



Tribunal Arbitral du Sport
Court of Arbitration for Sport
Tribunal Arbitral del Deporte

CAS 2020/A/7212 FC Nizhny Novgorod v. FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Efraim Barak, Attorney-at-law in Tel Aviv, Israel
Arbitrators: Mr Frans de Weger, Attorney-at-law in Haarlem, The Netherlands
Mr Jacopo Tognon, Attorney-at-law in Padova, Italy
Ad hoc Clerk: Mr Pierre Turrettini, Attorney-at-law in Geneva, Switzerland

between

FC Nizhny Novgorod, Russian Federation

Represented by Mr Georgi Gradev, Mr Mikhail Prokopets, Mr Ilya Chicherov and Mr Yuri Yakhno, SILA International Lawyers, in Moscow, Russia

Appellant

and

Fédération Internationale de Football Association, Switzerland

Represented by Mr Jaime Cambreleng Contreras, Head of Litigation, and Mrs Marta Ruiz-Ayucar, Senior Legal Counsel

Respondent

I. PARTIES

1. FC Nizhny Novgorod (the “Appellant” or “FC Nizhny”) is a professional football club with its registered office in Nijni Novgorod, Russia. The Club is a member of the Football Union of Russia (the “FUR”), which in turn is affiliated to *Fédération Internationale de Football Association* (“FIFA”).
2. FIFA (the “Respondent”) is an association incorporated under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the world governing body of international football. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and football players worldwide.
3. FIFA and FC Nizhny are hereinafter jointly referred to as the “Parties”.

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts and allegations based on the Parties’ oral and written submissions on the file and relevant documentation produced in these appeals. Additional facts and allegations may be set out, where relevant, in connection with the further legal discussion. While 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.

A. Background facts

5. On 12 March 2015, the FIFA Dispute Resolution Chamber (the “FIFA DRC”) rendered a decision (the “FIFA DRC Decision”), ordering the Russian club Noncommercial Partnership Football Club “Volga” (“FC Volga” or the “Original Debtor”) to pay to the player Mr Dani Bondarv (the “Creditor”) compensation in the amounts of USD 521,543 plus interest, Russian Rubles (RUB) 350,000 plus interest and USD 630,000 plus interest.
6. On 29 April 2016, disciplinary proceedings were opened against FC Volga in respect of a potential violation of Article 64 FIFA Disciplinary Code (2011 edition) (“FDC 2011”) because Mr Dani Bondarv never received the amounts awarded to it by the FIFA DRC Decision. This letter was addressed to the FUR with a copy to Mr Dani Bondarv and FC Volga.
7. On 23 June 2016, the FIFA Disciplinary Committee (the “FIFA DC”) rendered a decision (the “First Disciplinary Decision of 23 June 2016”) pronouncing FC Volga guilty of failing to comply with the FIFA DRC Decision, in violation of Article 64 FDC 2011, and ordering FC Volga to pay a fine in the amount of CHF 30,000. FC Volga was informed that disciplinary sanctions would be taken should FC Volga not pay its debts to Mr Dani Bondarv.
8. On 1 July 2016, the FUR informed FIFA that FC Volga was no longer affiliated to FUR due to a voluntary withdrawal from national competitions.

9. On 13 July 2016, FC Volga informed FIFA that it was no longer affiliated to FUR.
10. On 14 July 2016, the FIFA DC wrote the following letter to FC Volga and Mr Dani Bondarv (the “Letter of 14 July 2016”):

“Ref. no. 160434 jbl (please quote in all correspondence)

Club Noncommercial Partnership Football Club “Volga”, Russia

(Relative to the case: Player Dani Bondarv, Israel / Club Noncommercial Partnership Football Club “Volga”, Russia)

Dear Sirs,

We refer to the above-mentioned matter and in particular to the correspondence from the Football Union of Russia dated 1 July 2016, a copy of which we herewith enclose for the perusal of Mr Dani Bondarv, for his information and any action he may deem appropriate.

In this respect, we have noted from the abovementioned correspondence that – amongst others – the Russian club Noncommercial Partnership Football Club “Volga” (Football Club Volga Nizhny Novgorod) is no longer affiliated to the Football Union of Russia.

On account of the above, we must inform you that, as a general rule, our services and competent decision-making bodies (i.e. the Players’ Status Committee and the Dispute Resolution Chamber as well as the Disciplinary Committee) cannot deal with cases involving clubs which are not affiliated to their Association any longer.

As a consequence, on behalf of the chairman of the FIFA Disciplinary Committee, we regret having to inform you that we do not appear to be in a position to further proceed with the case of the reference in which the Noncommercial Partnership Football Club “Volga” (Football Club Volga Nizhny Novgorod) is involved.

Finally, we would like to add that our statements made above are based on the information we received from the Football Union of Russia only and hence are of general nature without prejudice whatsoever.

We thank you for taking note of the above and trust in your understanding of the situation.” (emphasis in original)

11. On 13 September 2016, the Arbitration Court of the Nizhny Novgorod Region decided to open a supervision procedure in relation to FC Volga.
12. On 1 February 2017, the Arbitration Court of the Nizhny Novgorod Region decided to terminate the supervision procedure in relation with FC Volga, to recognize FC Volga as insolvent (bankrupted) and to open receivership proceedings in respect of the property of FC Volga for a period of six months.

13. On 10 May 2017, Mr Dani Bondarv filed a claim with the FIFA DRC requesting that FC Nizhny be ordered to pay to him USD 521,543 plus interest, RUB 350,000 plus interest and USD 630,000 plus interest. In his submission, the Player claimed that FC Nizhny, founded in 2015 as “*farm club and a subsidiary*” of FC Volga, was the sporting successor of FC Volga considering, in particular, that the club’s name and history was the same, most of the players and staff members of FC Volga joined FC Nizhny, FC Nizhny was using the same stadium as FC Volga and the logos of the two clubs were similar.
14. Although the claim dated 10 May 2017 was submitted to the FIFA DRC, it appears that FIFA decided to consider the matter as a disciplinary matter. Although no official decision of FIFA to channel the matter to the FIFA DC was presented, as a matter of fact the claim was channelled by the FIFA DRC to the FIFA DC.
15. On 27 June 2017, the FIFA DC requested the FUR to provide its comments regarding the allegations of Mr Dani Bondarv in his claim of 10 May 2017. Same letter also provides the understanding of the reason behind FIFA's decision to classify the matter as a disciplinary matter, explaining that: “[i]n this respect, we herewith wish to provide you with a copy of the player's correspondence dated 10 May 2017 by means of which he alleges that the club, FC Olimpiyets Nizhny Novgorod, which according to him is currently competing in competitions organised by you, is in fact one and the same club as Noncommercial Partnership Football Club “Volga” (Football Club Volga Nizhny Novgorod)”.
16. On 11 July 2017, the FUR transferred to the FIFA DC a letter from FC Nizhny, with supporting exhibits, disputing Mr Dani Bondarv’s claim that FC Nizhny was the sporting successor of FC Volga.
17. On 23 August 2018, the FIFA DC wrote the following letter (the “Letter of 23 August 2018”) to FC Volga and Mr Dani Bondarv:

“Ref. no. 160434 jbl (please quote in all correspondence)

Club Noncommercial Partnership Football Club “Volga”, Russia

(Relative to the case: Player Dani Bondarv, Israel / Club Noncommercial Partnership Football Club “Volga” or FC Vogla Nizhny Novgorod, Russia / FC Olimpiyets Nizhny Novgorod, Russia)

Dear Sirs,

We refer to the aforementioned matter and in particular to the documentation provided by Mr Dani Bondarv’s legal representative on 10 May 2017 and by the club FC Volga Nizhny Novgorod, via the Football Union of Russia, on 11 July 2017, copies of which are hereto enclosed for your information.

In this regard, we hereby inform the parties that the Chairman of the FIFA Disciplinary Committee, after considering all the facts and documents related to the present case,

observed that, the club Noncommercial Partnership Football Club “Volga” involved in the matter at stake lost its affiliation to the Football Union of Russia. Therefore, it remains that the club called FC Volga Nizhny Novgorod that is currently competing in the Russian “1. Division” is a new entity.

As a consequence of the foregoing, we must recall that, as a general rule, our services and decision-making bodies (i.e. the Players’ Status Committee and Dispute Resolution Chamber as well as the Disciplinary Committee), cannot deal with cases involving clubs which are not affiliated to their association any longer.

