates is not a separate decision (rendered ahead of the elections) that would be amenable to an appeal.

101. The Panel, therefore, concludes that the Appellant's appeal is not late in the sense that it would have had to file an appeal against the presentation of the list of candidates if it was of the opinion that Mr. Lyakhov was not eligible.
102. Because, however, Mr. Lyakhov was already a member of the DRC when the elections of 2 July 2015 took place the Panel analyzed, as a next step, whether the right of the Appellant to challenge Mr. Lyakhov is forfeited as Mr. Lyakhov's membership in the DRC was never challenged before.

b.2. *Is the appeal in respect of Mr. Lyakhov late?*

103. As has been pointed out above, Mr. Lyakhov was already a member of the DRC when he was elected Chairman on 2 July 2015. He had been Deputy Chairman since 5 December 2014, and both parties confirmed that Mr. Lyakhov had never been challenged hitherto. Therefore, the question arises whether a challenge of Mr. Lyakhov should have been brought earlier and whether, in particular, the present challenge was lodged out of time.
104. Given that the DRR do not provide any explicit rule in this respect, the Panel had again to find the answer by interpreting the provisions available in the current version of the DRR in their given context.
105. The starting point for the Panel's analysis was Article 7.4 of the DRR which states, as already discussed above, that "*Members of the Chamber shall be citizens of the Russian federation and may not be members of the FUR Executive Committee, the Committee, as well as occupy the positions of Executives of the Leagues and/or associations. Members of the Chamber are forbidden to be representatives of the parties in cases (disputes) adjudicated by the Chamber*". The Panel also took note of Article 4 of the DRR setting out that the "*hearing shall be made on the basis of principles of legitimacy, confidentiality, independency and impartiality of members of the Chamber, optionality, competitiveness and equality of the parties, equal balanced representation of Arbitrators from professional football clubs and unions of players*".
106. The purpose of these provisions is clear. It is to ensure that each and every proceeding brought before the DRC shall be heard by a panel where the members are impartial and independent. In accordance with Article 8²1 of the DRR "*Disputes are to be adjudicated by the Arbitrators nominated out of members of the Chamber by the Chairman of the Chamber or the Deputy Chairman of the Chamber upon assignment made by the Chairman of the Chamber*". Furthermore pursuant to Article 8²2 of the DRR a "*dispute shall be adjudicated by the Chamber sitting in no less than three (3) Arbitrators, including the Chairman of the Chamber or the Deputy Chamber of the Chamber, complying with the principle of equal representation of Arbitrators of the football clubs and of the players*". This means, in essence, that after their election the Chairman and the Deputy Chairman become standing members of the panels of the DRC as either the Chairman or the Vice Chairman must sit on each of such the panels.
107. Against this background the Panel concludes that the requirements under the DRR on impartiality and independence of the DRC members and panels can presently never be fulfilled

as the current Chairman and the current Deputy Chairman fail to fulfil the requirements of Article 7.4 of the DRR.

108. This notwithstanding, the Panel finds that it cannot uphold the challenge against Mr. Lyakhov as Mr. Lyakhov became Deputy Chairman of the DRR, and thus a standing member of the DRC panels, already in December 2014. That election was never challenged. The change of his function from Deputy Chairman to Chairman of the DRC does not, in the Panel's view, raise new grounds for a challenge that could not already have been raised in December 2014. Therefore, although the Panel is of the opinion that Mr. Lyakhov does not fulfil the requirements of Article 7.4 of the DRR, it cannot intervene now and undo an election that should have been challenged earlier. The Appellant itself is estopped from mounting such a challenge.

