



**Arbitration CAS 2013/A/3228 Evgeny V. Levchenko v. Russian Football Association (RFA),
award of 15 January 2014**

Panel: Prof. Michael Geistlinger (Austria), President; Mrs Sylvia Schenk (Germany); Mr Mika Palmgren (Finland)

Football

Good governance

Applicable law

Scope of review of the CAS

1. **Once an operative part of the regulations applicable at national level explicitly refers to FIFA norms and rules, such reference incorporates the rules referred to into the regulations applicable at national level, as far as the rules by their nature and wording are specific enough and consistent to be incorporated and also the reference is so specific that the rules referred to can be applied consistently with the other provisions of the regulations applicable at national level.**
2. **If the prayers for relief, whatever the decision of the CAS panel may be, will affect the rights of a third party that has not been named and included as respondent in the proceedings before the CAS, there is no scope of review for the CAS panel and the appeal must be dismissed.**

I. THE PARTIES

- 1.1. Mr Evgeny V. Levchenko, (hereinafter referred to as the “Appellant”) is a professional football player, however, without current affiliation to a club and/or federation.
- 1.2. The Russian Football Association (hereinafter referred to as the “FUR” or “RFA” or the “Respondent”) is the governing body for the sport of football in Russia, which in turn is a member of FIFA and UEFA.
- 1.3. S. (hereinafter referred to as the “Third Party (Observer)”) is Vice-President of the FUR and President of the Russian Football Premier League.

II. FACTS

- 2.1. On 18 April 2011, the Russian newspaper “Novaya Gazeta” alleged in an article that the Third Party (Observer) in his capacity as a member of FUR committees, Vice-President of the FUR, member of the FUR Executive Committee and FUR Bureau of the Executive Committee as well as President of the Russian Football Premier League, had a conflict of interest and was involved in – illegal – activities with his brother A. (a former players’ agent and at present [*an employee*] of the Russian National Football League), K. (former sports director of [*two Russian clubs*], currently Advisor to the FUR President), as well as T. (Players’ agent licensed by the German Football Federation) and the X. GmbH.
- 2.2. Based on this article, the Novosibirsk regional branch of the Russian Union of Supporters filed a claim with the FUR Ethics Committee on 27 May 2011, requesting this committee to investigate against the persons enumerated above.
- 2.3. On 4 July 2011, the FUR Ethics Committee ruled to close the investigations due to the fact that it did not find any violations of the applicable rules by the Third Party (Observer). The decision rendered was communicated to the Appellant on 27 October 2011.
- 2.4. On 31 October 2011, the Appellant filed an appeal at the FUR Appeal Committee against the decision of the FUR Ethics Committee dated 4 July 2011.
- 2.5. On 15 November 2011, the appeal was dismissed and the Appellant so notified by fax dated 23 November 2011. The FUR Appeal Committee based its decision on the one hand on the fact that an appeal against another decision by the FUR Appeal Committee dated 18 July 2011, where the Appeal Committee had declared the appeal of the Novosibirsk regional branch of the Union of Supporters of Russia inadmissible, was brought to CAS and the proceedings before CAS “*on similar facts*” was pending at that moment. On the other hand, the FUR Appeal Committee held that the Appellant had no legal interest and, therefore, was not a party in the Novosibirsk regional office of the Russian Union of Supporters case against the Third Party (Observer). Even assumed he was a party, the FUR Appeal Committee found that he missed the deadline for filing the appeal.
- 2.6. The present dispute, thus, is closely related to the cases CAS 2011/A/2668 and CAS 2011/A/2669. The first of these cases was initiated by an appeal of the Union of Football Players and Coaches of Russia v. FUR and ended in the dismissal of the appeal. The second case was initiated by the Appellant in the current proceedings and led to a decision referring the case back to the FUR Appeal Committee. In CAS 2011/A/2669 it was stated that the Appellant “*is an interested party in the meaning of Article 35 of the current FUR Ethics Regulations*” (CAS/A/2669 at para. 85).
- 2.7. Following the CAS decision in CAS 2011/A/2669, on 23 January 2013, the FUR Appeal Committee cancelled the decision of the FUR Ethics Committee of 4 July 2011 and referred the case back to the FUR Ethics Committee for reconsideration. The FUR Appeal Committee advised the FUR Ethics Committee to establish whether the Third Party (Observer) could be called a “*person interested*” in the understanding of the Russian Federal Law “*On non-commercial*

organizations”, in particular in view of the activity of the X. GmbH, his brother and T., as condition of stating a conflict of interest with regard to the Third Party (Observer).

2.8. On 25 March 2013, the FUR Ethics Committee decided to dismiss the case against the Third Party (Observer) having investigated two issues brought forward by the Appellant against the Third Party (Observer):

- That the Third Party (Observer) *“did not prevent the violation by FC Saturn of the FUR Agents Regulations in July 2009”*, when the Appellant was transferred to FC Saturn;
- That the Third Party (Observer) did not disclose the fact that he had established the German X. GmbH and that his brother A. had an active agent license by the FUR, both when the Third Party (Observer) was a candidate for election as member of the FUR Executive Committee in 2008.

Further to that the FUR Ethics Committee had investigated the alleged existence of a conflict of interest in the activity of the Third Party (Observer) considering the decision of the FUR Appeal Committee based on the Russian Federal Law *“On non-commercial organizations”*.

The FUR Ethics Committee held that the period of prescription, laid down by art. 25 of the FUR Code of Ethics, was two years and all cases of eventual infringements of the applicable rules as to the Third Party (Observer), if any, happened more than two years before submission of the appeal to the FUR Ethics Committee, which was 31 October 2011.

Finally, the FUR Ethics Committee, found that according to art. 27 of the Russian Federal Law *“On non-commercial organizations”* a conflict of interest was to be seen *“in the interests in the conclusion of deals by a non-commercial organization, the CEO or a person belonging to the management or control bodies of which are in the relations of close relatives or in labour relations, or are the founders, partners or creditors”*. The FUR Ethics Committee held that this provision would have been fulfilled, if FUR made deals with the X. GmbH, the Third Party (Observer)’s brother and/or T. at a time when the Third Party (Observer) was a member of the FUR Executive Committee and did not disclose this potential conflict of interest. Additionally, in the opinion of the FUR Ethics Committee, the Appellant and the Novosibirsk regional office of the Russian Union of Supporters did not comply with their burden of proof and did not submit sufficient evidence for any actions of the Third Party (Observer) *“beyond those provided in the establishing documents of the non-commercial organization”* FUR, as requested by art. 27. Thus, the Committee held that there was no conflict of interest in the activity of the Third Party (Observer) as a member of the FUR Executive Committee.

2.9. Against this decision by the FUR Ethics Committee the Appellant filed an appeal to the FUR Appeal Committee dated 12 April 2013, arguing that the decision of the Ethics Committee *“ignored the commands of the Appeal Committee”* given on 23 January 2013, was wrong as to the evaluation of the facts and not recognizing the continuing character of the conflict of interest, and insufficiently defining the category *“person interested”*. Finally, according to the Appellant the decision of the FUR Ethics Committee deviated from the application of international football regulations.

2.10. On 17 April 2013, the FUR Appeal Committee held as follows:

"To reject the appeal claim filed by Levchenko E.V. in full and to keep in force the ruling of the Ethics Committee dated 25.03.2013.

This ruling comes in force from the moment of being taken.

Based on Article 47 of the Charter of the All-Russian Public Organization "Russian Football Association", this decision can be appealed with the Court of Arbitration for Sports in Lausanne, in accordance with the CAS Code (www.tas-cas.org)".

