



Arbitration CAS 2019/A/6636 BC Arsenal v. Russian Basketball Federation (RBF), award of 3 August 2020 (operative part of 8 April 2020)

Panel: Prof. Martin Schimke (Germany), Sole Arbitrator

Basketball

Sanction for violation of the spirit of sportsmanship and fair play

Prima facie ruling on CAS jurisdiction and consequences on findings on jurisdiction

Principle contra proferentem

Standing to appeal

Excessive formalism

Res judicata

Interpretation of statutes

Separation of powers in the law of associations

Principle of legality and predictability of sanctions

Proportionality of sanctions

1. A *prima facie* ruling on CAS jurisdiction by a Division President is always subject to review by the arbitral tribunal, once confirmed. Bearing in mind the low threshold for a *prima facie* jurisdiction finding, the arbitral tribunal cannot draw conclusory effects to such a determination made by the Division President. It must still analyze the evidence adduced to establish on the merits whether the CAS had jurisdiction over the matter. Of course, on the contrary, a ruling by the Division President that CAS manifestly has no jurisdiction is not subject to review because (i) a procedure at this point is terminated based on such a finding and (ii) an arbitral tribunal, once confirmed, is not an appeal instance for the Division President's decision.
2. The principle of *contra proferentem* provides that ambiguous terms within a contract should be construed against the party that drafted it.
3. A party has standing to appeal if it can show sufficient legal interest in the matter being appealed and if it is aggrieved, i.e. that it has something at stake. The term "standing to appeal" describes the entitlement of an appealing party to be affected by the decision it appeals. The standing of a party, in principle, follows from its procedural status before the previous instance. If, therefore, there was no issue related to the standing to appeal before the first instance, there cannot be a lack of standing to appeal before the CAS, since the mandate of the latter is exactly the same as the first instance bodies.
4. Excessive formalism takes place when strictly applying the rules is justified by no interest worthy of protection, becomes an end in itself and complicates in an untenable way the application of material law.
5. The procedural concept of *res judicata* is composed of two elements. First the

“Sperrwirkung” (prohibition to deal with one matter = *ne bis in idem*), the consequence of such effect being that if one matter (with *res iudicata*) is brought again before one judge, the latter is not allowed to look at it and must dismiss the matter (insofar) as inadmissible. Secondly, the “Bindungswirkung” effect (binding effect of one decision), according to which one judge in a second procedure is bound to the outcome of the matter decided in *res iudicata*. The basic legal principle of *ne bis in idem* generally states that one cannot be judged for the same charges again after a legitimate judgement in the first place. For this principle to be fulfilled three requirements need to be given: an identity of the parties, of the facts and of the object.

6. There is not one method or principle of interpretation that prevails over others, when statutes of a private legal entity are at stake. An objective or a subjective approach is acceptable depending on the specificities of the situation. When called upon to interpret articles of associations, a CAS panel had therefore to adopt a pragmatic approach and follow a plurality of methods, without assigning any priority to the various means of interpretation.
7. The principle of separation of powers does not exist in the law of associations. An association can, therefore, delegate individual competences to subdivisions. Otherwise, no association could sanction itself.
8. Every sanction requires an express and valid rule providing that someone can be sanctioned for a specific offence. The different elements of the rules of a federation shall be clear and precise in the event they are legally binding for the athletes whereas inconsistencies/ambiguities in the rules must be construed against the legislator as per the principle of “*contra proferentem*”. When interpreting the rules of a federation, it is necessary to consider whether the spirit of the rule (in as much as it may differ from the strict letter) has been violated. It follows that an athlete or official, when reading the rules, must be able to clearly make the distinction between what is prohibited and what is not. 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. However, the internal control upon the rules of the federation is manifestly put in perspective and relativized by the fact that various laws, whether CAS or national court jurisprudence, do not require a strict assurance of the elements provided for disciplinary sanctions of the sports federation, as required by criminal law. Such case law rather recognizes general elements, which constitute the basis for disciplinary sanctions.
9. A sanction imposed by a sport federation must comply with the principle of proportionality. In particular, the severity of a sanction must be proportionate to the offence committed. To be proportionate, the sanction must not exceed that which is reasonably required in the search of the justifiable aim. In other words, the principle of proportionality dictates that the most extreme sanction must not be imposed before other less onerous sanctions have been exhausted.

I. PARTIES

1. BC Arsenal (the “Appellant”) is a professional basketball club based in Tula, Russian Federation. It is affiliated with the Russian Basketball Federation. It participates in the Superleague-2, which is the second division of the Men’s Russian Basketball Championship.
2. The Russian Basketball Federation (the “RBF” or the “Respondent”) is the Russian governing body of basketball. It has its seat in Moscow, Russia. It notably organizes the Russian Basketball Championship (the “Championship”).

II. BACKGROUND FACTS

3. Below is a summary of the main relevant facts, as presented in the parties’ written submissions, pleadings and evidence adduced in the course of the present proceedings and at the hearing. Additional facts may be set out, where relevant, in connection with the legal discussion. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings he refers his Award only to the submissions and evidence he considers necessary to explain his reasoning.
4. On 7 December 2019, the Appellant played a Superleague-2 game against BC Dynamo Stavropol (the “Game”), which it won 82:65.
5. The Appellant’s efforts during the game are disputed by the Parties, namely whether the Appellant made every effort to score baskets, especially during the final minutes of the game.
6. The day after the game, on 8 December 2019, the Referees Control Commission issued a report stating that the Appellant’s players played defensively and were passively shooting as from the middle of the fourth quarter. During the last four minutes, *“the players of the both teams demonstrated passive actions in the defense and attack, namely:*
 - *Shooting of the ball out of court*
 - *Refuse to throw the ball from layup post on without any defense of the opponent side;*
 - *Use of the whole shot clock*
 - *No throw in during 5 seconds together with no active defensive motions;*
 - *Not obligatory defensive and offensive fouls in situations which do not require it, as well as no sportive foul during the period of dead ball*
 - *Intentional missing shoots during free throws*
 - *Spontaneous throws during the midtime of the shot clock”.*
7. According to the Referees Control Commission report, there was no competitive struggle between the Appellant and BC Dynamo Stavropol during the final minutes of the game. The

Referees Control Commission report included a description of the actions and unsportsmanlike actions.

8. On 9 December 2019, the Head of Professional Referees Department issued another report:

The results of the video review of the game:

1. *The game during the 1-3 quarters indicated normal sport competitiveness with the small advantage of Arsenal (Tula).*
2. *The players of BC Arsenal started to act more passive in the defense as well as in attack starting from the beginning of the 4th quarter.*
3. *The players of both teams showed unsportsmanlike behavior from the middle of the 4th quarter, demonstrating unwillingness to shoot.*

Decision:

1. *The players of BC Arsenal initiated unsportsmanlike behavior in the 4th quarter of the game.*
2. *The Comission [sic] gained an impression that the players of BC Dynamo (Stavropol) had not noticed "the idea" of their opponents, and only in the middle of the 4th quarter and in response to such actions of their opponents began to show unsportsmanlike actions.*
3. *The last 4 minutes of the 4th period came into controversion to the Article 1 of the Official Basketball Rules: "The aim of each team is to score in the opponents' basket and to prevent the other team from scoring".*
4. *I consider that both teams should bear responsibility for the abovementioned unsportsmanlike actions, meanwhile the fault of BC Arsenal is more significant.*

9. On 9 December 2019, the RBF Directorate issued a decision (the "Directorate Decision") which notably recommended the exclusion of the Appellant from the entry list for the 2019/2020 Superleague-2. The relevant points of the Directorate Decision read as follows:

1. Annul the result of the Russian Men's Superleague Second Division Basketball Championship game between Arsenal (Tula) and Dynamo (Stavropol) held on December 7, 2019 in Tula, and both teams shall lose by FORFEIT.

2. Recommend that the RBF Executive Committee excludes BC Arsenal (Tula) from the list of participants of the 29th Russian Men's Superleague Second Division Clubs/Teams Championship pursuant to Article 8.1. of the Regulations of the 2019/2020 Russian Basketball Men's and Women's Clubs/Teams Championship and Cup (hereinafter referred to as the "Regulations") for violating Article 7.4. of the Regulations during the Russian Men's Super League Second Division Basketball Championship game between Arsenal (Tula) and Dynamo (Stavropol) held on December 7, 2019 in Tula.

3. *Impose a sporting sanction in the form of suspension until the end of 2019/20 sports season against the following BC Arsenal (Tula) team players who committed the greatest number of intentional errors and/or unsportsmanlike actions, for violating Article 4.4. of the Regulations (namely, Article 1 of FIBA Official Basketball Rules, Paragraph g Article 1-28 of FIBA Internal Regulations) and Article 7.4. of the Regulations during the above game: Pavel Krykov (No. 16), Egor Shcherbinsky (No. 28) and Dmitry Rytenko (No. 31).*

4. *Suspend V.V. Uskov, Coach of BC Arsenal (Tula) team, from all official basketball competitions until December 31, 2021, for violating Article 4.4. of the Regulations (namely, Article 1 of FIBA Official Basketball Rules, Paragraph g Article 1-28 of FIBA Internal Regulations) and Article 7.4. of the Regulations during the above game.*

10. On the same day, the RBF Executive Committee held an extraordinary meeting to discuss the game between the Appellant and BC Dynamo Stavropol.
11. During that meeting, the RBF Executive Committee unanimously decided to affirm the decision of the RBF Directorate and to exclude BC Arsenal from the list of participants of the SuperLeague-2 (the “Executive Committee Decision” or the “Appealed Decision”). In addition, three of the Appellant’s players were suspended until the end of the 2019/2020 season while the Appellant’s head coach was suspended until 31 December 2021. As for the BC Dynamo Stavropol, it received a warning.
12. Also on 9 December 2019, a press release summarising the sanctions imposed on the Appellant and BC Dynamo Stavropol was published on the Respondent’s website, which reads as follows:

At its extraordinary meeting, the Executive Committee of the Russian Basketball Federation imposed sanctions on participants of the Men’s Superleague Second Division game Arsenal (Tula) – Dynamo (Stavropol), which took place on December 7.

To recap, the subject of consideration was the alleged lack of competitive spirit at the end of the match. In particular, the home team, which won with a score of 82:65, scored its last points 6 minutes 57 seconds before the final buzzer, after which its players started to lose the ball and to take inaccurate shots. The guests started to pull off similar moves in the final 5 minutes: the only three-point field goal by Dynamo took place at the end of ball possession.

Having carefully examined the video of the game, as well as the Review Committee Findings and the recommendations of the Directorate, the Executive Committee found that the teams’ actions at the end of the game were unsportsmanlike. This resulted in two decisions.

First, the result of the match between Arsenal and Dynamo was annulled and a forfeit was imposed to both teams.

Second, in accordance with the Regulations of the 2019/2020 Russian Men’s and Women’s Clubs/Teams Championship and Cup, impose the following sanctions:

- taking into account the warning for violation of the competitive spirit and fair play in 2017/18 season, exclude BC Arsenal (Tula) from the list of participants of the XXIX Russian Men's Superleague Second Division
- suspend three Arsenal players - Pavel Krykov, Dmitry Rytenko and Egor Shcherbinsky until the end of 2019/20 season, issue a warning to the rest of the team;
- suspend Viktor Uskov, head coach of Arsenal, until December 31, 2021;
- suspend Aleksandr Sosnin, head coach of FC Dynamo (Stavropol), until the end of 2019/20 season;
- issue a warning on unacceptability of violation of the fair play principle to Dynamo (Stavropol) and seven team players - Vladislav Iyinov, Aleksey Karpov, Georgy Korotyayev, Leonid Nikitenko, Vadim Nosov, Dmitry Prokin and Artem Stepantsov.

In the event of a repeated similar violation, address the issue of excluding Dynamo from the list of participants for the Competitions held under the auspices of the RBF and suspension of the aforementioned players.

