



**Arbitration CAS 2019/A/6483 Wydad Athletic Club v. Confédération Africaine de Football (CAF) & Espérance Sportive de Tunis, award of 18 September 2020**

Panel: Mr Jacques Radoux (Luxembourg), President; Mr Fabio Iudica (Italy); Prof. Ulrich Haas (Germany)

*Football*

*Forfeit of a match due to the refusal of one team to resume playing*

*Effects and extent of res judicata in arbitration*

*Res judicata effect of decisions of sport bodies*

*Consequences on the validation of a match of the unavailability of the VAR*

1. An arbitral tribunal violates procedural public policy if it disregards the *res judicata* effect of a previous decision or if the final award departs from the opinion expressed in an interlocutory award disposing of a material preliminary issue. There is *res judicata* when the claim in dispute is identical to that which was already the subject of an enforceable judgment (identity of the subject matter of the dispute). This is the case when both proceedings involve the same parties and the same matter in dispute. The identity must be understood from a substantive and not grammatical point of view, so that a new claim, no matter how it is formulated, will have the same object as the claim already adjudicated. With regard to the *res judicata* authority, this legal principle prevents the judge from entertaining a case that has been already and definitively decided; this mechanism excludes the competence of the second judge. This aspect of the *res judicata* principle constitutes the so-called “Sperrwirkung” (prohibition to deal with the matter = *ne bis in idem*), the consequence of which is that if a matter (with *res judicata*) is brought again before the adjudicatory authority, the latter is not even allowed to look at it, but must dismiss the matter (insofar) as inadmissible. The second aspect of that principle being the so-called “Bindungswirkung” (binding effect of the decision), according to which the judge in a second procedure is bound to the outcome of the matter decided in *res judicata*. The *res judicata* effect only goes as far as the panel (that issued the decision in question) wanted to decide on the matter in dispute. Issues that the first panel deliberately left undecided are not covered by the *res judicata* effect.
2. The principle of *res judicata* only applies to arbitral awards and court decisions. The types of decisions that enjoy *res judicata* effects are defined by law. It is not within the parties’ autonomy to extend the number or types of decisions that are vested with *res judicata* effect. If it were otherwise, a violation of the *res judicata* principle could not constitute a violation of the *ordre public*. There is no provision in Swiss law that confers *res judicata* effects to decisions of association tribunals. Decisions of a judicial body of a sport federation, which are not arbitral tribunals, are mere embodiments of the will of the federations concerned.

3. **The absence of the Video Assistant Referee (VAR) in a game does not constitute a violation of the principle of equality of chances as both teams are affected in the same way by this absence. In any event, the absence or a malfunction of the VAR does, according to the International Football Association Board (IFAB) VAR Protocol, not invalidate a match. Hence, the presence of the VAR is not a “*basic condition of the game*” in the sense that it is a condition to the validity of the match. Consequently, after the interruption of a match, the decision of a team not to resume play because of the absence or a malfunction of the VAR constitutes an abandonment in the sense of Article 148 of the CAF Disciplinary Code pursuant to which “[i]f a team refuses to play a match or to continue playing one which it has begun, it will be sanctioned with a minimum fine of twenty thousand US dollars (\$20’000) and will, in principle, forfeit the match”.**

## **I. PARTIES**

1. Wydad Athletic Club (hereinafter the “WAC” or the “Appellant”) is a Moroccan football club which has its seat in Casablanca. WAC qualified itself for the Final of the CAF Champions League Total 2018/2019.
2. Confédération Africaine de Football (hereinafter the “CAF” or the “First Respondent”) is an association with its registered office in 6<sup>th</sup> October City, Egypt. CAF governs football within the African continent and exercises regulatory, supervisory and disciplinary functions over the national associations, clubs, officials and players in Africa. It is the organizer of the CAF Champions League Total 2018/2019.
3. Espérance Sportive de Tunis (hereinafter the “EST” or the “Second Respondent”) is a Tunisian Football club which has its seat in Tunis. EST equally qualified itself for the Final of the CAF Champions League Total 2018/2019.
4. The WAC, CAF and EST will be referred to collectively hereinafter as “the Parties”.

## **II. FACTUAL BACKGROUND AND PREVIOUS PROCEEDINGS**

5. Below is a summary of the relevant facts and allegations based on the Parties’ written and oral submissions, pleadings and evidence adduced. Additional facts and allegations found in the Parties’ submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

### **A. Background Facts**

6. The WAC and EST are the two finalists of the CAF Champions League Total 2018/2019.

7. The first leg of the final took place on Friday 24 May 2019 in the stadium of the WAC's sports complex and ended on the score of 1-1.
8. According to the CAF, the match was punctuated by a number of incidents and the arbitrator's performance was judged weak. It is noted that the VAR (Video Assistant Referee) operated perfectly during this first match.
9. For its part, the WAC complained about serious irregularities and Referee prejudices against it. The CAF sanctioned the Match Referee by suspending him for six months.

**1. *The Disputed Match***

10. The return leg took place on 31 May 2019 in the stadium of the EST in Tunis (hereinafter the "Disputed Match").
11. On the day before the return leg, on 30 May 2019, a technical meeting was held in the Hôtel des Parcs, in Tunis, between the representatives of the two finalist clubs, as well as of their respective national federations, and of the CAF and the police. On that date, no information was notified concerning a possible problem in relation with the operation of the VAR.
12. It appears from the file that neither the Match Commissioner nor the Referee Assessor was able to attend that technical meeting, the starting time of which had been advanced by the host federation, irrespective of the arrival time of those two officials.
13. It was only on the day of the Disputed Match that the managers of the two teams were allegedly informed by the CAF, in the afternoon, that the VAR was not operational. The WAC denies having received this information.
14. The WAC and the CAF argue that the organisation of the Disputed Match has been punctuated by a number of incidents until the events which occurred at the 58th minute of play. They observe, in particular, that:
  - the WAC delegation has been tackled on arrival without any intervention on the part of the police;
  - projectiles were thrown at the WAC players on their way to the pitch;
  - during the Disputed Match, the "main courante" of the pitch, *i.e.* the area immediately surrounding the pitch, was occupied by unaccredited individuals;
  - there have been intensive uses of smoke bombs/grenades in the stadium, in particular by the EST supporters, who also used firecrackers and projectiles of all kinds, sent on the ground, aimed at the WAC players;