2.11. The FUR Appeal Committee stated that the Appellant did not present any new evidence and did not follow the Appellant's argument that the FUR Ethics Committee did not follow its advice. Since art. 27 of the Russian federal Law "On non-commercial organizations" defines a conflict of interest not referring to a liaison between two organizations or persons, but to a deal made between them, the FUR Appeal Committee with reference to a decision of the Supreme Court of Russia, sees two obligatory conditions as necessary:

- *"(i) whether the Director (Deputy Director) of the non-commercial organization at the moment of the conclusion of the deal was in labour relations with this organization, was its participant or creditor;*
- *(ii) whether this organization supplies products (services) for the non-commercial organization or consumes products (services) of the non-commercial organization, holds the property of the non-commercial organization, or can gain profit from this property of the non-commercial organization".*

2.12. Since the FUR Charter reserves the right to conclude deals on behalf of the FUR to its President and to some extent also to its General Secretary, or to the chairman of a regional entity of the FUR, respectively, the Third Party (Observer) being only a member of the FUR Executive Committee, in the opinion of the FUR Appeal Committee was not entitled to make any deal on behalf of the FUR. The FUR Appeal Committee concluded that his activity, therefore, being not the activity of a "person interested", did not raise a conflict of interest.

2.13. As to other actions, the FUR Appeal Committee found that the Appellant had the burden of proof, but provided only assumptions and hypotheses about alleged violations committed by the Third Party (Observer). The Appellant did not provide *"any concrete example of the conflict of interests which might have arisen with participation of S. as a member of the FUR Executive Committee when discussing and adopting amendments to FUR Charters, different regulations and forming FUR bodies with regards to X. GmbH, A. and T."*

2.14. As to the recurrent character of the argued violations of the FUR Code of Ethics by the Third Party (Observer), the FUR Appeal Committee held that there was no conflict of interest and that no applicable FUR regulation prevents a member of the FUR Executive Committee and/or the FUR President *"in view of their position to pursue own business activities. A person of this status has the right to establish any commercial organization"*. With respect to the activity of A., the Third Party (Observer)'s brother, as a football agent, the FUR Appeal Committee referred to the date of entry into force of the FUR Code of Ethics, which was 27 July 2010, while the Third Party (Observer) became chairman of the FUR Agents Commission on 14 April 2009 and his brother

had laid down his agent's license on the same day. In the opinion of the FUR Appeal Committee, the X. company and T. were beyond the jurisdiction of the FUR and applicable law. Thus, the Third Party (Observer), when he was elected member of the FUR Executive Committee in 2006, was not obliged to disclose that he had established such a company. The FUR Appeal Committee held that all alleged violations took place in the period between 2006 – 2009, if any, whereas the FUR Code of Ethics entered into force thereafter and had no retroactive effect. The FIFA Code of Ethics, also referred to by the Appellant, was considered not applicable by the FUR Appeal Committee, because all parties in the proceedings before the FUR Appeal Committee belonged to the same national federation, the FUR. Thus, only FUR regulations applied. The 2006 FIFA Code of Ethics could only apply to FIFA bodies, to disputes having an international aspect and to executive persons nominated by FIFA. The FUR Appeal Committee found that the FIFA Code of Ethics does not include any provision binding the Third Party (Observer) when executing functions on the national level. The FIFA Code of Ethics, in the opinion of the FUR Appeal Committee, *"served as an instruction for FUR to introduce necessary amendments into its own regulations; and this was made by FUR when adopting Ethics Regulations on July 27, 2010"*.

- 2.15 The decision of the FUR Appeal Committee was served on the Appellant by email on 23 May 2013.

III. PROCEEDINGS BEFORE THE CAS

- 3.1. On 13 June 2013, the Appellant submitted his Statement of Appeal against the decision of the FUR Appeal Committee and nominated the FUR as Respondent.
- 3.2. In accordance with Article R51 of the Code, the Appellant filed its Appeal Brief on 24 June 2013.
- 3.3. The Respondent acknowledged receipt of the Statement of Appeal and Appeal Brief by letter dated 2 July 2013 but did not file an answer in accordance with Article R55 of the Code.
- 3.4. On 11 July 2013, S., represented by Mr Georgi Gradev, filed a request for intervention pursuant to Articles R41.3 and R41.4 of the Code. The Appellant by letters dated 26 July 2013 and 16 August 2013 and the Respondent by letters dated 22 July 2013 and 15 August 2013 agreed to have S.'s intervention admitted and him considered as Third Party (Observer). S. agreed to such status by letter dated 26 August 2013.
- 3.5. On 10 September 2013, the Deputy President of the CAS Appeals Arbitration Division decided that S. shall be granted the status of "Third Party (Observer)" in this procedure.
- 3.6. On 24 September 2013, the CAS Secretary General, considering Articles R33 and R54 of the Code notified the formation of the Panel composed of Prof. Michael Geistlinger, Mr Mika Palmgren and Mrs Sylvia Schenk.

- 3.7. On 11 October 2013, the Panel informed the parties that it reserved the decision on the status of the Third Party (Observer) and its rights in the procedure to the first part of the hearing to be held, where the Appellant, the Respondent and the Third Party (Observer) were granted the right to express their related opinions. Further to that, the Panel granted the Third Party (Observer) the right to file a submission in writing by 7 November 2013, pursuant to Articles R41.3 and R41.4 of the Code. The Appellant and the Respondent were allowed, following receipt of the Third Party (Observer)'s submission to file a written reply. Further to that the Appellant and the Respondent were requested to provide the Panel with the Russian original and the English translation of the Ethics Regulations and Disciplinary Regulations of the FUR.
- 3.8. By letter dated 18 October 2013 and referring to Article R41.4 para. 5 of the Code and the decision CAS 2007/A/1367, the Third Party (Observer) requested the Panel to decide on the status and procedural rights of the Third Party (Observer) before the hearing. The Panel by letter dated 23 October 2013 advised the Third Party (Observer) to include all his procedural remarks, as well as his arguments on the merits within his written submission and extended the respective deadline for this submission as well as for the written replies of the Appellant and the Respondent.
- 3.9. The date for the hearing was set for 25 November 2013 and an Order of Procedure sent to the Appellant, the Respondent and the Third Party (Observer) on 4 November 2013.
- 3.10. The Order of Procedure has been signed by the Third Party (Observer) on 5 November, by the Appellant on 18 November and by the Respondent on 22 November 2013.
- 3.11. The Third Party (Observer) asked by letters dated 1 and 5 November 2013, whether the Appellant had paid the advance of costs to CAS himself.
- 3.12. By letter dated 5 November 2013, the Third Party (Observer) submitted his written Observations. On the same day, the Appellant submitted the copy of an email sent by the representative of the Third Party (Observer) to the Appellant, who had not yet named his representative, announcing that the Appellant might be sued for defamatory statements in case the appeal to CAS will be dismissed. By letter dated 6 November 2013, the Third Party (Observer) repeated the above indication, but stated, neither being willing to offend or show aggression as to the Appellant. On the same day, the Appellant informed that he will answer the Third Party (Observer)'s question as to the CAS advance payment at the hearing.
- 3.13. On 6 November 2013 the Appellant asked for rescheduling the hearing as he was not sure whether his representative would be available on the date for the hearing.
- 3.14. By letter dated 8 November 2013, the Respondent submitted the FUR Disciplinary Regulations (2013) in Russian, the FUR Disciplinary Regulations (2011) in English, and the FUR Ethics Regulations in Russian and in English. Further to that, the Respondent stated, not having available the Disciplinary Regulations (2011) in the Russian original. On the same day, the Third Party (Observer) argued that there are no exceptional circumstances as required by Art. R56 of the Code justifying to submit this new evidence at such late stage of the proceedings.

