



TAS / CAS

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2022/A/8708 Football Union of Russia (FUR) v. Fédération Internationale de Football Association (FIFA) et al.

ORDER

on Request for Provisional Measures

issued by the

**President of the Appeals Arbitration Division of the
Court of Arbitration for Sport**

in the arbitration between

Football Union of Russia, Moscow, Russian Federation

Represented by Messrs Yury Zaytsev, Alexandre Zen-Ruffinen, Ilya Chicherov and Yury Yakhno,
Attorneys-at-Law with SILA International Lawyers, Neuchatel, Switzerland, and Moscow, Russian
Federation

Appellant

v.

Fédération Internationale de Football Association, Zurich, Switzerland

Represented by Mr Miguel Liétard Fernández-Palacios, Director of Litigation

First Respondent

and

Union of European Football Associations, Nyon, Switzerland

Represented by Mr Antonio Rigozzi and Ms Brianna Quinn, Lévy Kaufmann-Kohler, Geneva,
Switzerland

Second Respondent

Polish Football Association, Warsaw, Poland

Represented by Mr Grzegorz Knap, LAS Legal, Warsaw, Poland

Third Respondent

Swedish Football Association, Solna, Sweden

Fourth Respondent

Czech Football Association, Prague, Czech Republic

Fifth Respondent

Football Association of Montenegro, Podgorica, Montenegro

Sixth Respondent

Malta Football Association, Ta' Qali, Malta

Seventh Respondent

I. THE PARTIES

1. The Football Union of Russia (the “Appellant” or the “FUR”) is the governing body of football in the Russian Federation. It has its seat in Moscow, Russian Federation and is a member of the Union of European Football Association (“UEFA”) and the Fédération Internationale de Football Association (“FIFA”).
2. FIFA (the “First Respondent”) is an association incorporated under Swiss law with its registered office in Zurich, Switzerland. FIFA is the governing body of international football. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players worldwide.
3. UEFA (the “Second Respondent”) is the governing body of European football. It is an association incorporated under Swiss law with its registered office in Nyon, Switzerland.
4. The Polish Football Association (the “Polish FA” or the “Third Respondent”) is the governing body of football in Poland. It has its seat in Warsaw, Poland, and is a member of UEFA and FIFA.
5. The Swedish Football Association (the “Swedish FA” or the “Fourth Respondent”) is the governing body of football in Sweden. It has its seat in Solna, Sweden, and is a member of UEFA and FIFA.
6. The Czech Football Association (the “Czech FA” or the “Fifth Respondent”) is the governing body of football in Czech Republic. It has its seat in Prague, Czech Republic, and is a member of UEFA and FIFA.
7. The Football Association of Montenegro (the “Montenegrin FA” or the “Sixth Respondent”) is the governing body of football in Montenegro. It has its seat in Podgorica, Montenegro, and is a member of UEFA and FIFA.
8. The Malta Football Association (the “Maltese FA” or the “Seventh Respondent”) is the governing body of football in Malta. It has its seat in Ta' Qali, Malta, and is a member of UEFA and FIFA.
9. The Appellant and the Respondents are collectively referred to as the “Parties”.

II. FACTUAL BACKGROUND

10. The elements set out below are a summary of the main relevant facts as established by the President of the Appeals Arbitration Division (the “Division President”) of the Court of Arbitration for Sport (the “CAS”) based on the Parties’ submissions and documents on file.
11. The FIFA World Cup Qatar 2022 (the “World Cup”) will take place from 21 November 2022 until 18 December 2022.

12. The Appellant's men's national team finished second in its group in the European qualifying round for the World Cup, thus advancing to the second round playoffs (the "Playoffs"). It is scheduled to play against Poland on 24 March 2022. In case of win, the team would then play against the winner of the match between Sweden and Czech Republic on 29 March 2022.
13. The FIFA Women's World Cup Australia & New Zealand 2023 (the "Women's World Cup") will take place from 19 July to 20 August 2023.
14. The Women's World Cup is currently in the qualifying phase. The Appellant's women's national team is currently ranked in second place after 6 out of 10 matches. It is scheduled to play against Montenegro on 7 April 2022 and against Malta on 12 April 2022. Two further matches against Bosnia and Herzegovina and Denmark, respectively, are scheduled on 2 and 6 September 2022.
15. On 24 February 2022, what the Appellant describes as "*military operations*" started to unfold in Ukraine. FIFA and UEFA dispute the accuracy of the wording used by the Appellant and refer instead to "*a blatant act of war*", respectively a "*Russian military invasion*".
16. The Russian actions have been widely condemned worldwide, including by the United Nations General Assembly, although the United Nations Security Council failed to adopt a draft Resolution on Ending the Ukraine Crisis as it was vetoed by the Russian Federation.
17. On 26 February 2022, the Swedish FA issued the following statement on its Twitter account:

"SvFF's message: The men's national team will not play against Russia - regardless of where the match is played.

The Federal Board also urges FIFA to cancel the play-off matches in March in which Russia participates" (free translation)
18. On 27 February 2022, the Polish FA issued the following statement:

"The Polish Football Association declares that, as a result of the brutal aggression of the Russian Federation on Ukraine and the ongoing war there, it does not see the possibility of competing with the Russian representation in the play-offs for promotion to the World Cup in Qatar in 2022, regardless of the name of the team consisting of Russian footballers and the place where the match will be played.