13. By letter dated 10 December 2019, the RBF Executive Committee notified the Appellant of the following:

The Professional Basketball Department informs you that by decision of the RBF Executive Committee as of December 9, 2019 in accordance with Clause 8.1. of the Regulations of the 2019/2020 Russian Men's and Women's Clubs/Teams Championship and Cup, Basketball Club Arsenal (Tula) was excluded from the list of competitors of the 29th Russian Men's Super League Second Division Clubs/Teams Championship for violating Clause 7.2 of the Regulations during the Russian Men's Super League Second Division Clubs/Teams Championship game held on December 7, 2019 that had a negative impact on running the Competitions. Pursuant to Clause 8.5. of the Regulations of the 2019/2020 Russian Men's and Women's Clubs/Teams Championship and Cup, Arsenal (Tula) team's results in 2019/2020 Russian Men's Super League Second Division Clubs/Teams Championship regular season games have been annulled. Arsenal (Tula) team is the last in the 2019/2020 Russian Men's Super League Second Division Clubs/Teams Championship final ranking.

Please find the Directorate resolution attached and be informed that the RBF Executive Committee has established that the resolution taken in relation to the players and the coach may be reviewed by the Executive Committee out-of-court if the players and the coach voluntarily undergo an examination involving polygraph equipment at a specialized organization selected by the RBF. The costs of such an examination will be borne by the persons undergoing it”.

14. With this aforesaid letter dated 10 December 2019, the RBF Executive Committee enclosed the Directorate Decision.
15. On 12 December 2019, the Appellant asked the Respondent to provide the Executive Committee Decision dated 9 December 2019.

16. On 16 December 2019, after the filing of the Statement of Appeal (see *infra*), the Respondent informed the Appellant that the deadline to produce the minutes of the meeting (the “Minutes”) was 10 days and that an excerpt of the minutes would be provided after expiry of such deadline. The Appellant was also advised that any dispute, disagreement or claim in connection with the conduct and/or participation in the competitions should be submitted to the National Center for Sports Arbitration (the “NCSA”).

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

17. On 13 December 2019, the Appellant filed with Court of Arbitration for Sport (the “CAS”) a Statement of Appeal against the Respondent with respect to Executive Committee Decision on 9 December 2019. The Appellant requested that the present case be conducted in English and be submitted to a Sole Arbitrator.

18. In its Statement of Appeal, the Appellant made an urgent Request for Stay pursuant to Article R37 of the Code of Sports-related Arbitration (2019 edition) (the “Code”). The Appellant submitted the following prayers for relief:

To stay the execution of the decision passed by the RBF Executive Committee on 9 December 2019 to the extent that the Appealed Decision is not enforceable pending the outcome of the appeal.

19. On 16 December 2019, the CAS Court Office initiated an appeal arbitration procedure under the reference *CAS 2019/A/6636 BC Arsenal v. Russian Basketball Federation*. In light of the proceeding’s urgency, the CAS Court Office invited the Respondent to comment on the Appellant’s Request for Stay by 18 December 2019.
20. On 18 December 2019, the Respondent requested an extension of time to file its Answer to the Request for a Stay, which was partially granted.
21. On 19 December 2019, the Respondent filed its observations on the Appellant’s Request for Stay, in accordance with Article R37 of the Code. The Respondent also attached to its observations the minutes of the meeting of the Executive Committee held on 9 December 2019.
22. On 20 December 2019, the Respondent expressed its consent to conduct the proceedings in English and to appoint a Sole Arbitrator.
23. Also on 20 December 2019, the President of the CAS Appeals Arbitration Division, ruling *in camera*, issued the operative part of an Order on Request for Stay as follows:

1. *The application for a stay of execution of the decision rendered by the Executive Committee of the Russian Basketball Federation on 9 December 2019, filed by BC Arsenal on 13 December 2019 in the matter CAS 2019/A/6636 BC Arsenal v. Russian Basketball Federation, is granted.*

2. *The decision rendered by the Executive Committee of the Russian Basketball Federation on 9 December 2019 is stayed.*
 3. *BC Arsenal is provisionally allowed to take part in the second division of the men's Russian Basketball Championship (Superleague-2).*
 4. *The costs of the present order shall be determined in the final award or in any other final disposition of this arbitration.*
24. On 23 December 2019, the CAS Court Office acknowledged receipt of the Respondent's letter of 20 December 2019 and advised the Parties that, pursuant to Article R54 of the Code, the Sole Arbitrator would be appointed by the President of the CAS Appeals Arbitration Division in due course.
 25. On 26 December 2019, the Appellant's requested an extension until 24 January 2020 or "*as far as possible otherwise*" to file its Appeal Brief.
 26. On 27 December 2019, the CAS Court Office acknowledged receipt of the Appellant's letter of 26 December 2019 and invited the Respondent to state its position no later than 31 December 2019. In the meantime, the Appellant's deadline to file its Appeal Brief was suspended until further notice from the CAS Court Office.
 27. On 30 December 2020, the Respondent objected to the Appellant's request for an extension of time to file its Appeal Brief.
 28. On 6 January 2020, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, informed the Parties that the Appellant's request for an extension of time to file its Appeal Brief was partially granted. More specifically, the Appellant was invited to submit its Appeal Brief together with all exhibits and specification of other evidence upon which it intended to rely by 20 January 2020.
 29. On 20 January 2020, the Appellant filed its Appeal Brief in accordance with Article R51 of the Code.
 30. On that same date, the Respondent filed a Request for Provisional Measures as well as an application to terminate the case based on an alleged lack of CAS jurisdiction. In this context, the Respondent requested that the time limit for the filing of its Answer be stayed until a preliminary Award on jurisdiction was issued.
 31. On 27 January 2020, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, confirmed the appointment of Prof. Dr. Martin Schimke, Attorney-at-Law in Düsseldorf, Germany, as Sole Arbitrator.

32. On 31 January 2020, the Appellant filed its observations on the Respondent's Request for Provisional Measures.
33. On 3 February 2020, the Respondent filed an unsolicited reply to the Appellant's observations on its Request for Provisional Measures, mainly as it relates to its application to terminate the present proceedings on the basis of an alleged lack of CAS jurisdiction.
34. On 4 February 2020, the CAS Court Office acknowledged receipt of the Respondent's letter of 3 February 2020 and requested the Parties to refrain from submitting any unsolicited comments.
35. On 5 February 2020, the CAS Court Office confirmed the appointment of Ms. Marianne Saroli, Attorney-at-Law in Montreal, Canada as *ad hoc* clerk.
36. On 18 February 2020, on behalf of the Sole Arbitrator, the CAS Court Office advised the Parties of the following:

The Respondent's request for provisional measures is dismissed due to a lack of legal basis. The Order on Request for a stay issued by the President of the CAS Appeals Arbitration Division is binding. The Code does not contain any appeal provision against such Orders. The Sole Arbitrator will however review the issue of the CAS jurisdiction in the award on the merits.

The Parties are invited to inform the CAS, by 21 February 2020, whether they would like the present proceedings to be bifurcated and the Sole Arbitrator to issue a preliminary Award on jurisdiction, without a hearing. Pursuant to Article R55(5) of the Code, it shall be for the Sole Arbitrator to decide whether to rule on CAS jurisdiction either in a preliminary decision or in an award on the merits.

For the avoidance of doubt, the deadline to file the Answer is not suspended and is expected to be filed on 24 February 2020 at the latest.

The Sole Arbitrator is aware on the urgency of the case and will issue further instructions upon receipt of the Parties' comments on the issue of bifurcation.

37. On 21 February, the CAS Court Office, on behalf of the Sole Arbitrator, who had considered the Parties' submissions on jurisdiction and bifurcation, advised the Parties that the CAS had jurisdiction to decide this appeal in accordance with Article R55 of the Code. The Parties were informed that the reasoning for the Sole Arbitrator's decision on jurisdiction would be set out in the final award (see *infra*). Accordingly, the Respondent's request that the time limit for the filing of the Answer be stayed until a preliminary Award on jurisdiction was moot and the Respondent was invited to file its Answer on 24 February 2020 at the latest.
38. On 24 February 2020, the Respondent filed its Answer in accordance with Article R55 of the Code.

39. On 27 February 2020, the Appellant *inter alia* withdrew its prayers for relief no. 2 from in its Appeal Brief, i.e. “2. Declare the result of games Neftekhimik Tobolsk - BC Arsenal scheduled for 14 and 15 December 2019 invalid and order the RBF to organize a replay of these games”.
40. On 3 March 2020, the CAS Court Office informed the Parties that the Sole Arbitrator, after consulting the Parties, had decided to hold a hearing in this matter pursuant to Article R57 of the Code.
41. On 6 March 2020, the Respondent signed and returned the Order of Procedure. However, the Respondent amended the Order of Procedure to specify that the CAS jurisdiction was disputed between the Parties.
42. On 9 March 2020, the CAS Court Office notified the Parties of the reasoned Order on Request for a Stay.
43. On 11 March 2020, the Appellant signed and returned the Order of Procedure, but amended it to indicate that the issue of the CAS jurisdiction had already been decided on 21 February 2020 by the Sole Arbitrator. The Appellant also replied to the Respondent’s letter of 10 March 2020, principally objecting to the unsolicited procedural order of conducting the hearing it proposed and alleging it was an attempt “to mislead the Sole Arbitrator regarding the scope of the appeal”. It also claimed that the Respondent’s letter of 10 March 2020 contained new arguments, which should not be authorized as it did not cite any exceptional circumstances to justify the filling of additional submissions pursuant to Article R56 of the Code.
44. On 12 March 2020, the CAS Court Office acknowledged receipt of the Parties’ respective letters of 10 and 11 March 2020. In this respect, the CAS Court Office indicated that the various procedural issues raised by the Parties would be discussed at the hearing.
45. Later on that same day, the CAS Court Office received another letter from the Appellant, which contained additional comments and enclosures. In response, the CAS Court Office informed the Parties that the admissibility of the Appellant’s letter and enclosures would be discussed at the outset of the hearing.
46. On 16 March 2020, a hearing was held by videoconference. The Sole Arbitrator was assisted throughout the procedure by Ms. Delphine Deschenaux-Rochat, Counsel to the CAS, and Ms. Marianne Saroli, *ad hoc* clerk. At the hearing, the Sole Arbitrator was joined by the following:

For the Appellant: Mr. Mikhail Prokopets, counsel
 Mr. Georgi Gradev, counsel
 Ms. Maria Tokmakova, counsel

For the Respondent: Mr. Yvan Henzer, counsel
 Ms. Alexandra Veuthey, counsel
 Mr. Alexander Vlasov, RBF in-house counsel

Ms. Svetlana Kuznetsova, RBF in-house counsel
Ms. Natalia Galkina, RBF Secretary General

47. At the outset of the hearing, the Parties confirmed that they had no objection to the appointment of the Sole Arbitrator. Next, the Sole Arbitrator dealt with the admissibility of all documents filed by the Appellant on 12 March 2020. After having allowed both Parties to comment, the Sole Arbitrator decided to admit the documents to the file since the Respondent did not object to them being part of the file and because they were of legislative nature, which could be of substance to the procedure. The Sole Arbitrator also dealt with an issue regarding the respective translation of the Minutes provided by the Parties, notably A-3 and R-8. The Respondent endorsed the translated Minutes submitted by the Appellant (A-3) and conceded that its translated Minutes (R-8) were not perfectly accurate. Hence, the Sole Arbitrator accepted to rely on A-3 instead of R-8 for any references made to the Minutes throughout the proceedings. Then, the Sole Arbitrator dealt with the admissibility of exhibits R17 and R20, which were challenged by the Appellant on the basis that they constituted statements from Mr. Kosta Iliev who was not summoned by the Respondent for cross-examination at the hearing. In this respect, the Sole Arbitrator notes that the Respondent did not summon Mr. Kosta Iliev as a witness, either in its Answer, or in later correspondences. Since the witness statements were filed with the request for provisional measures, respectively the answer, the Sole Arbitrator is of the opinion that the Appellant could have requested the presence of Mr. Kosta Iliev at the hearing for cross-examination instead of merely objecting to his testimony. Yet, the Sole Arbitrator finds inadmissible exhibits R17 and R20 as they are not decisive in the reasoning. Finally, the Sole Arbitrator dealt with the objection raised by the Appellant against the alleged new evidence submitted by the Respondent on 10 and 11 March 2020. The Respondent explained at the hearing having proposed to the Sole Arbitrator a procedural order of conducting the hearing, but did not intend to submit new submissions. The Sole Arbitrator thus disregarded the Respondent's comments as they were indeed technicalities prior to the hearing, not new submissions.
48. At the conclusion of the hearing, the Parties confirmed that their right to be heard was fully respected.
49. By letter dated 30 March 2020, the Sole Arbitrator wrote the following to the Parties:
“[...] In addition, the Sole Arbitrator – before making his final decision – would like to address an issue which has not been raised in either of the Parties’ submissions, nor during the hearing. It concerns the issue of “relegation” notably the part of the Appealed Decision which says that the Appellant shall be “the last in the 2019/2020 Russian Men’s Super League Second Division Clubs/Teams Championship final ranking”. The Sole Arbitrator wants to be completely clear on this point and asks: Does this mean that the Appellant will be automatically and definitely relegated? [...]”
50. In their corresponding response letters (each dated 31 March 2020), both Parties confirmed that the Superleague-2, in which the Appellant competes, is the lowest division of the Russian Basketball Championship and that the Appellant can in fact not be relegated.