- 3.15. By letter dated 11 November 2013, the Third Party (Observer) objecting to the Appellant's request of postponing the hearing, stated his concern that the arbitrator Mika Palmgren and Mr Nikolay Grammatikov, probably to be nominated by the Appellant as one of his legal representatives at the hearing, are both FIFPro members. According to the Third Party (Observer), Mr Palmgren failed to disclose this in his Acceptance and Statement of Independence form as well as that within the past three years he has been appointed as arbitrator on two or more occasions by the Appellant or an affiliate to the Appellant, such as the Appellant's current employer, the Union of football players and coaches in Russia. Mr Palmgren, in the opinion of the Third Party (Observer) also should have disclosed that he has served within the past three years as arbitrator in another arbitration on a related issue involving the Appellant or an affiliate of the Appellant and that he had received in the same period more than three appointments by Mr Grammatikov. The Third Party (Observer) referred to points 3.1.3, 3.1.5 and 3.3.7 of the IBA Guidelines on Conflicts of Interest. The Third Party (Observer) proposed, instead of postponing the hearing, to decide the case without a hearing.
- 3.16. On 15 November 2013, the Panel decided and made known to the Appellant, the Respondent and the Third Party (Observer) that all the regulations and translations submitted by the Respondent were admitted to the case file with reference to arts R57 and R44.3 of the Code. Further to that the Panel did not cancel the hearing or alter the hearing date. It addressed the Respondent for indicating the reasons why the Russian text of the FUR Disciplinary Regulations could be found by the Arbitral Panel on the internet website [http://1fni.ru/upload/s4y_docs/20/Link/Russian Football Union Disciplinary Regulation s.pdf](http://1fni.ru/upload/s4y_docs/20/Link/Russian_Football_Union_Disciplinary_Regulation_s.pdf), but not by the Respondent.
- 3.17. The Appellant and the Third Party (Observer) submitted duly signed Powers of Attorney of their legal representatives.
- 3.18. The hearing took place at the CAS headquarters on 25 November 2013. The Appellant appeared in person and was represented by Dr. Michael Noth, Mrs Barbara Abegg and Mr Nikolai Grammatikov, attorneys-at-law. The Respondent was represented by Mr Denis Rogachev, FUR's in-house counsel, and Mrs Daria Verstova, acting as interpreter. The Third Party (Observer) was represented by Mr Georgi Gradev and Mr Ilyich Siaghei, attorneys-at-law.
- 3.19. At the beginning of the hearing, the arbitrator Mr Mika Palmgren made a statement indicating that he was involved in the cases CAS 2011/A/2668, CAS 2011/A/2669, CAS 2011/A/2428 and CAS 2012/A/2792. The first two cases had been joined by the CAS to be handled at the same time. In both cases, the FUR was the Respondent. The appellants were the Union of Football Players and Coaches of Russia and Mr Levchenko. The facts of the cases were the same. The members of the Panel were the same in both cases. In the case CAS 2011/A/2668 the appeal was dismissed, in the case CAS 2011/A/2669 the decision of the FUR Appeal Committee was annulled and the case referred back to this Committee for a new decision. Further to that, Mr Palmgren declared having been member of the Panel in the cases CAS 2011/A/2448 and CAS 2012/A/2792, both of them dealing with Mr Igor Strelkov, a player, against the club CJSC FC Krylia Sovetov. Also for these two cases one and the same Panel

including Mr Palmgren was composed. The cases dealt with the same facts, a claim for compensation for breach of contract by the player from the club. In the first case the appeal was partially upheld and it was decided that Mr Strelkov did not violate his contract. Also in the second case the appeal was partially upheld and the club ordered to pay Mr Strelkov a fixed sum as arrears due under the contract. Based on the specific circumstances of these CAS cases Mr Palmgren saw himself independent from the parties and not endangered to act impartially.

- 3.20. The President of the Panel informed the Appellant, the Respondent and the Third Party (Observer) that the two other members of the Panel found the declaration of Mr Palmgren convincing. This was also accepted by the Appellant and the Respondent. None of them raised objections with regard to the composition of the Panel.
- 3.21. The President of the Panel informed the Appellant, the Respondent and the Third Party (Observer) that the Third Party (Observer) shall have the right to submit observations in writing which were open to comments from the Appellant and the Respondent, to be present at the hearing, to nominate witnesses, and experts, to submit documents, to speak and question the Appellant and Respondent as well as their witnesses, the Panel was referring to the respective provision of the FUR Disciplinary Regulations, and did not want to apply these rules, but simply to grant the Third Party (Observer) the rights that would have been granted a party according to the FUR Disciplinary Regulations. The legal basis for such decision of the Panel is based on art. R41.4 of the Code and the Panel made clear that the Third Party was not a “party” as such but only an “observer” as this was duly accepted by the Appellant, the Respondent and the Third Party (Observer) *inter alia* when signing the Order of Procedure.
- 3.22. The President indicated the opinion of the Panel that the Third Party (Observer) according to art. R41.4 para. 4 has no right to challenge the composition of the Panel and that the respective part of the Third Party (Observer)’s Observations, thus, was not to be taken into consideration. The Appellant and the Respondent confirmed and renewed their agreement to have S. accepted only as Third Party (Observer).
- 3.23. The Appellant, the Respondent and the Third Party (Observer), confirmed their submissions in writing and answered the other sides’ and the Panel’s questions. The Appellant pointed at the fact that the Prayers of Relief in the Statement of Appeal differ from the Prayers of Relief in the Appeal Brief. The Appellant wished not to amend them, but to specify this more in detail during the hearing and requested
 1. The decision of the Appeal Committee of 17 April shall be annulled and shall be referred back to the FUR Appeal Committee.
 2. The FUR Appeal Committee shall be obliged to refer back this case to the FUR Ethics Committee and the FUR Ethics Committee shall be obliged to carry out a detailed and comprehensive investigation concerning the activities of S., A., T., K. and X. GmbH and to render a new decision on the question of possible infringements and conflicts of interests by these persons also taking into consideration the applicable FIFA rules.
 3. The FUR shall bear the entirety of the costs of the proceedings and shall pay a substantial contribution towards Appellant legal fees and other expenses incurred in connection with

the proceedings. When granting such contribution, the Panel shall take into account also that the financial resources of Mr Levchenko are limited and that this deserves special consideration.