In the face of the Russian invasion of Ukraine, condemned almost everywhere in the world, this is the only decision we can make. The performance in the match against the Russian team would be shameful not only for our representatives, but also for the entire football community, it would be a denial of solidarity with the Ukrainian people. As a football association, we refuse to take part in the barrage matches in which the team from Russia plays.

At the same time, we call on the FIFA authorities to react immediately to the brutal violence we see every day on the territory of independent Ukraine. If the document "FIFA's Human Rights Policy" is more than just words on paper, now is the time to put it into effect by excluding the Russian Football Association from qualifying for the 2022 World Cup in Qatar."

19. On the same day, the Czech FA issued the following statement:

“The FAČR Executive Committee unanimously approved the decision that the Czech national team will not play in any way in the 2022 World Cup qualification barrage against the Russian selection. [...]”

20. Also on 27 February 2022, the Bureau of the FIFA Council issued the following decision (the “First Decision”):

- “• No international competition shall be played on the territory of Russia, with ‘home’ matches being played on neutral territory and without spectators*
- The member association representing Russia shall participate in any competition under the name ‘Football Union of Russia (RFU)’ and not ‘Russia’*
- No flag or anthem of Russia will be used in matches where teams from the Football Union of Russia participate”*

21. On 28 February 2022, the Executive Board of the International Olympic Committee (IOC) issued the following resolution (the “IOC Resolution”):

- “1. In order to protect the integrity of global sports competitions and for the safety of all the participants, the IOC EB recommends that International Sports Federations and sports event organisers not invite or allow the participation of Russian and Belarusian athletes and officials in international competitions.*
- 2. Wherever this is not possible on short notice for organisational or legal reasons, the IOC EB strongly urges International Sports Federations and organisers of sports events worldwide to do everything in their power to ensure that no athlete or sports official from Russia or Belarus be allowed to take part under the name of Russia or Belarus. Russian or Belarusian nationals, be it as individuals or teams, should be accepted only as neutral athletes or neutral teams. No national symbols, colours, flags or anthems should be displayed.*
- 3. Wherever, in very extreme circumstances, even this is not possible on short notice for organisational or legal reasons, the IOC EB leaves it to the relevant organisation to find its own way to effectively address the dilemma described above.*
- 4. In this context, the IOC EB considered in particular the upcoming Paralympic Winter Games Beijing 2022 and reiterated its full support for the International Paralympic Committee (IPC) and the Games.*
- 5. The IOC EB maintains its urgent recommendation not to organise any sports event in Russia or Belarus, issued on 25 February 2022.*
- 6. The IOC EB has, based on the exceptional circumstances of the situation and considering the extremely grave violation of the Olympic Truce and other violations of the Olympic Charter by the Russian government in the past, taken the ad hoc decision to withdraw the Olympic Order from all persons who currently have an important function in the*

government of the Russian Federation or other government-related high-ranking position [...]”

22. On the same day, the Bureau of the FIFA Council issued the following decision (the “Appealed Decision”):

“All teams of the FUR or otherwise affiliated to the FUR are suspended from participating in FIFA competitions until further notice and until the situation improves sufficiently to allow teams of the FUR or otherwise affiliate to the FUR to be readmitted”

23. On 3 March 2022, FIFA provided the grounds of the Appealed Decision:

“Following the escalation of the conflict in Ukraine, the Bureau of the FIFA Council (hereinafter: the Bureau) adopted yesterday, 27 February 2022, a decision containing a number of measures to be taken with immediate effect, to urgently address this crisis and to deal with the emergency now faced.

In that decision, the Bureau also highlighted the fact that FIFA would continue to monitor and assess the developments of the conflict and also consider additional emergency measures if appropriate. Given the clear decisions by several FIFA member associations not to compete with the Russian national team in ongoing football competitions, FIFA, as the event organizer of the FIFA World Cup Qatar 2022™, needs to guarantee the smooth running of its flagship competition.

FIFA has a reasonable margin of discretion in decisions concerning the operation of its competitions and the participation of its member associations. This also allows FIFA to take into account cases of force majeure, such as acts of war.

First, it is an objective necessity that FIFA, as the organiser of the FIFA World Cup Qatar 2022™, ensures that the calendar of the ongoing preliminary competition is fully respected. Given that the FIFA World Cup Qatar 2022™ is only a few months away it is imperative that this calendar is not disrupted, thus jeopardising the efficient organization and smooth running of the matches due to take place over the next months.

Second, the decisions by several FIFA member associations and, most particularly, the Polish Football Association, the Swedish Football Association, and the Czech Football Association, not to compete against the Football Union of Russia team (in whatever form) (hereinafter: RUF) must be respected by FIFA. Those decisions are both fully understandable and cannot be criticized from either a legal or moral point of view.

It also is foreseeable that other member associations would take the same position as Poland, Sweden and Czech Republic, the consequences of which for FIFA World Cup Qatar 2022™ would be irreparable and chaotic.

Having considered all these factors, FIFA must act to guarantee the efficient organization and smooth running of its competitions, and particularly the FIFA World Cup Qatar 2022™.

