Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2020/A/6690 Bonaire Football Federation v. Fédération Internationale de Football Association (FIFA)

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President:	Prof. Luigi **Fumagalli**, Professor and Attorney-at-law, Milan, Italy
Arbitrators:	Prof. Philippe **Sands** Q.C., Law Professor and Barrister, London, U.K.
	Prof. Ulrich **Haas**, Professor, Professor Zurich, Switzerland
Clerk:	Ms Stéphanie **De Dycker**, Attorney-at-law, Lausanne, Switzerland

in the arbitration between

Bonaire Football Federation, Bonaire

Represented by Mr Marc Cavaliero and Ms Carol Etter, Attorneys-at-law, Zurich, Switzerland

- Appellant -

and

Fédération Internationale de Football Association, Zurich, Switzerland

- Respondent -

I. PARTIES

1. The Bonaire Football Federation, *Federashon di Futbol Boneriano* (the "Appellant" or the "BFF"), is domiciled in Bonaire and affiliated since 2013 to the Confederation of North, Central America and Caribbean Association Football (the "CONCACAF"), which in turn is recognized by the *Fédération Internationale de Football Association.* Until February 2011, the BFF was a member of the *Nederlands Antilliaanse Voetbal Unie* ("NAVU"), which was the governing body for football in the former Netherlands Antilles between 1958 and 2011.

2. The *Fédération Internationale de Football Association* (the "Respondent" or the "FIFA") is the governing body of football worldwide. FIFA is an association under the Swiss Civil Code with its headquarters in Zurich, Switzerland.

II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts and allegations based on the Parties' submissions and allegations. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.

4. On 2 June 2019, the Appellant filed, via the CONCACAF, an application for admission to FIFA (the "Application"). The Application, which consisted of a 70-pages report and its enclosures, contained a detailed description of the internal organisation of the BFF, its championship, its national teams, registered teams and players, coaches and referees as well as a description of the political, economic and social structures and sporting infrastructure in Bonaire, its accommodation and transportation facilities. In addition, the Application contained an index of the FIFA requirements for admission to FIFA, as detailed in Article 3 of the FIFA Regulations governing the admission of associations to FIFA (the "Admission Regulations"), with a reference to the relevant sections of its report and/or to its enclosures, in which those requirements were addressed.

5. The Application was accompanied by a cover letter from the CONCACAF, in which CONCACAF stated that "*we are of the full conviction that the [BFF] fully meets and exceeds all criteria stipulated in the [Admission Regulations] in order to be granted full FIFA membership*".

6. On 18 December 2019, Mr Véron Mosengo Omba, Chief Member Associations Officer of FIFA wrote to the Appellant and CONCACAF a letter indicating that the Application was incomplete and therefore that it was rejected, in the following terms (the "Appealed Decision"):

   "*We are writing to inform you that the application for FIFA membership by the [BFF] dated 1 June 2019 was submitted to the FIFA Member Associations Committee for information on the occasion of its meeting in Mahajanga, Madagascar, on 26 November 2019. This resulted in our response taking longer than usual. We trust that this did not inconvenience you.*

The preconditions for admission of new members to FIFA are addressed in the FIFA Statutes, in the Regulations Governing the Application of the Statutes as well as in the Regulations Governing the Admission of Associations to FIFA. The FIFA Statutes and the aforementioned Regulations are available on FIFA.com.

Pursuant to art. 11 par. 1 of the FIFA Statutes, "Any association which is responsible for organising and supervising football in all of its forms in its country may become a member association" of FIFA. In this context, one of the crucial aspects of any application for membership is the question of whether or not the relevant association organises and supervises football in all of its forms in a "country"*. The term "country", in turn, is specified in the definitions section of the FIFA Statutes as* "an independent state recognised by the international community"*. Moreover, art. 3 par. 1 a) of the Regulations Governing the Admission of Associations to FIFA specifically states that any application for membership must contain* "Documents that show that the applicant represents a country" *as defined in the FIFA Statutes. In this respect, we note that Bonaire is a special municipality of the Netherlands and, as such, not an independent state recognised by the international community, and that the documentation included in your application for membership does not demonstrate that Bonaire is in fact a country as defined above.*

Furthermore, recent jurisprudence by the Court of Arbitration for Sport (CAS) (cf. award in the case CAS 2016/A/4602 Football Association of Serbia v. UEFA) specifies that within the meaning of the current FIFA Statutes a member association must organise and control association football within a country recognised by the majority of the United Nations member states as an independent state in order to be recognised as organising and supervising football in a "country" *within the sense of the FIFA Statutes. The FFB, however, does clearly not fulfil this legal qualification.*

In your application, you further refer to art. 11 par. 6 of the FIFA Statutes which states that "An association in a region which has not yet gained independence may, with the authorisation of the member association in the country on which it is dependent, also apply for admission to FIFA"*. In this context, we note that you included a letter from the Royal Netherlands Football Federation (KNVB) supporting the FFB's application for membership. However, the aforementioned provision of the FIFA Statutes refers exclusively to situations in which a specific territory has not become independent yet, but is clearly on the way to such independence or the territory's independence is imminent. Bonaire does not appear to be in the process of becoming an independent state and consequently art. 11 par. 6 of the FIFA Statutes is not applicable in the case at hand.*

Finally, we also note your argument that the FFB should be re-instated as a FIFA member association given that it used to be part of the "Netherlands Antillaanse Voetbal Unie" and that the latter had been a FIFA member association until it was succeeded by the Curaçao Football Association in 2011. However, there is no legal basis in the FIFA Statutes and regulations which would allow for a "re-instatement" of a member association.

Based on the reasons outlined above and in view of the content of art. 2 and 3 of the Regulations Governing the Admission of Associations to FIFA, we regret to inform you that the FFB's application for membership is incomplete and is therefore rejected."

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

7. On 8 January 2020, in accordance with Article R47 of the Code of Sports-related Arbitration, edition in force since 1 January 2019 (the "CAS Code"), the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport ("CAS") against the Respondent to challenge the Appealed Decision. In its Statement of Appeal, the Appellant nominated Prof. Philippe Sands Q.C., Law Professor and Barrister in London, United Kingdom, as an arbitrator, requested that CONCACAF be invited to these proceedings as an interested party and that the time limit to file its Appeal Brief be extended.

8. On 13 January 2020, the CAS Court Office informed the CONCACAF of the present proceedings and the fact that it had been named as interested party. The CAS Court Office informed the CONCACAF that in case it intended to participate as a party in the present proceedings, it shall file with the CAS an application to this effect within a specified time limit.