In this context, we regret having to inform you once again that we do not appear to be in a position to further proceed with the investigation in the present case.

Finally, we would like to add that our statements made above are based on the documentation in our possession only and hence are of a general nature and thus without prejudice whatsoever.

We thank you for taking note of the above and trust in your understanding of the situation.” (emphasis in original)

18. On 13 February 2020, Mr Dani Bondarv filed an additional submission this time with the FIFA DC requesting again that the FIFA DC order FC Nizhny – the sporting successor of FC Volga – to pay the debts due to Mr Dani Bondarv and related costs.

B. Proceedings before the FIFA Disciplinary Committee

19. On 18 February 2020, disciplinary proceedings were opened against FC Nizhny in respect of a potential violation of Article 15 FIFA Disciplinary Code (2019 edition) (“FDC 2019”) / Article 64 FDC 2011 for failure to respect a decision passed by a body, a committee or an instance of FIFA or a CAS decision. FC Nizhny was invited to provide the FIFA DC with its position.
20. On 28 February 2020, FC Nizhny provided the FIFA DC with its position which may be summarised as follows:
- FC Nizhny and FC Volga are two independent entities with different founders, owners and controlling persons.
 - Nizhny Novgorod pertains to the city where both clubs are based. Volga is the name of the largest river of the city Nizhny. The similarities in the name of the clubs shall therefore not be an indication that they are the same clubs.
 - The logos of the two clubs are completely different except for the colors which are the ones of the Coat of arms of the Nizhny city. In addition, FC Nizhny has grey as one of the official colors for its jerseys.
 - FC Nizhny did not replace FC Volga in the national championships when FC Volga stopped participating in the competitions. FC Nizhny started indeed in the

lowest professional competitions and got promoted to the higher competitions in 2017 according to sporting merit and principles.

- FC Nizhny invited former employees of FC Volga to join the team but most of them left the city of Nizhny Novgorod following the bankruptcy of FC Volga. In addition, refusing to hire former employees of FC Volga because of their former employer would be a violation of Russian labor law.
- The similarities in the websites and twitter accounts of FC Nizhny and FC Volga are explained by the fact that both websites were designed by the same web designer which was the only firm having experience in the production and design of football clubs' websites.
- The reference to the history of FC Volga on FC Nizhny's website is justified because of the poor history of the football clubs in the city of Nizhny Novgorod.
- FC Nizhny is not the owner of its stadium but rather benefits from it because it is the only stadium of decent standards to hold its football games. This stadium was built for the 2018 FIFA World Club and shall be used.

21. On 14 March 2020, the FIFA DC rendered a decision (the "Appealed Decision") concluding that FC Nizhny is to be regarded as the sporting successor of FC Volga and is therefore liable for its debts to Mr Dani Bondarv, determining, *inter alia*, the following:

- "[...] *the Single Judge of the Committee takes note, that as per the aforementioned communication of the Secretariat on 23 August 2018, the club FC Olimpiyets [i.e. FC Nizhny] was originally considered by the Chairman of the FIFA Disciplinary Committee to be a new entity.*
- [...] *The Single Judge considers that he is not prevented from reviewing and/or making a legal assessment and deciding if, FC Nizhny Novgorod [i.e. FC Nizhny], is the same as – and/or the successor of – the original Debtor, FC Volga Nizhny Novgorod [i.e. FC Volga], especially considering that the former is still duly affiliated to the Football Union of Russia, and as such, under the jurisdiction of the Committee.*
- [...] *the Single Judge first takes note that FC Nizhny Novgorod itself claimed that the appearance of the same employees and the presence of both clubs in one city should not be a reason to believe that the two clubs have anything to do with succession or inheritance. Furthermore, the Single Judge observes that FC Nizhny Novgorod stated that the original Debtor and FC Nizhny Novgorod have both different "Founders of the club[s]" and "Current head[s] of the club[s]" and therefore different ownership structures. In addition, the Single Judge observes that both clubs share similar names, (FC Volga Nizhny Novgorod – the original Debtor-, FC Nizhny Novgorod –the alleged sporting successor of the latter-) and previously played at the same stadium. Moreover, he notes that both*

clubs' websites are very similar and that according to FC Nizhny Novgorod's official website, they share the same history and sporting achievements.

- *Furthermore, the Single Judge acknowledges that clubs' logos differ but share the same colours, that the original Debtor's Twitter account maintained its activity for the benefit of FC Nizhny Novgorod and that the original Debtor and FC Nizhny Novgorod share an identical address.*
- *In light of all the above, the Single Judge recalls that, in line with the jurisprudence of CAS, which is now reflected in art. 15 par. 4 of the 2019 FDC, the identity of a club is constituted by elements such as its name, colours, logo, fans, history, players, stadium, etc., regardless of the legal entity operating it. As a result, on the basis of the information and documentation at hand, there is no other alternative but to conclude that FC Nizhny Novgorod, is the sporting successor of the original Debtor, FC Volga Nizhny Novgorod.*
- *In this regard, the Single Judge notes that neither the original Debtor nor FC Nizhny Novgorod have complied with the decision passed by the Dispute Resolution Chamber on 12 March 2015 as neither club has paid the outstanding amounts to the Creditor [i.e. Mr Dani Bondary].*
- *As such, following the jurisprudence of the FIFA Disciplinary Committee, the Single Judge concludes that, in principle, the sporting successor, i.e. FC Nizhny Novgorod, of a non-compliant party, i.e. the original Debtor, shall also be considered a noncompliant party and is thus subject to the obligations under art. 64 of the 2011 FDC.*
- *Therefore, the Single Judge found FC Nizhny Novgorod, liable for the debts incurred by the original Debtor – namely the one related to the decision passed by the Dispute Resolution Chamber on 12 March 2015 – and consequently concluded that FC Nizhny Novgorod is responsible for non-complying with a financial decision, under the terms of art. 64 of the 2011 FDC.*

22. On 19 June 2020, FIFA notified the grounds of the Appealed Decision to the FUR requesting it to forward it to FC Nizhny.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

23. On 30 June 2020, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "CAS Code"), FC Nizhny filed a Statement of Appeal at the Court of Arbitration for Sport (the "CAS") against the Respondent challenging the Appealed Decision. In its submission, FC Nizhny requested an extension of two weeks to file its Appeal Brief.

24. On 15 July 2020, FC Nizhny nominated Mr Frans de Weger, Attorney-at-law in Haarlem, The Netherlands, as arbitrator.

25. On the same day, the CAS Court Office initiated the present arbitral procedure.

26. On 20 July 2020, the CAS Court Office extended FC Nizhny's time limit for filing the Appeal Brief considering that FIFA agreed with it.
27. On 27 July 2020, FIFA informed the CAS Court Office that it wished to nominate Mr Mark Hovell, Attorney-at-law in Manchester, United Kingdom, as arbitrator.
28. On 5 August 2020, the CAS Court Office informed the Parties that Mr Mark Hovell had decided to withdraw from the procedure in view of the Appellant's concerns regarding his independence from FIFA.
29. On 7 August 2020, in accordance with Article R51 of the CAS Code and the extension of the time limit granted by the CAS Court Office, FC Nizhny filed its Appeal Brief.
30. On 17 August 2020, FIFA nominated Mr Jacopo Tognon, Attorney-at-law in Padova, Italy, as arbitrator.
31. On 29 September 2020, the CAS Court Office informed the Parties that the Panel appointed to decide this case was constituted as follows:

President: Mr Efraim Barak, Attorney-at-law in Tel Aviv, Israel

Arbitrators: Mr Frans de Weger, Attorney-at-law in Zeist, The Netherlands
Mr Jacopo Tognon, Attorney-at-law in Padova, Italy
32. On 1st October 2020, FIFA requested an extension of the time limit for filing its Answer.
33. On 2 October 2020, the CAS Court Office extended FIFA's time limit for filing its Answer considering that FC Nizhny agreed with it.
34. On 27 October 2020, the CAS Court Office extended again FIFA's time limit for filing its Answer considering a new request from FIFA in this respect accepted by FC Nizhny.
35. On 5 November 2020, FIFA submitted its Answer to the Appeal Brief in accordance with Article R55 of the CAS Code and the extensions of the time limit granted by CAS.
36. On 13 November 2020, FIFA informed the CAS Court Office that, in its view, holding a hearing would not be necessary and that it agreed that the Panel issues an award based solely on the Parties' written submissions.
37. On the same day, FC Nizhny informed the CAS Court Office that it wished a hearing to be held in this matter.
38. On 18 November 2020, the CAS Court Office, pursuant to Article R57 of the CAS Code, informed the Parties that the Panel had decided that a hearing would be held in this matter.
39. On 23 November 2020, the CAS Court Office informed the Parties that the hearing would take place on 4 February 2021 at the CAS Court Office in Lausanne, Switzerland, or by videoconference, depending on the evolution of the COVID-19 situation and the

related travel restrictions. The CAS Court Office also informed the Parties of the appointment of Mr Pierre Turretini, Attorney-at-law in Geneva, Switzerland, as *Ad Hoc* Clerk in this matter.