Given these circumstances and based on article 2.b and 34.12 of the FIFA Statutes, and article 31 of the Regulations of the FIFA World Cup Qatar 2022™, Preliminary Competition, today, 28 February 2022, the Bureau decided to approve the following measure:

- *All teams of the FUR or otherwise affiliated to the FUR are suspended from participating in FIFA competitions until further notice and until the situation improves sufficiently to allow teams of the FUR or otherwise affiliate to the FUR to be readmitted.*

In accordance with article 38 paragraph 3 of the FIFA Statutes, the above decision of the Bureau shall be ratified by the Council at its next meeting.”

24. On 3 March 2022, the Appellant invited FIFA to agree to an expedited procedure before CAS and reserved its right to “*request reimbursement of losses incurred by the [Appealed] Decision*”.
25. On 8 March 2022, the minister of sports of 37 nations, including (in Europe) Austria, Belgium, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland and the United Kingdom signed a joint statement supporting the sporting sanctions against the Russian Federation, in particular the fact that “*teams representing the Russian or Belarusian state should be banned from competing in other countries*”.
26. On 8 March 2022, the Bureau of the Organising Committee for FIFA Competitions issued another decision related to the organisation of the FIFA World Cup qualifying matches:

“The match between Scotland and Ukraine, initially scheduled for 24 March 2022, will now be postponed to the existing June window, and consequently, the match between the winners of Scotland v. Ukraine and Wales v. Austria will also be postponed to the same window. [...]

In addition, subsequent to the decision of 28 February 2022 taken jointly with the UEFA Executive Committee to suspend all Russian teams from participation in both FIFA and UEFA competitions until further notice, the Bureau of the FIFA Organising Committee decided that Poland will receive a bye to the final of Path B due to take place on 29 March 2022, in which they will face the winners of the match between Sweden and the Czech Republic.”

27. This decision is the subject of the appeal in the case CAS 2022/A/8717.

III. SUMMRY OF THE PROCEEDINGS BEFORE THE CAS

28. On 7 March 2022, the Appellant lodged an appeal with the CAS against the Respondents with respect to the Appealed Decision. In its Statement of Appeal, the Appellant made an application for provisional measures pursuant to Article R37 of the Code of Sports-related Arbitration (2020 edition) (the “Code”), asking for the Order to be issued by 19 March 2022.
29. On 8 March 2022, the CAS Court Office initiated the present procedure and invited the Respondents to comment on the Appellant’s request for a stay of execution by 15 March 2022.

30. On 15 March 2022, FIFA filed its Answer to the Appellant's request for provisional measures.
31. Also on 15 March 2022, UEFA filed its Answer to the Appellant's request for provisional measures.
32. The other Respondents did not file their position on the Appellant's request for provisional measures within the prescribed time limit.
33. On 16 March 2022, the CAS Court Office acknowledged receipt of the Answers filed by FIFA and UEFA and informed the Parties that the Division President, or her Deputy, would issue an Order on provisional measures in short order.

IV. SUMMARY OF THE PARTIES' SUBMISSIONS

A. THE APPELLANT

34. The Appellant submitted the following interim prayers for relief:

"As an interim measure

1. *Grant the suspensive effect to the present Appeal and/or, if needed, order FIFA and UEFA to take all necessary measures to reinstate immediately all Russian teams, whether national representative teams or club teams, for participation in FIFA competitions, including, but without limitation, in the competitions mentioned in the present Statement of Appeal. [...]"*

35. The Appellant's arguments may be summarised as follows:
36. With regard to irreparable harm, the Appellant relies on the case CAS 2020/A/7437 and submits that *"it would be very difficult, or even impossible, to include the Appellant at a very late stage of the Tournament"* and that *"the exclusion from the Tournament would result in immediate harm to the Appellant that would be impossible to repair at a later stage"*. The Appellant also refers to CAS OG 22/08-10, in which the Panel considered that *"[c]ompeting in these [Winter Olympic Games] 2022 is a unique experience, and the chance to win a medal and all that comes with that glory, is rare, of limited opportunity, and uncertain of repeating or being on offer again"*. In the present case, if the stay is not granted, *"it would be impossible to include the Appellant's representative team to FIFA World Cup 2022 and even restore the chance to promote to it on sporting merits"* (emphasis omitted). The Appellant's men's and women's teams will be deprived of the right to take part in the FIFA World Cup, respectively the FIFA Women's World Cup, which are *"a cornerstone of all international competitions in football"*. The FIFA World Cup is a major event not only in football, but in all sports.
37. The teams' FIFA ranking will also be affected, exposing them to more difficult draws in the future and complicating their qualification for future major tournaments.
38. The Appellant will also lose visibility, i.e. sponsorship opportunities, as well as *"the opportunity to compete against opponents of high standard"* and *"the chance to gain international experience and to raise its sporting level"*, which cannot be compensated financially.