9. On 21 January 2020, CONCACAF wrote to the CAS Court Office in the following terms:

"[...] *We are pleased to confirm that we wish to be part of the proceedings as an interested party and/or in accordance with the scope of participation that the Panel may decide.*

Given our unique position as football governing body for the region "North, Central America and Caribbean", which includes as a member the BFF, and our role as Confederation recognized by FIFA, we deem that our intervention may be useful, not to say necessary, to provide important input on the situation/affiliation of the BFF with CONCACAF and for the information of the Panel.

According to Article R41.4, a third party may only participate in the arbitration as intervening party if it is bound by the arbitration agreement or if it and the other parties agree in writing.

At this stage, while we are all bound to recognize the jurisdiction and authority of the CAS, we do not expect the BFF or FIFA to object to our participation in the proceedings. [...]

Furthermore, the framework FIFA implemented in relation to application for membership directly involves the Confederation. [...]

In light of the above, bearing in mind that the matter concerns one of its members, which expressed intention to become a full FIFA member, CONCACAF considers that it shall participate in the proceedings as interested party.

That way, CONCACAF will be able to present elements as to the membership of its affiliated member BFF to the CONCACAF and the application process in force. Needless to say that CONCACAF is affected by the outcome of the decision, as such a decision influences the number of member associations of CONCACAF within FIFA."

10. On 22 January 2020, the CAS Court Office invited the Parties to file their respective observations on CONCACAF's request for intervention.

11. On 24 January 2020, the Respondent nominated Prof. Ulrich Haas, Professor in Zurich, Switzerland, as arbitrator.

12. On 29 January 2020, both Parties filed their comments as to CONCACAF's request for intervention in the present proceedings. The Appellant informed the CAS Court Office that it had no objection to the intervention of CONCACAF to the present proceedings. The Respondent in turn indicated that it did not consider CONCACAF's intervention to be necessary, arguing that "[…] *BFF's status within CONCACAF is not being questioned, no issues have been raised with respect to the confederation's cooperation during the application process, and CONCACAF does not have* locus standi *[…]*."

13. On 2 March 2020, the CAS Court Office informed the Parties that the Panel would decide on CONCACAF's request for intervention, in accordance with Article R41.4 of the CAS Code.

14. On 5 March 2020, within the agreed time limit, the Appellant filed its Appeal Brief with the CAS Court Office.

15. On 25 March 2020, the CAS Court Office informed the Parties that the Panel appointed to decide the present dispute was constituted as follows:

President: Prof. Luigi Fumagalli, Law Professor and Attorney-at-law, Milan, Italy

Arbitrators: Prof. Philippe Sands Q.C., Law Professor and Barrister, London, U.K.
Prof. Ulrich Haas, Law Professor, Zurich, Switzerland

Furthermore, the Parties were advised that Ms Stéphanie De Dycker, Attorney-at-law in Lausanne, would assist the Panel as Clerk.

16. On 6 April 2020, the CAS Court Office informed the Parties that the Panel had decided to dismiss CONCACAF's request to intervene in the present proceedings as a party, but that, notwithstanding the above, upon receipt of the Answer to be filed by the Respondent, CONCACAF would be allowed to file an *amicus curiae* brief, which the Parties would then be invited to comment. The Panel also informed the Parties that CONCACAF would not be allowed to attend the hearing, if any.

17. On 27 May 2020, within the agreed time limit, the Respondent filed its Answer.

18. On 28 May 2020, the CAS Court Office invited CONCACAF to file an *amicus curiae* brief within a specified time limit. The CAS Court Office also requested the Parties to indicate whether they preferred a hearing to be held in this matter or for the Panel to issue an award based solely on the Parties' written submissions, and whether they would agree to hold the hearing by video-conference if necessary.

19. On 2 June 2020, the Appellant informed the CAS Court Office that it preferred a hearing to be held in this matter, and on 3 June 2020, the Respondent informed the CAS Court

Office that it considered that a hearing was not necessary. Both Parties agreed that, in case the Panel would decide to hold a hearing, it could be held by video-conference.

20. On 8 June 2020, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing. On 8 and 12 June 2020, the CAS Court Office consulted the Parties as to possible hearing dates.

21. On 16 June 2020, the CAS Court Office informed the Parties that a hearing would be held in Lausanne on 9 September 2020 and invited the Parties to indicate the name of all persons attending it.

22. On 23 June 2020, within the agreed time limit, CONCACAF filed its *amicus curiae* brief with the CAS Court Office.

23. On 10 July 2020, within the specified deadline, the Appellant filed its comments on the *amicus curiae* brief submitted by CONCACAF.

24. On 27 July 2020, within the specified deadline, the Respondent filed its comments on the *amicus curiae* brief submitted by CONCACAF.

25. On 29 and 30 July 2020, the Parties provided the CAS Court Office with the list of their hearing attendees.

26. On 4 August 2020, the CAS Court Office issued on behalf of the President of the Panel an order of procedure (the "Order of Procedure") confirming *inter alia* the CAS jurisdiction and the hearing date, and requested the Parties to return a signed copy of it, which the Appellant and the Respondent did on 5 and 18 August 2020, respectively.

27. On 24 August 2020, the CAS Court Office informed the Parties that, in light of the ongoing COVID-19 situation and related travel restrictions, the Panel had decided to hold the hearing partly by video-conference and partly in person in Lausanne.

28. On 9 September 2020, a hearing was held in Lausanne. The party-appointed members of the Panel attended the hearing by video-conference. The President of the Panel, Ms Delphine Deschenaux-Rochat, Counsel to the CAS, and Ms Stéphanie De Dycker, Clerk, as well as the following persons attended the hearing in person:

<u>For the Appellant</u>: Mr Marc Cavaliero and Ms Carol Etter, Attorneys-at-law, Mr Ludwig Balentin, President of the BFF and Ms Jeaninne Wong Soi Sing, General Secretary of the BFF.

<u>For the Respondent</u>: Mr Miguel Liétard Fernandez-Palacios, FIFA Director of Litigation, and Mr Jaime Cambreleng Contreras, FIFA Head of Litigation.

29. At the hearing, the Parties were given a full opportunity to present their case, submit their arguments and submissions, and answer the questions from the Panel.

30. At the end of the hearing, the Parties confirmed that they were satisfied with the hearing and that their right to be heard was provided and fully respected.