40. On 16 December 2020, the CAS Court Office sent the Order of Procedure to the Parties for signature.
41. On 18 and 30 December 2020 respectively, the Appellant and the Respondent each signed a copy of the Order of Procedure.
42. On 12 January 2021, the CAS Court office informed the Parties that, in light of the ongoing COVID-19 situation, the hearing scheduled on 4 February 2021 would be held by videoconference.
43. On 13 January 2021, FC Nizhny requested from the CAS Court Office a copy of the award issued in the case *CAS 2020/A/7092 Panathinaikos FC v. FIFA & Club Parma Calcio 1913*.
44. On 26 January 2021, FC Nizhny submitted by email a copy of the award issued in the case *CAS 2020/A/6971 Mihaita Plesan Paunel v. FC Nizhny Novgorod & FIFA*, indicating that it would rely on such document during the hearing.
45. On 30 January 2021, FC Nizhny submitted by email a copy of the award issued in the case *CAS 2020/A/7092 Panathinaikos FC v. FIFA & Club Parma Calcio 1913*, as well as a copy of Prof. Ulrich Haas' article, named *The enforcement of football-related arbitral awards by the Court of Arbitration for Sport (CAS)* published in the *International Sports Law Review* 2014, indicating that it would rely on such documents during the hearing.
46. On 1 February 2021, the CAS Court Office informed the Parties that the Panel took note of the unsolicited submissions of documents presented by the Appellant and that it considered them as requests to produce new exhibits for which FIFA would be able to comment at the outset of the hearing for further decision by the Panel.
47. On 4 February 2021, a hearing took place by videoconference. At the hearing, besides the Panel, the *Ad Hoc* Clerk and Mrs Delphine Deschenaux-Rochat, Counsel to the CAS, the following persons were present:
 - i. For FC Nizhny: Mr Georgi Gradev, Mr Mikhail Prokopets, Mr Ilya Chicherov, Mr Yuri Yakhno and Mr Marton Kiss, SILA International Lawyers, in Moscow, Russia.
 - ii. For FIFA: Mr Jaime Cambreleng Contreras, Head of Litigation, and Mrs Marta Ruiz-Ayucar, Senior Legal Counsel.
48. At the outset of the hearing, the Parties confirmed that they had no objections in respect to the formation of the Panel and that the Panel had jurisdiction over the present dispute. During the hearing, the Parties had the opportunity to present and defend their respective

positions and reiterate the arguments already put forward in their respective written submissions.

49. Before the hearing was concluded, the Parties expressly stated that they did not have any objection with the procedure adopted by the Panel and that their rights to be heard and to be treated equally had been duly respected.

IV. SUBMISSIONS OF THE PARTIES

50. The following outline is a summary of the Parties' arguments and submissions which the Panel considers relevant to decide the present dispute and does not necessarily comprise each and every contention put forward by the Parties. The Panel has nonetheless carefully considered all the submissions made by the Parties, even if no explicit reference has been made in the following summary. The Parties' written and oral submissions during the virtual hearing, documentary evidence and the content of the Appealed Decision were all taken into consideration.

A. The Appellant's Submissions and Requests for Relief

51. The Appellant's submissions in its Appeal Brief and during the hearing may be summarized as follows:
- The Creditor did not prove to FIFA that he had the right to invoke a substantive right under Article 15 FDC 2019 / Article 64 FDC 2011, both at the time of the filing of its first claim against the Appellant on 10 May 2017 before the FIFA DRC and at the time of the filing of its additional submission on 13 February 2020 before the FIFA DC. The Creditor could indeed not be considered as an indirect member of FIFA because he played his last official match as a "*player*" on 22 May 2012 and retired from football on 4 September 2014 and the FIFA DRC Decision was for his benefit as a player and not as a coach. Therefore, on 22 November 2014, 30 months after his last appearance, Mr Dani Bondarv was deregistered from the association of his last club pursuant to Article 4 of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP") and lost his procedural quality of a "*player*". Consequently, Article 3 FDC 2019 / Article 3 FDC 2011 was not applicable to Mr Dani Bondarv who could not benefit from Article 15 FDC 2019 / Article 64 FDC 2011. Mr Dani Bondarv further did not prove he had a license as a football coach.
 - The sporting succession matter was already decided by the Chairman of the FIFA DC with the Letter of 23 August 2018 which has *res judicata* effect. This case is comparable with the CAS 2019/A/6436 *Nathan Joel Burns v. FIFA & AEK Athens FC* one (the "AEK Athens FC Case") where the Sole Arbitrator confirmed the *res judicata* effect of a letter which content is identical to the Letter of 23 August 2018 except regarding the name of the parties.

- The Letter of 23 August 2018 followed a claim of the Creditor of 10 May 2017 where he clearly claimed that FC Nizhny was the same club as FC Volga, with supporting evidence. In the Letter of 23 August 2018, the FIFA DC stressed that it has considered “*all the facts and documents related to the present case*” and therefore when the FIFA DC indicated that FC Nizhny is a new entity, it took a decision on the merits of the sporting succession issue.
- The form of the communication has no relevance for the determination whether there exists a decision or not (CAS 2015/A/4162). The fact that the communication is made in the form of a letter does not rule out the possibility that it constitutes a decision subject to appeal. The decisive criterium is whether or not the act in question impacts upon the legal situation of the Appellant (CAS 2012/A/2854). If that is the case (independent of what the intentions of the relevant sports organisation were), there must be access to justice for the person concerned. In the present case, the Letter of 23 August 2018 affected the situation of Mr Dani Bondarv, as creditor, which request of 10 May 2017 was dismissed with the consequence that he could not pursue the enforcement of the FIFA DRC Decision against the Appellant. At that time, the Creditor had the opportunity to appeal to decision to CAS which he did not do.
- The new request of Mr Dani Bondarv of 13 February 2020 did not include any new information or document which did not exist at the time of the Letter of 23 August 2018 that could justify the reopening of proceedings under Article 52 FDC 2019. The facts raised already existed at the time of the first request of the Creditor. The parties were the same, the issue was the same (*i.e.* enforcement of the FIFA DRC Decision) and the claims were the same (*i.e.* request to open a disciplinary case against and to sanction the Appellant for failure to comply with the FIFA DRC Decision). The Appellant cited in particular the case CAS 2016/A/4408, para. 82 which provides as follows: “[t]he *res judicata* effect extends to all the facts existing at the time of the first judgment, whether or not they were known to the parties, stated by them, or considered as proof by the first court”. For these reasons, considering the *res judicata* effect of the Letter of 23 August 2018, which was a decision, the FIFA DC could not reopen the case and issue the Appealed Decision.
- With multiples references to the case CAS 2020/A/7092 *Panathinaikos FC v. FIFA & Club Parma Calcio 1913*, the Appellant raised that it is not liable for the debts of FC Volga, should the Panel consider that there is no *res judicata* effect, because of the following facts and differences between FC Volga and FC Nizhny:
 - The legal entities, the founders and the heads of clubs are different.
 - FC Nizhny started to compete in the third tier of Russian football in 2015 while FC Volga used to participate in the second tier. Because it won the third-tier championship, FC Nizhny was then promoted to the second tier in 2017, not because of a sporting relegation of FC Volga. In this context,

the “*category of competition concerned*” of Article 15 FDC 2019 should take precedence to assess the sporting succession question.