51. On 8 April 2020, the CAS Court Office provided the Parties with a copy of the Operative Part of an Arbitral Award issued by CAS.

IV. SUBMISSIONS OF THE PARTIES

52. This section of the award does not contain an exhaustive list of the Parties' contentions, its aim being to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this award, the Sole Arbitrator has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the award or in the discussion of the claims below.

A. The Position of the Appellant

53. In its Statement of Appeal, the Appellant requested the following relief:

1. *Set aside the decision issued on 9 December 2019 by the RBF Executive Committee.*
2. *Order RBF to bear the costs incurred with the present procedure.*
3. *Order RBF to pay BC Arsenal a contribution towards its legal and other costs for its counsels, in the amount to be determined at the discretion of the Panel.*

54. In its Appeal Brief, the Appellant amended its request for relief as follows:

1. *Set aside the decision issued on 9 December 2019 by the RBF Executive Committee.*
2. *Declare the result of games Neftekhimik Tobolsk - BC Arsenal scheduled for 14 and 15 December 2019 invalid and order the RBF to organize a replay of these games.*
3. *Order RBF to bear the costs incurred with the present procedure.*
4. *Order RBF to pay BC Arsenal a contribution towards its legal and other costs for its counsels, in the amount to be determined at the discretion of the Panel.*

55. The submissions of the Appellant, as contained in its written submissions and oral pleadings, may be summarized, in essence, as follows:

a) Preliminary issues

i. Jurisdiction of the CAS

- The Respondent wrongly challenges the jurisdiction of CAS based on Articles 94.1 and 94.6 of the Championship Regulations. It argues that all disputes arising from the Championship Regulations shall be referred to NCSA while CAS is the final instance body, i.e. the appeal body against decisions rendered by the NCSA:

94.1. Any dispute, disagreement or claim in connection with conduct and/or participation in the Competitions governed by these Regulations or otherwise arising from these Regulations shall be settled by arbitration administered by the “National Center for Sports Arbitration” (NCSA) of the Autonomous Non-Profit Organization Sports Arbitration Chamber (ANO “SAP”) in accordance with the provisions of the rules of sports arbitration.

94.6. All disputes, disagreements or claims arising out of or in connection with these Regulations, including those related to its performance, violation, termination or invalidity, shall be referred to the National Center for Sports Arbitration at ANO Sports Arbitration Chamber in accordance with its rules.

- Contrary to the Respondent’s assertion, Articles 94.1 and 94.6 only establish the body for consideration of disputes arising from the Championship Regulations in the first instance while the arbitration clauses for appeal procedure are set out in Articles 94.2 and 94.7 of the Championship Regulations. For instance, Article 94.2 of the Championship Regulations establishes appeals procedures for the decisions of the Directorate:

94.2 Decision of the Directorate may not be changed, cancelled or contested other than by an appeal by the person against whom it was made. Appeals against the decision of the Directorate may be submitted only to the National Center for Sports Arbitration of the Autonomous Non-Commercial Organization “Sports Arbitration Chamber” in accordance with its Rules.

- To some extent, the Appellant agrees that the NCSA is the appeal body for some disputes arising from the Championship Regulations, in particular for decisions of the Directorate. This is why the Appellant and its players filed a joint appeal against the Directorate Decision to the NCSA. However, Articles 94.1 and 94.6 do not clearly stipulate that all disputes and appeals should be submitted to the NCSA.
- With respect to the decisions issued by other RBF bodies, the Championship Regulations do not establish mandatory jurisdiction of the NCSA. It is the case for Article 94.7, which provides that “*the final instance for considering disagreements (disputes) should be either the “National Center for Sports Arbitration” of the Autonomous Non-Commercial Organization “Sports Arbitration Chamber”, or Court of Arbitration for Sport (CAS) in Lausanne*”. The Appellant highlights that the word “*or*” clearly stipulates an equal possibility for the Appellant to lodge the appeal against decisions of the bodies other than those of the Directorate, like a decision of the Executive Committee to either NCSA or alternatively to CAS.
- In any event, the CAS already acknowledged *prima facie* its competence to decide on the merits of this case when it decided to grant the Appellant’s Request for a Stay of the Appealed Decision. Moreover, the Respondent itself confirmed that it considers the CAS as a competent body by execution of the CAS Order on Request for Stay. Also, the Respondent sent on 30 December 2019 an official letter No 1303 to all clubs, confirming the Appellant’s right to continue to participate in the Championship:

Please be informed that in connection with an order of the Sports Arbitration Court in Lausanne on stay of execution of the decision rendered by the RBF Executive Committee on 09 December 2019 in terms of exclusion of BC Arsenal from participation in games of the Men's Russian Basketball Championship Superleague Second division (hereinafter - Championship) the team Arsenal (Tula) temporarily continues to participate in the Championship 2019/20.

- Therefore, the Respondent implicitly recognized the CAS competence to decide this dispute.

ii. Admissibility of the appeal

- The Respondent challenges the admissibility of the appeal on the basis that the Appellant failed to designate the proper club (i.e. Tula Regional Basketball Federation) as the appealing party when it named BC Arsenal to be the appellant.
- In response, the Appellant stresses that the Appealed Decision explicitly excluded BC Arsenal and therefore, BC Arsenal is the correct designated appealing party.
- In sum, the Respondent's argument could be viewed as excessive formalism (CAS 2014/A/3703).

iii. Violation of the Appellant's right to be heard

- The investigation and decision-making process was done in one day. The speed and secrecy with which the Appealed Decision was issued clearly indicate that the RBF had political motives rather than legal or sporting ones.
- Apart from the lack of the grounds of the Appealed Decision, the Appellant was not given any opportunity to defend itself and was not even notified about an ongoing investigation, which contradicts one of the fundamental legal principles, the right to be heard, that was grossly violated by the RBF Executive Committee.
- The RBF did not notify the Appellant of the proceedings before the RBF Executive Committee as it was never given the chance to react in any way to an alleged violation, let alone present a reasoned defense against an explicit charge identifying an alleged disciplinary violation under investigation by the deciding body. As a result, the RBF violated the Appellant's right to be heard.
- The Appellant understands that procedural flaws in the first instance may be cured by the CAS in accordance with the *de novo* principle and therefore, does not solely rely on this argument as the ground for annulment of the Appealed Decision. Instead, the purpose of such argument is to give the Sole Arbitrator a clear picture of the case.

b) *The Appeal Decision is unsubstantiated*

- By letter dated 10 December 2019, the RBF Executive Committee notified the Appellant of the Appealed Decision.
- On 12 December 2019, the Appellant requested the Respondent to provide the reasoned Appealed Decision dated 9 December 2019. On 16 December 2019, the Respondent informed the Appellant that it would be notified of the Minutes of the oral proceedings within a 10-day deadline.
- The reasoning of the Appealed Decision provided in the Minutes were notified for the first time to the Appellant only when the Respondent filed its Observations on Provisional Measures on 19 December 2019. The Appealed Decision is short and ungrounded.
- None of the facts on which the RBF Executive Committee relied upon to reach the Appealed Decision were true and proved for the following reasons:

i. The RBF incorrectly considered the Appellant's violation as a repeated offence

- On 9 December 2019, a press release summarising the sanctions imposed on the Appellant and BC Dynamo Stavropol was published on the Respondent's website. The press release indicated that the sanctions were imposed on the Appellant "*taking into account warning for violation of competitive spirit and fair play in the sporting season of 2017/18*".
- The Appellant admits having received a warning on 4 April 2018 for a game having been "*conducted in the spirit which was controversial to the sports spirit and fair play*". However, this warning was received two seasons ago when the current Championship Regulations were not even adopted.
- Therefore, such violation could not and should not have been considered in the sporting season 2019/2020. The RBF Executive Committee incorrectly considered the violation under consideration as a repeated offence.
- Indeed, Article 85.10 of the Championship Regulations states that "*violations personally committed by the participant in the Competitions from the start of sports season will be taken into account in order to determine the repeated nature of violations*". Hence, a misconduct could be considered as repeated only if it was committed for the second time during the same sporting season, *quad non*.

ii. The RBF Executive Committee failed to meet the requirements of Article 8.1 of the Championship Regulations

- The Appellant was excluded from the Championship based on Article 8.1 of the Championship Regulations, which requires the RBF to prove the violation "*caused financial damage to RBF and/or adversely affected the Competitions*".

- The Respondent did not prove that the Appellant “*caused financial damage to the RBF and/or adversely affected the competitions*”, which is a prerequisite to pronounce an exclusion from the Championship.
- In this context, the Appellant claims that the RBF had to demonstrate – but failed to do so – the damages sustained by the Competitions, the behavior which allegedly caused the damages and the connection between the alleged acts and the damages.
- The obligation to prove the circumstances in disciplinary matter by the regulatory body was confirmed by the CAS jurisprudence in CAS 2009/A/1920.
- Yet, the RBF Executive Committee did not meet its burden of proof as the Appealed Decision was issued very fast and without grounds. Hence, the Respondent did not produce any evidence that would prove that there was any substantial financial damage to the RBF or that the Championship was adversely affected and that such damage was caused by the Appellant.

iii. *The charges are based on assumptions and this case is not about match-fixing*

- According to the Minutes, the Appellant was excluded for match-fixing. However, the Respondent failed to provide any evidence of an attempt of players to illegally influence the results of the Game, or of the Club itself being involved in such illegal act or at least its awareness of the plans of the players.
- It appears from the Minutes that the RBF Executive Committee members found that “*strange behavior of the teams in the 4th quarter could be defined by sports betting and the teams’ necessity to achieve a definite result*”. The Appellant contends that this phrase was initially mistranslated by the Respondent which later changed the word “*could be defined*” for “*was obviously*”. The Appellant alleges that the Respondent – by changing words – tried to conceal that the Appealed Decision was decided on the basis on assumptions rather than on accurate facts.
- In addition, the RBF Executive Committee is aware that its decision is based on assumptions and not supported by any concrete evidence. This is demonstrated by the following excerpt from the Appealed Decision: “*the decision taken in relation to the players and the coach may be reviewed by the Executive Committee out-of-court if the players and the coach voluntarily undergo an examination involving polygraph equipment at a specialized organization selected by the RBF*”. This excerpt illustrates that the RBF Executive Committee gave an opportunity for the players and the coach to exempt themselves from unjustified sanctions, but not for the Club.
- The Respondent cannot exclude a club from a competition based on pure assumptions (CAS 2017/A/5272).
- On a different note, if the Sole Arbitrator were to accept that the present case was about match-fixing, the Appellant argues that the RBF Executive Committee would still not be competent to impose a sanction. Pursuant to Article 86 of the Championship Regulations as

well as Article 5.1.4 of the RBF Regulation on Measures on Prevention of Unlawful Influence on Match Results, the investigation and sanctioning of match-fixing falls under the competence of the RBF Committee on Prevention of Unlawful Influence on Match Results, not the RBF Executive Committee. Therefore, the Respondent's allegations of match-fixing, which are not reflected in the Appealed Decision, are not addressed to the appropriate forum.

c) *The Appeal Decision is biased and unjust*

- The Appellant argues that the reasoning contained in the Minutes is unjust since the RBF found BC Arsenal and BC Dynamo guilty of the same offence but imposed different sanctions. The Appellant unfairly received a harsher sanction (i.e. an exclusion to participate in the Championship) than BC Dynamo (i.e. a warning). The RBF failed to explain the reasoning behind this disparity of treatment. In this respect, the Appellant asserts that sports federations should always follow the principle of equal treatment when acting within its discretionary power to sanction its members. All members of a sports federation shall be treated equally and when deciding on a sanction between two equally liable teams, the sanction should also be the same for both.
- According to the Minutes, BC Dynamo was not excluded because it “*had not committed such actions before*” and its exclusion “*would [be a] big problem for the region*”. The Appellant believes the RBF Executive Committee was guided by other considerations not related to the Championship Regulations as there were no real, legally justified reason to treat the Appellant and BC Dynamo differently.
- At the hearing, the Appellant asserted that the principle of *res judicata* had been violated because he could not be sanctioned twice for the same infraction as the object was the same.

d) *This case is about the limits of the RBF Executive Committee's exercise of powers to exclude the Appellant's team from the Championship*

- There is no need to analyze the circumstances of the Game as the Appealed Decision shall be annulled because it lacks legal basis.
- Indeed, the Appealed Decision is not about match-fixing, but rather about the limits of the Executive Committee's exercise of powers to exclude the Appellant's team from the Championship based on Article 8.1 in connection with Article 7.2 of the Championship Regulations.

i. *The Appealed Decision was issued by an incompetent body*

- The RBF Executive Committee did not have competence to exclude the Appellant from the Championship.