c. *The challenge of Mr. Pivovarov*

109. Like Mr. Lyakhov, Mr. Pivovarov does not fulfil the requirements under Article 7.4 of the DRR on independence and impartiality. Mr. Pivovarov is an executive of an important club. But unlike Mr. Lyakhov, Mr. Pivovarov became a member of the DRC only on 2 July 2015 so that the above considerations regarding the timing of Mr. Lyakhov's challenge do not equally apply. As Mr. Pivovarov became a member of the DRC only on 2 July 2015 his election could not be challenged before.
110. Furthermore, the Panel noted that Article 8²4 of the DRR provides that "*In the event where a football club is a party to the dispute, as an Arbitrator – a representative of the professional football clubs may not be nominated a member of the Chamber nominated by the same League, to which the club – a party to the dispute is a member, and if the club – a party to the dispute shall have filed a motion with the Chamber to exclude nomination of Arbitrator nominated by the relevant league*". In light of this provision, Mr. Pivovarov would be prevented from exercising his function as Deputy Chairman in each case where a club of either the Premier League or the National League is involved as Zenit Saint Petersburg has a team in the Premier League and, as has been confirmed during the hearing, in the National Football League.
111. In addition, it seems that the process of his election was not fully in line with Article 8¹ 1 of the DRR which requires that in respect of the election of the Deputy Chairman a separate list of five candidates shall be presented. It was confirmed at the hearing that in respect of both, the election of the Chairman and the election of the Deputy Chairman, only one list with five candidates in total was available. The Panel is of the view that, based on the DRR, it is not clear whether a violation of this rule would per se be serious enough to form a ground for a challenge of the elected Deputy Chairman. However, given the other deficiencies discussed above the Panel is also of the view that this question can be left open for purposes of the present award.
112. In light of the above the Panel concludes that Mr. Pivovarov does not fulfill the criteria under Article 7.4 of the DRR on impartiality and independence of a DRC member. As, in contrast to Mr. Lyakhov who was elected Deputy Chairman in December 2014, no challenge could be raised before the present appeal was lodged, the present appeal must be seen filed on time as

far as Mr. Pivovarov is concerned. The Panel, therefore, decides that the election of Mr. Pivovarov as Deputy Chairman must be annulled.

C.6 Was Article 8¹ of the DRR violated?

113. The Appellant also argues that the elections took place in violation of the quorum requirements under Article 8¹ of the DRR. Article 8¹3 of the DRR provides that a candidate to the position of the Chairman or Deputy Chairman of the DRC shall be deemed elected if supported by a 2/3 majority of votes cast out of the total number of members of the DRC. If none of the candidates to the position of the Chairman or Deputy Chairman is supported by such 2/3 majority of votes a second ballot shall take place (Article 8¹4 of the DRR). In accordance with Article 8¹6 of the DRR, a candidate shall be deemed elected in a second ballot if supported by a simple majority of votes cast out of the total number of members of the DRC.
114. The Appellant argues that these provisions are to be understood as requesting that 2/3 of the members of the DRC must be present to form a valid quorum for the elections of the Chairman and Deputy Chairman. The Panel, however, finds that the aforementioned provisions do not imply that a presence quorum of 2/3 of the members of the DRC is required. These provisions only deal with the number of votes that are required, *i.e.* 2/3 of the total number of members of the DRC in the first round and simple majority of the total number of members of the DRC in the second round. The DRR are, thus, silent about a presence quorum, and the Panel holds that this is to be understood as not requiring any such specific presence quorum notwithstanding the fact that the members of the DRC may have decided at their meeting of 5 December 2014 that a 2/3 presence quorum was to apply for the elections held at the occasion of such meeting as the Appellant's witness explained at the hearing.
115. The Panel, therefore, analyzed whether the Chairman and Deputy Chairman obtained (at least) a simple majority of votes cast out of the total number of members of the DRC. In this context the Panel considered that at the hearing both parties explained that the DRC, as a rule, consists of 22 members in total, *i.e.* of 20 arbitrators as well as of the Chairman and the Deputy Chairman. Taking 22 members as a reference, the simple majority of votes would have been 12 votes.
116. The Panel notes that according to the minutes of the 2 July 2015 elections submitted by the parties, the new Chairman obtained, in the second round of the ballots, 12 votes and, thus, achieved the simple majority of votes cast out of such total number of members of the DRC.
117. On the other hand, the Panel also noted that the new Deputy Chairman obtained, in the fourth round of the ballots, 11 votes, so that the question arises whether he would have reached the threshold of a simple majority of votes. Even if the Panel holds that the Deputy Chairman's election must be annulled for other reasons, this question shall be further analyzed for sake of completeness.
118. The Panel discussed whether for purposes of the elections and assessment of the required number of votes the Chairman and the Deputy Chairman have also to be counted as members of the DRC, in which case the total number of members of the DRC would be 22 and the

simple majority would be 12 votes, or whether they have to be disregarded, in which case the total number of members of the DRC would be 20 and the simple majority of votes would be 11. The Panel noted that again the DRR are silent in this respect.