- The words “*Nizhny Novgorod*” relate to the name of the city where both clubs are domiciled, reason why no conclusion can be reached because of similar names between FC Nizhny and FC Volga. Atletico Madrid is not the sporting successor of Real Madrid. There cannot be sporting succession when the fans hate each other.
- The renaming of FC Olimpiyets to FC Nizhny Novgorod (namely the Appellant) at a certain period was made to increase the popularity of the clubs with citizens of the city Nizhny Novgorod – and not for sporting successions reasons – since, because of the bankruptcy of FC Volga, FC Nizhny was then the best football club in the city.
- The logos of FC Nizhny and FC Volga are completely different. The only similarity is the colours used (blue and white), being specified that the colour blue is traditional in Russia, in particular in the Nizhny Novgorod region.
- FC Nizhny had its team and youth sector already in the summer 2015, *i.e.* long before the disaffiliation of FC Volga on 30 June 2016. It was created under the name “FC Volga-Olimpiyets” as a farming club of all football clubs domiciled in the Nizhny Novgorod region and coexisted with FC Volga with different legal entities during the 2015/2016 season. FC Nizhny was created as an amateur football club and a separate legal entity and remained so until 2017, as also submitted by the FUR.
- The federation rights of FC Volga have not been transferred to FC Nizhny which played in the lower division. FC Nizhny did not replace FC Volga as a football club or legal entity.
- Some former employees of FC Volga (only 8 players of which 6 were already transferred on loan from FC Volga) moved to FC Nizhny after the disaffiliation of their former employer because they wanted to continue working in their hometown with the only professional club in the city that could employ them. FC Nizhny did not participate in the bankruptcy of FC Volga by purchasing assets or taking over obligations and liabilities.
- The similarities in the websites of FC Nizhny and FC Volga are justified by the fact that the same web designer designed them, which was the only firm with enough experience in football club’s website production and support.
- The temporary use of the stadium of FC Volga (“Lokomotiv”) by FC Nizhny was justified by the fact that FC Nizhny did not own its sports facilities and needed infrastructure of good standards, like other football

clubs since 1932. Then, when possible, FC Nizhny moved to the new stadium Nizhny Novgorod Arena built for the 2018 FIFA World Cup.

- The position of the Appellant is in line with the case CAS 2016/A/4918 and therefore the Panel shall conclude that FC Nizhny is not the sporting successor of FC Volga and shall not be responsible for its debts under the FIFA DRC Decision.
- In any event, the Appellant cannot be sanctioned for non-compliance with the FIFA DRC Decision because Mr Dani Bondary, as creditor, did not act diligently as he did not register his claim in the bankruptcy proceedings regarding FC Volga. The Appellant referred to the case CAS 2011/A/2646 where a panel decided that no sanction should be applied in a situation where the player, as creditor, did not claim for his labour debt in the bankruptcy proceedings despite being aware of these proceedings and having announced his intention to do so. In addition, the jurisprudence of FIFA judicial bodies regarding Article 15 FDC 2019 (which is materially the same as Article 64 FDC 2011) confirms that should a creditor fail to pursue his claim in the bankruptcy proceedings, such creditor will be, in principle, precluded from requesting disciplinary sanctions to be imposed on the new club that took over the bankrupted club. In the case at hand, the Creditor was aware of the opening of bankruptcy proceedings of FC Volga, which was public, and did not register any claim against FC Volga which is a lack of diligence on his hand and a waiver to claim the amounts dues according to the FIFA DRC Decision. The Creditor could have recovered the full amount of its claims had he participated to the bankruptcy proceedings according to the liquidator of FC Volga. Thus, even if the present Panel should consider that there is sporting succession from FC Volga to FC Nizhny, the Panel should not impose any disciplinary sanction on FC Nizhny considering the lack of diligence of the Creditor to collect his claims in the bankruptcy proceedings of FC Volga.
- The legal principle *iura novit curia* allows the Appellant to bring new legal arguments, even if not priorly raised before the FIFA DC. In addition, the *res judicata* issue is a public order one which shall be analysed *ex officio*.
- According to the FDC 2019, such code applies to all disciplinary offences committed prior to the date on which it comes into force, subject to any milder sanction that would apply under previous rules (*lex mitior* principle). The FDC 2011 shall apply considering that there is no definition of the sporting successor in such code and therefore no sanction, which is obviously milder than in the FDC 2019. Therefore, there is possibility to sanction FC Nizhny because of the *nulla poena sine lege* principle.

52. The Appellant submitted the following requests for relief:

“1. Set aside and annul the entire decision rendered on 14 March 2020 by a member of the FIFA Disciplinary Committee in case No. 200223.

2. Dismiss all charges against FC Nizhny Novgorod.

3. Order FIFA to close the disciplinary proceedings initiated against FC Nizhny Novgorod.

4. Order FIFA to bear all costs incurred with the present procedure.

5. Order FIFA to pay FC Nizhny Novgorod a contribution towards its legal and other costs in an amount to be determined at the discretion of the Panel.”

B. The Respondent’s Submissions and Requests for Relief

53. The Respondent’s submissions in its answer and during the hearing may be summarized as follows:

- The Appellant contested being the sporting successor of FC Volga by presenting new arguments and evidence which were not brought before the FIFA DC (the Creditor’s entitlement to invoke the application of Article 64 FDC, a flawed interpretation of the concept of *res judicata* and a misconstrued correlation between the concept of sporting succession and the notion of creditor’s diligence).
- The position of the Appellant that the Creditor could not invoke Article 15 FDC 2019 / Article 64 FDC 2011 is wrong because the enforcement procedure according to the FDC is a natural continuation of the procedure before the FIFA DRC. The creditors are not party to the disciplinary proceedings – but have only a right to report an alleged non-compliance – which are conducted by the FIFA DC to ensure that decisions passed by a body, committee or an instance of FIFA or a subsequent CAS appeal decision are respected and complied with. If a player had the right to bring the case before the FIFA DRC, he is also entitled to request the competent organs with FIFA to assist him in having a decision of the FIFA DRC respected, regardless of the fact that he is retired or not. In addition, the purpose of Article 4 para. 3 FDC 2019 – which provides that disciplinary proceedings instigated against someone who was under FIFA’s jurisdiction on the day the alleged disciplinary offence was committed shall not be abandoned by the FIFA judicial bodies solely because the person involved is no longer under FIFA’s jurisdiction – has been enacted to avoid a situation where someone sanctioned by FIFA leaves the FIFA system to avoid a sanction.
- Article 4 para. 1 RSTP does not establish a specific time limitation for professional players of 30 months after the end of their career to lodge a claim in front of FIFA but rather aims to protect the interests of the player who would want to resume playing again and the player’s last club. This is also confirmed by the case CAS 2016/A/4426 *Ramon Castillo Segura v. FIFA* in which the panel determined that the (temporary) loss of the license should not be decisive otherwise it would imply that a football player, despite a final and binding favorable decision of a FIFA body, would lose his standing if he retired from professional football during proceedings based on Article 64 FDC. Additionally, the only limitation period applicable is determined in Article 10 FDC 2019 that

establishes that infringements may no longer be prosecuted after five years from the day on which the decision of the FIFA DRC becomes final and binding, said limitation period being interrupted by all procedural acts. In the present case, the FIFA DRC Decision became final and binding on 20 August 2015 and the Creditor's last request was sent before such time limit on 13 February 2020.