- It is incorrect for the RBF Executive Committee to claim - according to the Minutes - that its authority to exclude the Appellant from the Championship stems from Article 6.1.1. of the Championship Regulations, which provides as follows:

6.1. The Directorate may resolve to impose sanctions in the following cases:

6.1.1. In case of emergence of situations related to matches of the Competitions, which are not stipulated by provisions of these Regulations. The resolution will come into effect upon its approval by RBF President (RBF Executive Director General Secretary) and, in exceptional cases, by RBF Executive Committee.

- Article 6.1.1 does not authorize the RBF Executive Committee to decide on sanction implementation as it only allows it to approve decisions of the RBF Directorate. However, it appears from both the Appealed Decision and the Minutes that the RBF Executive Committee did not approve the Directorate Decision to exclude the Appellant from the Championship, but rather issued its own decision on this matter. By doing so, the RBF Executive Committee acted beyond its authority.
- Moreover, Article 6.1.1 is only designed for circumstances that are not stipulated by the Championship Regulations. Indeed, Article 6.1.1 specifies that the RBF Directorate is entitled to impose sanctions only “*in case of emergence of situations related to matches of the Competitions, which are not stipulated by provisions of these Regulations*”. According to the RBF, the present situation relates to an alleged lack of the competitive spirit at the end of the Game, expressed in passive defense and attack. More precisely, the RBF Directorate legally assessed the Appellant’s actions when it decided that its players’ behavior constituted a refusal to continue to play. In this context, the Appellant argues this alleged situation is stipulated at Article 92, which reads as follows:

92.1. If a team refuses to play/continue to play, takes actions that prevent the game from being played, after the referee has decided that the game should start/continue the following sanctions shall apply:

92.1.1. In the case of the first violation committed in a tournament, the game shall be awarded to the opponents and the score shall be twenty to zero (20:0). The team shall lose the game by forfeit, receive zero (0) classification points and pay the following fine:

- *for women’s teams of the First Division and men’s teams of the Second Division of the Super League*
- *RUB 75,000.*

- Additionally, the Appellant highlights that the RBF Directorate referred to the available sanctions set out in Article 92 when it decided on 9 December 2019 to “*annul the result of the Russian Men’s Superleague Second Division Basketball Championship game between Arsenal (Tula) and Dynamo (Stavropol) held on December 7, 2019 in Tula, and both teams shall lose by FORFEIT*”.
- While the Appellant disagrees that its team refused to play, the RBF cannot claim that the alleged situation is not stipulated in the Championship Regulations especially after having

decided that it fell under Article 92. And even if the RBF would successfully define the players' conduct as match-fixing, Article 6.1.1 would still not apply to a situation that is stipulated in the RBF Regulation on Measures on Prevention of Unlawful Influence on Match Results.

- On a different note, the Appellant asserts that the lack of competence of the RBF Executive Committee also derives from the RBF Statutes. Indeed, the RBF Statutes do not confer exclusion powers to the RBF Executive Committee and the scope of the RBF Statutes cannot be modified by the Championship Regulations, which are hierarchically inferior regulations. Along those lines, the Appellant refers to the hierarchy of rules and relies upon Article 5.1, 5.2, 5.3, 5.4, 5.13 and 7.22 of the RBF Statutes to illustrate that the Executive Committee can only exclude member federations or associations, but not clubs.
- ii. *The RBF Executive Committee did not have proper legal or regulatory basis to exclude the Appellant from the Championship*
- The RBF Executive Committee excluded the Appellant from the Championship based on Article 8.1 for an alleged violation of Article 7.2 of the Championship Regulations.
 - On one hand, Article 8.1 establishes that a club can be excluded from the Championship during the sports season or its game results can be annulled by decision of the RBF Executive Committee for gross violations of the Championship Regulations. In this regard, Article 8.1 lists some examples of gross violations such as:
 - *for violation / non-compliance club / team requirements passports provided for by these Regulations, including for failure to provide the necessary documents / provision of false information;*
 - *if the club / team has committed violations of the Rules, when such violations entailed financial damage to the RBF and / or adversely affected the conduct of the Competition, in including failure to appear at the game, refusal to participate in the game, being late for the game (see Art. 91 and Art. 92 Regulation).*
 - On the other hand, Article 7.2 provides that a club should be guided by *“the principles of fair business partnership, fairness, respect for rivals, referees, commissioners, referees secretaries, statisticians, spectators and take all necessary measures to exclude violence and illegal actions in sports facilities”*.
 - However, the Appellant argues that the Championship Regulations do not establish an offence or sanction for failure to comply with the principles listed at Article 7.2 while Article 8.1 (or any other provisions of the Championship Regulations) does not explicitly provide for the exclusion of a club which generally violated Article 7.2.
 - In fact, conducts that may constitute a violation of any principle laid out in Article 7.2 are all specifically outlined in Chapter XI part *“C. Disciplinary Offences”* of the Championship Regulations.

- Had the Championship Regulations' drafter wished to allow the exclusion of a club from the Championship for "*lack of competitive spirit*" or failure to comply with Article 7.2, it would have done so explicitly.
- By excluding the Appellant from the Championship, the RBF did not "*adhere to what is in the text of the regulation*" and rather drew "*material consequences from the regulation's silence*" (*Ubi lex voluit, dixit; ubi noluit, tacuit* / CAS 2006/A/1152).
- Besides, according to the "*principle of legality*", sports organizations cannot impose a sanction without a proper legal or regulatory basis and such sanction must also be predictable (CAS 2017/A/5272; 2014/A/3765; CAS 2011/A/2670; CAS 2008/A/1545).
- The "*principle of legality*" was breached by the RBF when it interpreted Article 8.1 as giving it authority to exclude clubs from the Championship for almost any behavior that it did not deem appropriate. Pursuant to the Respondent's interpretation, essentially any conduct could be considered a violation of Article 7.2 which dictates the obligation to observe the principles of fair business partnership, fairness, respect for rivals, referees, commissioners, referees secretaries, statisticians, spectators and take all necessary measures to exclude violence and illegal actions in sports facilities.
- As a result, the RBF adjusted the existing Championship Regulations and incorrectly acted as a legislator. The RBF Executive Committee went beyond its authority and excluded the Appellant from the Championship for an alleged conduct that was not sanctionable under the Championship Regulations.

e) *The sanction imposed on the Club is disproportionate*

- A sanction imposed by a sport federation must comply with the principle of proportionality. In particular, "*the severity of a sanction must be proportionate to the offence committed. To be proportionate, the sanction must not exceed that which is reasonably required in the search of the justifiable aim*" (CAS 2013/A/3297).
- However, the RBF Executive Committee imposed a sanction on the Appellant that did not comply with the principle of proportionality since Article 8.1. allows the ruling body to limit itself to imposing one single sanction.
- The principle of proportionality implies that before imposing the harshest sanction possible, the judicial body must have exhausted all other less onerous sanctions, such as warnings, forfeits, etc. The RBF Executive Committee did not do so as it imposed the harshest sanctions for a first alleged offence.
- The RBF Executive Committee neither provided evidence, nor grounds to justify the implementation of the most serious sanction given for a basketball club, i.e. excluding it from the Championship and annulling all its results.

- Furthermore, the sanction imposed on the Appellant is disproportionate because the RBF unfairly increased it to the harshest penalty as if the alleged violation committed on 7 December 2019 (subsequent to the one committed on 4 April 2018) could be classified as a repeated offence. However, such interpretation is wrong since a subsequent violation can only be considered a repeated offence if it occurred during the same sporting season pursuant to Article 85.10 of the Championship Regulations. Since the two alleged violations did not occur during the same sporting season, the RBF cannot rely on the offence of 4 April 2018 to determine the repeated nature of the one supposedly committed on 7 December 2019.
- Finally, the Appellant argues that the sanction is disproportionate in comparison to BC Dynamo Stavropol, which was also considered liable for suspicious behavior during the Game, but only received a warning. While the Respondent claims that BC Arsenal received a harsher sanction “*taking into account warning for violation of competitive spirit and fair play in the sporting season of 2017 /18*”, the Appellant contends its conduct is not a repeated offense, for the reasons mentioned above. Because the Appellant and BC Dynamo Stavropol were equally responsible, they should have received the same sanction.

B. The Position of the Respondent

56. In its Answer, the Respondent submitted the following prayers for relief:

1. *The appeal filed by BC Arsenal is dismissed.*
11. *The Russian Basketball Federation is granted an award for costs.*

57. The submissions of the Respondent, as contained in its written submissions and oral pleadings, may be summarized, in essence, as follows:

a) Preliminary Issues

i. Jurisdiction of the CAS

- The NCSA – not the CAS – is competent to hear this appeal. Hence, the Appellant wrongly filed its appeal before the CAS.
- With respect to jurisdiction in case of a dispute between RBF and its members, Article 94.1 of the Championship Regulations provides as follows:

94.1. Any dispute, disagreement or claim in connection with and/or participation in the competition regulated by these Regulations or otherwise arising from these Regulations shall be settled by arbitration administered by the “National Center for Sports Arbitration” (NCSA) under the Autonomous Non-Profit Organization Sports Arbitration Chamber (ANO “SAP”) in accordance with the provisions of the rules of sports arbitration.

- Article 94.6 further provides that “*All disputes, disagreements or claims arising from or in connection with these Regulations, including those related to its execution, violation, termination or invalidity, shall be resolved by the National Center for Sports Arbitration at ANO Sports Arbitration Chamber in accordance with its rules*”.
- It is clear from the aforesaid provisions that the NCSA is the competent body to hear the appeal against the Executive Committee Decision. In fact, the CAS only has jurisdiction when a decision of the NCSA is challenged. The CAS is a final instance decision-body as it appears from Article 94.7 of the Championship Regulations, which states that “*Disagreements (disputes) should be considered either at the “National Center for Sports Arbitration” at the ANO “Sports Arbitration Chamber”, or Court of Arbitration for Sport (CAS) in Lausanne as the final instance*”.
- While the Appellant claims that Article 94.7 is construed as a rule allowing the RBF and its members to choose between the NCSA or the CAS to solve their disputes, the specific Agreement No. MSL2–6/19 dated of 4 September 2019 between the Parties (the “Agreement”) makes it clear that only NCSA has jurisdiction for disputes between the Parties. Indeed, Article 7 indicates that:

7.1. Any dispute, disagreement or claim arising from this Agreement and arising in connection with it, including related to its entry into force, conclusion, violation, execution, amendment, termination or invalidity, as well as any dispute, disagreement or claim in connection with the competition, are resolved by arbitration, administered by the “National Center for Sports Arbitration” (NCSA) under the Autonomous Non-Profit Organization Sports Arbitration Chamber (ANO “SAP”) in accordance with the provisions of the rules of sports arbitration, subject to pre-order dispute resolution (including, by its transmission to the appropriate jurisdictional authorities RBF).