- the media area was occupied by the supporters of the EST and that, according to various testimonies, there was a disproportionate presence of police forces, the armaments of which, according to the WAC, were excessive.
15. These facts are partially confirmed by the reports of the Referee Assessor.
  16. It is not contested that prior to the Disputed Match and in light of the incidents of the first leg of the final, the CAF had warned the EST that the match was considered to be at *“high risks, particularly in view of the historical links and the last match between the two teams, which was chaotic and violent”*.
  17. It is established that the Disputed Match began without the VAR being operational because one element had not been delivered yet.
  18. Before the start of the Disputed Match, the Referee informed the captains of the two teams that the VAR was not operational and that he would give them notice as soon as the VAR would become available. The WAC observes that its team captain did not comprehend the information he was given by the Referee as he understands neither French nor English.
  19. The Parties diverge on the playing conditions of the first half-time. The EST considers that the first half-time took place *“under the best conditions until the 58th minute”* whereas the WAC considers that the climate was tense from the beginning of the Disputed Match.
  20. The incident giving rise, *inter alia*, to the present arbitration took place in the 58th minute, when the WAC scored a goal which allowed it to draw the score at 1-1. However, the Referee disallowed the goal for offside.
  21. The Parties disagree on whether or not the decision of the Referee to disallow the goal was correct or not. The main discussion is about the on-court visibility in the 58<sup>th</sup> minute and whether the visibility was impaired to the point that the Referee and the Assistant Referee could not properly see the position of the EST player that was allegedly in an offside position. The fact that there might have been an issue with the visibility is confirmed by the supplementary report of the Match Commissioner.
  22. After the Referee had disallowed the goal, the Disputed Match continued until it was interrupted for a foul play at the 59<sup>th</sup> minutes. At that moment, the players of the WAC called upon the Referee to use the VAR for verification of the action in the 58<sup>th</sup> minute. However, the VAR was still not operational, and the Referee recalled that information to the players of the WAC.
  23. As regards the incidents which then occurred, it appears from the pleadings of the Parties as well as from the video footage of the Disputed Match, that the interruption of the match lasted for approximately one hour thirty minutes. It also appears, in the light of the images, that a large number of unauthorized individuals were on the pitch, this includes but is not limited to officials of the two teams.

24. On viewing the videos, it is apparent that discussions then took place between the presidents of the two clubs and the representatives of the CAF, amongst others the president, Mr. Ahmad Ahmad. At moments, the Match Commissioner was present during these discussions.
25. The request from WAC to see images from the 58<sup>th</sup> minutes was followed by requests from the EST to see images from the 20<sup>th</sup> minute of the Disputed Match, *i.e.* when an incident occurred that should have been sanctioned with a penalty kick in favor of the EST. All in all, discussions went on between the representatives of the Parties in an attempt to persuade the WAC to abandon its request to solicit the VAR (which, at that point in time, was not operational) and continue play.
26. According to the WAC, during the interruption, its players, still present on the pitch, became the target of projectiles, in particular of fumigens and other dangerous explosives from part of the stands for the EST fans.
27. From viewing of the video footage, it is clear that there was a great disorder on the pitch, leading to the presence of a large number of individuals difficult to identify, and above all, to an interruption of the Disputed Match that lasted longer than what can normally be expected in the event of an incident in the game.
28. Finally, upon the instructions from the CAF officials to the Match Commissioner, the Referee whistled the end of the Disputed Match. The Parties disagree on whether the Referee was instructed to do so or if he was simply asked to apply the rules and, thus, whistled the end of the Disputed Match. The Parties further disagree on the question whether, before ending the Disputed Match, the Referee had the obligation to order the players of the WAC to resume play and, in the affirmative, if he had given such order.
29. The decision of the Referee to whistle the end of the Disputed Match led to the result that the EST had won the match and the CAF Champions League Total 2018/2019. After the end of the Disputed Match the situation in the stadium worsened in the sense that spectators invaded the pitch and the near surroundings thereof. The trophies were handed over in circumstances described differently by the Parties but which are of no relevance to the present arbitration.
30. The day after the Disputed Match, the CAF official website published a press communication announcing the victory of the EST by forfeit of the WAC team. Shortly afterwards, the CAF announced an urgent meeting of the Executive Committee on 4 June 2019 to discuss events which had taken place during the Disputed Match. The CAF stated that the press release had been issued by mistake by its communications department and immediately removed said press communication from its website.
31. On 2 June 2019, the WAC and the Fédération Royale Marocaine de Football (hereinafter the "FRMF") lodged a complaint with the CAF Secretary-General for it to be submitted to the interclub club committee and the CAF disciplinary board under Article XV.2 of the CAF Champions Ligue Rules. In its complaint, the WAC requested the result of the Disputed Match not to be approved and the WAC to be awarded the title of winner of the CAF

Champions League Total 2018/2019. Subsidiarily, the WAC requested that the Disputed Match be replayed in its entirety.

32. On 4 and 5 June 2019, the CAF held an emergency meeting in Paris with the following agenda: *“match pour la finale de la Ligue des Champions de la CAF: Espérance de Tunis VS Wydad Athletic Club du 31 mai 2019, stade de Radhès, Tunisie, Tunis”* (free translation: match for the final of the CAF Champions League: Espérance de Tunis vs. Wydad Athletic Club of 31 May 2019, Radhès stadium, Tunisia, Tunis).
33. The CAF states that, during the second part of the extraordinary meeting of its Executive Committee on 5 June 2019, the president of the Fédération Tunisienne de Football (hereinafter the “FTF”) as well as the president of the FRMF were heard.
34. On 5 June 2019, the CAF Executive Committee decided (hereinafter “the 5th June Decision”) to annul the results of the Disputed Match and ordered its replay, to be held in a neutral venue.

## **2. The Proceedings before the First Panel**

35. The WAC and the EST appealed the 5th June Decision before the Court of Arbitration for Sports (the “CAS”), in Lausanne, Switzerland. The respective appeals were registered as TAS 2019/A/6336 and TAS 2019/A/6338. The two proceedings were joined and attributed to the same panel (hereinafter “the First Panel”). The Parties were heard in their pleadings and witnesses were heard at a hearing held on 29 July 2019.
36. On 31 July 2019, the First Panel issued the operative part of its partial award which reads as follows:
  1. *Déclare l'appel déposé le 17 juin 2019 par l'Espérance Sportive de Tunis contre la décision du Comité Exécutif de la Confédération Africaine de Football du 5 juin 2019 recevable.*
  2. *Déclare l'appel déposé le 14 juin 2019 par le Wydad Athletic Club contre la décision du Comité Exécutif de la Confédération Africaine de Football du 5 juin 2019 recevable.*
  3. *Admet l'appel déposé le 17 juin 2019 par l'Espérance Sportive de Tunis contre la décision du Comité Exécutif de la Confédération Africaine de Football du 5 juin 2019 dans la mesure où il requiert l'annulation de la décision précitée.*
  4. *Admet partiellement l'appel déposé le 14 juin 2019 par le Wydad Athletic Club contre la décision du Comité Exécutif de la Confédération Africaine de Football du 5 juin 2019.*
  5. *Annule la décision rendue le 5 juin 2019 par le Comité Exécutif de la Confédération Africaine de Football.*
  6. *Rejette l'appel du Wydad Athletic Club pour le surplus, sous réserve de la question des frais et dépens.*

7. *Renvoi les conclusions subsidiaires de l'Espérance Sportive de Tunis ainsi que les questions de la répartition des frais d'arbitrage et de l'allocation des dépens à la sentence motivée et son dispositif complet*".