- In any case, when the Creditor requested the opening of disciplinary proceedings, he was registered as a coach, a status which is included in the scope of personal application of the FDC in accordance with Article 3 FDC. He could therefore invoke Article 64 FDC.
- The *res judicata* is a new argument that the Appellant should have raised when the disciplinary proceedings were opened against it. In any case, the FDC analyzed in the Appealed Decision its competence in light of the Letter of 23 August 2018.
- The key elements of the *res judicata* principle were summarized in the award CAS 2013/A/3380 *Club Atlético Independiente v. FIFA* as follows: “[f]or a ruling or resolution to have the force of *res iudicata*, two preliminary requirements shall be met: (a) the decision-making body shall be competent to pass the relevant ruling or resolution; (b) the relevant ruling or resolution shall be passed after following the appropriate contradictory procedure. Furthermore, for a ruling or resolution to have the force of *res iudicata*, it has to meet the “triple identity check” which consists of the verification of (i) the identity between the parties to the first decision and to the subsequent one, i.e. the parties were the same in both cases; (ii) the identity of objects between the two decisions; and (iii) the identity of the basis (*causa petendi*) on which the claim is submitted. All three elements of *res iudicata* are of equal fundamental importance and relevance and have to be concurrently present. The plea of *res iudicata* – founded on the principle of public interest – eliminates the possibility of pending disputes prejudicing the rights which have already been established by a judgement. The principle of *res iudicata* ensures that whenever a dispute has been defined and decided upon, it becomes irrevocable, confirmed and deemed to be just. The classification of the *res iudicata* principle as part of public policy indicates that it is to be analysed *ex officio* by the decision-making body”. In the present case, the triple identity check is not met between the First Disciplinary Decision of 23 June 2016, the Letter of 14 July 2016, the Letter of 23 August 2018 and the Appealed Decision which were all compared in detail by the Respondent.
- The First Disciplinary Decision and the Letter of 14 July 2016 did not deal with the issue of sporting succession considering that the insolvency proceedings of FC Volga had not even started.
- In the Letter of 23 August 2018, the FIFA DC only resolved whether FC Nizhny was a new entity with respect to FC Volga and informed the FUR and the Creditor that it could not deal with cases involving clubs not affiliated to the member association. At this moment, the FIFA DC did not open disciplinary

proceedings against FC Nizhny nor analyzed the issue of the sporting succession. It is only on 13 February 2020 that, for the first time, the Creditor requested that the FIFA DC pass a formal decision concerning the sporting successor of FC Volga. The FIFA DC did so and for the first time opened disciplinary proceedings against FC Nizhny and analyzed the merits of the claim of 10 May 2017 as well as the new facts and evidence of the claim of 13 February 2020.

- The present case is not comparable to the AEK Athens FC Case for which the FIFA DC and the Sole Arbitrator confirmed that there was *res judicata*. The main difference is that the FIFA DC decided that the new AEK was not the legal successor of the original club, while in the present case, the FIFA DC never addressed the issue of the legal and/or sporting succession of FC Volga until the Appealed Decision.
- Even if the Panel were to consider that the Letter of 23 August 2018 did analyse the concept of legal succession of FC Volga by FC Nizhny, this is not equivalent to the sporting succession concept. FIFA and CAS developed the concept of sporting succession which is constituted of sporting elements, such as the history, the fans, the logo and colours, the participation in competitions, the address of the club (see notably CAS 2007/A/1355, CAS 2016/A/4550 & 4577). Thus, the Panel shall find that the Letter of 23 August 2018 concluding that FC Nizhny is a new entity did not address the question of the sporting succession, which is a distinct one from the legal succession, a civil law concept.
- The Appellant is the sporting successor of FC Volga because of the following historical background and facts:
 - Shortly after the relegation of FC Volga to the Russian Football National League at the end of the 2013/2014, FC Volga's General Director declared that FC Volga was "*in reset mode*" and that a new football club was being built. On 1 June 2015, the "*Volga-Olimpiyets*" (which later became FC Nizhny) was created as FC Volga's reserve team and started its participation in the Russian Professional Football League as many other farm teams of the Russian Premier League. "*Volga-Olimpiyets*" changed its name to "*FC Olimpiyets*" and the Minister of Sports of Nizhny Novgorod declared, on 16 June 2016, that "*FC Olimpiyets*" would replace FC Volga. After FC Volga was dissolved, at least 8 players and 8 staff members who had a contract with FC Volga moved to "*FC Olimpiyets*". On 30 June 2016, FC Volga was officially disaffiliated from the FUR while "*FC Olimpiyets*" was promoted, thanks to 18 new players that came following the providing of new funds from the Nizhny Government. On 29 June 2018, the Nizhny Government decided that "*FC Olimpiyets*" would be renamed FC Nizhny.
 - FC Nizhny ("*FC Nizhny Novgorod*") and FC Volga ("*FC Volga Nizhny Novgorod*") share the same names and the same history. In its website, FC Nizhny proudly refers to the titles won by FC Volga and renders tributes to former players of FC Volga.

- FC Nizhny and FC Volga share the same colors (blue and white) and the same logo even if they are not strictly identical. The websites are almost identical in terms of features, fonts, content, structure and information used. FC Nizhny maintains the activity of FC Volga's twitter account.
 - The registered address, as well as the stadium, are the same. The board members of the two clubs are the same and decided the change of names of the teams and the reorganization of FC Volga since 2012. At least 8 players and 8 staff members transferred from FC Volga to FC Nizhny.
 - FC Nizhny has sought to be identified by FC Volga's fanbase in particular in its website with a section dedicated to "*Legends of Nizhny Novgorod Football*" benefiting thereby from a pre-existing fan base, commercial value and a legacy that a real new club could never have obtained from one day to another.
 - Although FC Nizhny was allegedly founded in 2015, all the financial and personal resources of FC Volga were transferred to FC Nizhny. There is no evidence that FC Nizhny was the farm club for the whole Nizhny Novgorod region.
- Bearing in mind the above considerations which are also indicated in Article 15 para. 4 FDC 2019, the Appellant shall be considered as the sporting successor of FC Volga. CAS confirmed that, in football, a club is a sporting entity identifiable by itself that transcends the legal entities which operate it (see CAS 2016/A/4576).
 - The *nulla poena sine lege* argument is a new one which shall not be accepted because brought in relation with the Prof. Ulrich Haas' article.
 - The alleged lack of diligence of the Creditor during the insolvency proceedings of FC Volga is another new argument which was not brought before the FIFA DC. In this respect, the Respondent reminds that the required degree of diligence shall be assessed on a case-by-case basis (see CAS 2019/A/6461). In the present case, the Creditor did not remain passive but proactively and regularly contacted FC Volga and FIFA pursuing the payment of his debts. Secondly, the Creditor was never made aware of the insolvency/bankruptcy proceedings of FC Volga, despite the fact the club had his contact details, and that the temporary manager should notify all creditors of FC Volga. There are no grounds to consider that the Creditor was not sufficiently diligent to pursue his claim before the Russian courts.
 - In view of the above, the Respondent finds that the Appellant committed a violation of Article 64 FDC 2011 considering that there is no evidence that the financial amounts defined in the FIFA DRC Decision were paid. The FIFA DC rightfully and appropriately imposed on the Appellant disciplinary sanctions which shall be confirmed by the Panel.

54. The Respondent submitted the following requests for relief:

“(a) Rejecting the requests for relief sought by the Appellant.

(b) Confirming the Appealed Decision.

(c) In any case, ordering the Appellant to bear the full costs of these arbitration proceedings.

(d) Ordering the Appellant to make a contribution to FIFA’s legal costs.”

V. JURISDICTION

55. 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.”

56. The jurisdiction of the CAS, which was not disputed, derives from Article 58 para. 1 of the FIFA Statutes which provides that:

“Appeals 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.”

57. The jurisdiction of the CAS was further confirmed by the Order of Procedure duly signed by the Parties.

58. Accordingly, the Panel is satisfied that CAS has jurisdiction to hear the present case.

VI. ADMISSIBILITY OF THE APPEAL

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

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has already been constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties.”

60. The Panel notes that pursuant to Article 58 para. 1 of the FIFA Statutes, the time limit to file an appeal is 21 days following receipt of the Appealed Decision.
61. The grounds of the Appealed Decision were communicated to the Parties on 19 June 2020. The Appellant filed the Statement of Appeal with CAS on 30 June 2020 and filed its Appeal Brief on 7 August 2020, *i.e.* within the granted extension of the time limit. The Statement of Appeal further complied with the other conditions set out in Article R48 of the CAS Code.
62. Therefore, the Panel is satisfied that the appeal was timely submitted and is admissible.

VII. APPLICABLE LAW

63. Article R58 of the CAS Code provides the following:

“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.”

64. Article 57 para. 2 of the FIFA Statutes provides the following:

“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.”

65. In view of the above provisions, the Panel finds that the various regulations of FIFA are to be applied primarily, in particular the FDC, and, additionally, Swiss law should the need arise to fill a possible gap in the various regulations of FIFA.

66. With regard to the relevant edition of the FDC, Article 4 FDC 2019 (which entered into force on 15 July 2019) provides in particular the following:

“1. This Code applies to all disciplinary offences committed following the date on which it comes into force.

2. This Code also applies to all disciplinary offences committed prior to the date on which it comes into force, subject to any milder sanction that would apply under previous rules. [...]”