- Moreover, when the Appellant was notified of the Appealed Decision, the Respondent informed it that the NCSA was competent in the event of a dispute.
- In view of the aforesaid, the Appellant did not exhaust the internal remedies available prior to the appeal and the present proceedings should be terminated.
- Moreover, an appeal was filed by the Appellant in the meantime with the competent body, i.e. the NCSA. In fact, the Appellant and other parties affected by the decision taken by the RBF have filed an appeal with the NCSA, on 24 December 2019. It seems that the Appellant challenges the RBF Executive Committee Decision before CAS and the Directorate Decision before the NCSA.

ii. Admissibility of the Appeal

- The Respondent challenges the admissibility of the appeal, because, in its opinion, the Appellant failed to designate the proper club as the appealing party when it named BC Arsenal as the appellant.

- The Respondent highlights, in fact, that BC Arsenal is neither a legal entity or a member association as per Articles 5.2 and 5.3 of the RBF Statutes, which dictate that only a legal entity may become an RBF member federation.
- In fact, the Appellant is a member federation of the RBF through its legal entity Tula Regional Basketball Federation. This is notably illustrated in the Agreement, which clearly designates the Appellant as Tula Regional Basketball Federation, not BC Arsenal. The Respondent also underlines that the Directorate Decision was appealed before the NCSA on 24 December 2019 by a public organization designated as Tula Regional Basketball Federation.
- Therefore, BC Arsenal has no standing to appeal, but Tula Regional Basketball Federation does.

iii. Respect of the right to be heard

- The Appellant put forward that the Appealed Decision violated the principle of due process, more specifically its right to be heard.
- Given the emergency of the situation, the Appealed Decision was notified without a contradictory hearing but further to a meeting of the RBF Executive Committee.
- The Appealed Decision was rendered urgently because it directly affected the other participants of the Championship as well as the financial interest of all the clubs competing. The RBF wanted to avoid a situation where clubs would have to bear expenses to play games against the Appellant, while these games would ultimately be annulled due to the exclusion.
- However, the right to be heard of a party does not require a contradictory hearing. The right to be heard is respected if a party is afforded the opportunity to present observations, which is the case here. Indeed, the Appellant was invited on 8 December 2019 to provide explanations to the Department of Professional Basketball by 9 December 2019. It appears that the Appellant seized such opportunity and filed a written submission to the RBF that was duly considered before the Appealed Decision was issued. Hence, the Appellant had the opportunity to be heard.
- In any event, the Appellant's arguments are irrelevant as the CAS hears the present case *de novo*.

b) The Appealed Decision relies on a proper legal basis

- Contrary to the Appellant's assertion, the RBF Executive Committee was entitled to exclude it from the Championship.

- The RBF Executive Committee's jurisdiction to exclude the Appellant from the Championship derives from Article 8.1 and the legal basis cannot be clearer. Therefore, the Respondent complied with the "*principle of legality*".
- Furthermore, the wording of Article 8.1 is unambiguous since an exclusion can be decided in case of gross violation of the Championship Regulations.
- The sanction imposed by the Respondent is wholly appropriate considering the conduct adopted by the Appellant.
- The competence of the RBF Executive Committee to exclude clubs is logical as it is the same Executive Committee that decides about the participants to the Championship pursuant to Article 7.3 of the Championship Regulations, which stipulates that "*the composition of the participants of the Competition is being approved by the RBF Executive Committee no later than 30 June 2019*".
- Finally, in response to the argument raised at the hearing by the Appellant about a possible violation of the res judicata principle, the Respondent argued that there was no decision from the RBF Directorate against it, rather a recommendation for the RBF Executive Committee's benefit. In addition, the Appellant was never sanctioned before.

c) *The Appellant committed a gross violation and the sanction is proportionate*

- The Appellant incorrectly claims that the sanction imposed is disproportionate.
- The conduct adopted by the Appellant's players was a gross offence to the most basic principles of fair play. In this respect, the video footage as well as the Referees Control Commission report clearly establish that the players of BC Arsenal stopped playing basketball.
- According to the Respondent, FIBA is also extremely worried by the behavior adopted by the Appellant. The Respondent claims the FIBA Secretary General supports the actions it had taken against the Appellant.
- The way the Appellant played the game was also widely echoed in the press and social media, with headlines such as "*The most disgusting basketball of the year: Tula's Arsenal was expelled from the second super league for its love of bets (and contracts?)*".
- The Appellant committed a gross offence to the spirit of sport as it played without any kind of respect for the game, for the opponent, for the spectators and for all the basketball fans. As a result, the Appellant's behavior grossly violated Article 7.2 of the Championship Regulations because it failed to "*observe the principles of fair business and partnership, fairness, respect for rivals, referees, commissioners, referees' secretaries, statisticians, spectators and take all necessary measures to exclude violence and illegal actions in sports facilities*".

- Notwithstanding the aforesaid, the Respondent stresses that the Appellant is also bound by all FIBA regulations pursuant to Article 3.1.1 of the Agreement. More specifically, the Appellant had to “*observe the Official Basketball Rules of FIBA, the Regulations and other normative acts of FIBA and RBF, the Status of the player and decisions of the RBF bodies adopted by them on the organization and conduct of the Competition*”.
- In this context, the Respondent argues that the Appellant’s conduct not only violated Article 7.2 of the Championship Regulations, but also the Official Basketball Rules, FIBA Code of Ethics and the World Anti-doping Code (to name a few).
- Notably, the Appellant breached Article 1 of the Official Basketball Rules according to which “*basketball is played by 2 teams of 5 players each. The aim of each team is to score in the opponents’ basket and to prevent the other team from scoring*”. This provision was infringed since the Appellant did not aim to score and to defend at the end of the Game.
- Likewise, the Appellant did not comply with the FIBA Code of Ethics, in particular Article 28g, which prohibits “*engaging in other unethical conduct of any kind which has the potential to affect the outcome of game/s*”. In this respect, it is worth mentioning that the Respondent can impose sanctions on its affiliated clubs for violations of the FIBA Code of Ethics, in accordance with its Article 55.
- In addition, the Respondent underlines that the Appellant’s conduct generally violated the values outlined in the preamble of the World Anti-doping Code, which provides as follows:

The spirit of sport is the celebration of the human spirit, body and mind, and is reflected in values we find in and through sport, including:

- *Ethics, fair play and honesty*
- *Health*
- *Excellence in performance*
- *Character and education*
- *Fun and joy*
- *Teamwork*
- *Dedication and commitment*
- *Respect for rules and laws*
- *Respect for self and other Participants*
- *Courage*
- *Community and solidarity*

- Consequently, the Appellant’s conduct fully justifies its exclusion.
- Pursuant to the CAS jurisprudence, the measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules can be reviewed only when the sanction is evidently and grossly disproportionate to the offence (CAS 2009/A/1870). In

the case at hand, the appeal shall be dismissed on the merits since the sanction, i.e. the exclusion from the championship, is not “*evidently and grossly disproportionate to the offence*”.

- The Respondent finally argues that the Appellant has already been sanctioned on 4 April 2018 further to a conduct that was controversial to the sports spirit and fair play.

V. JURISDICTION

58. The key provision dealing with CAS jurisdiction is Article R47 of the Code, which provides as follows:

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

59. In the absence of a specific arbitration agreement, in order for the CAS to have jurisdiction to hear an appeal, the statutes or regulations of the sports-related body from whose decision the appeal is being made must expressly recognise the CAS as an arbitral body of appeal.

60. In the present case, the jurisdiction of the CAS was contested by the Respondent.

61. On one hand, the Appellant stressed that CAS jurisdiction had already been established when the Division President granted its Request for Stay of the Appealed Decision.

62. The Appellant also relied on Article 94.7 of the Championship Regulations, which provides:

Disagreements (disputes) should be considered either in the National Center for Sports Arbitration of the Autonomous Non-Commercial Organization “Sports Arbitration Chamber”, or Court of Arbitration for Sport (CAS) in Lausanne as the final instance.

63. The Appellant further submitted that the Championship Regulations “*do not provide for internal appeal against decisions of the RBF Executive Committee*”.

64. On the other hand, the Respondent contended that Article 94.7 of the Championship Regulations “*does not provide for CAS jurisdiction in first instance, but only in second instance, as an appeal body against decisions issued by the [NCSA]*”.

65. It further referred on Articles 94.1 and 94.6 of the Championship Regulations:

94.1. Any dispute, disagreement or claim in connection with and/or participation in the competition regulated by these Regulations or otherwise arising from these Regulations shall be settled by arbitration administered by the [NCSA] under the Autonomous Non-Profit Organization

Sports Arbitration Chamber (ANO "SAP") in accordance with the provisions of the rules of sports arbitration.

[...]

94.6. *All disputes, disagreements or claims arising from or in connection with these Regulations, including those related to its execution, violation, termination or invalidity, shall be resolved by the [NCSA] in accordance with its rules.*

66. Also, the Respondent highlighted Article 7 of the Agreement according to which only the NCSA had jurisdiction for disputes occurring between the Parties:

Any dispute, disagreement or claim arising from this Agreement and arising in connection with it, including related to its entry into force, conclusion, violation, execution, amendment, termination or invalidity, as well as any dispute, disagreement or claim in connection with the competition, are resolved by arbitration, administered by the [NCSA] in accordance with the provisions of the rules of sports arbitration, subject to pre-order dispute resolution (including, by its transmission to the appropriate jurisdictional authorities RBF).

67. On 21 February 2020, the Sole Arbitrator confirmed that CAS had jurisdiction over this procedure. The basis of decision is as follows:
68. Preliminary, the Sole Arbitrator emphasizes that in her reasoned Order on Provisional Measures of 9 March 2020, the President of the CAS Appeals Arbitration Division only assessed the jurisdictional competence of the CAS *prima facie*. Indeed, she expressly reserved the final decision on jurisdiction to the Sole Arbitrator to decide on the present arbitration proceedings.
69. Only for sake of clarification, the Sole Arbitrator acknowledges that the operative part of that order did not specifically indicate that CAS only had jurisdiction on a *prima facie* basis. The Sole Arbitrator finds, however, that the Division President certainly could not grant the Appellant's Request for a Stay without admitting, at least implicitly, on the basis of a *prima facie* examination, that CAS had jurisdiction to do so. In this respect, the Sole Arbitrator clarifies that a *prima facie* ruling on CAS jurisdiction by the Division President is always subject to review by the arbitral tribunal, once confirmed. Of course, on the contrary, a ruling by the Division President that CAS manifestly has no jurisdiction is not subject to review because (i) a procedure at this point is terminated based on such a finding and (ii) an arbitral tribunal, once confirmed, is not an appeal instance for the Division President's decision (see CAS 2018/A/5868, CAS Bulletin 2019/2 p.112)
70. Bearing in mind the low threshold for a *prima facie* jurisdiction finding, the Sole Arbitrator cannot draw conclusory effects to such a determination made by the Division President. He must still analyze the evidence adduced to establish on the merits whether the CAS had jurisdiction over the matter.

71. In doing so, the Sole Arbitrator finds that the wording of Article 94.7 of the Championship Regulations (“*either [...] or*”) allows the possibility to choose between two options, namely the NCSA or the CAS. In essence, this grants the Parties the right to choose which of these two arbitral tribunals they wish to seek recourse from. Such approach is procedurally admissible as the expression “*either [...] or*” implies that both options are equivalent.
72. Contrary to the Respondent’s interpretation, the reference in Article 94.7 of the Championship Regulations to the CAS “*as the final instance*” does not necessarily mean that the CAS only has jurisdiction in the second instance. Indeed, this could also be understood as the Parties’ intent to exclude any appeal against the CAS award. Hence, the Sole Arbitrator is not convinced by the Respondent’s argument that, pursuant to Article 94.7, CAS is competent merely as the last resort after the club’s internal recourse mechanisms, including the NCSA, have been exhausted.
73. Moreover, the Sole Arbitrator notes that Article 94.1, Article 94.6 and Article 94.7 of the Championships Regulations all anticipate the same type of disputes. Indeed, Article 94.1 concerns “[*a*]ny dispute, disagreement or claim in connection with and/or participation in the competition regulated by these Regulations or otherwise arising from these Regulations”; Article 94.6 is directed at “[*a*]ll disputes, disagreements or claims arising from or in connection with these Regulations, including those related to its execution, violation, termination or invalidity”; and Article 94.7 refers to “[*d*]isagreements (disputes)”. All three provisions (i.e. Articles 94.1, 94.6, and 94.7) speak of “*disagreements (disputes) or claims*” and “*the dispute between the Parties will be subject to the expedited arbitration procedure stipulated by the Rules of Sport Arbitration*” without any mention of a proscribed sequence of appeals from NCSA to CAS. The Sole Arbitrator also notes that “*Arbitration procedure*” includes Article 94.7, which allows for appeals in both directions.
74. In addition, the Sole Arbitrator notes that the arbitration clause to the NCSA contained at Article 7.1 of the Agreement does not establish that only the NCSA has jurisdiction for disputes between the Parties. The Sole Arbitrator further observes that Article 7.3 of the Agreement indicates that the Parties subject themselves to, inter alia, the rules of the RBF. Moreover, the Sole Arbitrator - after reading the Agreement - notes that its subject matter relates chiefly to licensing and earmarked contributions. While the provision about the settlement of disputes states that “*any dispute, disagreement or claim arising from this Agreement and arising in connection with it ... are resolved by arbitration, administered by the [NCSA]*”, the present dispute doesn’t, at first glance, arise from this Agreement.
75. As to the banned players’ parallel arbitration proceedings before the NCSA, the Sole Arbitrator finds it does not hinder the CAS proceedings for the Appellant.
76. Finally, well-established CAS jurisprudence supports the Sole Arbitrator’s finding, determining that any ambiguities are to be interpreted to the disadvantage of the party best in position, i.e. the RBF (CAS 2011/A/2670). This stems from the principle of *contra proferentem* providing that ambiguous terms within a contract should be construed against the party that drafted it.
77. In view of the foregoing, the CAS has jurisdiction to hear the present appeal.