IV. THE PARTIES' SUBMISSIONS AND CONCACAF'S *AMICUS CURIAE*

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

A. The Appellant

32. In its Appeal Brief, the Appellant requested the Panel to decide as follows:

"*Prayer 1:* *The Appealed Decision shall be set aside.*

Prayer 2: *FIFA shall be ordered to admit Bonaire Football Federation as full FIFA Member.*

In alternative of Prayer 2

Prayer 2a: *FIFA shall be ordered to submit Bonaire Football Federation's Membership Application to the FIFA Council and subsequently at the next available FIFA Congress to admit Bonaire Football Federation as full FIFA Member.*

In alternative of Prayer 2a

Prayer 2b: *FIFA shall be ordered to submit Bonaire Football Federation's Membership Application to the FIFA Council and subsequently at the next available FIFA Congress to vote on the Membership Application submitted by Bonaire Football Federation.*

In the alternative of Prayers 2, 2a and 2b

Prayer 2c: *In case the Bonaire Football Federation's Membership Application is considered incomplete, FIFA shall be ordered to grant Bonaire Football Federation an additional deadline to supplement its Membership Application and thereafter to submit Bonaire Football Federation's Membership Application to the FIFA Council and subsequently at the next available FIFA Congress to vote on the Membership Application submitted by Bonaire Football Federation.*

In any event

Prayer 3: *FIFA shall be ordered to bear the costs of the arbitration and it shall be ordered to contribute to the legal fees incurred by Bonaire Football Federation.*"

33. The Appellant's submissions in support of such requests may be summarized as follows:

- Through its affiliation to the NAVU from 1958 until the 2011, the Appellant used to participate to FIFA Congresses and all other FIFA activities. Like the other members of the NAVU, the Appellant managed football affairs and activities on its territory independently from the NAVU and its other member federations as well as from the Royal Netherlands Football Association (*Koninklijke Nederlandse Voetbalbond*) ("KNVB"). After the Netherlands Antilles ceased to exist on 10 October 2010, the Appellant continued to manage

football affairs on Bonaire independently, without any involvement of the KNVB. The Appellant became a full member of the CONCACAF in 2014.

- According to Article 10 and 12 of the FIFA Statutes, the competence to decide whether to admit a new FIFA member association lies solely with the FIFA Congress, upon recommendation of the FIFA Council. In addition, the Admission Regulations provide for a detailed procedure to be followed once an application for admission as a FIFA member is received. In the present matter, however, FIFA decided to overlook its own rules: the Application for membership was directly rejected by the FIFA secretariat (the "FIFA Administration") or the FIFA Member Association Committee (the "MA Committee"). In addition, the Respondent (i) never informed nor cooperated with CONCACAF on the process of the Application (contrary to Article 4 of the Admission Regulations) ; (ii) CONCACAF was never invited to submit a report to FIFA on the Application (contrary to Article 8 of the Admission Regulations); (iii) the MA Committee never submitted its findings on the Application and CONCACAF's report to the FIFA Council (contrary to Article 9 of the Admission Regulations); and (iv) the FIFA Council never submitted the Application, together with its recommendation, to the FIFA Congress (contrary to Article 10 of the Admission Regulations).

- In the Appealed Decision, FIFA refers to the fact that the Appellant "*does clearly not fulfil [the] legal qualification*" of 'country' within the meaning of Article 11 para. 1 of the Admission Regulations nor that of being "*in the process of becoming an independent state*" as provided under Article 11 para. 6 of the Admission Regulations. The MA Committee, or potentially the FIFA Administration thus rejected the Application on a substantive basis, and not for its alleged incomplete character as mentioned in the Appealed Decision. In any event, had the Application been incomplete, FIFA would have had to send the Application back to the Appellant as per Article 2 of the Admission Regulations.

- The interpretation made by FIFA of Article 11 para. 6 of the Admission Regulations goes beyond what this rule provides. The independence-test was introduced in the FIFA Statutes in 2004 in the first place in order to protect the existing football federations and prevent "secession" from non-sovereign entities willing to become a member of FIFA or a confederation. This is however not the case in the present matter since the KNVB agrees with the Appellant becoming a FIFA member association. FIFA's decision to dismiss the Application is therefore contrary to the *ratio legis* of Article 11 para. 6 of the Admission Regulations.

- The situation of the Appellant is not different than that of the Football Federation of Curaçao ("CFF"), a former member of the NAVU, that became a FIFA member in 2011. Somehow, despite the fact that Curaçao does not fulfil the definition of a country as provided in the FIFA Statutes, FIFA decided to 're-instate' the Football Federation of Curaçao as a FIFA Member upon dissolution of NAVU. FIFA is bound by the precedent of Curaçao. The Appellant notes that CONCACAF does not share the Respondent's view that NAVU simply changed its denomination on 6 February 2011 to that of one of its constituents, since NAVU participated to its General Assembly under that name on 3 May 2011 and

because it considered both the Appellant and the CFF equally as the "offspring" of NAVU.

- FIFA overlooked the unique and very specific situation of the Appellant, as confirmed by CONCACAF in its *amicus curiae*, who (i) has been organizing and managing football independently on its territory since 1962; (ii) has been part of the NAVU, which was a FIFA member association, until its dissolution; (iii) has never been and still not is a member of the KNVB, the latter having no involvement whatsoever in the life and growth of football in Bonaire.
- Denying the Application would create an inequality of treatment between associations. Numerous member associations in the Caribbean region have been admitted as FIFA member associations, and today, the Appellant is precluded from taking advantage of the same rights as its direct competitors, which is certainly not what FIFA aims at. In particular, Bonaire football players, who have played for the A national team in a CONCACAF competition, are precluded from playing for the national team of the KNVB as well as in any FIFA competitions. In addition, the Appellant, because it is not a FIFA member association, is not entitled to field a player who has played in A matches in official competitions for the KNVB.
- By refusing to admit the Appellant as a new FIFA member association, the Respondent discriminated the Appellant and infringed the Appellant's personality rights (Article 28 Swiss Civil Code), since the latter is deprived of the possibility to be recognized at a worldwide level in the same manner as many other FIFA member associations. In addition, such wrongful refusal to admit the Appellant as a FIFA member association hinders itself but also its affiliated clubs and players from fully pursuing their sporting and economic activities. Furthermore, the FIFA's interest does not override the Appellant's interest, since the only interest FIFA could invoke is that it does not wish to be confronted to "other" situations, in which associations governing football in a territory that does not qualify as a "country" apply to become a FIFA member. Such interest cannot override the Appellant's many interests in this matter since the situation of the Appellant is objectively unique and not transferable to any other application for admission as a FIFA member. As a result, the wrongful dismissal of the Application for FIFA membership infringes the Appellant's personality rights.