67. The Panel observes the Appellant’s argument that, although the potential failure to comply with the FIFA DRC Decision was allegedly committed before the entry into force of the FDC 2019, when the FDC 2011 was in force, the FDC 2019 applies to all disciplinary offenses committed before its entry into force. Consequently, the FDC 2019 shall apply, subject to any milder sanction that would apply under the FDC 2011.

68. The Panel further notes that the alleged offence of FC Nizhny took place following the issuance of the FIFA DRC Decision on 12 March 2015 or at the latest in February 2017 following the bankruptcy of FC Volga because, if FC Nizhny were to be the sporting successor of FC Volga, FC Nizhny, at that time, decided to continue not to comply with the FIFA DRC Decision.
69. Since the FDC 2019 entered into force on 15 July 2019, and the FIFA Disciplinary Code (version 2017) entered into force on 9 May 2017, and considering the above findings, the FDC 2019 shall apply to the merits of the present case, subject to any milder sanction applicable under the FDC 2011. Considering that the disciplinary proceedings against FC Nizhny were commenced on 18 February 2020, the procedural aspects of the proceedings shall be governed by the FDC 2019.

VIII. MERITS

A. Preliminary points

70. Before turning to the examination of the issues of the present matter, the Panel has to address the preliminary issues brought forward by the Parties in the course of the arbitration.
71. This relates in particular to the unsolicited submission by the Appellant of a copy of the awards issued in the cases CAS 2020/A/6971 *Mihaita Plesan Paunel v. FC Nizhny Novgorod & FIFA* and CAS 2020/A/7092 *Panathinaikos FC v. FIFA & Club Parma Calcio 1913*, which are not confidential, as well as a copy of Prof. Ulrich Haas' article, named *The enforcement of football-related arbitral awards by the Court of Arbitration for Sport (CAS)* published in the International Sports Law Review 2014, in January 2021.
72. In this respect, the Appellant maintains that the awards are not confidential, and that Prof. Haas' article is well known. Therefore, such documents were sent as a matter of courtesy for the Panel, being specified that one member of the Panel participated in one of the cases.
73. On its hand, the Respondent did not oppose the submission of the copy of the award in the case CAS 2020/A/7092 *Panathinaikos FC v. FIFA & Club Parma Calcio 1913*, which is available on its website. Regarding the other award and Prof. Haas' article, the Respondent did not object to such submission, provided that no new arguments were raised by the Appellant based on such documents.
74. The Panel considers that the submission of additional jurisprudence material or pertinent articles of renowned legal authors is not an issue of supplementing one's argument or producing further evidence in the sense of Article R56 of the CAS Code, in particular if the adverse party does not oppose to it. Thus, as confirmed by a previous panel (see CAS 2020/A/6884, para. 82), Article R56 of the CAS Code should not apply to justify

the exclusion of the documents submitted by the Appellant which are accepted by the other Party.

75. The Panel wishes however to remind that Parties to arbitration proceedings are expected to request the permission from the arbitral tribunal before submitting additional documents of whatever type.
76. The Panel can now turn to the substantive issues of the present case.

B. The Dispute

77. The main issues to be resolved by the Panel are:
- i. Whether the Creditor had standing to invoke Article 15 FDC 2019 / Article 64 FDC 2011?
 - ii. If so, and in light of the *res judicata* principle, whether the FIFA DC legitimately analysed the merits *i.e.* the question whether FC Nizhny is the “sporting successor” of FC Volga?
 - iii. If so, whether FC Nizhny is the “sporting successor” of FC Volga?
 - iv. If so, whether the Creditor acted with due diligence in the insolvency proceedings of FC Volga?
78. The Panel shall answer each of those questions separately.
- i. **Did the Creditor have standing to invoke Article 15 FDC 2019 / Article 64 FDC 2011?**
79. The first question to be addressed by the Panel concerns the argument raised by the Appellant that the Creditor did not prove that he has the right to invoke Article 15 FDC 2019 / Article 64 FDC 2011. In this respect, the Appellant argued that the Creditor, at the time of the filing of his first claim on 10 May 2017 before the FIFA DRC, and at the time of the filing of his additional submission of 13 February 2020 before the FIFA DC, was no longer a(n) (in)direct member of FIFA because he was not a “*player*” anymore, having retired from football on 4 September 2014, nor proved he was a football coach after his retirement as player. For this reason, the Appealed Decision shall be annulled.
80. The Panel firstly notes that the persons/entities listed at Article 15 FDC 2019 / Article 64 FDC 2011, are “*a player, a coach or a club*” which can therefore benefit from the disciplinary proceedings to be conducted by the FIFA DC. Players are also included in the scope of personal application of Article 3 FDC 2019 / Article FDC 2011. In other words, as also rightly decided by the panel in CAS 2016/A/4426, entities/persons that are not members of FIFA cannot invoke Article 64 of the FIFA Disciplinary Code since they are not subject to the various regulations of FIFA.
81. It is undisputed that the Creditor was a player within the meaning of the FDC 2019 / FDC 2011 when the FIFA DRC Decision was issued. Considering this, the Panel is

therefore called to address the question; at what moment in time a player needs to be considered as such in order to have standing to invoke Article 15 FDC 2019 / Article 64 FDC 2011, *i.e.* at the moment he, as creditor, requests the payment of sums of money from a club before the FIFA DRC or at the moment he invokes Article 15 FDC 2019 / Article 64 FDC 2011 before the FIFA DC or at both moments in time.

82. The Panel observes that a previous CAS Panel considered that the standing to sue is in general to be examined at the moment of lodging the claim (see CAS 2016/A/4426, para. 88). Such panel noted also that the temporary loss of a license shall not be decisive considering that “[d]etermining otherwise would imply that a football player, despite a final and binding favourable decision of a FIFA body, would lose his standing if he retired from professional football during proceedings on the basis of article 64 FDC”.
83. The majority of the Panel agrees with this view and considers that one of the decisive criteria shall be whether the Creditor, as former player, had the right to bring his claim before the FIFA DRC (see also CAS 2012/A/2983). If that is the case, in the majority of the Panel’s view, the loss of his license or his retirement shall not preclude him from requesting the assistance of FIFA to enforce a final and binding decision rendered by one of its bodies. Concluding otherwise would mean that a player is obliged to remain active not only during the proceedings before the FIFA DRC but also until he notices that a club does not comply with a final and binding decision of the FIFA DRC – which could occur years later if appeals are filed with the CAS and then with the Swiss Federal Tribunal as dilatory measures – and requests enforcement before the FIFA DC. This is in line with Article 4 para. 3 FDC 2019 which provides that “[d]isciplinary proceedings instigated against someone who was under FIFA’s jurisdiction as per article 3 on the day the alleged disciplinary offence was committed shall not be abandoned by the FIFA judicial bodies solely because the person involved is no longer under FIFA’s jurisdiction”. The same principle shall benefit persons not anymore subject to the FIFA DC but who would need the assistance of the FIFA DC to enforce a decision in their favour, issued by FIFA as a result of claims brought by them when they were part of the FIFA system.
84. The Panel considers further that what matters is that the person invoking Article 15 FDC 2019 / Article 64 FDC 2011 has an interest worthy of protection in the enforcement of the FIFA decision, which is the case for the Creditor. In addition, the Panel notes that Article 15 para. 2 FDC 2019 now provides that “[w]ith regard to financial decisions passed by a body, a committee or an instance of FIFA, or CAS, disciplinary proceedings may only commence at the request of the creditor or any other affected party, who will have the right to be notified of the final outcome of the said disciplinary proceedings”. This is an additional indication that the objective of disciplinary proceedings to be commenced based on Article 15 FDC 2019 is to protect the creditors or any other affected party, notwithstanding their status at the time of the request to the FIFA DC. The Panel however agrees with the Respondent that persons or entities which were not parties to the proceedings leading to the disrespected FIFA decision or which were never members of FIFA cannot invoke Article 15 FDC 2019. As such, (in)direct FIFA members can in principle not invoke this provision in order to urge the FIFA DC to enforce a decision against another member if they do not have a direct and personal interest in such decision. In fact, it is clear to the Panel that the Creditor, against the

background that the standing to act before FIFA and CAS is the same (see, *inter alia*, CAS 2018/A/5746), has sufficient legal interest in the matter being appealed as the Creditor is aggrieved, i.e. it has something at stake (see, *inter alia*, CAS 2014/A/3744&3766, CAS 2009/A/1880&1881 and CAS 2008/A/1674).