119. When analyzing the sequence of the elections of 2 July 2015, the Panel noted that at the time of the election of Mr. Pivovarov, Mr. Ljakhov had already been elected as Chairman so that at that time the number of members of the DRC was 21. On the other hand, Mr. Pivovarov was not yet a member of the DRC so that the Panel did not have to also analyze whether Mr. Pivovarov would have had to abstain from voting given that he was himself a candidate in which case he could not have been taken into account when assessing the total number of DRC members entitled to vote.
120. On the premise that the relevant number of members of the DRC when Mr. Pivovarov's election took place was 21, the simple majority threshold was 11. As Mr. Pivovarov obtained such 11 votes his election would have been valid had it not to be annulled for the reasons discussed above.
121. The meeting minutes indicate, on the other hand, that the members of the DRC were of the opinion that for purposes of the elections the total number of members of the DRC was 20. Both, in respect of the election of the Chairman and in respect of the election of the Deputy Chairman, the minutes provided that the relevant simple majority threshold was 11 out of 20. This would also indicate that Mr. Pivovarov would have reached the simple majority of the votes.
122. After assessing the relevant majority thresholds, the Panel had to analyze whether pursuant to Article 8¹ of the DRR a Chairman or Deputy Chairman can only be validly elected if he or she is elected in the first or second round of the ballot as the Appellant argues. In this context, the Panel first noted that the Chairman was actually elected in the second round as the minutes of the elections indicate so that this argument of the Appellant need only be considered in the context of the election of the Deputy Chairman.
123. Whilst it is true that Article 8¹ of the DRR only mentions a first and a second round and does not expressly refer to any further round, the Panel holds that this will not necessarily exclude the possibility for the members of the DRC to move on to another round if none of the candidates could be elected in the preceding two rounds. Article 8¹ 5 of the DRR is based on the assumption that only two candidates have to move to the second round. However, in case of the election of the Deputy Chairman, three candidates had to move one stage further since two of them had achieved the same number of votes in the first round. This necessarily triggered the need for a third round. A strict and literal construction of Article 8¹ 5 of the DRR would lead to the conclusion that such third round was in violation of the DRR. The Panel, however, holds that this would be unreasonably over-formalistic given that the purpose of Article 8¹ of the DRR is clearly to have two candidates in the last round of the ballot and such situation can only be achieved in cases where three candidates move to the second round, if a third round takes place with the two candidates that obtained the most votes in the second round. The Panel is of the provisional view that even engaging in a fourth round may have been legitimate as after the third round no candidate had obtained a simple majority of the votes cast out of the total

number of the DRC. However, the Panel holds that this question can finally be left open as the election of Mr. Pivovarov must, for the reasons explained above, be annulled.

C.7 Was Article 9⁴ of the DRR violated?

124. The Appellant also argues that the course of the elections of 2 July 2015 also violated the provisions of Article 9⁴ of the DRR. The Panel, however, sees no ground for a possible violation of Article 9⁴ of the DRR. This Article concerns “early re-elections” as not only the title of this article, but also the introductions to the various sub-paragraphs clearly express.
125. The elections of 2 July 2015 were not early re-elections. Mr. Lyakhov was elected as new Chairman and Mr. Pivovarov would have been elected as new Deputy-Chairman of the DRC. The Panel, therefore, holds Article 9⁴ of the DRR was not violated.

C.8 Conclusion

126. In sum, the Panel holds that the present appeal must be rejected as far as the election of Mr. Lyakhov as Chairman of the DRC is concerned, but that it must be granted as far as the election of Mr. Pivovarov as Deputy Chairman of the DRC is concerned.
127. Consequently, the election of Mr. Lyakhov as Chairman of the DRC that took place on 2 July 2015 is confirmed and the election of Mr. Pivovarov that took place on 2 July 2015 is annulled.
128. The Appellant also requested that the CAS cause the FUR and arbitrators of the DRC to conduct new elections of the Chairman and Deputy Chairman of the DRC strictly on the basis of the applicable DRR and within the shortest possible time limit. The Panel, however, holds that there is no basis for the Panel to accede to that request at this stage, as it has no indications, and the Appellant did not submit any argument or evidence that would indicate that the Respondent will not hold new elections in due course.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal of the Association of Unions of Football Players and Coaches filed on 31 July 2015 against the elections of 2 July 2015 of the Chairman and Deputy Chairman of the Dispute Resolution Chamber of the Football Union of Russia is partially upheld.
2. The election of Mr. K.O. Lyakhov as Chairman of the Dispute Resolution Chamber of the Football Union of Russia is confirmed.

3. The election of Mr. P.K. Pivovarov as Deputy Chairman of the Dispute Resolution Chamber of the Football Union of Russia is annulled.

(...)

6. All other and further claims for relief are dismissed.