VI. ADMISSIBILITY

78. 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 of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.

79. The Appealed Decision was taken on 9 December 2019. The Appellant filed its Statement of Appeal on 13 December 2019. There is no evidence of a time limit stipulated in the Championships Regulations that may derogate from Article R49 of the Code.

80. However, one issue was raised as regards to the admissibility of the appeal. It concerns the objection raised by the Respondent relating to the Appellant's standing to appeal.

81. According to Respondent, BC Arsenal is not a legal entity or a member federation of the RBF and therefore, the Appellant did not designate the proper appealing party. Rather, the Respondent argues that the Appellant is a member federation of the RBF through its legal entity Tula Regional Basketball Federation. Consequently, BC Arsenal has no standing to appeal as it was not and cannot be a party to the proceedings before the CAS.

82. Pursuant to CAS jurisprudence, a party has standing to appeal if it can show sufficient legal interest in the matter being appealed (CAS 2008/A/1674; CAS 2014/A/3744 & 3766) and if it is aggrieved, i.e. that it has something at stake (CAS 2009/A/1880-1881).

83. The term "standing to appeal" describes the entitlement of an appealing party to be affected by the decision it appeals (CAS 2015/A/3959).

84. The Respondent's contention that the different names used by the Appellant in the CAS proceedings (BC Arsenal) and in the later proceedings at the NCSA (Tula Regional Basketball Federation) could affect the procedural admissibility of the CAS appeal fails for the simple reason that the exclusion from the league contested in the CAS proceedings had been undisputedly decided against BC Arsenal. Had the name used been wrong, any reliance on it by the RBF would have been an abuse of the law at the very least.

85. The standing of a party, in principle, follows from its procedural status before the previous instance. If, therefore, there was no issue related to the standing to appeal before the first instance, there cannot be a lack of standing to appeal before the CAS, since the mandate of the latter is exactly the same as the RBF judicial bodies.

86. In any event, it is all about the Appellant's correct name. In this respect, the Sole Arbitrator notes that the Respondent itself confirmed at the hearing that BC Arsenal was just a "sporting name". By using the name BC Arsenal, the Appealed Decision also clarified that there is only one legal entity, but perhaps with different names. BC Arsenal is the one which participates in

the RBF and the one that was explicitly excluded by the Executive Committee Decision. In such context, BC Arsenal is undoubtedly aggrieved and has sufficient legal interest for the matter being reviewed by CAS. Also, the Sole Arbitrator underscores that a problem of standing to appeal generally arises if there are two legal entities, which is not the case here.

87. As contended by the Appellant, the Respondent's argument could be viewed as excessive formalism (CAS 2014/A/3703). With regard to excessive formalism, the Sole Arbitrator notes that the Swiss Federal Tribunal made the following comments: "*excessive formalism takes place when strictly applying the rules is justified by no interest worthy of protection, becomes an end in itself and complicates in an untenable way the application of material law*" (4A_600/2008).
88. In light of the foregoing, the Sole Arbitrator concludes that, notwithstanding the indication of a different name, the Appellant intended by implication to name Tula as the appealing party to the appeal it brought against the Executive Committee Decision. The Sole Arbitrator arrives at this conclusion by the elements of the file, which point to the identification of BC Arsenal as the subject entitled to appeal against the Executive Committee Decision which expressly excluded BC Arsenal (not Tula), as well as by the position adopted by the Respondent, which was able to answer in the merits such appeal.
89. The Sole Arbitrator, therefore, finds that BC Arsenal has standing to appeal in the present arbitration and it therefore follows that this appeal is admissible.

VII. APPLICABLE LAW

90. Article R58 of the Code provides as follows:

The Panel shall decide the dispute according to the applicable regulations and 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 application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

91. The Sole Arbitrator notes that the Appealed Decision was rendered by the RBF in accordance with the regulations of the RBF and in particular of the Championship Regulations.
92. The Sole Arbitrator also notes that Russian law is the law of the country where the RBF is domiciled.
93. Both Parties agree to the application of the RBF regulations and subsidiarily to Russian law.
94. The Sole Arbitrator, therefore, finds that the relevant RBF rules and regulations, as in force at the relevant time of the dispute, shall be applied primarily, and Russian law shall be applied subsidiarily.

VIII. MERITS

A. *De Novo* Review

95. The Appellant stresses that the RBF committed various procedural violations in the prior proceedings which detrimentally impacted its due process rights.
96. Under Article R57 of the Code, the Sole Arbitrator considers both fact and law *de novo* on appeal. Accordingly, any procedural defects which (may or may not have) occurred in the internal proceedings are cured by the present arbitration proceedings before the CAS (*see* CAS 96/156 and CAS 2001/A/345).
97. Since the Sole Arbitrator is conducting a *de novo* hearing pursuant to Article R57 of the Code, he will decide the appeal on the evidence before him, whether or not the same evidence was available to the RBF Executive Committee, subject only to the rejection of any fresh evidence under the discretion vested in it under paragraph 3 of the same Article.
98. For this reason, the Appellant's argument concerning any perceived violation of its procedural rights during the first instance proceedings is dismissed as moot.

B. Was the RBF Executive Committee competent to issue the Appealed Decision?

As it concerns the merits of this dispute, the Sole Arbitrator must first determine, as a threshold matter, whether the RBF Executive Committee was competent to issue the Appealed Decision. This analysis is based on four considerations:

i. Articles 6.1.1 and 8.1 of the Championship Regulations

99. As an initial matter, the Appellant contends that the RBF Executive Committee was not competent to exclude the Appellant from the Championship. According to the Appellant, the RBF Executive Committee justified its authority based on Article 6.1.1 of the Championship Regulations, which provides as follows:

6.1. The Directorate may resolve to impose sanctions in the following cases:

6.1.1. In case of emergence of situations related to matches of the Competitions, which are not stipulated by provisions of these Regulations. The resolution will come into effect upon its approval by RBF President (RBF Executive Director General Secretary) and, in exceptional cases, by RBF Executive Committee.

100. The Appellant further argues, however, that Article 6.1.1 does not authorize the RBF Executive Committee to decide on sanction implementation as it only allows the committee to approve decisions of the RBF Directorate. As such, it was simply not competent to act.
101. The Sole Arbitrator disagrees with the Appellant for two principal reasons.

102. First, in the Appealed Decision the RBF Executive Committee excluded the Appellant from the Championship based on Article 8.1 – not 6.1.1 as the Appellant asserts - for an alleged violation of Article 7.2 of the Championship Regulations. Indeed, Article 6.1.1 is not mentioned (expressly or implicitly) in the Appealed Decision. In this respect, the relevant points of the Appealed Decision read as follows:

The Professional Basketball Department informs you that by decision of the RBF Executive Committee as of December 9, 2019 in accordance with Clause 8.1. of the Regulations of the 2019/2020 Russian Men's and Women's Clubs/Teams Championship and Cup, Basketball Club Arsenal (Tula) was excluded from the list of competitors of the 29th Russian Men's Super League Second Division Clubs/Teams Championship for violating Clause 7.2 of the Regulations during the Russian Men's Super League Second Division Clubs/Teams Championship game held on December 7, 2019 that had a negative impact on running the Competitions. Pursuant to Clause 8.5. of the Regulations of the 2019/2020 Russian Men's and Women's Clubs/Teams Championship and Cup, Arsenal (Tula) team's results in 2019/2020 Russian Men's Super League Second Division Clubs/Teams Championship regular season games have been annulled. Arsenal (Tula) team is the last in the 2019/2020 Russian Men's Super League Second Division Clubs/Teams Championship final ranking.

103. Moreover, on review of the Minutes, it is clear that the RBF Executive Committee also excluded the Appellant from the Championship based on Article 8.1 for an alleged violation of Article 7.2 of the Championship Regulations¹. In this respect, the relevant points of the Minutes read as follows:

In accordance with article 8.1. of the Regulations of 2019/2020 Russian Basketball Men's and Women's Clubs/Teams Championship and Cup, disqualify Basketball Club Arsenal (Tula) from Russian Men's Super League Second Division Clubs/Teams Championship for a gross violation of article 7.2. of the Regulations during the Russian Men's Super League Second Division Clubs/Teams Championship game held on December 7, 2019 (from 08:18 of the fourth quarter to the end of the match), that had an adverse impact on the Competitions.

(...)

In accordance with article 6.1.1. of the Regulations of 2019/2020 Russian Basketball Men's and Women's Clubs/Teams Championship and Cup, approve the Resolution of RBF Directorate as of December 9, 2019 on disqualification of Viktor Viktorovich Uskov, coach of BC Arsenal, from all official basketball competitions. Disqualification will remain valid until December 31, 2021.

104. The Appealed Decision was, therefore, not based on Article 6.1.1 at all.
105. Second, and in any event, the RBF Executive Committee is competent to exclude a club pursuant to Article 8.1 (as opposed to the Directorate according to Article 6.1.1).

¹ The Sole Arbitrator, however, notes the existence of a reference to Article 6.1.1 in the Minutes. Yet, such reference was not used as a justification of the RBF Executive Committee's authority to exclude a club from the Championship.

106. Specifically, Article 8.1. of the Championship Regulations empowers the RBF Executive Committee to exclude a club for a gross violation of Article 7.2. On the contrary, Article 6.1.1 entitles the RBF Executive Committee to approve the decisions of the RBF Directorate. In this respect, Articles 8.1. and 6.1.1 provide the RBF Executive Committee with different powers.
107. In the Sole Arbitrator's view, it is not unusual (but rather normal) in the course of an extraordinary meeting for the board of any organization to agree upon different resolutions to be put to the shareholders and members for approval whereby the chairman subsequently reads out and recommends the resolution to those present for approval. Against this background, it appears from the Minutes that the reference to Article 6.1.1 was applied exactly as it was intended in the context of an extraordinary meeting, i.e. the RBF Executive Committee approved the resolution of the RBF Directorate. There is simply no evidence to the contrary.
108. Notwithstanding the foregoing, the Sole Arbitrator acknowledges the Appellant's contention that Article 6.1.1. is only designed for circumstances that are not stipulated by the Championship Regulations. While the Sole Arbitrator accepts the legitimacy of such contention in a context where the present situation seems likely related to a situation which is stipulated "*by provisions of these Regulations*", he highlights that Article 6.1.1 concerns a resolution to impose sanctions made by the RBF Directorate coming "*into effect upon its approval by President (RBF Executive Director General Secretary) and, in exceptional cases, by RBF Executive Committee*". And even if the Sole Arbitrator was to accept that the RBF Directorate incorrectly resolved to impose sanctions in a situation covered "*by provisions of these Regulations*" and that the RBF Executive Committee unlawfully approved such resolution, it would still not be enough to prove the lack of competence of the RBF Executive Committee to issue the Appealed Decision.
109. As set out above, nothing in the Minutes suggests that the RBF Executive Committee acted beyond its authority in issuing a decision on the basis of Article 6.1.1. To the contrary, it is conclusive from both the Minutes and the Appealed Decision that the RBF Executive Committee decided on the application of sanction on the basis of Article 8.1 for an alleged gross violation to Article 7.2.
110. Finally, and for completeness only, the Sole Arbitrator points out that whether or not Article 6.1.1. was correctly applied by the RBF Directorate is of no moment in assessing the competence of the RBF Executive Committee deriving from Article 8.1. in these circumstances.

ii. Was the case about match-fixing?