B. The Respondent

34. The Respondent requested the Panel to decide as follows:

"*(a) rejecting the reliefs sought by the Appellant;*

(b) confirming the Appealed Decision;

(c) alternatively, referring the case back to FIFA for a decision on the merits of the [Appellant's] membership application;

(d) ordering the Appellant to bear the full costs of these arbitration proceedings; and

(e) ordering the Appellant to make a contribution to FIFA's legal costs."

35. The Respondent's submissions in support of such requests may be summarized as follows:

- Based on Articles 2 (2) and 5 of the Admission Regulations, the sole competence to verify the completeness of an application for FIFA membership remains with the FIFA Administration in close cooperation with the MA Committee. In the present matter, the Application was incomplete since it did not include the *"[d]ocuments that show that the applicant represents a country in accordance with article 10 of the FIFA Statutes"*. The Appellant even failed to provide evidence that it would eventually represent a country, i.e. that it would be expected to gain independence in the short term.

- Moreover, in the present case, it is undisputed that, although the Application was deemed incomplete, it was not sent back to the Appellant to submit a complete application, as provided under Article 2(2) of the Admission Regulations. Indeed, under the specific circumstances of the case, such step could be foregone for reasons of procedural economy in light of the impossibility for the Appellant to complete its Application in the following twelve months (if ever).

- FIFA Administration's competence covers the right to reject the Application for incompleteness: the intervention of the FIFA Council, and eventually the FIFA Congress, in the admission process is (i) exclusively linked to the prior existence of a complete and final report from the relevant confederation and (ii) limited to the evaluation of the merits of the Application and not the formal and procedural aspects. Considering that only complete applications are forwarded to the relevant confederation under Article 5 of the Admission Regulations, it follows that incomplete applications are not forwarded to that confederation and are therefore rejected as per Article 2 (2) of the Admission Regulations.

- Alternatively, should the Panel consider that the Application cannot be deemed incomplete – *quod non* –, the Appellant does not meet the requirements to become a FIFA member. First, Bonaire is not a 'country' within the meaning of Article 11 of the FIFA Statutes as interpreted by the CAS case law since it is clearly not an independent State recognised as such by the majority of the United Nations Member States. Such restrictive approach has been consistently applied by the FIFA, since the amendments to the FIFA Statutes adopted in 2004. Secondly, Bonaire is not in a process to gain independence, as envisaged in Article 11 (6) of the FIFA Statutes. This provision requires that there be a realistic expectation that the candidate will become an independent country at some point in the near future.

- Contrary to what the Appellant contends, the CFF was never admitted as a new FIFA member after the dissolution of the Netherlands Antilles. Instead, on 6 February 2011, the NAVU amended its statutes and changed its denomination to the current *Federashon Futbol Korsou*, i.e. the CFF, while maintaining the FIFA membership intact over the relevant territory. Since the amendments to FIFA Statutes in 2004, all the associations that have been admitted to FIFA pertain to an independent State recognised by the international community, i.e. Comoros, Timor Leste, Montenegro, South Sudan and Kosovo.

- The Appellant's alleged "special status" is irrelevant, since none of the points enumerated by the Appellant as creating a special status are listed in the FIFA

Statutes as requirements to be considered for FIFA membership. For the same reason, the arguments put forward by CONCACAF in this respect are also irrelevant.

- By rejecting the Application, the Respondent did not discriminate the Appellant. The Appellant was treated in the same way as all those associations that, despite being members of confederations, do not meet the requirements to become FIFA members, i.e. French Guiana, Guadeloupe, Martinique or Saint Martin. In addition, the fact that the Appellant was treated differently than other associations that applied for FIFA membership under a different regulatory regime – i.e. before the amendments to the FIFA Statutes in 2004 – is in line with the principle *tempus regit actum*. As a result, there is no inequality vis-à-vis associations that became FIFA members before 2004.

- By rejecting its Application, the Respondent did not breach the Appellant's personality rights. According to the Swiss Federal Tribunal (SFT, 5A_21/2001; SFT 4A_314/2017), not every refusal of a member association constitutes an attack to the applicant's personality rights; in particular, FIFA could not have breached the Appellant's personality rights since the reason for refusing the Application was that the Application did not meet the conditions as provided in the Admission Regulations. Alternatively, any possible breach of the Appellant's personality rights that may have been caused by the Appealed Decision is justified by FIFA's overriding interest under Article 28 (2) of the Swiss Civil Code to reject the Application. Indeed, FIFA has an interest in avoiding the proliferation of member associations which exercise jurisdiction in territories that do not correspond to an independent State recognized by the international community, which was recognized by the Swiss Federal Tribunal as an overriding interest with respect to the IOC, and should equally be recognized as such with respect to FIFA.

C. CONCACAF's *amicus curiae* brief

36. CONCACAF fully supports the admission of the Appellant as a FIFA member. Its *amicus curiae* brief may be summarized as follows:

- With respect to the admission process, CONCACAF confirms that, since it submitted the Application, FIFA never contacted CONCACAF until the issuance of the Appealed Decision. FIFA never indicated to CONCACAF that the Application was incomplete nor requested any report from CONCACAF. CONCACAF objects to the alleged change of denomination of the NAVU to CFF on 6 February 2011, since the NAVU participated in its General Assembly on 3 May 2011 under that name and that NAVU consisted of two associations, i.e. the Appellant and the CFF.

- After the dissolution of the NAVU, the Appellant was welcomed as an associate member of CONCACAF as of 19 April 2013; on 10 June 2014, then, its membership was unanimously approved by the CONCACAF Ordinary Congress. This means that the Appellant fulfilled the following criteria: (i) the Appellant is the controlling body for football in Bonaire; (ii) the Appellant has a working administrative and sporting infrastructure and internal organisation; and (iii) the Appellant ratified statutes that are in accordance with the FIFA

Statutes and declared that it will always comply with the statutes, regulations and decisions of FIFA and CONCACAF.

- Since the very beginning of its membership, the Appellant has been a very active member of CONCACAF and has developed itself to a model member with participation in grassroots programs and ambitious development goals.
- CONCACAF confirms that the Appellant has a special status: the Appellant has been operating for a long time alike the CFF; while NAVU existed, CONCACAF acknowledged the existence of the two football federations that made up NAVU. CONCACAF therefore recognised the CFF and the Appellant equally as "offspring" of the NAVU.