39. For players who are 30 years old and over, this is the last chance of their career to play such tournament. Finally, should the Appellant lose its appeal on the merits, it could be replaced in the final stages of the FIFA World Cup by a lucky loser or be forfeited. The other national teams (Poland, Sweden, Czech Republic, Montenegro and Malta), who “*should maintain political neutrality as per FIFA Statutes*”, do not incur irreparable harm should the requested provisional measures be granted. They can still qualify for the tournaments on sporting merits.
40. With regard to likelihood of success, the Appellant first submits that the IOC Resolution is purely of generic nature, does not refer to any legal provision and is not binding upon FIFA. With regard to the Appealed Decision, it violates Article 16(1) of the FIFA Statutes, which provides that member associations may only be suspended if they seriously violate their obligations. In the Appellant’s case, there is no such breach. Furthermore, according to Article 13 of the FIFA Statutes, member associations have the right “*to take part in the competitions organised by FIFA*”.
41. The Appealed Decision further violates the duty of political neutrality as well as the prohibition of discrimination. The Appellant is independent from the Russian government and the latter’s actions should not be attributed to the Appellant. The Polish, Swedish and Czech FAs, by refusing to play against the Appellant, violate Article 14(1)(b) of the FIFA Statutes, which states that member associations have the obligation “*to take part in competitions organized by FIFA*”.
42. With regard to force majeure, the Appellant argues that it does not apply in this case as there is no objective impediment. The matches could be played on neutral ground and/or behind closed doors.
43. In addition, the Appealed Decision violates the Appellant’s personality rights, in particular its right to economic freedom. It is disproportionate and violates the fundamental principle of equal treatment. It is also a disguised disciplinary sanction and, as such, the Appellant’s procedural guarantees, including the right to be heard, should have been respected. Yet the Appealed Decision was passed in the Appellant’s absence. It is also in breach of the *nulla poena sine lege* principle, the principle of predictability of the sanction and the principle of proportionality.
44. The smooth running of the competition could have been safeguarded without suspending the Appellant; it would have been possible to maintain the final draw, scheduled on 1 April 2022, “*without final determination of the qualifier*” and to postpone Russia’s match against Poland until June 2022.
45. With regard to the balance of interests, the Appellant submits that the Appealed Decision deprives it of the right in the competitions organised by FIFA without any breach committed by the Appellant. The reinstatement of the Appellant’s teams in the competitions at stake will be complicated, if not impossible and, as such, its interest should prevail.
46. The Respondents of the other member associations involved are not harmed by the participation of the Appellant’s teams. They should remain politically neutral and “*refrain from any ‘solidarity’ with the positions of their respective states of domicile unless a binding decision of international body such as UN is passed*”.

47. As to the Ukrainian Football Association, it is not a direct opponent of the Appellant and is likely to obtain a postponement of its remaining matches.
48. It is in FIFA's interests to provide the Appellant with an opportunity to play the matches so that the best teams are qualified, based solely on sporting merit. The Appellant's matches could take place on a neutral pitch (as with Belarus or, previously, Israel). Although Russian aircraft is banned from EU airspace, natural persons are not prevented from travelling, for example via Turkey. The matches could be conducted "*without spectators and with enforced security measures*". The Appellant would be willing to cover the related additional costs. Finally, should the Appellant's exclusion be confirmed on the merits, FIFA could issue directions regarding the replacement of the Appellant's teams.

B. THE RESPONDENTS

a) FIFA

49. In its Answer, FIFA requested to issue an Order:

"[...] to reject the Appellant's request for provisional measures and order the Appellant to assume any costs related to this part of the proceedings."

50. FIFA's arguments may be summarised as follows:

51. With regard to irreparable harm, FIFA first recalls that the Appellant's presence in both the World Cup and the Women's World Cup is not guaranteed. At the time of the Appealed Decision, the men's national team still had 2 playoff matches to play while the women's team had 4 remaining group matches. FIFA describes the suggestion that the Appealed Decision would deprive the Appellant from participating in the World Cup as "*purely hypothetical*". According to the CAS case law, such a hypothetical risk is not sufficient to establish irreparable harm (CAS 2008/A/1480).
52. In addition, the Appellant's argument that its FIFA ranking will be affected is pure speculation. Ranking does not affect performance, and does not reduce the chances of success.
53. The loss of visibility and sponsorship opportunities, which are not substantiated by the Appellant, constitute in any case financial damage, which can be compensated.
54. The fact that some players would miss what could be their last world cup is irrelevant: the teams have not even qualified yet and "*there is no evidence of which players will take part in a tournament scheduled several months from now*". Notwithstanding the above, any potential harm is in any case financial, and thus reparable, as admitted by the Appellant which reserved its right to claim damages.
55. With regard to likelihood of success, FIFA submits that, pursuant to Articles 34(1) and 38(1) of the FIFA Statutes, as well as Article 31 of the Regulations of the FIFA World Cup Qatar 2022 (the "WCR 2022"), the Bureau of the FIFA Council was competent to issue the Appealed Decision. Besides, an act of war such as the invasion of Ukraine constitutes force majeure (TAS 2020/A/7065) or, at the very least, a situation not covered by the FIFA regulations, which can

therefore be decided by the FIFA Council. As mentioned in the Appealed Decision, “*it is an essential interest of FIFA, as the event organizer of the [World Cup], that the calendar of the ongoing preliminary competition is fully respected*”, failing which the efficient organisation and smooth running of the matches would be affected.