- 3.24. The Appellant showed ready to submit his Opening Statement in writing, which, however, was not accepted by the Respondent and the Third Party (Observer) and not admitted by the Panel. The Appellant analysed the provisions of the current FIFA Statutes he held to be applied to the present facts, in particular, arts 7, 10 par 4 lit. a, arts 11 and 13 para. 1 lit. a and f of the FIFA Statutes, art. 4 para. 6, art. 6 lit. l and m, art. 11 number 1 and art. 29 FUR Charter, arts 2 and 3 para. 2 FUR Code of Ethics and held also that the respective UEFA Rules were to apply. None of the referred set of rules was, however, submitted to the Panel as exhibits to the Appeal Brief. The Appellant held them to be common knowledge and, therefore, to be considered by the Panel *ex officio*. The Third Party (Observer) objected to such opinion, the Respondent referred to decision by the Panel. The Panel decides to consider all applicable rules of the FIFA, UEFA and FUR as well as Swiss and Russian law *ex officio*. When asked by the Panel which version of the 2006, 2009, and 2012 versions of the FIFA Code of Ethics to apply, the Appellant wished to refer to all versions, stating that the various applicable provisions did not change from version to version.
- 3.25. The Respondent declared that it holds that the decision of the FUR Appeal Committee was correct and shall, therefore, be upheld by the Panel.
- 3.26. The Third Party (Observer) repeated his arguments from the Observations as to the reservation with regard to the composition of the Panel. Additionally he argued that the Appellant is no professional football player anymore, thus, has no legal interest in the current dispute in deviation from the previous cases. Also the transfer of the Appellant to Saturn cannot have any relevance for the present proceedings, since it was neither referred to in the Statement of Appeal, nor in the Appeal Brief, but only at the hearing. From The Third Party (Observer)'s point of view, the case was brought forward in bad faith since its purpose was to influence the elections to the FUR Executive Committee which will take place in February 2014. The Third Party (Observer) held that the Prayers for Relief submitted by the Appellant during the hearing were no specification, but were new Prayers for Relief and, therefore, inadmissible. The Appellant did not respect art. R49 of the Code and art. 81 para. 4 of the FUR Disciplinary Regulations, because no appeal against the Third Party (Observer), who was a party in the proceedings before the FUR committees, was submitted within the set deadline. The Third Party (Observer) was to be nominated as Second Respondent which did not happen by mistake of the Appellant. Thus, no other decision by the Panel than dismissal of the appeal is possible. Also a decision to return the case to the FUR Appeal Committee would violate the legal interests of the Third Party (Observer), since the decision of the FUR Appeal Committee has become final for him. With regard to an alleged conflict of interest the Third Party (Observer) argued that the FUR Executive Committee is composed of 33 members, thus, the participation of the Third Party (Observer) at the decision making could not have influenced any decision.
- 3.27. The Appellant stated that he is still a professional football player. He had a contract in Australia until March 2012 and is currently in the Netherlands, trains every day, helps players in the

Ukraine, Russia and the Netherlands, but has no contract with any club. A Player's agent is trying to set up a new contract for him in Russia, but due to the impacts of his dispute with the Third Party (Observer), no contract could be set up so far. All documents submitted to the Panel were either signed by himself, or were sent by somebody else with his signature copied with his permission. The Appellant declared that he had paid all CAS costs himself, even if his financial situation is a bit difficult. He declared not having a contract with FIFPro, not being employed there, but only having taken part as observer at a recent meeting.

- 3.28 Initial objections raised by the Third Party (Observer) against the translation done by a party representative instead of an interpreter during the hearing were withdrawn by the Third Party (Observer).

IV. SUBMISSIONS OF THE PARTIES

a. The Appellant:

- 4.1. The Appellant, considers the following dates and events as relevant for the case:
- In 1998, K. became an official Players' agent;
 - In 2006, the Third Party (Observer) became General Director of the FUR;
 - On 30 March 2006, the Third Party (Observer)'s brother received a license as FUR Players' agent;
 - In 2006, Mr Fursenko became President of FC B.;
 - In 2007, K. became Sport Director of FC B. and gave up his Players' agent license;
 - In 2007, the Third Party (Observer) became President of the Russian Premier League, Vice-President of the FUR and a member of the FUR Executive Committee and of the Bureau of the FUR Executive Committee,
 - In 2008, the FUR created a Commission on Agent Activity with the Third Party (Observer) as chairman, while his brother gave up his license, whereas T. received a Players' agent license at the German Football Federation;
 - In 2009, K. became Sport Director of FC C.;
 - In 2009, Mr Efremov became General Manager of FC D., but underwent a bankruptcy procedure and became President of the Russian Football League;
 - In 2010, Mr Fursenko became FUR President;
 - In 2010, K. became Advisor to the FUR President;
 - In 2010, the Third Party (Observer) resigned from chairman of the Commission on Agent Activity and was replaced by the Chief Executive of the Russian Premier League, Mr. Cheban;

- In 2011, the Third Party (Observer) became a member of UEFA's Players' Status, Transfer and Agents and Match Agents Committee;
 - In 2012, Mr Efremov became FUR Vice-President;
 - In 2012, the Third Party (Observer) participated in the elections for the FUR President.
- 4.2. Since 1999, the Third Party (Observer) and K. were the founders and general managers *"with the sole right to represent the company, with the right to make deals with each other or as a representative of third parties"* of the X. GmbH seated in Germany. One of the company's major activities was *"players' agent activity"*. The company, represented by T., was active, as the Appellant undertook to show by a screenshot from its website. After the publication of the article in *"Novaya Gazeta"* (see above at para. 2.1), the information on this company was removed. T. was listed as a players' agent on the FIFA website.
- 4.3. The Appellant refers to art 43.1 of the FUR Charter which provides as follows:
- "The Commission of the Agent Activities oversees the activities of the agents, ensures compliance of the activities of the players' agents with the legislation of the Russian federation, the present Charter, the specific regulations of FIFA and the FUR, **submits to the Board for approval documents regulating the activities of players' agents, as well as applies disciplinary sanctions to the players' agents for violation of the documents regulating the activities of players' agents**" (emphasized by the Appellant).*
- 4.4. Further to that this Commission, as the Appellant points out on the basis of art 24.4 of the FUR Regulations on Agents is entitled *"to require the club to provide financial as well as any other information and documents concerning the activities of the club in respect of transactions with the Agent"*. The Appellant holds that the Third Party (Observer) as chairman of this Commission, thus, *"had the opportunity to directly influence the market of agent services in Russia, developing regulations for agent activities, introducing or not introducing penalties for violations"*. He had also direct access to all relevant information on the agents' business. With the help of K. he could directly influence acquisition decisions concerning players and promote the agency activity through the X. GmbH. The replacement as chair of the Commission in April 2010 by Mr S. Cheban did not change anything in the Appellant's opinion because Mr S. Cheban was a direct subordinate of the Third Party (Observer) in the Premier League. Simply the fact of his appointment raised already a conflict of interest issue. The Appellant named a list of players' transfers negotiated by T. on behalf of X. GmbH. The Appellant draws the conclusion that the Third Party (Observer) due to his *"status in the hierarchy of football managers and official position on its own, without any special efforts on his part, with a high degree of probability, could make agents, players, officials, clubs and other stakeholders of agent services market assume of non-market benefits of affiliated persons" and himself and "on the contrary – the negative consequences of the choice of the other contractors (agents)"*.
- 4.5. The Appellant argues that the FUR Ethics Committee and the FUR Appeal Committee had access to information on conflicts of interest as well as on specific transfers of players *"showing sums of money for the transfer and the name of the recipient of funds"*. But all this information was found to be in accordance with the FUR Charter and FUR Regulations.

- 4.6. The Appellant refers to the procedure which had been chosen by the FUR Appeal Committee in order to implement the CAS 2011/A/2669 decision and on the instructions given to the FUR Ethics Committee for reviewing the facts and the case and enumerates the following provisions that were and are to be applied:

Art 3 number 4 of the FUR Ethics Regulations, which reads as follows:

“Officials shall not be allowed to abuse or use their status, make profits of it that may lead to a conflict of interests which causes contravention of personal interests of the official party and legitimate interests of third parties that may do harm to people, organizations, society and the state”.

The Appellant finds that the term “*conflict of interests*” is not in line with the FIFA Regulations.

Art 6 of the FUR Ethics Regulations, which reads as follows:

“Officials shall do their duties in an honest and fair way; their actions shall not do harm to the business reputation of the FIFA, the UEFA, the RFU, members of the RFU, of the leagues and the clubs and shall not violate the principles of the fair play”.