111. It was the common understanding between the Parties and the Sole Arbitrator that this case was not about match-fixing. Indeed, it was everyone's understanding that Article 8.1, in connection with Article 7.2, was the only legal basis at stake.
112. The Appellant, however, submitted the match-fixing rules in support of its case, including the *Regulation on measures to prevent unlawful influence on the results of basketball matches* as well as the RBF

Statutes, and the Respondent did not object to them being part of the file. The Sole Arbitrator considers, therefore, that these rules must be examined.

113. Article 1.1 of the Regulation on measures to prevent unlawful influence on the results of basketball matches (the “Regulation on unlawful influence”) is about unlawful influence on the results of competitions. More precisely, unlawful influence on the results of competitions is defined as *“the commission of actions aimed at influencing the result of a Competition match in violation of the principle of fair sportsmanship, including but not limited to: participation in gambling in bookmakers and betting companies by betting on the results of Competition matches, as well as participation in collusion, accepting and giving gifts, money or property in order to influence the result of an individual match or competition as a whole, as well as deliberately allowing the Commission of these actions”*.

114. As set out in Article 5.1.4. of the Regulation on unlawful influence, violations for such unlawful activity only applies to basketball players:

5.1.4. applies sanctions to basketball players in connection with their unlawful influence on the results of Competition matches

115. In terms of sanctions for such violations, Article 86(5) of the Championship Regulations provides as follows:

“Sanctions for violations committed during the Competitions may be imposed by: (...) the Committee for Prevention of Unlawful Influence on Match Results in accordance with the Regulation on Measures to Prevent Unlawful Influence on Match Results”.

116. The Sole Arbitrator is of the opinion that the Regulation on unlawful influence could be viewed as *lex specialis* when compared to Articles 8.1 and 7.2 of the Championship Regulations. This notwithstanding, Article 1.1. of the Regulation on unlawful influence is broad and covers more than typical match-fixing and betting activities. Whether the Appellant’s actions had an unlawful influence on the results of the Competition matches, it has to be noted that Article 5.1.4. of said regulation only covers offences committed by individuals since it stipulates *“sanctions to basketball players”* (not “clubs”) and therefore, it is not applicable to this situation.

117. Nevertheless, the Appealed Decision strictly deals with the Executive Committee’s exercise of powers to exclude the Appellant’s team from the Championship on the basis of Article 8.1 for an alleged violation of Article 7.2. Consistent with this view, the Appellant claims that even if the Sole Arbitrator were to accept that the present case was about match-fixing, the RBF Executive Committee would still not be competent to impose a sanction. Pursuant to Article 86 of the Championship Regulations, as well as Article 5.1.4 of the Regulation on unlawful influence, the investigation and sanctioning of match-fixing falls under the competence of the RBF Committee on Prevention of Unlawful Influence on Match Results, not the RBF Executive Committee.

118. The Sole Arbitrator agrees that the competence of the RBF Executive Committee could be disputed if the case was about match-fixing. Be that as it may, given the understanding of the Sole Arbitrator and Parties that this case is not about match-fixing, the Sole Arbitrator does not purport to adjudicate beyond the matter submitted.

iii. Was the *res judicata* principle violated?

119. During the hearing, the Appellant alleged a violation of the principle of *res judicata*, asserting that it could not be sanctioned twice for the same infraction if the object between the two infractions was the same. In response, the Respondent argued that there was no violation of the *res judicata* principle because the Appellant was never previously sanctioned as there was no decision from the RBF Directorate against it; it was rather a recommendation for the RBF Executive Committee's benefit.

120. As it was established in CAS 2018/A/5500 and CAS 2013/A/3256, "*the procedural concept of res judicata is composed of two elements. First the "Sperrwirkung" (prohibition to deal with one matter = ne bis in idem), the consequence of such effect being that if one matter (with res iudicata) is brought again before one judge, the latter is not allowed to look at it and must dismiss the matter (insofar) as inadmissible. Secondly, the "Bindungswirkung" effect (binding effect of one decision), according to which one judge in a second procedure is bound to the outcome of the matter decided in res judicata. The basic legal principle of ne bis in idem generally states that one cannot be judged for the same charges again after a legitimate judgement in the first place. For this principle to be fulfilled three requirements need to be given: an identity of the parties, of the facts and of the object*" (see also CAS 2015/A/4319; CAS 2007/A/1396 & 1402).

121. Here, there are two different internal decision-making bodies with different subjects of dispute and resulting decisions. On one hand, the Sole Arbitrator recognizes the RFB Executive Committee, which excluded the Appellant from the list of participants of the 29th Super League championship. On the other hand, the Sole Arbitrator recognizes the RBF Directorate which, apart from a recommendation to exclude the Appellant, imposed sanctions on various individuals as players and a coach.

122. In such a situation, the Sole Arbitrator considers that there are two different bodies rendering two different decisions. This situation does not differ from the one where an internal body issues a decision impacting the past (i.e. the annulment of a game) and another body deciding the future (i.e. the exclusion from the league). This is not entirely different from a doping procedure where, for example, one body issues a disqualification of a competition and another panel a ban.

123. Hence, the Sole Arbitrator finds that the principle of *res judicata* was not violated.

iv. Was there a contradiction in the Statutes?

124. The Appellant addresses the hierarchy of rules and alleges that the scope of Statutes, i.e. the RBF Statutes, cannot be modified by hierarchically inferior regulations, i.e. the Championship

Regulations. In support of this, the Appellant refers to Articles 5.1, 5.2, 5.3, 5.4, 5.13 and 7.22 of the RBF Statutes, according to which the RBF Executive Committee can only exclude member federations or associations, but not clubs. The Respondent countered that if the RBF Executive Committee is entitled to exclude member federations or associations then, obviously, it could exclude clubs (*argumentum a maiore ad minus*).

125. The RBF is a legal entity with different affiliated members or associations who must abide by its applicable regulations. In this context, the RBF Statutes have broader effects and should consequently be interpreted more objectively. The Championship Regulations are a specific set of rules about a specific event limited in time and are more of a contractual nature (see CAS 2017/A/5356). Moreover, the RBF Statutes are not meant to resolve issues relating to the organization of the Championship as they should be dealt with by specific regulations. This could be considered as *lex specialis* (see CAS 2017/A/5356).
126. The Appellant is suggesting that all exclusion powers of the RBF Executive Committee should be comprised in the RBF Statutes even in relation to the Championship. But the Sole Arbitrator does not share its view. Such an approach is too firm and not practical.
127. Examining the issue on the round, and taking a rational approach, it could reasonably be understood from the RBF Statutes that the RBF Executive Committee has the power to exclude clubs as from the moment it is able to exclude member federations or associations.
128. By all accounts, the Sole Arbitrator is reminded that “*not everything can be regulated at the level of the Statutes and that there is not one method or principle of interpretation that prevails over others, when statutes of a private legal entity are at stake. An objective or a subjective approach is acceptable depending on the specificities of the situation. When called upon to interpret articles of associations, a CAS panel had therefore to adopt a pragmatic approach and follow a plurality of methods, without assigning any priority to the various means of interpretation*” (CAS 2017/A/5356, CAS Bulletin 2018/2, p.88).
129. The Championship Regulations are clearly specific regulations (*lex specialis*) compared to the more general provisions of the RBF Statutes. This is confirmed by Article 4.1(11) of the RBF Statutes, which allows the Federation to “*create committees, commissions, councils, boards and other bodies in the main areas of activity of the Federation*” that can draw up their own regulations and then impose the sanctions provided for therein.

*4.1. To carry out its activities, achieve statutory goals and solve tasks in accordance with the legislation of the Russian Federation has the right to:
(...)*

- create committees, commissions, councils, boards and other bodies in the main areas of activity of the Federation, whose competence and procedure are regulated by the regulations approved in accordance with the procedure established by this Code, and whose decisions are binding on all members of the Federation and other basketball subjects that recognize the rules established by the Federation;

130. Furthermore, the principle of separation of powers does not exist in the law of associations. The RBF can, therefore, delegate individual competences to subdivisions. Otherwise, no association could sanction itself.
131. In any event, the Sole Arbitrator stresses that the RBF enacted the Championship Regulations, which are not in contradiction with its own Statutes. Accordingly, the Sole Arbitrator does not see any compliance issues between the Championship Regulations and the RBF Statutes.

v. Conclusion

132. In sum, the Sole Arbitrator concludes that the RBF Executive Committee was competent to exclude the Appellant from the Championship.

C. Does the Appealed Decision rely on a proper legal basis?

133. The second consideration that must be examined by the Sole Arbitrator is whether the Appealed Decision relied on a proper legal basis.
134. In the present case, the RBF Executive Committee excluded the Appellant from the Championship based on Article 8.1 for an alleged violation of Article 7.2 of the Championship Regulations.
135. On one hand, Article 8.1 stipulates that a club can be excluded from the Championship during the sports season or its game results can be annulled by decision of the RBF Executive Committee for gross violations of the Championship Regulations. To comply with Article 8.1, the RBF Executive Committee was required to prove the violation committed by the Appellant “*caused financial damage to RBF and/or adversely affected the Competitions*”.
136. On the other hand, Article 7.2 provides that a club should be guided by “*the principles of fair business partnership, fairness, respect for rivals, referees, commissioners, referees secretaries, statisticians, spectators and take all necessary measures to exclude violence and illegal actions in sports facilities*”.
137. Yet, the Appellant contends that the Championship Regulations do not establish an offence or sanction for failure to comply with the principles listed at Article 7.2 while Article 8.1 (or any other provisions of the Championship Regulations) does not explicitly provide for the exclusion of a club which generally violated Article 7.2.
138. According to the Appellant, the “*principle of legality*” was breached by the RBF when it interpreted Article 8.1 as giving it authority to exclude clubs from the Championship for almost any behavior that it did not deem appropriate.
139. The Sole Arbitrator agrees that every sanction requires an express and valid rule providing that someone can be sanctioned for a specific offence. In this respect, the Sole Arbitrator finds comfort in CAS 2013/A/3324 & 3369 and CAS 2017/A/5006, where the Panel provided a

useful summary of the relevant principles of interpretation established by the CAS case law. Pursuant to the CAS jurisprudence, the different elements of the rules of a federation shall be clear and precise, in the event they are legally binding for the athletes (see CAS 2006/A/1164; CAS 2007/A/1377; CAS 2007/A/1437) whereas inconsistencies/ambiguities in the rules must be construed against the legislator as per the principle of “*contra proferentem*” (CAS 2013/A/3324 & 3369; CAS 94/129; CAS 2009/A/1752; CAS 2009/A/1753; CAS 2012/A/2747; CAS 2007/A/1437; CAS 2011/A/2612).