56. The Appealed Decision was warranted since (a) the current air travel restrictions and other international sanctions were likely to prevent the Russian teams from playing abroad; (b) the decisions of the Polish, Swedish and Czech FAs not to play against Russia had to be respected by FIFA, failing which Russia would have automatically qualified for the World Cup without having played a match in the Playoffs; (c) it is unlikely that any venue would agree to host the Appellant’s teams “*considering the security risks that hosting a match under these circumstances would entail*”. Allowing the Appellant’s teams to compete “*creates an enormous security risk for all participating teams and delegations (including the FUR’s), as well as for officials, referees and other persons involved in the organisation of such matches, regardless of where the relevant matches are held*”.
57. Pursuant to CAS jurisprudence, private sports associations have a wide autonomy and margin of discretion when deciding on matters related to the competitions which they organise (CAS 2020/A/7252) and deference must be given to such autonomy (CAS 2020/A/7090). The situation evolved rapidly after FIFA issued the First Decision, thus making it necessary to issue the Appealed Decision.
58. The Appellant failed to prove that its appeal is likely to succeed: the fact that the Appealed decision has not been justified by any superior decision or order, for example from the IOC, does not render it illegal. This is not a case of suspension pursuant to Article 16 of the FIFA Statutes; only the FUR’s national teams are prevented from participating in FIFA competitions. In addition, pursuant to Article 13(2) of the FIFA Statutes, the right to participate in FIFA competitions is “*subject to other provisions in these Statutes and the applicable regulations*”. As mentioned above, member’s rights can be limited in cases of force majeure “*and when the organisation of the competition in question is jeopardised*”.
59. The Appealed Decision is not a political decision and does not violate political neutrality; it was objectively necessary and justified. The alleged breach of political neutrality by the Polish, Swedish and Czech FAs do not render the Appealed Decision illegal, nor does the alleged discrimination, which is not established.
60. Even if the Appellant’s economic development had been infringed (which is disputed), such breach would be justified by an overriding private interest pursuant to Article 28(2) of the Swiss Civil Code.
61. The Appealed Decision is not a sanction; therefore, the principle of proportionality and the right to be heard do not apply. The principles of equal treatment and *venire contra factum proprium* have not been violated either. The Russian invasion in Ukraine is “*an unprecedented situation which left FIFA with no other practical option, as competition organizer, than to suspend the FUR from participation*”. It cannot be compared with the situation of Yugoslavia three decades ago. Finally, all the alleged procedural violations raised by the Appellant are in any event cured by CAS *de novo* power of review.

62. With regard to the balance of interests, “*FIFA submits that it has a prevalent interest in ensuring that its competitions are run smoothly, in the spirit of fair play and that their integrity is protected at all times*”. Such interest prevails “*in a context in which there is limited room for manoeuvre for the amendment of the international match calendar, and only a few months ahead of the [World Cup]. It also prevails in light of the inherent security threats that the current circumstances entail for the organising of all FIFA competitions with the participation of the FUR*”. The balance of interests cannot tip in the Appellant’s favour considering that its participation in the World Cup and the Women’s World Cup is purely hypothetical. The Appealed Decision “*does not prevent the Appellant’s national teams from participating in FIFA competitions in the future*”. Playing matches on a neutral pitch, as suggested by the Appellant, is not an adequate remedy since the respective cities and countries would refuse to host matches for security reasons.
- b) UEFA
63. UEFA’s arguments may be summarised as follows:
64. In line with CAS recent case law, the risk of not being able to participate in a competition is generally insufficient to establish irreparable harm as such. The non-participation of a football team in a tournament can be remedied by financial compensation. The possible effects of the Appealed Decision on the Appellant’s future FIFA ranking are speculative. In addition, provisional measures cannot be granted on the basis of possible – future – results given that the outcome of a competition cannot be predicted. The alleged loss of visibility and sponsorship opportunities can be quantified and remedied by financial compensation. The fact that the World Cup will be the last opportunity for some Russian players to play at such level before retirement is irrelevant: the Appellant’s participation in the Playoffs does not mean that it would qualify for the World Cup.
65. As regards the likelihood of success on the merits, UEFA notes that the Appellant does not challenge the competence of the Bureau of the FIFA Council to render the Appealed Decision. The latter was not based on the existence of any binding superior decision, but is nevertheless consistent with the IOC Resolution. The decisions of the Polish, Swedish and Czech FAs not to play against Russian teams are based “*on the consequences of the Russian ‘aggression’ against Ukraine, not on the politics behind it*”. Finally, the examples put forward by the Appellant to demonstrate a violation of the principle of equal treatment do not concern Europe, apart from the case of Yugoslavia. In that case, the UN Security Council enacted a resolution requesting the states to take necessary measures to prevent the participation of persons representing Yugoslavia in sporting events. In the present case, Russia has a veto right, so that it can object to any UN resolution. In addition, such a resolution is not a precondition for the Bureau to suspend a national team from participating in competitions.
66. With regard to the balance of interests, as the body responsible for the implementation of the World Cup qualifications, including the Playoffs, UEFA shares FIFA’s interests in the smooth running of the competitions. FIFA’s and UEFA’s interest “*when it comes to the organisation of the Competitions, in terms of not only the calendar and the smooth organisation in general terms, but also the situation on the ground when staging each and every match*” is overriding. The successful staging of the events, including the safety and security, is the paramount factor. Allowing Russia to participate in the Playoffs, respectively the final qualification matches for

the Women's World Cup, "*exposes even the FUR's own players to volatile and potentially dangerous situations*". The security of the opposing teams, officials, and the cities and countries involved should also be taken into account. Incidents could take place both in the stadia and outside. The Appellant's suggestion that matches could be organised on a neutral pitch or without spectators is "*unconvincing*": it is simply impossible to ensure the security of all participants. UEFA also points out to the likelihood of travel difficulties, noting that the Russian Judo Federation withdrew its athletes from international judo competitions due to safety fears for competitors and in light of logistical difficulties with travel. Finally, it cannot be discounted that the relevant host cities and countries "*would refuse to host the matches on the basis of legitimate security or other concerns, which would then harm FIFA, UEFA and the opponents*".