Art 7 of the FUR Ethics Regulations, which reads as follows:

“Officials shall be loyal to the FIFA, the UEFA, the FUR, members of the FUR, of the leagues and the clubs as well as to the activities of the above mentioned organizations, i.e. shall refrain from any actions that may cause harm to their business reputation”.

Art 27 number 7 FUR Charter (version 2013: number 8), which provides as follows:

“Any member of the Executive Committee shall refrain from participation in discussion and voting on issues if such discussion or voting may lead to a conflict of interests”.

Art 30 para. 3 FUR Charter, which states as follows:

“If there is a risk to or possibility of a conflict of interests while fulfilling their duty any member of the Executive Committee shall respect the regulations of the legislation of the Russian Federation and shall refrain from any discussion and voting” (emphasized by the Appellant).

Art 3 para. 2 number 1 of the FUR Ethics Regulations, which provides as follows:

“Officials shall 1) follow the main rules of conduct as set by these Regulations, by the documents of the FIFA, the UEFA, the RFU”.

Art 5 number 1 of the FIFA Ethics Regulations (must be art 19 para. 1 edition 2012) which states in the version submitted by the Appellant as follows:

“Before being elected or appointed officials shall disclose any information on possible personal interests that may come out of their future activities” (emphasized by the Appellant),

Art 5 number 2 of the FIFA Ethics Regulations (must be art 19 para. 2 edition 2012) which states in the version submitted by the Appellant as follows:

“While fulfilling their duties officials shall refrain from any situation that may lead to a conflict of interests. A conflict of interests takes place or may take place in a situation when officials have or may have a personal interest that may prevent them from fulfilling their duties in an efficient and independent way. Personal interest shall be recognized as receiving of any possible advantages for the official themselves, their family, relatives, friends and acquaintances” (emphasized by the Appellant).

Art 5 number 3 of the FIFA Regulations (must be art 19 para. 2 edition 2012) saying in the version submitted by the Appellant as follows:

“Officials may withdraw from fulfilling their duties in case of a conflict of interest or in case of possibility of a situation of a conflict of interest. Information on such conflict of interest shall be immediately disclosed by notification to the organization that employs the official”.

- 4.7. The Appellant holds that the Third Party (Observer) from 2006 until 2011 took part in the discussion and approval of amendments of the FUR Charter and FUR Regulations (agent activities, players’ status and transfer, resolution of disputes, regulations on ethics), nomination and approval of the members of the FUR Control and Disciplinary Committee, FUR Appeal Committee, FUR Chamber for Resolution of Disputes, FUR Players’ Status Committee, FUR Ethics Committee, FUR Committee for Football Players’ Agents, and FUR Appeal Committee for Football Players’ Agents, which functions he continues to fulfil at present as confirmed before the FUR Appeal Committee at the hearing on 23 January 2013, violated art. 30 number 3 of the FUR Charter, arts 6 and 7 of the FUR Regulations on Ethics and art. 5 numbers 1 – 4 of the FIFA Code of Ethics (must be art. 19 paras 1 – 4 edition 2012 and corresponding previous editions).
- 4.8. The Appellant argues that the FIFA Regulations are applicable because of their art. 3 number 2 sub-item 1 and sub-item 9 of the preamble of the FUR Charter. The Challenged decision, thus, is wrong by stating that the FIFA Regulations did not apply and were not violated. The former decision of the FUR Ethics Committee dated 4 June 2011 had held, that the FIFA rules did apply, but were not violated. The Panel in CAS 2011/A/2669 had held instead, in the Appellant’s opinion, that the FIFA Rules shall apply to this case.
- 4.9. The Appellant holds as to the terms *“interested party”* and *“conflict of interest”* that the FUR Ethics Committee only found that the Third Party (Observer) was an interested party in the sense of art. 27 of the Russian federal Law *“On non-commercial organizations”*, but otherwise did not fulfil the instructions of the FUR Appeal Committee and misinterpreted the two terms by holding that, since there were no deals between the FUR and X. company or personally with the Third Party (Observer) and other persons, there was no conflict of interest, and that there was no proof established as to other conflict of interest violations. The FUR Appeal Committee confirmed the FUR Ethics Committee’s decision and, thus, was wrong in the same manner, since it correctly had to find that the fact that since 2006 and up to present the Third Party (Observer) and K. *“occupied senior positions in the FUR, the Russian Premier League and the Clubs, concealed their joint business that was directly related to their job position serves as an outrageous demonstration of conflict of interest. In order to confirm a conflict of interests and a personal interest it is not necessary for an official to do any action designed to receive any profit or advantages for them, their family members, relatives or affiliated parties. It is also not necessary for any formal negative consequences to take place. According to the*

Applicant, to confirm a conflict of interest and a personal interest it is ENOUGH to have a fact that proves possibility of a conflict of interest and it is ENOUGH to have an opportunity to act in a personal interest regardless whether the person whose case is being treated personally did any action of personal interest” (emphasized by the Appellant).

4.10. The Appellant is of the opinion that the FUR Appeal Committee was wrong in finding that the appeal was too late, holding that the activities of the Third Party (Observer) took place long before the FUR Regulations on Ethics applied. The activities of the Third Party (Observer) are recurrent, because – as he stated before the Appeal Committee on 23 January 2013 – the Third Party (Observer) still is connected to the X. GmbH. Art. 25 FUR Regulations on Ethics concerning the period of limitation, thus, does not stand against the appeal.

4.11. The Appellant considers the Challenged Decision to be wrong because it did only rule on the Third Party (Observer), but not on his brother, K., Mr Efremov and T., and because it was signed by the chairman of the Appeal Committee who did not take part at the hearing before this Committee.

4.12. The Appellant in his Statement of Appeal submits the following Prayers for Relief:

“As the claim was not fully and accordingly investigated by the FUR Appeal Committee, the Appellant is therefore asking the Court of Arbitration for Sports:

- *To overturn the ruling of the FUR Appeal Committee;*
- *To carry out a detailed and a comprehensive investigation concerning the conflict of interests and the alleged corruption related to the activities of S., A., T., K. and X. GmbH”.*

4.13. In the Appeal Brief the Prayers for Relief read as follows:

“I am asking you:

1. *to cancel the disputed decisions*
2. *to make a resolution to impose liability to S.*
3. *as to the untried requests to impose liability to other persons – A., K., I. Efremov, T.– to make the RFU authorities with jurisdiction aware of the necessity to continue the review of the actually untried requests”.*

b. The Respondent:

4.14. The Respondent did not argue the case, but preferred to refer to the Challenged Decision in the hearing asking the Panel to uphold the decision, and referred to the reasons given in the decision considering them to be correct.

c. The Third Party (Observer):