[Free translation:

- “1. Declares the appeal lodged on 17 June 2019 by the [EST] against the decision of the Executive Committee of the [CAF] of 5 June 2019 admissible.
  2. Declares the appeal lodged on 14 June 2019 by the [WAC] against the decision of the Executive Committee of the [CAF] of 5 June 2019 admissible.
  3. Upholds the appeal lodged on 17 June 2019 by the [EST] against the decision of the Executive Committee of the [CAF] of 5 June 2019 to the extent it requires the annulment of said decision.
  4. Partially upholds the appeal lodged on 14 June 2019 by the [WAC] against the decision of the Executive Committee of the [CAF] of 5 June 2019.
  5. Annuls the decision of the Executive Committee of the [CAF] of 5 June 2019.
  6. Dismisses the remainder of the appeal by the [WAC], save for the question relating to the costs and fees.
  7. Remands the alternative pleas of the [EST] as well as the questions on the allocation of fees and costs to the reasoned award and its complete operative part”.]
37. On the same day, the CAS published a media release stating that the First Panel had “*considered that the CAF Executive Committee did not have jurisdiction to order that the second leg of the final be replayed and has decided to annul the decision challenged. The appeals of both clubs are therefore partially upheld for that reason*” and that it was now for the “*competent CAF authorities to review the incidents which occurred in the Radès stadium on 31 May 2019, to order the appropriate disciplinary sanctions, if any, and accordingly to decide whether the second leg of the CAF Champions League Final 2018/2019 shall be replayed or not*”. The media release further specified that the First Panel having annulled the decision of the CAF Executive Committee for formal reasons, it had “*decided to refer to the competent CAF bodies the questions of the replay of the final’s second leg and of the disciplinary procedure, which is currently pending before the CAF and which does not fall within the CAS jurisdiction in the present arbitration procedure*”.
38. On 7 July 2020, the First Panel rendered its reasoned (final) award in the cases TAS 2019/A/6336 and TAS 2019/A/6338. The operative part of said final award, reads as follows:
1. *“Déclare l’appel déposé le 17 juin 2019 par l’Espérance Sportive de Tunis contre la décision du Conseil Exécutif de la Confédération Africaine de Football du 5 juin 2019 recevable.*
  2. *Déclare l’appel déposé le 14 juin 2019 par le Wydad Athletic Club contre la décision du Conseil Exécutif de la Confédération Africaine de Football du 5 juin 2019 recevable.*

3. *Admet partiellement l'appel déposé le 17 juin 2019 par l'Espérance Sportive de Tunis contre la décision du Conseil Exécutif de la Confédération Africaine de Football du 5 juin 2019.*
4. *Admet partiellement l'appel déposé le 14 juin 2019 par le Wydad Athletic Club contre la décision du Conseil Exécutif de la Confédération Africaine de Football du 5 juin 2019.*
5. *Constate que la décision rendue par le Comité Exécutif de la Confédération Africaine de Football en date du 5 juin 2019 est nulle.*
6. *Rejette l'appel du Wydad Athletic Club pour le surplus.*
7. *Déclare que l'Espérance Sportive de Tunis peut conserver le trophée de la Ligue des Champions de la CAF Total 2018/2019, ainsi que les médailles décernées le 31 mai 2019 à Espérance Sportive de Tunis et à ses joueurs.*
8. *Ordonne la Confédération Africaine de Football de payer à l'Espérance Sportive de Tunis la prime de USD 2.5 millions qui est due au vainqueur de la finale de la Ligue des Champions de la CAF Total 2018/2019.*
9. *Met les frais d'arbitrage, dont le montant final sera communiqué aux parties par le Greffé du TAS sous pli séparé, à la charge de la Confédération Africaine de Football à hauteur de 75% (septante-cinq pourcents) et du Wydad Athletic Club à hauteur de 25% (vingt-cinq pourcents).*
10. *Ordonne à la Confédération Africaine de Football de verser un montant de CHF 7'500 (sept mille cinq cents francs suisses) à l'Espérance Sportive de Tunis valant participation à ses frais d'avocat et autres dépens encourus dans la présente procédure arbitrale, le Wydad Athletic Club supportant ses propres frais et dépens.*
11. *Rejette toutes les autres ou plus amples conclusions”.*

[free translation:

- “1. Declares the appeal lodged on 17 June 2019 by the [EST] against the decision of the Executive Committee of the [CAF] of 5 June 2019 admissible.
2. Declares the appeal lodged on 14 June 2019 by the [WAC] against the decision of the Executive Committee of the [CAF] of 5 June 2019 admissible.
3. Partially upholds the appeal lodged on 17 June 2019 by the [EST] against the decision of the Executive Committee of the [CAF] of 5 June 2019.
4. Partially upholds the appeal lodged on 14 June 2019 by the [WAC] against the decision of the Executive Committee of the [CAF] of 5 June 2019.
5. Holds that the decision of the Executive Committee of the [CAF] of 5 June 2019 is invalid.



6. Dismisses the remainder of the appeal by the [WAC].
7. Declares that the [EST] can preserve the trophy of the CAF Champions League Total 2018/2019, as well as the medals allocated on 31 May 2019 to the [EST] and its players.
8. Orders the [CAF] to pay to the [EST] the USD 2.5 million premium due to the winner of the final of the CAF Champions League Total 2018/2019.
9. The costs of the arbitration, the final amount of which is to be notified to the parties by the CAS Court Office in separate envelopes, are to be borne by the [CAF] in the amount of 75 % (seventy-five percent) and by the [WAC] in the amount of 25 % (twenty-five percent).
10. Orders the [CAF] to pay an amount of CHF 7'500 (seven thousand five hundred Swiss francs) to the [EST] as a contribution to its legal costs and other costs incurred in the present arbitral proceedings, and the [WAC] to bear its own costs and expenses.
11. Rejects all or more of the claims".]

## **B. Proceedings Before the Previous Instances**

39. On 3 August 2019, the CAF Disciplinary Board invited the WAC and the FRMF as well as the EST and the FTF to respectively supplement their initial claim dated 2 June 2019 and to file their observations concerning the incidents that occurred during the Disputed Match. Further, the WAC and the EST were invited to attend a hearing that was to take place on 7 August 2019 at the CAF headquarters. During that hearing, both the WAC and the EST were heard. On the same day, the Disciplinary Board rendered two decisions, one against the EST (DECISION 001 – CAI – 07.08.2019, “Decision 001”) and one against the WAC (DECISION 002 – CAI – 07.08.2019, “Decision 002”).

40. The operative part of Decision 001 reads as follows:

*“Le Jury Disciplinaire de la CAF a décidé de:*

- *Adresser un rappel à l'ordre à M. Mohamed Meddeb, Président du club E.S.T, et lui infliger une amende de 20,000 USD (Vingt Mille Dollars Américains) pour son comportement antisportif à l'encontre du Président de la CAF.*
- *Faire jouer le club E.S.T ses deux (2) prochains matches interclubs à domicile à huis clos pour l'usage excessif des fumigènes et pétards. Toutefois le Jury Disciplinaire a décidé de suspendre la sanction en question à condition que le club E.S.T ne soit pas coupable d'une telle infraction dans les douze (12) prochains mois.*
- *Imposer au club E.S.T une amende de 50,000 USD (Cinquante Mille Dollars Américains) pour l'usage des fumigènes et jets de projectiles et le comportement antisportif de ses supporters”.*

41. Decision 001 was only notified to the FTF with the mention “to the attention of the EST”.

42. The operative part of Decision 002 provides:

*“Le Jury Disciplinaire de la CAF a décidé:*

- *Que l'équipe du WAC est perdante du match de la Finale retour par forfait.*
- *Qu'une amende de 20,000 USD (Vingt Mille Dollars Américains) est imposée au club WAC pour l'abandon du match.*
- *Qu'une amende de 15,000 USD (Quinze Mille Dollars Américains) lui est infligée pour l'utilisation des fumigènes par les supporters”.*

43. Decision 002 was only notified to the FRMF with the mention “to the attention of the WAC”.

44. The EST did not appeal the Decision 001 whereas the WAC appealed the Decision 002 before the CAF Appeal Board. In its statement of appeal, WAC named both the CAF and the EST as respondents. In its appeal brief sent by the FRMF in the name and on behalf of the WAC on 28 August 2019 and directed against the CAF and EST, WAC reiterated its initial claim filed with the CAF (on 2 June and on 5 August 2019) to be declared winner of the CAF Champions League Final or, in the alternative, to have the Disputed Match replayed as the only fair and just decision based on the applicable rules and the particular circumstances of the case.