V. JURISDICTION OF THE CAS

67. In accordance with Article 186 of the Swiss Private International Law Act ("PILA"), the CAS has the power to decide upon its own jurisdiction.
68. The extent of the jurisdictional analysis at this point is to assess whether, on a *prima facie* basis, the CAS can be satisfied that it has jurisdiction to hear the application. The final decision on jurisdiction will be made by the Panel in its award.
69. Article R47 of the Code states that "*An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body*".
70. In the absence of a specific arbitration agreement, in order for the CAS to have jurisdiction to hear an appeal or a request for provisional and conservatory measures, the statutes or regulations of the sports-related body from whose decision(s) the appeal is being made must expressly recognise the CAS as an arbitral body of appeal.
71. In the case at hand, the Appellant relies on Article 57(1) of the FIFA Statutes, which provides as follows:

"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."
72. Both FIFA and UEFA accept that CAS has jurisdiction to rule on the present matter. The other Respondents have not challenged at this stage the jurisdiction of the CAS.
73. In view of the above, the Division President considers that, on a *prima facie* basis and without prejudice to any other findings of the Panel at a later stage of the present proceedings, the CAS has jurisdiction to hear the dispute.

VI. ADMISSIBILITY

74. 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.”

75. Pursuant to Article 57(1) of the FIFA Statutes, the time limit to file an appeal is 21 days of receipt of the Appealed Decision.

76. The Appealed Decision was publicly announced on 28 February 2022. The grounds of the Appealed Decision were notified to the Appellant on 3 March 2022. The Appellant filed its Statement of Appeal on 7 March 2022. The Statement of Appeal *prima facie* complied with all the other requirements of Article R48 of the Code.

77. Therefore, the Division President finds that, on a *prima facie* basis and without prejudice of any different decision that the Panel may take in this regard once constituted, the appeal is admissible.

VII. LEGAL DISCUSSION

78. Pursuant to Article 183 PILA, an international arbitral tribunal in Switzerland is empowered to order provisional or conservatory measures at the request of one party: *“Unless the parties have otherwise agreed, the arbitral tribunal may, on motion of one party, order provisional or conservatory measures”*.

79. Pursuant to Article R37(3) of the Code, the Division President is competent to consider an application for a stay prior to the file having been transferred to the Panel.

80. In accordance with Article R37 of the Code and CAS jurisprudence (CAS 2007/A/1370-1376; CAS 2006/A/1088; CAS 2004/A/780; TAS 2004/A/708-709; CAS 2003/O/486; CAS 2002/A/378; CAS 2001/A/324), when deciding whether an application for a stay should be ordered, the Division President should, in general, consider the following factors:

- a) whether the stay requested is necessary to protect the applicant from irreparable harm (“irreparable harm” test): the applicant must demonstrate that the requested stay is necessary in order to protect its position from damage or risks that would be impossible, or very difficult, to remedy or cancel at a later stage;
- b) whether the applicant has reasonable chances to succeed on the merits (“likelihood of success” test): the applicant must demonstrate that its position is not obviously groundless and that it has reasonable chances eventually to win the case;

- c) whether the interests of the applicant outweigh those of the opposite parties and of third parties (“balance of convenience” test): the applicant must demonstrate that the harm or inconvenience it would suffer from the refusal of the requested stay would be comparatively greater than the harm or inconvenience other parties would suffer from the granting of the provisional measures.

81. The Division President notes that the three requirements for the grant of a stay (i.e. irreparable harm, likelihood of success on the merits of the appeal and balance of interests) are cumulative (CAS 2007/A/1403; TAS 2007/A/1397; and CAS 2010/A/2071). Those requirements will be examined in turn.

IRREPARABLE HARM

82. In accordance with CAS jurisprudence, as a general rule, when deciding whether to grant the requested provisional measures, the Division President considers whether the measure is useful to protect the applicant from substantial damage that would be difficult to remedy at a later stage (“irreparable harm” test): “*The Appellant must demonstrate that the requested measures are necessary in order to protect his position from damage or risks that would be impossible, or very difficult, to remedy or cancel at a later stage*” (CAS 2007/A/1370-1376, CAS 2008/A/1630).

83. Furthermore, the Division President notes that “*without any concrete evidence to justify damages (or potential damages as the case may be) general allegations of potential harm do not suffice to establish irreparable harm*” (CAS 2014/A/3642, emphasis added).

84. The Division President needs to determine whether the Appellant would suffer irreparable harm should the requested provisional measures not be granted. In this respect, the Division President notes that the Appellant is seeking an order to reinstate all Russian teams for participation in FIFA competitions, including notably (a) the upcoming Playoffs on 24 and 29 March 2022, as well as (b) the women’s national team’s matches on 7 and 12 April 2022.

85. The Appellant’s reference to the operative part of the Order on Request for Provisional Measures in the case CAS 2020/A/7356 is of no help to the Appellant: indeed, in that case, the Appellant’s request to postpone or reschedule a Champions League qualifying round match was rejected.