- 4.15. The Third Party (Observer), apart from its arguments as to the formation of the Panel declared inadmissible by the Panel, submitted arguments as to S.'s procedural/legal status at CAS, as to the admissibility of the appeal, as to the law applicable to the merits, as to the standing of the Appellant and as to the prayers concerning S..
- 4.16. As to S.'s **procedural/legal status before CAS**, the Third Party (Observer) refers to art. R48 of the Code which requires that the Appellant in his Statement of Appeal must include, *inter alia*, the name and full address of the Respondent(s) and his request for relief. Adducing orders to stay in CAS 2005/A/850 and CAS 2007/A/1369 as well as the decisions of CAS in the cases CAS 2007/A/1367, CAS 2007/A/1329 & 1330 and CAS 2008/A/1620, the Third Party (Observer) states that CAS "*held – in essence – that, if the appellant failed to indicate FIFA formally as the respondent ..., FIFA cannot be considered as a formal party to the arbitration proceedings*" (explicitly in the first three, implicitly in the two other cases).
- 4.17. The Third Party (Observer) concludes that the Appellant had to name S., who was the only respondent in the FUR procedure, as co-Respondent within the 21 days deadline from the moment of receiving the decision being appealed to CAS, but did not do so in his Statement of Appeal nominating only the FUR as Respondent. Further to that, the Appellant did not claim anything against the Third Party (observer), nor sought anything from him. All Prayers for Relief are only addressed to the FUR. Also in his Appeal Brief and later respective letters, the Appellant showed that he did not intend and wish to name S. as Second Respondent. In the opinion of the Third Party (Observer), this was a fatal procedural error.
- 4.18. Due to the opposition of both, the Appellant and the Respondent, to admit the third Party as a co-Respondent in the procedure in their answers to the letter of CAS dated 22 August 2013 and due to the fact that "*CAS/the Panel does not have the power to include on its own a third party in an arbitration procedure*", the Panel, in the opinion of the Third Party (Observer) is not allowed to decide that the Third Party (Observer) shall be considered as a formal party (co-Respondent). The Third Party (Observer) held that the Appellant himself did not correct his procedural flaw and – referring to CAS 2007/A/1329, 1330 and CAS 2007/A/1367 – this would have been too late anyhow. The Panel, in the Third Party (Observer)'s view, is precluded from summoning the Third Party (Observer) by the 21-day deadline for submitting the appeal. As a consequence "***the Third Party concludes that this arbitration cannot extend to him as a formal party (co-Respondent)***" (emphasized by the Third Party (Observer)).
- 4.19. The Third Party (Observer) considers it a different situation, if an Appellant names a wrong Respondent, because in such case the CAS Court Office must summon such Respondent into the proceedings.
- 4.20. The Third Party (Observer) considers the reference of the decision of the Panel communicated by letter dated 11 October 2011 to art. 58 FUR Disciplinary Regulations as error, because the present appeal is not directed against the Third Party (Observer), but only against the FUR. The Third Party (Observer) underlines that "*he is not and does not wish to become a co-Respondent in this*

arbitration. Should the Panel deal with this question anyway, S. would see major formal requirements not being respected in these proceedings as mentioned above, which would give him grounds to appeal to the Swiss Federal Tribunal”.

- 4.21. As to the **admissibility of the Appeal**, the Third Party (Observer) finds that the appeal is inadmissible, because not duly signed by the Appellant or an authorized representative, but by someone else and/or copied in. It has to be deemed admissible and withdrawn pursuant to art. R51 par 1 ff of the Code, unless the Appellant coming in person to the hearing and confirming his signature on the Statement of Appeal and the Appeal Brief. Both signatures apparently are “totally different” in the opinion of the Third Party (Observer) (emphasized by the Third Party (Observer)).

- 4.22. As to **the applicable law to the merits**, the Third Party (Observer) refers to CAS 2011/A/2669 at para. 47 where CAS with effect of res judicata for the case at hands ruled that the “*rules applicable to adjudicate the case are ... the various regulations of FUR. Russian law shall apply subsidiary*”.

- 4.23. Since in the opinion of the Third Party (Observer), the case is a purely domestic one, the FIFA Regulations do not apply with reference to CAS 2011/A/2853 at para. 99, unless they have been explicitly incorporated in the FUR By-Laws.

- 4.24. The Third Party (Observer) holds that the FIFA Code of Ethics (2006) “*does not constitute per se a binding set of rules for the Third Party when carrying out his office duties on national level. Instead, it constitutes an instruction to introduce a regulation providing for such rules at the FUR level. This was implemented by the coming into force of the FUR Code of Ethics in September 2010 only. However, since the events giving rise to the present dispute occurred before the coming into force of the FUR Code of Ethics in September 2010 only, the latter Code cannot be applied retroactively to the merits of the case at hand*”.

- 4.25. As to the **standing of the Appellant**, the Third Party (Observer) opposes the position of the Appellant and holds that his consideration as “*football subject*” by the Panel in CAS 2011/A/2669 is not *res judicata*, because the decision referred only to the FUR’s internal legal process, but not to the CAS process. Apart from that, in the opinion of the Third Party (Observer), the Appellant lost his status as “*football subject*”, “*because he has not been registered as a football player ever since 25 March 2012*”. At that time he terminated his employment relationship with his last club, Adelaide United, Australia. He, thus, cannot be seen as an “*aggrieved party*”, being “*directly affected by the decision appealed from*” and, therefore with reference to a bundle of CAS cases has “*no interest whatsoever worthy of protection*” and, therefore, no right to appeal.

- 4.26. As to **prayers concerning S.**, the Third Party (Observer) mentions that the Appellant only in his Appeal Brief filed a claim against the Third Party (Observer) by asking “*to make a resolution to impose liability to ... S.*”. But, since the Appellant did not ask for sanctioning the Third Party (Observer), but for recognizing his liability, it is impossible for the Panel to inflict a sanction against the Third Party (Observer). Otherwise, the Panel would act against the principle of *ne ultra petita*. The same goes, if the Panel were to decide to refer the case back to the previous

instance for decision. The Challenged Decision must be considered to be *res judicata* with regard to the Third Party (Observer).

- 4.27. Referring to CAS jurisprudence (CAS 2004/A/594, CAS 2007/A/1248, CAS 2011/A/2654, CAS 2013/A/3047), the Third Party (Observer) holds that **“the Panel cannot render a decision, which may purport to affect the rights of a party that has not been named as a (co-)Respondent in compliance with the requisites stipulated in Art. R48 of the Code”** (emphasized by the Third Party (Observer)).

- 4.28. The Third Party (Observer) finds that the Panel’s review is limited to those prayers that concern only the FUR. He submits as follows:

“In other words, the Panel is not in a position to consider the behaviour and/or the possible breach of the applicable law by the Third Party, nor may it rule as to whether the Third Party can be held “liable”, as the Appellant requests in point 2 of the Appeal Brief, because the latter’s failure to include the Third Party as a co-Respondent to the CAS proceedings precludes the Panel from entertaining any claim and/or allegations relating to the Third Party ...”.

- 4.29. The Third Party (Observer) refers to CAS 2013/A/3047 at para. 52, where CAS ruled, based on Swiss civil procedural law, that the question whether the Appellant is entitled to request from a federation/Panel to issue a sanction against anybody, where the applicable rules do not contain any provision granting such right, is not an issue of jurisdiction, but a question relating to the principle of standing to sue or to be sued which is a matter of substantive law in Switzerland. The Third Party (Observer) holds that in the case at hands there is no provision *“granting the Appellant a right to claim from the FUR/ the Panel “to make a resolution to impose liability to ... S.”*” The Third Party (Observer) continues as follows:

“Even if there was such a right (according to the applicable substantive rules), the Panel would still be barred from deciding upon such a claim, since the latter would have had to be directed not only against the FUR, as the Appellant erred, but also against S., insofar as the FUR and S. form a mandatory passive joinder of parties. Since the Appellant filed his claim pertaining to point 2 of the petitum of the Appeal Brief against the FUR solely, the latter has no standing to be sued”.

- 4.30. The Third Party (Observer) submits the following Prayers for Relief:

“The claim raised in point 2 of the petitum of the Appeal Brief, and directed towards S., should be dismissed by the Panel without further consideration, in compliance with the afore-cited constant CAS jurisprudence”.

V. CAS JURISDICTION

- 5.1. The jurisdiction of the CAS, which is not disputed, derives from art. R47 of the CAS Code in connection with art. 47 FUR Charter and art. 81 para. 4 of the FUR Disciplinary Regulations, The jurisdiction of CAS has been confirmed by the Appellant, the Respondent and the Third Party (Observer) having signed the Order of Procedure.