140. Furthermore, the Sole Arbitrator notes that when interpreting the rules of a federation, it is necessary to consider whether the spirit of the rule (in as much as it may differ from the strict letter) has been violated (see CAS 2001/A/354 & 355; CAS 2007/A/1437; CAS OG 12/002). It follows that an athlete or official, when reading the rules, must be able to clearly make the distinction between what is prohibited and what is not (CAS 2007/A/1437).
141. In CAS 2007/A/1363, in line with many CAS awards, the Sole Arbitrator protected “*the principle of legality and predictability of sanctions which requires a clear connection between the incriminated behaviour and the sanction and calls for a narrow interpretation of the respective provision*”. However, the internal control upon the rules of the federation is manifestly put in perspective and relativized by the fact that various laws, whether CAS or national court jurisprudence, do not require a strict assurance of the elements provided for disciplinary sanctions of the sports federation, as required by criminal law. Such case law rather recognizes general elements, which constitute the basis for disciplinary sanctions (CAS 2007/A/1437).
142. Applying general principles to the case at hand, the Sole Arbitrator concludes that there are no basic diversions of the above-mentioned legal basis or disciplinary provisions.
143. In particular, Article 7.2 is a typical and valid so-called general clause of sportsmanship and fair play with identifiable and determinable elements like “*fairness*” and “*fair business partnership*” (CAS 2014/A/3665, 3666 & 3667; CAS 2015/A/3975). Generally, the wording of Article 7.2 tries to cover the scope of all possible instances against fair play, which are not yet covered by other articles of the Championship Regulations. This notwithstanding, the interpretation of the relevant RBF rules must be carried out according to the above-mentioned principles.
144. Here, Article 8.1 refers to violations of “*these Regulations*” (i.e. the Championship Regulations) and Article 7.2 is encompassed within “*these Regulations*”.
145. According to Article 8.1, the violation(s) must be “gross” and there can be no doubt that the passive conduct of the teams during the match, and as shown on the video, i.e. violating the shot-clock and missing (free-)shots on purpose etc., constitutes a violation of the spirit of sportsmanship and fairness. Indeed, not only did the Appellant explicitly confirm the foregoing during the hearing in response to a question from the Sole Arbitrator, it could not even attempt to explain its behaviour. While not raised by the Parties, the Sole Arbitrator nevertheless recognises that the legal responsibility could also have been extended to the Appellant for the misconduct of its players and coaches on the only basis of its contractual duties towards them.

146. This said, explanations and justifications for this passive conduct are quite conceivable. Just recently, players of two professional German soccer teams showed a similar passive behaviour in order to protest together against racist chants and a poster of “fans” during an official game. The Sole Arbitrator notes that he also saw such a conduct years ago during a Basketball All Star Game. It turned out to be a kind of a first strike in order to draw the attention to an alleged mismanagement in the league.
147. Nevertheless, in the absence of any evidence and explanations to the contrary, the logical conclusion from the evidence, including the game footage itself, is that the Appellants engaged in passive play/conduct without any justifications or explanations whatsoever, i.e. in other words a “*gross violation of fairness*” by the Appellant. And as such, the Appellant’s violation was a gross offense to the spirit of sport. The Appellant played without any kind of respect for the game, for the opponent, for the spectators and for all the basketball fans. This plainly violates Article 7.2 of the Championship Regulations.
148. Having established that the Appellant’s behavior grossly violated Article 7.2, the Sole Arbitrator must now analyse whether the violation committed by the Appellant “*caused financial damage to RBF and/or adversely affected the Competitions*” pursuant to Article 8.2 of the Championship Regulations.
149. In this respect, the Sole Arbitrator bears in mind that Article 8.2. uses “and/or”, meaning the violation committed by the Appellant must have either “*caused financial damage to RBF*” or “*adversely affected the Competitions*” or both.
150. Regarding to the “*financial damage to RBF*”, the Sole Arbitrator notes that the Respondent did not formally claim any of it in its submissions. Still, the Sole Arbitrator can reasonably infer that the RBF must have suffered a financial damage – to some extent – as a result of the Appellant’s violations. In the plainest sense, negative press alone (see below by example) indirectly affects fans engagement with the sports and a sponsor’s desire to align with the league, etc.
151. As to whether the violation “*adversely affected the Competitions*”, the Respondent asserted that the RBF was seriously affected by the Appellant’s conduct in terms of reputation and image. While the Sole Arbitrator concurs with the Appellant that damage to the RBF’s image was not an express prerequisite to Article 8.1, he believes it is nevertheless an important element to consider. Indeed, there was a great interest by the media which condemned the behaviour of the teams (“*The most disgusting basketball of the year: Tula’s Arsenal was expelled from the second super league for its love of bets (and contracts?)*”; “*Did you pass the match in Russian basketball? Bazarevich warned about it*”). This type of mediatic attention is not needed and obviously damages the image of the competition.
152. In assessing the nature of the infringement, the Sole Arbitrator noted that because the Appellant was at least generally aware of the wrongfulness of its conduct, this abuse therefore negatively affected the competition. The Appellant’s conduct plagued the *competitive* scene and

interfered with the competitive balance of the Game. And the Sole Arbitrator simply does not view how such conduct could not have *“adversely affected the Competitions”*.

153. A narrow interpretation of *“adversely affected the Competitions”*, as suggested by the Appellant, is not justifiable especially in light of the abovementioned necessity to consider the spirit of a rule. Otherwise, a narrow interpretation could encourage other teams to do the same or other violations of sportsmanship whenever it is certain that a team can no longer lose. That cannot be the spirit of the RBF rules. The fact that the RBF is adversely affected in a broader sense shows the case itself.
154. Therefore, the Sole Arbitrator finds that the RBF Executive Committee successfully complied with the requirements of Article 8.2 as it proved that the violation committed by the Appellant *“caused financial damage to RBF and/or adversely affected the Competitions”*.
155. In sum, the (general and specific) requirements of the legal basis set forth at Article 8.2 in connection with Article 7.1 of the Championship Regulations are fulfilled.
156. Finally, and for sake of completeness, the Sole Arbitrator underscores that other violations of *“these Regulations”*, however, were not set out in a straightforward fashion in either the Appealed decision or in the Parties’ submissions.
157. Notably, the Sole Arbitrator recalls that the Appellant made some references throughout the present proceedings to Articles 92 and 85 of the Championship Regulations. In this respect, the Sole Arbitrator notes the Appellant’s argument according to which Article 6.1.1 could not apply to present dispute because its alleged behaviour was stipulated at Article 92:
- 92.1. If a team refuses to play/continue to play, takes actions that prevent the game from being played, after the referee has decided that the game should start/continue the following sanctions shall apply:*
- 92.1.1. In the case of the first violation committed in a tournament, the game shall be awarded to the opponents and the score shall be twenty to zero (20:0). The team shall lose the game by forfeit, receive zero (0) classification points and pay the following fine:*
- for women’s teams of the First Division and men’s teams of the Second Division of the Super League - RUB 75,000*
158. Put simply, it would be a stretch to consider that Article 92 covers passive play/conduct. The teams played/continued to play until the end of the match, and in the opinion of the Sole Arbitrator Article 92 does not cover the type of behaviour for which the Appellant is being criticized for in this case.
159. Regarding to Article 85 of the Championship Regulations, as previously confirmed, this provision does not apply to clubs and more generally does not apply to present case.

D. Proportionality of the Sanctions

160. Having determined that the club's conduct grossly violated Article 7.2 and Article 8.1 of the Championship Regulations, the Sole Arbitrator must now turn its attention to the proportionality of the sanction imposed on the Appellant.
161. According to well-established legal doctrine and CAS jurisprudence, a sanction imposed by a sport federation must comply with the principle of proportionality. In particular, *"the severity of a sanction must be proportionate to the offence committed. To be proportionate, the sanction must not exceed that which is reasonably required in the search of the justifiable aim"* (CAS 2013/A/3297).
162. The Sole Arbitrator remarks that Article 8.1 of the Championship Regulations covers the sanctions that can be imposed, i.e. a club can be excluded from the Championship during the sports season or its game results can be annulled by decision of the RBF Executive Committee for gross violations of the Championship Regulations.
163. The Sole Arbitrator heard submissions as to the sanctions imposed on the Appellant and on the appropriateness and proportionality of those sanctions, taking into account the complete circumstances of the case.
164. The Appellant asserts having been treated unfairly in comparison to the opponent team BC Dynamo Stavropol, which had only received a warning for the same passive conduct. The RBF supports this reasoning with the fact that the Appellant had already been sanctioned earlier on 4 April 2018 (i.e. a repeated offender). The Sole Arbitrator notes the press release dated 9 December 2019 (*"taking into account the warning for violation of the spirit of fair play and good sportsmanship in 2017/18 season"*). The Minutes, however, are silent on this entire argument and no conclusions can be drawn therefrom.
165. The Appellant further argues that only preceding sanctions within the same season may be drawn on to constitute aggravating circumstances. In other words, prior behavior/sanction cannot aggregate an offense unless such prior behavior/sanction occurred in the same season. However, the Sole Arbitrator did not find anything in the regulations in support of this.
166. In particular and as confirmed during the hearing by the Parties, Article 85.10 does not apply to clubs and therefore, the Sole Arbitrator disagrees with the Appellant's argument in this regard. And considering that Article 92 does not apply, no further reduction on this basis is possible.
167. Put simply, right or wrong, the Championship Regulations, as they stand, do not foresee lower sanctions. As to the Appellant's reference to the part "C. Disciplinary Offenses" of the Championship Regulations, the Sole Arbitrator notes that this part includes some provisions with lower sanctions like fines and warnings. However, the Sole Arbitrator cannot associate any violation that relates to Article 7.2 in said chapter and that could subordinate the present case.

168. Lastly, the Sole Arbitrator observes that Article 8.1 does not plainly take into account the repeated nature of violations while noting the Appellant’s argument that the imposition of a disciplinary sanction requires a violation of existing laws or a legal basis imposing the relevant sanction. But if a sport organisation can only impose a predictable sanction with a proper basis, can a decision from the Directorate dated April 2018 be considered a proper regulatory basis to impose such sanction? For an offence to be considered as a repeated offence, the Sole Arbitrator recalls that a previous and similar offence must have been sanctioned, or at least formally noted. As set out above, this is the case here. As a matter of fact, the eventual exclusion of the Appellant was clearly predicted in the decision from the Directorate dated April 2018 when it stated that an exclusion would be raised “*in the event of a similar repeated violation*”. While the minutes of the Decision of April 2018 does not specify a fixed period of time within which the violation must be repeated, the Appellant could be said to have been “on notice”, taking all precautions to avoid the situation it now finds itself in. Hence, the Appellant knew or at least should have reasonably known the risk of violating – for a second time – the spirit of sportsmanship and fair play, i.e. the team exclusion. Indeed, the exact same warning was addressed to BC Dynamo Stavropol as it appears from the Minutes of the 9 December 2019 meeting (i.e. they are now on notice too).
169. In this context, the Sole Arbitrator considers that the principle of proportionality dictates that the most extreme sanction must not be imposed before other less onerous sanctions have been exhausted (CAS 2011/A/2670). Hence, the Sole Arbitrator considers that the Appellant has been treated equally and fairly as it has already been sanctioned and warned due to a violation of fair play. Such a warning came recently in April 2018, and it would be naïve to brush off the warning or think that it no longer would have any impact on the Appellant’s behaviour a year later. BC Dynamo Stavropol has now received the same warning going forward and consistency in this approach by the Respondent is not only telling, but defeats the Appellant’s argument that its club was treated unjustly as compared to BC Dynamo Stavropol.
170. Moreover, the Panel observes that it is consistent jurisprudence of the CAS that CAS panels shall give a certain deference to decisions of sports governing bodies in respect of the proportionality of sanctions. In particular, CAS panels have frequently stated that “[t]he measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rule can be reviewed only when the sanction is evidently and grossly disproportionate to the offence” (cf. CAS 2013/A/3139 para. 114; CAS 2012/A/2762 para. 122; CAS 2011/A/2645 para. 44 with numerous references therein).
171. However, at least one CAS Panel (in a relatively new decision) stated that said jurisprudence should be interpreted (and applied) with care and found that its powers to review the facts and the law of the case are neither excluded nor limited (see CAS 2018/A/5808). Nevertheless, CAS-Panels in a number of recent cases in disciplinary matters still refer to the CAS case law mentioned above in para. 169 (see for ex. CAS 2019/A/6345, CAS 2019/A/6305, CAS 2019/A/6276, CAS 2019/A/6233, CAS 2019/A/6356).

172. The Sole Arbitrator sees no reason to go into this discussion. Considering the arguments of the Parties, the circumstances of the Appealed Decision and, not least, the fact that the latter does not result in the Appellant's relegation to a lower league, the Sole Arbitrator finds that the sanction imposed on the Appellant can neither be considered to be evidently and grossly disproportionate nor does the Sole Arbitrator see other aspects which could make the sanction seem inappropriate.
173. In view of the aforesaid, the Sole Arbitrator finds the sanction imposed on the Appellant proportionate.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by BC Arsenal on 13 December 2019 against the Russian Basketball Federation with respect to the decision rendered by the Russian Basketball Federation Executive Committee on 9 December 2019 is dismissed.
2. The decision rendered by the Russian Basketball Federation Executive Committee on 9 December 2019 is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.