45. On 7 September 2019, the WAC was invited to a meeting of the CAF Appeals Board due to take place on 15 September 2019 at the CAF headquarters. In its response, dated 8 September 2019, the WAC noted that the requests from its initial claims filed on 2 June 2019 and on 5 August 2019 had remained undecided and that this could constitute a formal denial of justice which could be appealed to the CAS. The WAC further highlighted the fact that it had named the EST as respondent as the EST would be directly affected by any decision taken by the CAF Appeal Board and thus asked the Appeal Board to confirm the presence of the EST at the meeting on 15 September 2019.

46. On 15 September 2019, the CAF Appeal Board meeting took place as planned in presence of representatives from the FRMF and the EST. Before the hearing, the WAC was informed that the EST had submitted a response to the appeal but that said response had not been forwarded to the WAC. WAC was then granted a short period of time to read the response. Finally, the WAC and the EST were allowed to make their oral submissions.

47. On the same day, the CAF Appeal Board rendered its decision (hereinafter “the Appealed Decision”), addressed to the FRMF with the mention “to the attention of the WAC”. The operative part of the Appealed Decision reads as follows:

*“1. The Appeal of Wydad Athletic Club is admissible in law;*

*2. The Appeal of Wydad Athletic Club is rejected in substance;*

3. *The decision of CAF Disciplinary Board rendered on 7<sup>th</sup> August 2019 is hereby upheld and confirmed*”.

48. The Appealed Decision contains the following grounds:

- “1. *The appeal submitted by Wydad Athletic Club on the 28th of August 2019 is declared admissible following the extension of deadline that was approved by the Chairman of the Appeal Board.*
2. *The Appellant argued that their right to equal chances was not respected due to the different circumstances between the 1<sup>st</sup> and 2<sup>nd</sup> leg of the Final match of the CL 2018/2019. Nevertheless, it has been established that the present appeal’s purpose is against the incidents that took during the 2<sup>nd</sup> leg only and does not concern the 1<sup>st</sup> leg on which no claims or objections were made.*
3. *Furthermore, the Board underlined the fact that the absence of the Video Assistant Referee (VAR) has no legal effects whatsoever and that its sole purpose is to aid the referee to take the correct decision.*
4. *That the referee is vested with the power to have the final decision on the field of play since start of the game, and that his decision is not up to review by the Appeal Board.*
5. *The match officials’ reports were very clear that the Wydad Athletic Club’s players refused to resume the match even after several attempts conducted by the referee, to the point that the referee waited almost 90 minutes before he whistled the end of the match.*
6. *The Board highlighted the fact that the present appeal submitted by Wydad Athletic Club is submitted against the decision rendered by CAF Disciplinary Board on the 7<sup>th</sup> of August 2019 which concerns the forfeit of the match but not the financial sanction imposed on Wydad Athletic Club which remains undisputed to this day.*
7. *The Appeal Board has noted that the stoppage of almost 90 minutes was due to the Wydad Athletic Club’s players’ failure to resume the match, the players were then instructed to resume play by the referee who has seen his attempts fail to no avail. Therefore the Appeal Board confirms that the match was forfeited by Wydad Athletic Club because their players refused to resume the match.*
8. *As to Wydad Athletic Club’s request for the Appeal Board to sanction Esperance Sportive de Tunis, the Board took note that the aforementioned request was already addressed by the Disciplinary Board and that Esperance Sportive de Tunis were effectively sanctioned for the incidents that took place on match 144 of the Total CAF Champions League. The Board resolved that a consideration for this request would be deemed as a double sanction on Esperance Sportive de Tunis which would contradict the principle of Non Bis In Idem”.*

### III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

49. On 25 September 2019, the WAC filed its statement of appeal against the CAF and the EST (the “Respondents”) with respect to the Appealed Decision in accordance with Article R47 of the Code of Sports-related Arbitration, Edition 2019 (the “Code”) and Article 48.3 of the Statutes of the CAF. In the Statement of Appeal, the WAC had requested provisional

measures in accordance with Article R37 of the Code. However, at a later stage of the procedure, the WAC withdrew that request.

50. On 4 October 2019, the CAS Court Office acknowledged receipt of the statement of appeal and informed the Respondents, *inter alia*, that according to Article R53 of the Code, they should nominate an arbitrator within ten (10) days of receipt of the said letter. Finally, it was noted that the Appellant had designated the FRMF and the FTF as interested parties.
51. On 7 October 2019, these two federations were invited to inform the CAS Court Office whether they intended to intervene in these proceedings.
52. On the same day, the Second Respondent informed the CAS Court Office that it objected to the language of the procedure being English.
53. The Parties not having been able to find an agreement on the language of the arbitration, the Deputy President of the Appeals Arbitration Division of the CAS, by order dated 18 October 2019, pronounced that the language of the present procedure is English and that the Parties are authorised to file the supportive documents of their written submissions such exhibits, witness statements, expert reports, audio or video recording (if any) in French, without translations.
54. On 17 October 2019, in response to the invitation dated 7 October, the FRMF applied to be “*authorised to participate in this arbitration as a party whose status would be limited to file amicus curiae submissions and to attend the CAS hearing, if any, and make submissions in support of the Appellant*”. On the same day, the FTF informed the CAS Court Office that it supported the position of the EST in the present proceedings, but without clearly stating whether or not it wanted to intervene.
55. On 25 October 2019, the Respondents jointly nominated Prof. Dr. Ulrich Haas as arbitrator in the present proceedings.
56. On 28 October 2019, the Respondents filed their observations on the Appellant’s request for provisional measures, the First Respondent raising an exception of inadmissibility of said request. The Appellant was thus invited to submit its observations to this exception of inadmissibility by 5 November 2019.
57. On 30 October 2019, the Appellant filed its Appeal Brief and requested, *inter alia*, the FIFA to be invited into these proceedings.
58. On 5 November 2019, the Appellant submitted its response to the exception of inadmissibility raised by the First Respondent and withdrew its request for provisional measures. Further, it appointed Mr. Fabio Iudica as arbitrator in the present proceedings.
59. On 13 November 2019, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, informed the Parties that the Panel appointed to decide this appeal was constituted as follows:

President: Mr. Jacques Radoux, Legal Secretary at the Court of Justice of the European Union, Luxembourg

Arbitrators: Mr. Fabio Iudica, Attorney-at-Law in Milan, Italy  
Mr. Ulrich Haas, Professor of Law in Zurich, Switzerland.