86. According to CAS case law concerning the suspension of individual athletes, it is not in itself sufficient that an athlete is prevented from competing in sports events to justify a stay in itself (CAS 2008/A/1569). The mere risk of not being able to participate in a few matches, whether it may or may not have a significant sporting impact on the results, is generally insufficient to establish irreparable harm as such (CAS 2021/A/7851; CAS 2020/A/6796; CAS 2019/A/6477; CAS 2014/A/3642). However, a suspension (subsequently found to be unjustified) can cause irreparable harm (see Preliminary Decisions in CAS 2008/A/1453; CAS 2014/A/3571; CAS 2016/A/4710), especially when it bars the athlete from participating in a major sports event (CAS 2019/A/6163) or if the athlete is unable to compete in qualifying events necessary to compete in such major events (CAS 2015/A/3925).

87. In this respect, the Division President recalls that both the World Cup and the Women's World Cup are undeniably the biggest and most prestigious football tournaments. While the World Cup is one of the most-watched sporting events in the world, the latest edition of the Women's World Cup has drawn a huge wave of interest, gaining in importance and popularity. The fact that both tournaments only take place every four years reinforces their importance and means that the Appellant's teams would have to wait until 2026, respectively 2027 for the chance to qualify and participate in the next edition of the World Cup, respectively the Women's World Cup. Accordingly, the Division President considers that the World Cup and the Women's World Cup both constituted "major events" within the meaning of the abovementioned case law.
88. The Division President now turns to the Respondents' argument that neither the men's nor the women's national teams have any guarantee to qualify for the World Cup due to the unpredictability of the results of their upcoming matches. Indeed, the men's national teams still had to play – and win – its two Playoffs matches. The women's national team had four matches left, before possible playoffs in case it did not finish first in its group.
89. In accordance with CAS recent case law, the loss of the possibility to participate in a major sporting event does not represent, *per se*, an irreparable damage, especially when the applicant still has to complete the entire qualification process (CAS 2021/A/7829).
90. Contrary to the Appellant's allegations in its Statement of Appeal, the Division President considers that it does not have a "*right to take part in the [World Cup]*" and therefore cannot be deprived of that alleged "right". In this regard, the Appellant's situation is different to the one of the Russian figure skater Kamila Valieva at the Olympic Winter Games Beijing 2022 (CAS OG 22/08-10): she was already qualified for the Olympics, whereas the Appellant's men's and women's teams are still participating in the qualifying rounds for the World Cup, respectively the Women's World Cup.
91. The present case shall also be distinguished from two precedents quoted by the Appellant (CAS 2019/A/6636 and CAS 2020/A/7437): in those cases, two clubs were excluded from their respective national championships, which were already well under way. There was no issue of qualification for a – later – major event. In these cases, it seemed preferable to let the clubs finish the championship and possibly remove them at a later stage, rather than excluding them with immediate effect as the missed matches could not be replayed. These procedures cannot be compared with the Appellant's situation in the present case, which is subject to a suspension which affects its national teams for international tournaments. CAS 2016/A/4710 also concerns a different situation, namely the provisional registration of a single player with a club which was already qualified for the UEFA Champions League. Finally, in CAS 98/200, the Respondent had agreed that the non-admission of the appellant club to the UEFA Cup constituted irreparable harm, so that the Division President did not have to assess that question in detail.
92. FIFA relies on a precedent (CAS 2008/A/1480) in which the CAS declined to stay a decision preventing an athlete from participating in qualifying events, which in turn deprived the athlete from competing in the Olympic Games. In that case, however, the Parties had agreed to an expedited procedural calendar which allowed the CAS Panel to issue a final Award approximately three months before the start of the Olympic Games, thus leaving sufficient time

for the athlete to participate in competitions during the peak of the season and possibly meeting the qualifying times.

93. In the present case, none of the Respondents accepted the Appellant's proposal to implement an expedited procedure, which makes it impossible for a final Award to be rendered before the first Playoff match. While the Appellant's teams have no guarantee to qualify for the World Cup, respectively the Women's World Cup, there is no denying that the Appealed Decision deprives the Appellant's teams of the opportunity of qualifying for these competitions. In other words, if the CAS Panel finds in favour of the Appellant, it will not be possible to replay the missed matches and reinstate the Appellant's teams in the respective competitions. The Division President notes in this regard that neither FIFA nor UEFA have offered to reinstate the Appellant should it win on the merits, which confirms that such possibility is not an option.
94. The Division President now turns to the remaining arguments raised by the Appellant: first, the effect of the Appealed Decision on the FIFA ranking of the Appellant's teams is purely speculative and entirely unsubstantiated. There is no evidence that their ranking will automatically improve if the Appealed Decision is stayed as this depends on the results of the matches – which are by definition unknown – as well as their opponents' ranking, which – apart from the matches already scheduled in March and April 2022 – is also unknown. The FIFA ranking could also be negatively affected should the Appellant play and lose its matches. Accordingly, the alleged impact on the Appellant's FIFA ranking is unsubstantiated and does not constitute irreparable harm.
95. As regards the alleged loss of visibility and sponsorship opportunities, the Division President considers that such harm is purely financial and therefore by definition is never considered as irreparable because such damage may be remedied by means of financial compensation (CAS 2012/A/2802; TAS 2012/A/2830; CAS 2014/A/3703). The Appellant could indeed file a claim for damages in case its appeal was successful on the merits.
96. Finally, the Appellant submits that Russian players who are over 30 years of age will suffer irreparable damage should they miss the World Cup, which is "*the last chance in the career to relive this experience*". In this regard, the Division President notes that, pursuant to the CAS longstanding jurisprudence, irreparable harm allegedly caused to third parties cannot be taken into account by the Deputy Division President (CAS 2020/A/7568; CAS 2021/A/8307).
97. In the light of the above, the Division President considers that the Appellant may suffer irreparable harm in case the requested provisional measures are not granted, mainly due to the impossibility for the Appellant to participate in a major sport event without such measures. This issue may however be left open since, as will be discussed above, the Appellant did not demonstrate that its interests prevail over the interests of the Respondents.