85. The Panel is aware of the disciplinary nature of the dispute but finds that the right of access to justice does not only cover a party's right to bring a case before the FIFA DRC, but also before the competent organs of enforcement of FIFA, such as the FIFA DC. The Panel therefore concurs with the position of the Respondent that the procedure of Article 15 FDC 2019 / Article 64 FDC 2011 is a natural continuation of the procedure before the FIFA DRC which can be considered as enforcement proceedings. This view is confirmed by CAS jurisprudence (see CAS 2015/A/4162 and cited awards). Therefore, if a person has a right to bring a case before the FIFA judicial bodies, he/she shall then have the right to request enforcement of the decision passed, notwithstanding his/her status at the time of the request of enforcement. With respect to the initiation of disciplinary proceedings against an alleged sporting successor, and in light of the provisions of the FDC, the same principle applies in spite of the fact that part of the proceedings will obviously deal with the request to declare that an entity that was not a party to the proceedings before the FIFA DRC should be considered the sporting successor of another legal entity.
86. In the Panel's view, this is of course subject to any limitation period provided by the FIFA regulations. In this respect, the Panel notes that such period is of five years from the day on which a decision of the FIFA DRC becomes final and binding in accordance with Article 10 FDC 2019 / Article 45 FDC 2011. In addition, the limitation period is interrupted by all procedural acts starting afresh each interruption (Article 10 para. 3 FDC 2019), respectively if the FIFA DC commences proceedings before it has expired (Article 44 FDC 2011). Against this legal background, the Panel notes that in the present case, the Creditor filed his additional submission on 13 February 2020 and that disciplinary proceedings were opened by the FIFA DC on 18 February 2020, namely less than five years after the issuance of the FIFA DRC Decision of 12 March 2015. Therefore, the limitation period had not expired.
87. As a result, the Panel finds that the Creditor had standing to invoke Article 15 FDC 2019 / Article 64 FDC 2011 and that it is not necessary to analyze the question whether the Creditor had also a right to invoke such provisions in his alleged new capacity as a coach, being specified that the Panel found, in any case, that not enough evidence was submitted in this respect.
88. The request for relief of the Appellant to annul the Appealed Decision on the basis of lack of standing of the Creditor shall therefore be dismissed.
 - ii. **In light of the *res judicata* principle, did the FIFA DC legitimately analyse the merits i.e. the question whether FC Nizhny is the "sporting successor" of FC Volga?**
89. The Panel observes that the Appellant claimed that the Appealed Decision breaches the principle of *res judicata* with respect to the Letter of 23 August 2018 which constituted

a decision on the question whether FC Nizhny is the sporting successor of FC Volga. The Appellant has in particular compared the present case and the wording of the Letter of 23 August 2018 with the AEK Athens FC Case.

90. The Panel wishes first to remind that the *res judicata* principle, not being codified in the FIFA DC or Swiss law, is part of procedural public policy according to the Swiss Federal Tribunal (decision 4A_633/2014 of 29 May 2015). The jurisprudence of the Swiss Federal Tribunal states in particular that “*il y a autorité de la chose jugée lorsque la prétention litigieuse est identique à celle qui a déjà fait l'objet d'un jugement passé en force (identité de l'objet du litige). Tel est le cas lorsque, dans l'un et l'autre procès, les mêmes parties ont soumis au juge la même prétention en se basant sur les mêmes faits*” (freely translated into English: “there is *res judicata* when the claim in dispute is identical to that which was already the subject of an enforceable judgment (identity of the subject matter of the dispute). This is the case when in both litigations the same parties submitted the same claim to the court on the basis of the same facts”) (decision 4A_508/2013 of 27 May 2014, para. 3.3).
91. As submitted by the Respondent, for the Letter of 23 August 2018 and the Appealed Decision to have the force of *res judicata*, the “*triple identity check*” must be met. The triple identity check consists of the verification of (i) the identity between the parties to the first decision and to the subsequent one, so that if the parties were the same in both cases, the principle of *res judicata* may come into play; (ii) the identity of objects between the two decisions at stake; and (iii) the identity of the basis (*causa petendi*) on which the claim is submitted (see CAS 2013/A/3380).
92. The *res judicata* effect extends to all the facts existing at the time of the first judgment, whether or not they were known to the parties, stated by them, or considered as proof by the first court (ATF 139 III 126 at 3.1, p. 129).
93. In the present case, the majority of the Panel finds that the Letter of 23 August 2018 has *res judicata* effects on the Appealed Decision because it meets the “*triple identity check*” in relation with the parties and the facts.
94. Firstly, the parties to the Letter of 23 August 2018 and the Appealed Decision are the same, namely the FIFA DC and FC Nizhny, and in both cases, it followed a request from the Creditor that FC Nizhny be ordered to pay the debts of FC Volga.
95. Secondly, the Panel considers that, in its Letter of 23 August 2018, the FIFA DC has decided on the sporting succession issue and not only on the concept of legal succession. Such letter was indeed the result of the Creditor’s request of 10 May 2017 before the FIFA DRC that FC Nizhny shall pay the amounts due by FC Volga under the FIFA DRC Decision. In his submission, the Creditor raised clearly that FC Nizhny was the sporting successor of FC Volga and provided supporting evidence and reference to jurisprudence on the sporting succession issue. The FIFA DC contacted the FUR in this respect and received then a letter of FC Nizhny on 11 July 2017 with its detailed position on the issue of the sporting succession, also discussing typical sporting succession elements, in particular under the Section “*II. Sports Circumstances*”. The FIFA DC was therefore perfectly aware of the link between FC Volga and FC Nizhny and the issue of

the sporting succession, which also follows from its letter of 27 June 2017 to the FUR in which reference is made to the Creditor's allegations "*by means of which he alleges that the club, FC Olimpiyets Nizhny Novgorod is in fact one and the same club as Noncommercial Partnership Football Club "Volga" (Football Club Volga Nizhny Novgorod)*". This is further confirmed by its Letter of 14 July 2016 – informing the Creditor that it could not proceed further with the case considering that FC Volga was no longer affiliated with the FUR – indicating the following reference and subject title:

"Ref. no. 160434 jbl (please quote in all correspondence)

Club Noncommercial Partnership Football Club "Volga", Russia

(Relative to the case: Player Dani Bondary, Israel / Club Noncommercial Partnership Football Club "Volga", Russia) [...]" (emphasis in original)

while its Letter of 23 August 2018 indicated an identical reference and an almost identical subject:

"Ref. no. 160434 jbl (please quote in all correspondence)

Club Noncommercial Partnership Football Club "Volga", Russia

(Relative to the case: Player Dani Bondary, Israel / Club Noncommercial Partnership Football Club "Volga" or FC Vogla Nizhny Novgorod, Russia / FC Olimpiyets Nizhny Novgorod, Russia) [...]" (emphasis in original)

96. The Panel further observes that the letter of 18 February 2020 of FIFA to notify the FUR about the opening of disciplinary proceedings against FC Nizhny indicates the following reference:

"Ref. N°: 200223 (former 160434) [...]" (emphasis in original)

97. The Panel is therefore convinced that FIFA was always conscious that the matter was a disciplinary one for which an answer on the sporting succession between FC Volga and FC Nizhny was required. This is further confirmed by the fact that the FIFA DRC, when receiving the Creditor's claim of 10 May 2017, transferred on its own decision and initiative the file to the FIFA DC for a decision in this respect, having examined its competence in accordance with Article 3 the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber. The Panel reminds that, at that time, the sporting succession issue was not codified yet in the FIFA DC (as it is in the FDC 2019) but only with FIFA jurisprudence also confirmed by CAS decisions (see CAS 2011/A/2646; CAS 2018/A/5618 at para. 65ff and cited references). It was therefore legitimate for the FIFA DRC to transfer the file to the FIFA DC for a decision on the matter.
98. In the Panel's view, an additional indication that the FIFA DC decided on the sporting succession issue with its Letter of 23 August 2018 is the comparison of the present case with the AEK Athens FC Case. In the latter case, the sole arbitrator indeed confirmed a

decision of the FIFA DC not to reopen disciplinary proceedings on the basis of *res judicata*.