60. On 20 November 2019 and after having consulted the Parties on the Appellant's request to invite FIFA into these proceedings, the CAS Court Office, on behalf of the Panel, invited the FIFA to state whether it was interested in submitting an *amicus curia* brief on the possible implications that follow, in the present case, from the application the VAR Protocol contained in said IFAB Laws of the game.
61. On the same day and after having duly consulted the Parties on the FRMF's request for intervention, the CAS Court Office informed the FRMF that the Panel had issued the following decision:  
  
*"The Panel notes that the FRMF expressly applied 'to be authorised to participate in this arbitration as a party whose status would be limited to file amicus curia submissions and to attend the CAS hearing, if any, and make submissions in support of the Appellant'. The Panel however considers that amicus curiae briefs should serve a general or the Court's interest and should thus not be admitted when they explicitly aim at supporting the position expressed by one of the parties and thus create an imbalance between the parties (CAS 2008/A/1639). In light of the above, the Panel finds that the application as submitted by the FRMF on 17 October 2019 can only be dismissed"*.
62. Still on 20 November 2019, the Panel ruled on the evidentiary requests formulated by the Appellant in its appeal brief. It *inter alia* invited the Parties to submit any documents or transcripts from the CAF file and CAS filed CAS 2019/A/6336 & 6338 they intend to rely on and dismissed the Appellant's request for the appointment of an independent experienced referee as an expert since this was not needed in this stage of the present proceedings.
63. On 25 November 2019, the FIFA declined the Panel's invitation to submit an *amicus curia* brief.
64. On 24 December 2019, the CAS Court Office acknowledged receipt of the First Respondent's Answer, filed 19 December 2019, as well as the Second Respondent's Answer, filed on 17 December 2019, and invited the Appellant to submit its observations in relation to the exceptions raised by the Respondents (inadmissibility, *res judicata*, scope of the appeal) within 14 days.
65. A hearing was planned to take place on 20 March 2020 in Lausanne, Switzerland. However, due to exceptional circumstances (COVID-19), said hearing had to be postponed.
66. On 6 March 2020, the CAS Court Office notified the order of procedure to the Parties. On 11 March 2020, the Appellant signed and returned the order of procedure in this arbitration procedure. On 12 March 2020, the First Respondent signed and returned the order of procedure. The Second Respondent signed and returned the said order of procedure on 20 April 2020.

67. On 29 May 2020, a hearing took place at the CAS Court Office. Due to COVID-19 restrictions, only the President of the Panel was physically present at the CAS Court Office. The two other members of the Panel were assisting by video. The Panel was assisted by Ms Pauline Pellaux, CAS Counsel, who was also physically present at the CAS Court Office. The Panel was joined by the following participants, all attending by video:

**For the Appellant:**

Ms. Despina Mavromati, counsel;  
Mr. Said Naciri, WAC President;  
Mr. Anouar Zyne, WAC Secretary General;  
Dr. Khalil Boubhi, WAC President's counsel;  
Mr. Tarik Mossadek, WAC Legal Counsel;  
Ms. Soukaina Saoui, WAC Legal and Finance Director;  
Mr. Panagiotis Delimatsis, assisting Ms. Mavromati.

**For the First Respondent:**

Mr. Marc Cavaliero, counsel;  
Ms. Carol Etter, counsel,  
Ms. Achta Mahamat Saleh, Director legal affairs & compliance division of the CAF;

**For the Second Respondent:**

Mr. Riadh Touiti, counsel;  
Mr. Ali Abbes, counsel;  
Mr. Fabrice Robert-Tissot, counsel;  
Mr. Hachmi Jilani, EST representative;  
Mr. Mondher Kaali, interpreter.

**As witnesses called by the Appellant:**

(brought by the First Respondent further to an Appellant's request that was granted by the Panel)

Mr. Ahmad Ahmad, President of the CAF;  
Mr. Constant Omari, Vice-President of the CAF;  
Mr. Ahmed Yahya, Match Commissioner;  
Mr. Papa Bakar Gassama, Referee.

68. At the outset of the hearing, the Parties confirmed that they had no objections to the constitution of the Panel. At the conclusion of the hearing, the Parties confirmed that their right to be heard had been fully respected and that they had no objections as to the manner in which the proceedings had been conducted.
69. On 14 July 2020, following the notification of the reasoned (final) award in the cases TAS 2019/A/6336 and TAS 2019/A/6338, the Parties were invited to file their observations in relation to that award.
70. On 21 July 2020, the Parties filed their respective observations.

71. On 27 July 2020, the EST requested that the Panel reject the WAC's observations in relation to the Award on the cases TAS 2019/A/6336 and TAS 2019/A/6338 for having exceeded the framework set by the Panel.
72. On 3 August 2020, the Panel informed the Parties that the WAC's observations were accepted in the file only insofar they were within the scope determined by the Panel.

#### **IV. SUBMISSIONS OF THE PARTIES**

##### **A. The Appellant's submissions**

###### ***a. As to the exceptions on admissibility, res judicata and scope of the appeal***

73. In response to the exceptions raised by the Respondents in their answers, the Appellant argues, first, that while it filed all its requests, similar to the requests filed with the CAS in the present proceedings, with the CAF Appeal Board, the latter erroneously refused to review some of them, including the match replay. Therefore, the scope of review of the Panel would include the control of all these questions since, formally, they were all within the scope of the previous proceedings. Moreover, apart from the general jurisdiction against the Appealed Decision, the Appellant would have the right to file its appeal also because its claims filed on 2 June 2019 and on 5 August 2019, regarding the match and security conditions and a possible replay of the Disputed Match, remained undecided, both by the CAS award in the cases TAS 2019/A/6336 & 6338 and the CAF Disciplinary Board/CAF Appeals Board proceedings. As the First Panel specified in its press release, it was for the "competent" CAF instances to decide on the question of match replay. The fact that the previous instances left this question undecided does not mean it was not part of the scope of the previous proceedings. The fact that the claims filed on 2 July and 5 August 2019 were part of the proceedings before the Disciplinary Board and the Appeals Board is proven by the email correspondence from the CAF Secretariat dated 10 September 2019.
74. Second, concerning the alleged *res judicata* effect of the Disciplinary Board Decision 001, the Appellant observes that it did not have standing to appeal that decision as it was not notified to the Appellant and as it concerned disciplinary sanctions imposed on the Second Respondent exclusively. Further, the Respondents were well aware of the Appellant's intention to appeal the disciplinary sanctions and to reiterate its request for a replay of the Disputed Match, which would also affect the Second Respondent. This allowed the Second Respondent to participate in the proceedings (written and oral) before the Appeals Board. Under these circumstances, the Respondents would be estopped from raising any arguments as to the finality of the sanction imposed on the Second Respondent and to the impossibility of reviewing them. Further, in the present case, the *res judicata* principle does not apply as the Disciplinary Board decision is not a judgment passed by a state court nor a final arbitral award rendered by an arbitral tribunal in the sense of Article 59, para. 2, lit. e), of the Swiss Code of Civil Procedure ("CCP") as interpreted by the Swiss Federal Tribunal ("SFT"). In any event, in the present case there could be no *res judicata* as the "triple identity test" required by Swiss law is not met. There is no identity of parties and identity of claims. Furthermore, the

underlying claims have not become final since the Appellant successfully challenged the CAF Disciplinary Board Decision 002 by requesting the replay of the Disputed Match. Furthermore, under Swiss law, the effect of *res judicata* would only include re-litigation of claims and not the collateral estoppel nor the underlying issues.