- 5.2. The Challenged Decision, dismissing the appeal of the Appellant rules as follows:

“Based on Article 47 of the Charter of the All-Russian Public Organization ‘Russian Football Association’, this decision can be appealed with the Court of Arbitration for Sports in Lausanne, in accordance with the CAS Code (www.tas-cas.org)”.

- 5.3. It follows that the CAS has jurisdiction to decide the present case.

VI. APPLICABLE LAW

- 6.1. Art. R58 of the CAS Code provides as follows:

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

- 6.2. In the present matter, the parties have not agreed, before CAS, on the application of any particular law.
- 6.3. The parties do not dispute that, as was held by CAS in the cases CAS 2011/A/2669, at para. 47, and CAS 2011/A/2668, at para. 46, closely related to the current case, the various regulations of the FUR are the rules applicable to adjudicate this case. Russian law shall apply subsidiary.
- 6.4. There arose a dispute, however, between the Appellant and the Respondent, referring to the Challenged Decision, and the Third Party (Observer), concerning the applicability of the FIFA Code of Ethics in the present matter. Whereas the Appellant holds that the FIFA Code of Ethics is directly applicable due to art. 3 para. 2 number 1 of the FUR Ethics Regulations and number 9 of the Preamble of the FUR Charter, the Respondent and the Third Party (Observer) argue that the FIFA Regulations are not directly applicable to a purely domestic matter as is the matter at stake. There is only room for application of the FIFA rules and regulations in the present proceedings, as far as they have been explicitly incorporated in the FUR By-Laws. In the Respondent’s and Third Party (Observer)’s view, the FIFA Code of Ethics is not *per se* binding for the Third Party (Observer) when carrying out his office duties on national level, it, moreover, constitutes an instruction to the FUR to introduce a regulation providing for such rules at the FUR level.
- 6.5. The Panel wishes to refer to CAS 2011/A/2653, which reads at par 99 as follows:
- “The Panel is of the opinion that the FIFA Regulations are not applicable to a dispute regarding a purely domestic [matter] ...”.*
- 6.6. The Panel holds that, indeed, such ruling corresponds to the delimitation of the spheres of competences between the FIFA and its member federations as laid down by their Statutes. However, the Panel does not see a contradiction to the quoted decision and the holding of CAS in the previous decisions linked to the present matter in finding that once an operative part of

the FUR Regulations explicitly refers to FIFA norms and rules, the Panel holds that such reference incorporates the rules referred to into the FUR Rules, as far as the rules by their nature and wording are specific enough and consistent to be incorporated and also the reference is so specific that the rules referred to can be applied consistently with the other provisions of the FUR Regulations.

- 6.7. As to the FIFA Code of Ethics, such direct reference takes place, e.g., in art. 8 lit. m FUR Charter, which binds the FUR to guarantee that its leading bodies and certain functionaries observe, inter alia, the FIFA Code of Ethics and the FUR Ethics Regulations. In the opinion of the Panel, this reference shows that – as for the FUR – both set of rules are not in the relationship of one instructing and the other incorporating and binding, but both binding and obviously supplementing each other. The Panel, when following this reference to the FIFA Code of Ethics, finds that certain provisions of the FIFA Code of Ethics by their nature cannot be meant of being referred to, e.g., the provisions setting up bodies on the FIFA level, whereas the FUR Ethics Regulations set up different own bodies providing for a procedure in case of a violation of ethical rules contained either in the FUR Ethics Regulations or in the FIFA Code of Ethics. Thus, e.g., art. 3 para. 2 number 1 of the FUR Ethics Regulations binds officials to obey the main rules of conduct, included in these regulations and FIFA documents. The fact that the FIFA Code of Ethics is understood as such document follows from number 3 of the Preamble of the FUR Ethics Regulations referring to the “*Code of Ethics and other documents of FIFA*”.
- 6.8. The Panel, thus, concludes that the FUR Regulations in the limits set out at the examples above provide for the direct applicability of the FIFA Code of Ethics in purely domestic FUR matters.

VII. ADMISSIBILITY

- 7.1. The Third Party (Observer), not being fully consistent in using the term “*inadmissibility*” in his Observations raises two arguments, which the Panel wishes to address in the context as to the admissibility of the appeal: the lack of due signature by and the lack of standing of the Appellant.
- 7.2. As to the lack of due signature, the Third Party (Observer) himself declared in his Observations being satisfied, if the Appellant will appear in person at the hearing and declare that the signatures on the Statement of Appeal, Appeal Brief and other letters submitted to the Panel were his signatures. The Appellant appeared in person at the hearing and declared having either signed documents originally or authorised to use his signature. Thus, the Panel feels fine with the authenticity of the Appellant’s submissions.
- 7.3. As to the standing of the Appellant, the Third Party (Observer) holds that the Appellant is no professional football player anymore, thus no “*football subject*”, and, thus, has no legal interest, being not aggrieved by the appealed decision. The Third Party (Observer) quotes para. 154 of CAS 2009/A/1880, 1881. The Appellant refers to the finding of CAS in the closely linked case CAS 2011/A/2669, which was decided on 28 August 2012 and had recognized that the Appellant as player according to art. 1.1 sub 9 of the FUR Ethics Regulations falls under the

term “*football subject*”, and to the fact that he was a party to the proceedings before the FUR Ethics Committee, which ended by decision on 25 March 2013.

- 7.4. The Panel holds that the argument raised by the Third Party (Observer) that the Appellant lost his status as “*football subject*” at the moment of termination of his contract with Adelaide United, Australia, on 25 March 2012, was already given, when the CAS Panel held its hearing in the case CAS 2011/A/2669 on 14 June 2012. The FUR had argued before CAS in that case that the Appellant was no “*football subject*” “*because he does not live in Russia, is not a Russian citizen and no longer plays for a Russian football club*” (see at para. 37). The argument raised by the Third Party (Observer) does not add to this reading any new substance as to the applicable norm in the FUR Ethics Regulations, except specifying more in detail that the Appellant currently is without employment. This was confirmed by the Appellant at the hearing, who explained in addition that he is looking for a new contract with the help of a Player’s agent, but unfortunately failed so far. The facts stay the same: the Appellant does not live in Russia, is not a Russian citizen and no longer plays for a Russian football club and this was continuously the case in the present case as well as in the previous instances and currently before this Panel. This was evaluated in CAS 2011/A/2669 and decided by the Panel at para. 64, holding “*that the Player ... can be considered to be “football subject(s)” within the meaning and for the purposes of the FUR Ethics Regulations*”. Thus, this Panel finds that *res judicata* is being given. This result is in line with the previous instances’ decisions in the present case (FUR Ethics Committee on 25 March 2013 and FUR Appeals Committee on 17 April 2013), none of which put in doubt the standing and legal interest of the Appellant and, thus, considered him as a party in the proceedings before them.
- 7.5. The facts in the cases quoted by the Third Party (Observer) from CAS 2009/A/1880, 1881 are totally different from the present case, because there the question was whether the “*exact identity of the parties*” was given. This emanated from the petition to FIFA having wrongly directed the claim against the amateur club and not against the professional club. This decision, therefore, does not contradict to the above finding of the Panel in the present case.
- 7.6. The Panel, for the above reasons, declares the appeal as admissible.