99. In the AEK Athens FC Case, the letter which was considered by the FIFA DC and the sole arbitrator to be a final decision on the sporting succession issue was a letter from FIFA of 24 October 2016 replying to the appellant, *inter alia*, as follows:

“[...] In this regard, we hereby inform the parties that the Chairman of the FIFA Disciplinary Committee, after considering all the facts and documents related to the present case, observed that, according to the letter of the Hellenic Football Federation dated 26 October 2015 (hereto enclosed), the club AEK FC involved in the matter at stake had been dissolved and lost its affiliation to the Hellenic Football Federation. Therefore, it remains that the club called AEK FC that is currently competing in the Greek first division is a new entity.

As a consequence of the foregoing, we must inform you that, as a general rule, our services and decision-making bodies (i.e. the Players’ Status Committee and Dispute Resolution Chamber as well as the Disciplinary Committee), cannot deal with cases involving clubs which are not affiliated to their association any longer. [...]”

100. The Panel observes that the Letter of 23 August 2018 issued within the proceedings of the case at hand reproduced below is identical (except the names of the parties):

“[...] In this regard, we hereby inform the parties that the Chairman of the FIFA Disciplinary Committee, after considering all the facts and documents related to the present case, observed that, the club Non-commercial Partnership Football Club “Volga” involved in the matter at stake lost its affiliation to the Football Union of Russia. Therefore, it remains that the club called FC Volga Nizhny Novgorod that is currently competing in the Russian “1. Division” is a new entity.

As a consequence of the foregoing, we must recall that, as a general rule, our services and decision-making bodies (i.e. the Players’ Status Committee and Dispute Resolution Chamber as well as the Disciplinary Committee), cannot deal with cases involving clubs which are not affiliated to their association any longer. [...]

101. In both cases, the FIFA DC expressly indicated “*after considering all the facts and documents related to the present case*” which, in the Panel’s view, is an indication that the FIFA DC, based on the information received, decided if there were valid grounds to enforce the FIFA DRC Decision against FC Nizhny.

102. In this context, the majority of the Panel observes that the position of the Respondent that the Letter of 23 August 2018 was not a decision on sporting succession, but only on the concept of legal succession, is inconsistent with its own jurisprudence. The Panel finds that the Letter of 23 August 2018 was a decision regarding the sporting succession issue between FC Nizhny and FC Volga within the meaning of Article R47 of the CAS Code (see CAS 2019/A/6436). The Panel dismisses the arguments of the Respondent that it had no intention to decide on such issue, considering in particular the circumstances of the case. In this sense, it is of fundamental importance to identify the

real question that was in dispute between the Parties. The submission of the positions of both the Creditor and the Appellant – where the issue of the sporting successor was the core question of the dispute – provides the clear and the only possible answer.

103. The claim submitted to the FIFA DRC against the Appellant is based on the allegations and the long argumentation that the Appellant is the sporting successor of FC Volga. The introduction to that claim ends with the following paragraph: “[i]n other words, in the case at hand, the new club is essentially the same (or at least very similar) as the old club. It is unlawful, and done in bad faith, to just acquire the assets, but not the liabilities. Hence, in accordance with the jurisprudence of FIFA and CAS on the succession of clubs, in such a Situation the new club is liable for the liabilities of the old club”. Then the content of the claim is mostly focused on the attempt to establish the similarity between the two clubs based on the condition that under the FIFA and CAS jurisprudence it should be examined in order to decide whether a new legal entity is to be considered as a sporting successor of another previous entity. Finally, in the prayers for relief the Creditor precisely requests that the Appellant be ordered to pay him the exact amounts that were awarded in his favour in the FIFA DRC decision against FC Volga. As to the Appellant’s answer in the same proceedings, it fully rebuts the argumentation of the Player that the Appellant is the sporting successor of FC Volga. Not only is it clear from reading the claim of the Creditor what was the essence of the claim *i.e.* ordering the Appellant to pay the amounts that were originally awarded against FC Volga, but also the way the arguments were presented and the way the answer of the Appellant was presented created unequivocal and legitimate expectations of the parties that the sporting succession issue would finally be resolved. Determining otherwise would be a violation of the principle of *venire contra factum proprium*.
104. It is very true and unfortunate that the drafting of the FIFA DC decision, as included in the Letter of 23 August 2018, is unclear, to say the least. The FIFA DC had chosen to dismiss the claim of the Creditor by saying that the Appellant is a “new entity”. Yet, looking at the whole picture and the clear content of the claim and the answer provides a crystal-clear understanding of the meaning of the FIFA decision. As opposed to an attempt to play with words, the real essence of the decision is clear *i.e.* that the FIFA DC decided that the Appellant is not the sporting successor of FC Volga.
105. The decision of the FIFA DC included in the Letter of 23 August 2018 was not appealed and thus became final and binding.
106. The Panel has also examined whether new facts occurred between the Letter of 23 August 2018 and the Appealed Decision of 14 March 2020, which could have justified a new decision with regarding to the sporting succession issue and the absence of *res judicata* effect.
107. The Panel finds that no evidence has been produced to prove that the FIFA DC issued the Appealed Decision based on new facts which occurred after the Letter of 23 August 2018. With its claim of 13 February 2020, the Creditor submitted copies of internet articles which existed prior to 23 August 2018 and repeated arguments already brought in his initial claim of 10 May 2017 regarding the change of name of FC Nizhny, its staff, its website, and its history.

108. Considering the foregoing, the majority of the Panel finds that a final and binding decision was already made on 23 August 2018, addressing the question whether FC Nizhny is the successor of FC Volga and, therefore, liable for its debts to the Creditor. Any further claim in circumstances that meet the conditions of *res judicata* should therefore have been dismissed by FIFA.
109. In accordance with the principle of *res judicata*, and based on the above conclusion, the majority of the Panel finds itself in a position where it cannot deal again with the question whether FC Nizhny is the “sporting successor” of FC Volga.

B. Conclusion

110. Based on the foregoing, and after taking into due consideration all the evidence produced and all submissions made, the Panel upholds the appeal of the Appellant and annuls the Appealed Decision.
111. The above conclusion makes it unnecessary for the Panel to consider the other requests and submissions presented by the Parties. Accordingly, all other prayers for relief are dismissed.

IX. COSTS

112. Article R64.4 of the CAS Code provides as follows:

“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.”*

113. 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.”

114. Article R65.1 of the CAS Code provides as follows:

“This Article R65 applies to appeals against decisions which are exclusively of a disciplinary nature, and which are rendered by an international federation or sports-body. It is not applicable to appeals against decisions related to sanctions imposed as a consequence of a dispute of an economic nature. In case of objection by any party concerning the application of Article R64 instead of R65, the CAS Court Office may request that the arbitration costs be paid in advance pursuant to Article R64.2 pending a decision by the Panel on the issue.”

115. The Panel finds that there is a predominant economic nature in this disciplinary matter. It indeed comes down to a case where FIFA decided to sanction a club (the Appellant) for failure to pay the Creditor amounts of USD 521,543, RUB 350,000 and USD 630,000 granted by the FIFA DRC Decision.
116. Therefore, and considering that none of the Parties requested that the present arbitration be considered as exclusively disciplinary, Article 64 of the CAS Code shall apply.
117. Given the outcome of these proceedings, in particular the fact that the Appealed Decision is annulled, the Panel is of the view that the costs of the present proceedings shall be borne by the Respondent in their entirety.
118. Furthermore, considering that the Appellant was represented by outside counsels, the Panel holds that the Respondent shall pay a contribution to the Appellant’s legal fees and other expenses incurred in connection with these arbitration proceedings in the amount of CHF 5,000 (five thousand Swiss Francs).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by FC Nizhny Novgorod against the decision issued on 14 March 2020 by the FIFA Disciplinary Committee is upheld.
2. The decision of the FIFA Disciplinary Committee of 14 March 2020 is annulled.
3. The costs of the arbitration, to be determined and served to the parties by the CAS Court Office, shall be borne entirely by FIFA.
4. FIFA is ordered to pay to FC Nizhny Novgorod a total amount of CHF 5,000 (five thousand Swiss francs) as a contribution towards its expenses incurred in connection with these arbitration proceedings.
5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 31 August 2021

THE COURT OF ARBITRATION FOR SPORT

Mr Efraim Barak
President of the Panel

Mr Frans de Weger
Arbitrator

Mr Jacopo Tognon
Arbitrator

Mr Pierre Turrettini
Ad Hoc Clerk