75. Third, as regards the application, by the Appeals Board, of the principle *ne bis in idem*, the Appellant starts by disputing that said principle applies to disciplinary sanctions imposed by sports federations as the SFT has raised some serious doubts about its applicability while a CAS Panel has reserved its application to very harsh sanctions imposed by sports federations on individuals, and not clubs. Next, the principle applies only if the protected interest is identical in both prosecutions. Thus, if there is a lack of identity of object, said principle does not apply. In the present case, there is a clear difference of object between the request to replay the Disputed Match and the sanction, imposed on the EST, to play matches behind closed doors. Further, there is a difference between the finality of the different proceedings at hand, as some issues and claims have been left unresolved. Moreover, in the present case, the sanctions imposed by the Disciplinary Board do not exclude all other measures that can be imposed by the different instances, including the Interclub Commission. In this regard, the Appellant reiterates the point of view that the Respondents cannot validly argue that the CAF disciplinary bodies were not competent to deal with the Appellant's claim dated 2 June and 5 August 2019, as the CAF Secretariat clearly stated that the Disciplinary Board had the power to review those claims. As the scope of the Appellant's prayers for relief in the present case (replay of the Disputed Match) do not correspond to the prayers for relief examined by CAF disciplinary bodies in other proceedings, the main condition for the application of the *ne bis in idem* principle is not met. In any event, the Appellant should not see its procedural and substantive rights violated by a failed administration of justice by the CAF, whose sanctions imposed on a party cannot become final pending a proceeding relating to the same subject matter. Otherwise, the Appellant would risk suffering – again – a denial of justice.
76. Fourth, as to the alleged *res judicata* effect of the award in the cases TAS 2019/A/6336 and TAS 2019/A/6338, the Appellant observes that the First Panel merely annulled the CAF Executive Committee decision for formal reasons and decided to limit its review to the validity of the 5 June Decision without examining the merits and various requests filed, *inter alia*, by the Appellant. This interpretation is corroborated by the content of the press release accompanying the publication of the operative part of the award. In any event, it would be obvious that the First Panel did not have jurisdiction over a decision to be taken by other CAF bodies and which had not even been rendered at the moment that panel was seized and mandated to decide.
77. In view of these arguments, the Appellant asks the Panel to dismiss all exceptions related to jurisdictional limits, the scope of review and the *res judicata* arguments raised by both Respondents.

**b. As to the substance of the appeal**

78. The Appellant, as a preliminary point, maintains that its initial claims, filed on 2 June 2019 with the CAF Secretariat and addressed to the Disciplinary Jury and the Interclub Commission



of the CAF, have been left unanswered until now. Indeed, neither the partial award nor the reasoned final award of the First Panel took a stand on the merits of these claims or the arguments raised in their support. Further, the Disciplinary Board's Decision 002 shows that this instance did not hear all arguments and claims raised by the Appellant as to the insufficient match and security conditions, the causal link between the limited view of the action and the interruption of the game, and the situation that preceded the interruption of the game or the reasons why the Match Referee ended the match, all of them leading to the claim of the Appellant to replay the Disputed Match. Regarding this decision, the Appellant points out that although it indicates that the WAC and the EST were represented in the proceedings of 7 August 2019, the decision was only notified to the Appellant whereas the Decision 001 of the same day imposing sanctions on the EST was only notified to the EST. Thus, the Appellant would not have had standing to appeal nor a legal interest in appealing the Decision 001. As to the procedure before the Appeals Board, the Appellant submits that it explicitly named both the CAF and the EST as respondents in its statement of appeal dated 9 August 2019. Moreover, in the corresponding appeal brief it highlighted the fact that its initial claims regarding the match replay and all subsequent claims remained valid and in force, rendering thus any potential claim to the contrary raised by the parties involved against the principle of good faith. The EST was given the opportunity to submit an answer to the appeal brief and was allowed to argue its case during the hearing that took place on 15 September 2019. Notwithstanding the above, the Appealed Decision and the CAF Decision 001 left the WAC's initial claim to a potential replay of the Disputed Match unanswered, dealing merely with the refusal to play and the disciplinary sanctions imposed on the WAC. Thus, based on its full power of review the facts and the law *de novo* attributed by Article R57 of the Code, the Panel should review all these arguments anew without limiting itself in the findings of the Appeals Board and would be vested with the full powers of the Disciplinary Board which equally failed to address all of the WAC's initial claims dated 2 June 2019 and 5 August 2019.

79. The Appellant argues, first, that the Appealed Decision is flawed in many aspects and should be annulled and replaced by a new decision. In support of its position, the Appellant submits, *inter alia*, that:
- although the absence or the malfunctioning of the VAR does not itself lead to the invalidity of a match, in the present case, where the match conditions with respect to refereeing were not in accordance with the standards, its absence was crucial as a match-changing decision, the disallowance of the goal in the 58<sup>th</sup> minute, was taken by the Referee without any possibility for the latter to check whether his decision was correct or not;
  - the presence of the VAR during the first leg of the CAF Champions League Final and its absence in the Disputed Match constitute a breach of the principle of equality of chances in the particular circumstances of the case, which characterise themselves by the poor visibility conditions during the Disputed Match. This principle would be a cardinal principle in football that forms part of the non-discrimination principle which is recalled in Article 2.1 of the CAF Statutes. Besides, the decision of the CAF Executive Committee to implement the VAR in the two finals of the 2018/2019 CAF Champions League would have been taken with the aim of ensuring equal opportunities and prevent unfair decisions

related to refereeing. The fact that VAR was ordered also for the Disputed Match would mean that the VAR should have been present and therefore became a basic condition of the game. In the present case, if the VAR had worked, the VAR Referees would have had independent access to the produced images and could have intervened to interrupt the game to remedy the Referee's wrongful decision. However, due to the absence of the VAR, the WAC players were deprived of their right to have a chance to correct the capital and obvious refereeing error. According to the Appellant, the principle of equality was violated by the fact that the first leg match was played with the VAR technology while the second leg was played without such technology, independently of the results of the first leg final. The finding of the Appeals Board, that the WAC could not invoke this violation because the result of the first leg match has not been disputed would be legally inaccurate;