V. JURISDICTION OF THE CAS

37. The question of whether the CAS has jurisdiction to hear the present dispute must be assessed on the basis of the *lex arbitri*. As Switzerland is the seat of the arbitration and not all Parties are domiciled in Switzerland, the provisions of the Swiss Private International Law Act ("PILA") apply, pursuant to its Article 176.1. In accordance with Article 186 of PILA, the CAS has the power to decide upon its own jurisdiction ("*Kompetenz-Kompetenz*").

38. Article R47 of the CAS Code provides as follows:

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

39. Article 58 (1) of the FIFA Statutes provides that "*[a]ppeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question.*"

40. The Panel notes that the Appealed Decision represents a final decision taken by FIFA in the meaning of Article 58 (1) of the FIFA Statutes, and that therefore the CAS holds jurisdiction to decide on the present appeal. In addition, the jurisdiction of the CAS to hear the appeal filed by the Appellant against the Appealed Decision is confirmed by the signature of the Order of Procedure.

41. Based on the above considerations, the Panel finds that it has jurisdiction to decide on the present appeal.

VI. ADMISSIBILITY

42. Article R49 of the CAS Code provides as follows:

"*In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit*

for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties."

43. The Panel notes that the statement of appeal was filed on 8 January 2020, i.e. within the time limit as provided under Article R49 of the CAS Code and Article 58 of the FIFA Statutes. The Panel also notes that the other requirements provided under Article R48 of the CAS Code are fulfilled. As a result, the present appeal is admissible.

VII. APPLICABLE LAW

44. Pursuant to Article R58 of the CAS Code:

"*The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*"

45. Pursuant to Article 57 (2) of the FIFA Statutes:

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

46. To decide on the present matter, the Panel shall therefore apply primarily the FIFA Statutes and other FIFA rules and regulations, in particular the FIFA Admission Regulations, and, on a subsidiarily basis, Swiss Law.

VIII. CONCACAF'S REQUEST TO INTERVENE

47. On 21 January 2020, CONCACAF requested the CAS Court Office to be authorised to intervene in the present proceedings in the following terms:

"[...] *We are pleased to confirm that we wish to be part of the proceedings as an interested party and/or in accordance with the scope of participation that the Panel may decide.*

Given our unique position as football governing body for the region "North, Central America and Caribbean", which includes as a member the BFF, and our role as Confederation recognized by FIFA, we deem that our intervention may be useful, not to say necessary, to provide important input on the situation/affiliation of the BFF with CONCACAF and for the information of the Panel. [...]

Furthermore, the framework FIFA implemented in relation to application for membership directly involves the Confederation. […]

In light of the above, bearing in mind that the matter concerns one of its members, which expressed intention to become a full FIFA member, CONCACAF considers that it shall participate in the proceedings as interested party.

That way, CONCACAF will be able to present elements as to the membership of its affiliated member BFF to the CONCACAF and the application process in force. Needless to say that CONCACAF is affected by the outcome of the decision, as such a decision influences the number of member associations of CONCACAF within FIFA."

48. The Appellant confirmed not having any objection to the intervention of CONCACAF to the present proceedings. The Respondent however objected to CONCACAF's intervention.

49. The Panel notes that according to Article R41.3 of the CAS Code:

"*If a third party wishes to participate as a party to the arbitration, it shall file an application to this effect with the CAS Court Office, together with the reasons therefore within 10 days after the arbitration has become known to the intervenor, provided that such application is filed prior to the hearing, or prior to the closing of the evidentiary proceedings if no hearing is held. The CAS Court Office shall communicate a copy of this application to the parties and fix a time limit for them to express their position on the participation of the third party and to file, to the extent applicable, an answer pursuant to Article R39.*"

50. Pursuant to Article R41.4 of the CAS Code:

"*A third party may only participate in the arbitration if it is bound by the arbitration agreement or if it and the other parties agree in writing. […]*

After consideration of submissions by all parties concerned, the Panel shall determine the status of the third party and its rights in the procedure.

After consideration of submissions by all parties concerned, the Panel may allow the filing of amicus curiae briefs, on such terms and conditions as it may fix."

51. The Panel notes that CONCACAF's request to intervene in the present arbitration, as formulated by the CONCACAF, covers both a request to intervene as a party as well as *a maiore ad minus* a request to be admitted as an *amicus curiae*. The Panel will examine whether CONCACAF meets the conditions to be admitted as a party or, at least, if it could be admitted as an *amicus curiae*.

A. Binding Arbitration Agreement

52. The Panel notes that, pursuant to Article R41.4 of the CAS Code, intervention as a party can only be admitted if an arbitration proceeding is pending and if the party requesting the intervention is bound by the arbitration agreement or if the other parties agree with its request to intervene.

53. In the present matter, the Panel recognises that, despite the Respondent's objections to CONCACAF's request to intervene as a party, CONCACAF, as a FIFA member confederation, is bound by the arbitration clause encompassed in the FIFA Statutes.

B. Time limit to file the request to intervene

54. The Panel notes that CONCACAF was informed of the present arbitration proceedings on 13 January 2020 and submitted its request to intervene on 21 January 2020. As a result, CONCACAF filed its request to intervene within the time-limit provided under Article R41.3 of the CAS Code.

C. Legal Interest

55. According to the CAS case law, intervention according to Article R41.3 of the Code requires a legal interest of the intervenor (CAS 2018/A/6017, para. 75; CAS 2010/A/2296, decision on intervention, para. 18 ff; CAS 2008/A/1513, decision on intervention, para. 18 ff.). In the absence of any defined threshold of legal interest in the rules and regulations, a specific legal interest requires that a person - as a result of its procedural status in the previous instance or the application of substantive rules and regulations - is adversely affected in his/her legal sphere by the outcome of the arbitration procedure.

56. In the present matter, CONCACAF submits that its intervention is necessary to provide important input on the situation and affiliation of the Appellant with CONCACAF and relies on the role granted to confederations in Article 4 of the Admission Regulation. CONCACAF also argues that it will be affected by the outcome of the present arbitration procedure as such decision will influence the number of associations of CONCACAF within FIFA.

57. The Panel notes that, according to Articles 4 and 8 of the Admission Regulations, CONCACAF's role in the admission procedure is merely consultative and informative. As a result, the Panel finds that – except for its right to be consulted during the internal process before FIFA – CONCACAF has no material claim against FIFA nor the Appellant that could be affected by the present arbitration procedure. In addition, the fact that the outcome of the present arbitration procedure could potentially influence the number of associations of CONCACAF in FIFA will only affect CONCACAF's sporting, political or financial sphere, but not its legal sphere. As a result, the Panel finds that CONCACAF lacks a specific legal interest to be accepted to intervene as a party in the present arbitration procedure.