LIKELIHOOD OF SUCCESS

98. In accordance with CAS jurisprudence, as a general rule, when deciding whether to grant a stay, the Applicant "*must make at least a plausible case that the facts relied upon by him and rights which he seeks to enforce exist and that the material criteria for a cause of action are fulfilled*" (the "likelihood of success" test) (CAS 2000/A/274; CAS 2004/A/578; CAS 2014/A/3751).

99. First of all, the Division President emphasises that her analysis is based on the file as it stands at the moment of the present Order and, therefore, this Order is rendered without prejudice to the final decision of the Panel, once constituted.
100. The Division President, while having considered the Parties' rival positions, does not consider that she disposes of all the necessary elements for a complete assessment of the merits of the Appeal, which shall be left to the Panel, once constituted.
101. Hence, at this stage the Division President limits herself to determine that, on a *prima facie* basis and without any prejudice of any future consideration of the Panel, the Appellant's likelihood of success on the merits cannot be definitely discounted (CAS 2006/A/1137, CAS 2006/A/1141).

BALANCE OF INTERESTS

102. In accordance with CAS jurisprudence, as a general rule, when deciding whether to grant a stay, the CAS considers whether the interests of the Appellant outweigh those of the opposite party or parties, and/or of third parties (the "balance of interests" test): "*It is then necessary to compare the disadvantages to the Appellant of immediate execution of the decision with the disadvantages for the Respondent of being deprived such execution*" (CAS 2008/A/1453, CAS 2008/A/1630, CAS 2008/A/1677).
103. It is undisputed that the Appellant's teams have a legitimate interest in participating in FIFA competitions. On the other hand, the Division President agrees with FIFA that it has an undeniable interest in maintaining and ensuring the smooth running and the integrity of its competitions. Apart from UEFA, none of the other Respondents have provided any comments on the Appellant's request for provisional measures. However, the Polish, Swedish and Czech FAs have publicly announced their decision not to play against Russia. In other words, should the Appellant's men's national team be allowed to play, their opponents would forfeit the game and the matches would not even take place. The integrity of FIFA competitions would be severely damaged. As regards the qualifying matches for the Women's World Cup, the Montenegrin FA and the Maltese FA have not provided their position on the issue, so that the Division President has no reason to believe that they would refuse to play against the Appellant's women's national team.
104. The Division President further considers that the security of the opposing teams, players, officials and the Russian players themselves prevail over the Appellant's interests. The Appellant itself admits that "*additional expenses for security measures*" would be necessary. In light of the worldwide outrage and condemnation provoked by the events currently unfolding in Ukraine, it is doubtful whether enhanced security measures would be sufficient to guarantee the security of the players, coaching staff and other team personnel.
105. In addition, the Division President notes that, in line with the First Decision, which has not been challenged by the Appellant, the international matches could in any event not take place in Russia and would have to be played on a neutral pitch. FIFA and UEFA submit in this respect that there is no guarantee that a city or country would accept to host a match with Russia. However, no evidence has been provided in this respect. On the other hand, while the Appellant offers to

play on a neutral pitch, it has also not identified a single city or country willing to host its upcoming matches. Given that UEFA is responsible for organising the World Cup and the Women's World Cup qualifying matches, the country willing to organise the Appellant's remaining matches should be a member of UEFA. The Division President notes however that a large number of European countries backed the decision to ban teams representing the Russian state from competing in other countries (see para. 25 above), so that it is unlikely that these countries would host the Appellant's games.

106. Finally, as to the Appellant's suggestion that its teams could be "*replaced in the final stage of FIFA World Cup*", the Division President cannot follow the Appellant's argument. FIFA, as the organiser of the World Cup and the Women's World Cup, and UEFA, as the organiser of the qualifying matches, have a duty to ensure the integrity of the competitions (CAS 2017/A/4957). If the Appellant's teams were allowed to play and then had to be removed and replaced at a later stage, all results would be affected, thereby threatening the integrity of the competitions.
107. In view of the above, the Division President determines that the balance of interests test tips decisively in favour of the Respondents.
108. Accordingly, the Appellant's application for provisional measures is rejected.

VIII. COSTS

109. According to standard CAS practice, the cost of this part of the proceedings will be settled in the final award or in any other final disposition of this arbitration.

ON THESE GROUNDS

The President of the CAS Appeals Arbitration Division rules that:

1. The application for provisional measures filed by the Football Union of Russia on 7 March 2022 in the matter *CAS 2022/A/8708 Football Union of Russia (FUR) v. Fédération Internationale de Football Association (FIFA) et al.* is rejected.
2. The costs of the present Order shall be determined in the final award or any other final disposition of this arbitration.

Lausanne, 8 April 2022
(Operative part notified on 18 March 2022)

COURT OF ARBITRATION FOR SPORT

Ms Corinne Schmidhauser
President of the CAS Appeals Arbitration Division