- the conditions for the application of Article 148 of the CAF Disciplinary Code, as interpreted in light of Swiss law and CAS jurisprudence, are not met in the present case as the WAC players never gave up the match, remaining at the Referee's disposal if the latter had decided to officially restart the Disputed Match. However, the Referee never decided to summon the WAC to resume the match. Furthermore, according to CAS case law (CAS 2015/A/3874), the WAC players should have received a clear, direct and unconditional order from the Referee to resume the Disputed Match before deciding that the WAC abandoned playing. In any event, the conditions of visibility at the 58<sup>th</sup> minute of the Disputed Match were so bad, that the Referee should have interrupted play for that reason before the disputed goal. The negotiations between, *inter alia*, certain CAF officials, the competing teams and some representatives of the national federations of these teams, were never followed by an order to restart the play and it would follow from the Referee report, the Referee's witness statement, the video footage of the Disputed Match, the CAF Security report and the Match Commissioner's report, that the Referee whistled the end of the game following an order from the Match Commissioner due to the chaos created, after the interruption, by the numerous unsolicited persons that entered the pitch. It would thus be established that the Disputed Match ended before its term for reasons other than the refusal of the WAC players to continue play under Article 148 CAF Disciplinary Code. Under these circumstances, the responsibility for the early ending of the Disputed Match should lie with the host club, *i.e.* the EST, and WAC should be declared Winner of the 2018/2019 CAF Champions League Final. Alternatively, and in absence of any other rules applicable to the present case, in accordance with the Law 7.5 of the IFAB Laws of the Game, pursuant to which “[a]n abandoned match is replayed unless the competition rules or organisers determine otherwise”, the Disputed Match should be replayed in its entirety. This provision would not have a disciplinary character and would not sanction one or the other club, since it foresees the technical consequence of a match not having been played in full. Besides, as the EST leaders also protested and asked to view a scene from the 20<sup>th</sup> minute of play, *i.e.* an alleged penalty, the EST should also be held responsible for the same violation than the WAC, with the additional violation of the security requirements as the host club. Thus, if one were to reason by analogy with the concepts of fault and causality under Swiss civil law, the defective match and security conditions should be considered as factors that precede over any other source of responsibility (“causalité dépassante”);

- in the 58<sup>th</sup> minute, when the WAC team scored a goal that was wrongly disallowed by the Referee for offside, the playing conditions were not met and that the Referee should have stopped the Disputed Match due to lack of visibility. By not doing so, the Referee committed a manifest error and made an arbitrary decision opening the doors for review by the subsequent hearing authorities, including the Disciplinary Board, the Appeals Board and the CAS. This would be all the more so as none of previous instances of the CAF addressed these arguments validly raised by the Appellant. The “*field of play*” doctrine would not apply in the present case as it has been established that (i) the visibility during the wrongly disallowed goal was so poor that it prevented the Referees from viewing the action, leading thus to a manifestly wrong and arbitrary decision and (ii) the above was confirmed by both the Referee and the Referee Assessor in their subsequent reports. Further, according to CAS case law, the arbitrariness of a decision does not require the proof of bad faith since the review conditions are not cumulative (CAS 2009/A/1783) and there is arbitrariness, *inter alia*, when a decision harms a feeling of justice or of fairness. In such a situation, the CAS is not encroaching the powers reserved to the Referee or official when these were not exercised properly but is reviewing the existence of some form of behaviour, in this case arbitrary, that the CAS has the jurisdiction to review freely. In the present case, it would be utterly unfair to impute to the WAC team the serious consequences of a match forfeit for their alleged “refusal” to continue play without VAR, since the match conditions were irregular prior to their conduct. Unlike other similar cases where the field of play doctrine has been accepted, the present case would show a clear correlation between the obvious irregularity of the match conditions that led to a match-changing decision and directly affected the Appellant;
- it did not have standing to appeal the Decision 001. Indeed, according to CAS case law, a party has standing to appeal a decision if it is not the addressee of that decision if it has legal interest to set aside the decision (CAS 2015/A/4343). A “*directly*” affected party has the legal interest to appeal a decision and this criterion must be interpreted in a restrictive manner. In the present case, first, the Appellant was not the direct addressee of the decision imposing financial and other sanctions on the EST. Second, the Appellant is not directly affected by the measures taken by the Disciplinary Board against the EST and would not have an interest appealing against the sanctions imposed on the EST. However, as the Appellant has addressed the appeal of the Decision 002 against the EST and the CAF has obtained knowledge that the Appellant had the intention to contest the sanctions imposed on it and to reiterate its request for a replay of the Disputed Match, which would obviously affect the EST, the Respondents would be estopped from bringing forward any argument as to the finality of the sanctions imposed on the EST in the Decision 001;
- the Appeals Board misinterpreted the meaning and scope of the *ne bis in idem* principle by finding that by sanctioning the EST for the incidents taking place during the Disputed Match, the CAF would be prevented from imposing any other sanctions on the EST or admitting the claims raised by the WAC because this would contradict that principle. Indeed, first, the SFT has left the question open of whether the principle of *ne bis in idem* applies to disciplinary sanctions of sports federations. Second, according to CAS case law, the applicability of such principle on disciplinary sanctions should be reserved to “*severe*”

sanctions of a “*quasi-criminal*” character imposed in disciplinary proceedings (CAS 2015/A/4319), which logically do not include purely financial sanctions or sanctions with suspensive effect or under probation like the ones imposed on the EST. Most importantly however, such principle would have no effect and no application whatsoever on the Appellant’s request to order a replay of the Disputed Match as the conditions of the triple identity test, *i.e.* (i) identity of purpose, (ii) identity of parties and (iii) identity of facts, are not met in the present case. In particular, only one part of the subject matter of the case, *i.e.* the match and security conditions of the Disputed Match, has been decided by the CAF with the other issues, *i.e.* claim for a replay of the Disputed Match, having been left undecided. Yet, a partial sanction imposed on a party cannot logically become “final” until the entire issue of which such sanction forms part, *in casu* the issue of the match replay, becomes itself final. Even if the - partial - sanction imposed on EST had become “final” for the latter, the issue of the match replay has not yet been decided and is thus to be decided. As the Appellant’s prayers for relief, which would essentially concern the replay of the Disputed Match, do not correspond to the prayers for relief examined by the Disciplinary Board in its decision imposing sanctions on the EST, the principle *ne bis in idem* could not play in the present matter.

80. The Appellant argues, second, that the causal nexus between the excessive presence of smoke, the malfunctioning of VAR and the security problems must lead the Panel to invalidate the results of the Disputed Match and order its replay. The same result would apply if the Disputed Match was interrupted for any reason other than those provided in the CAF Champions League or other CAF competition regulations, pursuant to the Law 7.5 of the IFAB Laws of the Game. In this regard, the Appellant reiterates its view that the playing conditions prescribed for by the applicable rules were not met at the 58<sup>th</sup> minute of the game and that, as a consequence, the Referee should have interrupted the Disputed Match but wrongly did not do so. According to the Appellant, the normal course of events was therefore interrupted at that time and the EST, as host club, was responsible for that interruption as the lack of visibility was caused by the smoke bombs launched by the EST supporters. Thus, the excessive use of smoke bombs in connection with the absence of the VAR, the lack of adequate information about the malfunction of the VAR as well as other problems related to the conditions of play and safety during the Disputed Match, especially after its interruption, should lead to the cancellation of the Disputed Match and a replay. The same considerations and consequences should apply if the Panel were to establish that the Disputed Match was not terminated following a “refusal” to play in the sense of Article 148 of the CAF Disciplinary Code. Given that the CAF is responsible for the good organization of the CAF Champions League, it would have a strong and obvious interest – and a statutory obligation – that its competitions are played under fair and acceptable conditions. A decision to replay a match – which has not been played in its entirety – would therefore be legitimate, appropriate and would not violate public policy.
81. The Appellant observes that its requests are based on the CAF Disciplinary Code and the CAF Champions League Regulations 2018/19 and refers, in particular, to Articles 82, 83 and 151.2 of the CAF Disciplinary Code (responsibility of the host club and association for the behaviour of the spectators). Further, the Appellant invokes Article 45.2.3 of the CAF Statutes according to which it is possible to pronounce the cancellation of a match. Moreover, the

Appellant refers to Article 56 of the FIFA Disciplinary Code according to which “*if a match cannot be played at all or can only partially be played for reasons other than force majeure, but because of a team or behaviour of which the association or club is responsible, the association or the club will be punished with a fine of at least CHF 10’000. The match will be declared lost by forfeit (Article 31) or it will be replayed (Article 31bis)*”, to argue that, in the case at hand, the EST should have been eliminated or, alternatively, that the Disputed Match should be replayed in its entirety. The provisions of the FIFA Disciplinary Code should apply in the present case as Article 156 of the CAF Disciplinary Code states that in absence of a rule in the CAF Disciplinary Code the judicial bodies of the CAF should apply FIFA Disciplinary Code. Finally, the IFAB Law of the Game would, in their Article 7.5, also explicitly provide the replay of a match that has not been played in its entirety.