58. The Panel however finds that, since CONCACAF has the right to be consulted and to provide information to FIFA as detailed under the Admission Regulations, it shall be entitled to intervene as an *amicus curiae* in accordance with Article R41.4 of the CAS Code.

IX. MERITS

59. In light of the Parties' submissions, the Panel will address the following issues:

A. the internal competence to decide on the Application, and in more detail whether or not the FIFA Administration was entitled to decide on the Application;

B. in the affirmative, whether, by dismissing the Application, FIFA contradicted the principle of equal treatment or the principle of estoppel; and

C. whether, by dismissing the Application, FIFA violated the Appellant's personality rights.

A. Internal Competence to decide on the Appellant's Application for FIFA Membership

a.) Position of the Parties

60. The Appellant submits that according to Article 10 and 12 of the FIFA Statutes, the competence to decide whether to admit a new FIFA member association lies solely with the FIFA Congress, upon recommendation of the FIFA Council. Based on Article 2 of the Admission Regulations, the competence of FIFA's Administration is limited to the verification of the completeness of an application. In addition, according to the same provision, should an application be incomplete, it shall be returned to the applicant with a deadline to submit a revised version of it and not rejected. In the present matter, the Application was rejected by the MA Committee or potentially by FIFA's Administration despite the Application being complete, since all the documentation listed under Article 3 of the Admission Regulations had be attached to it. The wording of the Appealed Decision shows that the Application was rejected for a substantive reason, i.e. the fact that the Appellant does not meet the condition provided for in Article 3, para. 1 a) of the Admission Regulations nor Article 11 para. 6 of the FIFA Statutes. FIFA Administration was not competent to make such an assessment in the Appealed Decision. In addition, the procedure described in the Admission Regulations – which provides for the involvement of in particular the confederation geographically concerned – was not followed in the present matter.

61. The Respondent in turn submits that according to Article 2 para. 2 and Article 5 of the Admission Regulations, FIFA Administration was clearly competent to verify the completeness of the Application. The FIFA Administration decided that the Application was incomplete because it lacked any documents that show that the Appellant represents a country in accordance with the FIFA Statutes or that it would be expected to gain independence in the short term pursuant to Article 11 para. 6 of the FIFA Statutes. For reasons of procedural economy in light of the impossibility for the Appellant to complete its application in the following twelve months (if ever), FIFA Administration dismissed the Application. It is only if the Application is considered complete that the FIFA Congress will decide on whether to admit an association as a new FIFA member.

b.) Position of the Panel

62. The Panel notes that the issue of competence of FIFA to decide on the Application in this matter is connected to the issue of whether or not the Application was complete. Indeed, Article 2 para. 2 of the Admission Regulations provides that:

"*The FIFA general secretariat shall verify the completeness of the application. If the application is not complete, it shall be returned to the application with a deadline for submitting a revised application. The applicant must submit a full application within twelve months of the initial submission to FIFA. If the applicant failed to do so, the application will be rejected and the applicant may submit no further applications in the twelve months following the rejection of the application.*"

In addition, Article 5 of the Admission Regulations provides as follows:

"*The FIFA Associations Committee shall work in close cooperation with the FIFA general secretariat to verify the completeness of the application. [...]*"

63. The Panel will therefore first address the issue of the completeness of the Application, and then turn to that of the internal competence to decide on such Application.

i. Was the Appellant's Application for FIFA Membership complete?

64. The Panel notes that the issue of completeness of the Application for FIFA membership falls to be assessed in relation to the FIFA Statutes and other relevant rules, especially the FIFA Admission Regulations, which govern the process and the conditions to be met to become a FIFA member.

65. Indeed, pursuant to Article 3, para. 1 of the Admission Regulations, "*the application for admission [...] must contain reports and documentation on the points listed below. Any applications that do not meet the provisions of this article shall be regarded as* <u>*incomplete*</u>*. [...]*" [we underline].

66. Among the documents that need to be included in any application for FIFA membership, Article 3 para. 1 a) of the Admission Regulations require to include "*Documents that show that the applicant represents a* <u>*country*</u> *in accordance with article 10 of the FIFA Statutes. [...]*" [we underline].

67. According to the FIFA Statutes, a "*country*" is "*an independent state recognised by the international community*".

68. Also, Article 11 para. 6 of the FIFA Statutes provides as follows:

"*An association in a region which has not yet gained independence may, with the authorisation of the member association in the country on which it is dependent, also apply for admission to FIFA.*"

69. The Application contained with respect to the condition provided for under Article 3 para. 3 a), two letters:

- a letter from CONCACAF to FIFA dated 30 May 2019, in which CONCACAF "*formally confirms that the [Appellant] is a full member of CONCACAF [since] June 2014 [...] [and] that the [Appellant] is in good standing with CONCACAF and is therefore in full exercise of its membership rights*".

- a letter from the KNVB to FIFA dated 30 August 2017, in which the KNVB stated as follows:

> "*By means of this letter, we confirm that Bonaire is a special municipality within the country of the Netherlands.*
>
> *Additionally, we confirm that the [Appellant] is the entity responsible for the organization and supervision of football in all its forms in Bonaire.*
>
> *In this respect, and in accordance with article 10 par. 6 of the FIFA Statutes, the [KNVB], formally and without any restrictions nor conditions, hereby authorizes the [Appellant] to apply for admission to FIFA*"

70. As to the letter from CONCACAF, confirming the Appellant's membership to CONCACAF, the Panel notes that it is clearly not "*a document that show[s] that the [Appellant] represents a country*"; the Panel therefore decides that this document is clearly irrelevant to the issue under Article 3 para. 1 a) of the Admission Regulations.

71. The second letter mentioned above, the letter dated 30 August 2017 from the KNVB to FIFA, does not "*show that the [Appellant] represents a country*" either. To the contrary, in its statement, the KNVB confirms that "*Bonaire is a special municipality within the country of the Netherlands*", and that, as a result, the Appellant does not represent a *country* within the meaning of the FIFA Statutes. Hence, the letter from the KNVB rather confirms that the Appellant does not meet the condition of representing a *country*. As a result, in the Panel's view, since the documents included in the Application under Article 3 para. 1 a) of the Admission Regulations, clearly do not demonstrate that the Appellant represents a 'country' within the meaning of the FIFA Statutes, the Application is indeed "*incomplete*" within the meaning of Article 3, para. 1 of the Admission Regulations, which provides that "*any application that do not meet the provisions of this article shall be regarded as incomplete*".