VIII. MERITS

- 8.1. The Panel holds that the key question to decide in the present case is the issue of the consequences of the legal status of the Third Party (Observer). Referring to the findings in the case CAS 2013/A/3047 at para. 52, the Panel considers this issue a question related to the merits.
- 8.2. Para. 52 of CAS 2013/A/3047 reads as follows:

“Whether or not the Appellant is entitled to request from the RFU/the Panel to issue a sanction against FC Dynamo Moscow is not an issue of jurisdiction ..., but a question relating to the standing to sue or to be sued. The latter is a matter of substantive law (Zürcher Kommentar zur Schweizerischen Zivilprozessordnung (ZPO) (Teil I), 2010, N 67 zu Art. 59 ZPO; S. 382; GRAF in: GesKR 2012 S. 380; BGE 107 II 82 E. 2a). The applicable rules do not contain any provision granting the Appellant a right to claim from RFU/the Panel

to sanction a third party, such as FC Dynamo Moscow. Even if there was such a right (according to the applicable substantive rules), this Panel would be barred from deciding upon such a claim, since the latter would have to be directed not only against the RFU, but also against FC Dynamo Moscow, Insofar RFU and FC Dynamo Moscow form a mandatory passive joinder of parties. Since Appellant has filed its claims pertaining to number 3 of the Statement of Appeal solely against the RFU, the latter has no standing to be sued. Thus, the claims raised in prayer number 3 of the Statement of Appeal, and directed towards FC Dynamo Moscow, shall be dismissed”.

- 8.3. In the above case the prayers for relief could be separated according to the party direction. In the present case the prayers for relief brought forward by the Appellant are clearly different in the Statement of Appeal, Appeal Brief and “as specified” by the Appellant during the hearing. Reading together arts R48, R51 and R56 of the Code, the Panel does not see a legitimacy to change the prayers for relief from the Statement of Appeal and Appeal Brief. The “Appellant’s request for relief” is an essential element of the Statement of Appeal and Appeal Brief. At the hearing, the Appellant himself recognized this fact by using the word “specification”, which means trying to stay within the original prayers for relief submitted through the Statement of Appeal and Appeal Brief, but explain them more in detail.
- 8.4. In the Statement of Appeal, the Appellant asked:
“- to overturn the ruling of the RFA Appeal Committee
- to carry out a detailed and a comprehensive investigation concerning the conflict of interests and the alleged corruption related to the activities of S., A., T., K. and X. GmbH”.
- 8.5. In the Appeal Brief, the Appellant asked for:
 1. *“to cancel the disputed decisions*
 2. *to make a resolution to impose liability to S.*
 3. *as to the untried requests to impose liability to other persons – A., K., I. Efremov, T.– to make the RFU authorities with jurisdiction aware of the necessity to continue the review of the actually untried requests”.*
- 8.6. Number 1 of the Prayers for Relief submitted by the Appeal Brief enlarges the first item of the Prayers for Relief submitted by the Statement of Appeal by using the plurality instead of the singular. Number 2 of the Appeal Brief’s Prayers for Relief was not included at all in the Statement of Appeal. Number 3 of the Appeal Brief’s Prayers for Relief enlarges the request from “investigations” to “imposing of liability”.
- 8.7. At the hearing, the Appellant’s “specification of the Prayers for Relief” was submitted as follows:
 1. The decision of the Appeal Committee of 17 April shall be annulled and shall be referred back to the FUR Appeal Committee.
 2. The FUR Appeal Committee shall be obliged to refer back this case to the FUR Ethics Committee and the FUR Ethics Committee shall be obliged to carry out a detailed and comprehensive investigation concerning the activities of S., A., T., K. and X. GmbH and to

render a new decision on the question of possible infringements and conflicts of interests by these persons also taking into consideration the applicable FIFA rules.

3. The FUR shall bear the entirety of the costs of the proceedings and shall pay a substantial contribution towards Appellant legal fees and other expenses incurred in connection with the proceedings. When granting such contribution, the Panel shall take into account also that the financial resources of Mr Levchenko are limited and that this deserves special consideration.
-
- 8.8. Number 1 of the Appellant's hearing's Prayers for Relief corrects number 1 of the Appeal Brief's Prayers for Relief back to the Statement of Appeal's Prayers for Relief but enlarges this by asking the Panel *"to return the decision"*. Number 2 adds a new Prayer for Relief, which was neither submitted by the Statement of Appeal, nor by the Appeal Brief, asking for a new decision concerning all persons indicated and naming the FIFA Regulations as law to be applied. Number 3 was neither contained in the Statement of Appeal, nor in the Appeal Brief.
 - 8.9. The Panel, thus, holds to be bound by art. R48 read together with art. R56, art. R57 and art. R59 of the Code to answer the Prayers for Relief as submitted by the Appellant in the Statement of Appeal and Appeal Brief. As to the first Prayer for Relief, submitted by the Appellant there, the *"decision to be overturned"* is the Challenged Decision, addressed alone in the Statement of Appeal, and addressed together with the decision of the FUR Ethics Committee in the Appeal Brief referred to in the Challenged Decision. The Challenged Decision held that the appeal of the Appellant submitted before the FUR Appeal Committee was rejected in full. The Appellant had asked the Appeal Committee
"to cancel the ruling of the FUR Ethics Committee of 25.03.2013, reargue the case, hold liable all violators of ethics regulations, namely to impose ban on S. for all activities related to football";
"circumstances related to other persons possibly violating the Regulations (A., K., Efremov I.V.) to revert into a separate case to be studied by FUR Commission on Agents and FUR Ethics Committee".
 - 8.10. The Panel, thus, finds that as to the first item of the object of appeal, whatever might be the contents of its decision, it will affect the rights of the Third Party (Observer) as a party that has not been named as second Respondent by the Appellant, but was a party in the previous instances' proceedings. The Panel also holds that as to the second item of the object of appeal according to the Statement of Appeal, whatever, might be the contents of its decision(s), it will affect the rights of other persons who have not been named as further respondents by the Appellant, but also have not even been parties in the previous instances' proceedings.
 - 8.11. As to the second Prayer for Relief in the Appellant's Statement of Appeal as read together with the Appeal Brief, the Panel holds that, whatever might be the contents of its decision, it will affect the rights of the Third Party (Observer) and other persons as parties that have not been named as Respondents by the Appellant.
 - 8.12. The Panel wishes to refer to established CAS jurisprudence on such matter, as was held by CAS e.g. in CAS 2011/A/2654 at para. 8.9, which reads as follows:

“The Panel noted that it was ultimately the choice of the Appellant against whom it appealed, but by not including the Burkina Faso FF as a party, the Panel has determined that its scope of review is limited to a review of the Appealed Decision alone. In the event that, on the merits, it is determined to overturn the Appealed Decision, then this Panel would be unable to go further and issue an award that would have the effect of replacing Burkina Faso with Namibia at AFCON 2012”.

- 8.13 Also in the present case it was the choice of the Appellant against whom he appealed. Due to his repeated expressions of his clear wish not to have the Third Party (Observer) named and included as Second Respondent, the Panel does not see a necessity to rule on whether the Appellant’s procedural flaw could have been corrected by him after the Statement of Appeal or even by the Panel itself and under which conditions. The Appellant before CAS did not want to name the Third Party (Observer) as Second Respondent. Thus, the Appellant withdrew any scope of review for the present Panel.
- 8.14 For this and the other above reasons the Panel decides to dismiss the appeal.

ON THESE GROUNDS

The Court of Arbitration for Sport hereby rules:

1. The Appeal filed by Mr Evgeny V. Levchenko on 13 June 2013 is dismissed.
 2. The decision rendered by the Appeal Committee of the Russian Football Association on 23 May 2013 is confirmed.
- (...)
5. All other motions or prayers for relief are dismissed.