72. The Panel further notes that the Appellant also relied on Article 11 para. 6 of the FIFA Statutes, "*an association in a region which has not yet gained independence may, with the authorisation of the member association in the country on which it is dependent, also apply for admission to FIFA*". The Panel however finds that the word "yet" in this provision unambiguously means that this provision only covers the case of an association within a region that is in a process of gaining independence <u>in the near future</u> but has not <u>yet</u> done so. In the present matter, both Parties agree that this is not the case of Bonaire, which is and will remain in the near future a special municipality of the Netherlands. As a result, the Appellant could not rely on this provision for the purpose of fulfilling the condition set out under Article 3, para. 1 a) of the Admission Regulations.

73. As a result, based on Article 3 para. 1 of the Admission Regulations, the Panel finds that the Application filed by the Appellant is incomplete, as no document has been provided that confirms that the Appellant "*represents a country*" was provided.

ii. Was FIFA Administration entitled to reject the Appellant's Application?

74. Having determined that the Application was incomplete, the Panel now turns to the issue of whether or not, pursuant to the applicable rules and regulations, FIFA Administration was competent to reject the Application.

75. As mentioned above, Article 10 of the FIFA Statutes provide as follows:

"*The Congress shall decide whether to admit, suspend or expel a member association solely upon the recommendation of the Council.*"

76. In addition, Article 2 para. 2 of the Admission Regulations provides that:

"*The FIFA general secretariat shall verify the completeness of the application. If the application is not complete, it shall be returned to the application with a deadline for submitting a revised application. The applicant must submit a full application within twelve months of the initial submission to FIFA. If the applicant failed to do so, the application will be rejected and the applicant may submit no further applications in the twelve months following the rejection of the application.*"

77. Finally, Article 5 of the Admission Regulations also provides that: "*Complete applications shall be forwarded to the confederation that is geographically responsible for the applicant*".

78. In the Panel's view, it clearly derives from the above-mentioned provisions of the FIFA Statutes and Admission Regulations that FIFA Administration is competent to verify as a preliminary matter the completeness of any application for FIFA Membership, and that FIFA Congress is only competent to decide on applications for FIFA Membership once they have been considered as complete by the FIFA Administration. The FIFA Administration was therefore competent to decide that the Application was incomplete since it did not meet Article 3 para.1 a) of the Admission Regulations.

79. The Panel further notes that since both Parties agree that Bonaire is not a country, and that it will not become an independent State in the near future, it made sense from a standpoint of procedural efficiency – in light of the impossibility for the Appellant to fulfil this condition within the next twelve months (if ever) – to reject the Application directly instead of returning it to the Appellant and rejecting it at a later stage. As a result, the Panel finds that FIFA Administration was competent to dismiss the Application for reasons of incompleteness. In doing so, FIFA Administration could not have assessed – nor did it have to – elements relating to the merits of the Application, in particular the fact that the Appellant has been managing football activities independently on Bonaire since 1962, that it used to be one of the constituents of the NAVU before the dissolution of the Netherlands Antilles or that it works independently from the KNVB.

B. Alleged violation of the principle of equal treatment or estoppel

a.) Position of the Parties

80. The Appellant submits that it is in the same situation as the CFF, which was accepted as a FIFA member association in 2011 after the NAVU ceased to exist. Indeed, CFF was admitted as a FIFA member despite Curaçao not being a 'country' (nor having the intention to become one) within the meaning of the FIFA Statutes and the Admission Regulations. As a result, by dismissing the Appellant for the reason that it is not an independent State within the meaning of the FIFA Statutes constitutes a violation of the principle of equal treatment. In other words, by accepting the CFF as a FIFA Member in 2011, the Respondent was estopped from acting differently with respect to the

Appellant, because the latter is in the same situation than CFF used to be in 2011. By contrast, the Respondent contends that CFF and BFF are different, which explains the difference in treatment by FIFA: first, contrary to what the Appellant argues, the CFF was not admitted as a FIFA member in 2011 following the dissolution of the NAVU, but rather NAVU kept FIFA membership while changing its denomination and territory to CFF per notarial deed dated 11 February 2011; secondly, Curaçao and Bonaire have a different status within the Netherlands; thirdly, the CFF was already a FIFA Member prior to the creation of the NAVU, which is not the case for the Appellant. By contrast, the Appellant is being treated in the same way as many other associations that, despite being members of confederations, do not meet the requirements to become members of FIFA.

b.) Position of the Panel

81. Equal treatment is a fundamental legal principle which requires that administrative or adjudicatory bodies to treat similar situations in a similar manner. The crucial caveat rests on the objective similarity between situations (CAS 2015/A/4241, para. 8.56; CAS 2018/A/5854, para. 57; CAS 2012/A/2750, para. 133). In fact, quite obviously, the principle of equal treatment does not require that different situations are treated in the same way.

82. The Panel shall therefore verify whether the Appellant today is objectively in a similar situation as CFF was at the time of its admission as a FIFA member in 2011. In this respect, the Panel first notes that, from a perspective of Dutch law, Bonaire and Curaçao have a different legal status. Indeed, as noted in the Application itself (p. 10), whereas Bonaire is a special municipality (*openbaar lichaam* or *bijzondere gemeente*) of the Netherlands, Curaçao (like Aruba and Sint Maarten) is a constituent country (*land*) of the Kingdom of the Netherlands: in other words, Curaçao is not a Dutch overseas dependency, while Bonaire voted to keep direct ties with the Netherlands. The Parties agree that from a perspective of Dutch law, Curaçao enjoys more autonomy than Bonaire. Secondly, according to the evidence on file, CFF was already a member of FIFA before the incorporation of the NAVU in 1958, since 1932. In addition, according to a notarial deed on file, after the dissolution of the Netherlands Antilles, a general meeting of the NAVU decided, on 6 February 2011, to amend the articles of incorporation of the association so as to become the CFF, while keeping the FIFA affiliation.

83. The Appellant argues against such conclusion, on the basis that such amendment could not be possible since the NAVU was composed of several constituent members and because after such alleged general meeting, NAVU was represented at a meeting organised by CONCACAF in May 2011 under the denomination of NAVU. The Panel however finds that the Appellant's arguments are not convincing: the fact that the CFF was represented at a CONCACAF meeting under the denomination of NAVU clearly does not counterbalance the fact that the decision to change NAVU's denomination to CFF is embodied in a valid notarial deed. In addition, the Appellant did not demonstrate that the evidence on file – i.e. the notarial deed of 11 February 2011 – was invalid. Besides, in many jurisdictions, associations may lawfully decide – admittedly, subject to specific conditions – to amend their articles of incorporation on important aspects such as membership, objectives and denomination. There is no reason to believe this would not have been possible under the laws applicable in Curaçao at the time. Hence,

the Appellant did not demonstrate that the notarial deed is invalid or that the decision encompassed in such notarial deed is unlawful or even that it has been challenged. In the Panel's view, it is therefore established that the CFF was not admitted – nor re-instated – as a FIFA Member in 2011 but rather that it kept its FIFA affiliation by changing its denomination, an operation that was not objected to by the Appellant at any time before today in the framework of the present proceedings.

84. The Panel therefore finds that the Appellant's situation shows several important objective differences as compared with that of the CFF. These differences may reasonably may reasonably relied on by FIFA to treat the Appellant in a different way from that which it treated the CFF in 2011. Furthermore, the Respondent produced evidence that the position it held with respect to the Appellant was consistently held with respect to FIFA membership applications received from other football federations not representing an independent State either. Hence, for instance, the Respondent equally rejected the applications for FIFA membership received from French Guiana, Guadeloupe, Martinique and Saint Martin.

85. The Appellant similarly argued that the Respondent was estopped from rejecting the application for membership from the Appellant because it had accepted that of the CFF in 2011.

86. According to CAS jurisprudence, the doctrine of estoppel is defined as a general principle of law firmly established in common law and known in other legal systems even though under a different heading (e.g. reliance in good faith, *venire contra factum proprium*) that arises when one makes a statement or admission that induces another person to believe something and that results in that person's reasonable and detrimental reliance on the belief. (CAS 2011/A/2473 para. 74; CAS OG 02/006).

87. In the present matter, the Panel considers that the Appellant cannot not validly rely on the doctrine of estoppel. Indeed, the Appellant knew already in 2011 that the CFF used to be a FIFA member prior to the creation of the NAVU in 1958, and that Bonaire enjoys less autonomy than Curaçao within the Kingdom of the Netherlands. The Appellant therefore should have considered whether there were – or at least could be – other factors explaining CFF being a FIFA member, which could possibly not be relied on by the Appellant. In addition and more importantly, over 8 years have elapsed between the date the NAVU changed its articles of incorporation to become the CFF in February 2011 and the date the Appellant applied for FIFA membership in June 2019. In the Panel's view, the Appellant's argument that it relied on the expectations induced by FIFA's behavior towards the CFF more than 8 years ago is not reasonable: even if the rules remained unchanged in this period of time, FIFA's political approach and practice with respect to membership applications could have evolved over time. As a result, the Panel finds that the Appellant cannot rely on the doctrine of estoppel to justify that the Respondent could not validly dismiss the Appellant's application for FIFA membership.

88. As a result, the Panel finds that by rejecting the Application, the Respondent did not violate the principle of equal treatment nor the principle of estoppel.

C. Alleged violation of the Appellant's personality rights

a.) Position of the Parties

89. By refusing to admit the Appellant as a new FIFA member, the Respondent deprived the Appellant and its affiliated clubs and players from fully pursuing their sporting and economic activities, in particular as to the possibility for the Appellant to be recognised at a worldwide level in the same way than many other FIFA member associations. Furthermore, the FIFA's interest – to avoid being confronted to other FIFA membership applications from football associations not representing an independent State – does not override the Appellant's interests to benefit from such membership, since the situation of the Appellant is objectively unique and not transferable to any other association applying for FIFA membership.

90. The Respondent argued that there can be no breach of personality rights since it rejected the Application because it did not meet the conditions contained in the FIFA Statutes and the Admission Regulations. Alternatively, even if the Respondent breached the Appellant's personality rights, such breach was not illicit since it was justified by FIFA's overriding interest – i.e. avoiding the proliferation of member associations exercising jurisdiction over territories that do not correspond to an independent State.

b.) Position of the Panel

91. Article 28 SCC states that: 1) Any person whose personality rights are unlawfully infringed may petition the court for protection against all those causing the infringement; 2) An infringement is unlawful unless it is justified by the consent of the person whose rights are infringed or by an overriding private or public interest or by law. Under Article 8 SCC, the Appellants must prove that their personality rights were infringed in an unlawful manner.

92. In the present matter, the Panel considers that since the Application did not meet the conditions set out in the FIFA Statutes and Admission Regulations, the Respondent could not have violated the Appellant's personality rights by rejecting its application for FIFA membership. Respect of personality, in fact, does not give any entity the right to become a FIFA member, if the conditions for admissions are not satisfied. There may be an exception to this rule in case the criteria for admission are discriminatory and unlawful in nature. However, the latter has not been submitted by the Appellant or – in any event – has not been sufficiently substantiated.

X. COSTS

93. The Panel observes that Article R64 of the CAS Code provides the following:

"At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:

- *the CAS Court Office fee,*
- *the administrative costs of the CAS calculated in accordance with the CAS scale,*
- *the costs and fees of the arbitrators,*

- *the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,*
- *a contribution towards the expenses of the CAS, and*
- *the costs of witnesses, experts and interpreters.*

The final account of the arbitration costs may either be included in the award or communicated separately to the parties. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs."

94. Article R64.5 of the CAS Code provides as follows:

"*In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties.*"

95. Having considered the outcome of the arbitration, in particular the fact that the appeal was dismissed, the Panel determines that the costs of the arbitration, as notified by the CAS Court Office, shall be borne by the Appellant.

96. Furthermore, pursuant to Article R64.5 of the CAS Code, and in consideration of the complexity and outcome of the proceedings, the financial resources and the conduct of the Parties, in particular the fact that the Respondent was not represented by external counsels, the Panel rules that no contribution shall be awarded for legal costs and other expenses incurred in connection with these proceedings.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 8 January 2020 by *Federashon di Futbol Boneriano* against *Fédération Internationale de Football Association* with respect to the Decision taken by *Fédération Internationale de Football Association* on 28 December 2019 is dismissed.
2. The decision by *Fédération Internationale de Football Association* dated 28 December 2019 is confirmed.
3. The costs of the arbitration, to be determined and served to the Parties by the CAS Court Office, shall be borne entirely by the Bonaire Football Federation.
4. Each party shall bear its own costs.
5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 30 November 2020

THE COURT OF ARBITRATION FOR SPORT

Luigi Fumagalli
President of the Panel

Philippe Sands
Arbitrator

Ulrich Haas
Arbitrator

Stéphanie De Dycker
Clerk