82. In view of the above arguments, the Appellant requests the Panel to rule as follows:

- i. The appeal of Wydad Athletic Club is admissible;*
- ii. The appeal of Wydad Athletic Club is upheld;*
- iii. The decisions of the CAF Appeal Board and the CAF Disciplinary Jury are set aside.*
- iv. Ruling de novo, the CAS Panel finds that*
  - a. the Disputed Match is declared invalid;*
  - b. WAC is declared winner of the CAF Champions League final;*
  - c. In the alternative, the disputed return leg of the CAF Champions Final is to be replayed in its entirety.*
- v. Wydad Athletic Club is granted a contribution towards its legal fees and expenses incurred in connection with this arbitration;*
- vi. CAF and EST shall bear any legal costs in connection to this arbitration.*

**B. The First Respondent’s submissions**

***a. As to the exceptions on admissibility, res judicata and scope of the appeal***

83. The First Respondent argues that the *de novo* ruling requests of the Appellant are inadmissible. In support of its position, the First Respondent recalls that by means of two letters dated 3 August 2019, the Disciplinary Board initiated disciplinary proceedings against the WAC as well as the EST. In particular, the Disciplinary Board informed the WAC of the opening of disciplinary proceedings for possible violations of Article 82 (Principles of conduct), Article 83 (Responsibility) and Article 148 (Abandonment) of the CAF Disciplinary Code. The proceedings against the WAC thus concerned the incidents which occurred during the Disputed Match and which could fall under the responsibility of the WAC and were therefore limited to the question whether the WAC infringed any of the mentioned provisions of the

CAF Disciplinary Code. On the other hand, the proceedings against the EST led the Disciplinary Board to find whether the EST was guilty of infringements of Articles 82 (Principle of conduct), 83 (Responsibility) and 151 (Security for organisation of matches) of the CAF Disciplinary Code in the context of the incidents that occurred during the Disputed Match. These infringements were sanctioned by the Disciplinary Board who imposed the sanctions it deemed appropriate. According to the First Respondent, the Disciplinary Board had considered the complete catalogue of sanctions available to it, including the possibility to annul the result of a match (Article 88 al. 3 lit. e of the CAF Disciplinary Code) and the forfeit (Article 88 par. 3 lit. g of that same Code). As the decision imposing sanctions on the EST has not been appealed, it became final and binding. The First Respondent notes that although aware of its existence, the WAC decided not to appeal that decision. Whether or not the WAC had standing to appeal the decision at stake, it would have been up for the Appeals Board and/or the CAS to decide. However, by failing to appeal that decision, the WAC would be prevented, in the context of the present proceedings, to bring forward considerations in relation to the conduct of the Second Respondent, or its supporters, with the aim to modify the sanctions imposed against the latter. Indeed, due to the principle of *res judicata*, as set out in Article 59 para 2 lit e of the CCP, all factual elements with regards to the behaviour of the supporters of the EST and other security breaches observed by the match officials as well as the extent of the sanctions passed, may no longer be challenged. Thus, the prayers for relief under point iv) of the Appellant shall all be disregarded as being inadmissible.

84. The First Respondent further recalls that, according to Article R57 of the Code, a panel may certainly issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance, but that the panel's power of review is limited by the object of the dispute that was before the previous instance. Likewise, the *de novo* review cannot be construed as being wider than the power of the body that issued the decision appealed against and the general limits of Article 190 para. 2 of the Swiss Private International Law Act ("PILA"). Hence, the Panel's power to review the Appealed Decision cannot go beyond the task of the previous instance in the proceedings against the WAC, *i.e.* deciding whether the WAC did or did not breached Article 148 of the CAF Disciplinary Code. All issues related to a lack of security, a lack in the organisation of the Disputed Match and the misconduct of the EST spectators in the stadium solely concern and are part of the proceedings against Second Respondent. These issues would have all been discussed and decided exhaustively in the context of the proceedings against the EST and fall out of the scope of the present proceedings. Any considerations and any prayers for relief which aim at imposing an additional sanction against the Second Respondent cannot be reviewed in these proceedings. Given that the replay of a match is not part of the catalogue of disciplinary measures that the Disciplinary Board or the Appeals Board can impose in application of Article 45 of the CAF Statutes and Article 88 of the CAF Disciplinary Code, such replay can never be a sanction and can never be ordered by the Disciplinary Board or any subsequent appeal body. A replay is consequently not foreseen in the context of Article 148 of the CAF Disciplinary Code, which would be the provision at stake here. Thus, the present proceedings could, under no circumstances, lead to a replay of the Disputed Match. Moreover, and in view of the fact that the sanctions imposed on the EST, which do not include an annulment of the result of the Disputed Match, are final and binding, there would be no room for an order to

replay the Disputed Match. Therefore, the prayer for relief regarding a replay of that match would be inadmissible.

85. The First Respondent notes, moreover, that according to Article 48 para. 4 of the CAF Statutes, CAS has no jurisdiction to decide on violations of the laws of the game. Thus, the argument of the Appellant that the laws of the game were not respected during the Disputed Match and that the Referee should have stopped play, shall be disregarded as CAS lacks jurisdiction in this context.
86. Next, the First Respondent observes that the request of the Appellant to be declared winner of the CAF Champions League clearly falls outside of the scope of the present appeal as such declaration does not fall under the jurisdiction the CAF judicial bodies. Thus, this prayer for relief should be disregarded as well.
87. Finally, the First Respondent argues that for there to be a denial of justice, a judicial body must fail to issue a decision on a request falling within its competence. The present case would however not be constitutive of such a denial of justice. Indeed, the CAF judicial bodies have rendered several decisions by which they were sanctioning the WAC, the EST and the EST's president. In each of these separate decisions, the Disciplinary Board reviewed the whole factual constellation and assessed all the incidents that occurred, in light of the applicable regulations. In particular, by imposing sanctions on the EST, *i.e.* a fine and a suspended sanction of two matches behind closed doors, the CAF Disciplinary Board decided not to annul the result of the Disputed Match or to impose a forfeit against the EST. In view of the existence of that decision, which has become final and binding, the Appellant could not validly maintain that the CAF judicial bodies committed a denial of justice.

***b. As to the substance of the appeal***

88. The First Respondent argues that the allegations of the Appellant in respect to procedural flaws affecting the procedures before the CAF Judicial bodies are groundless. In any event, according to constant CAS case law, even in case there had been some flaws, the latter would be cured by the *de novo* hearing of the case by the CAS Panel.
89. As regards the reasons for the interruption of the Disputed Match, the First Respondent sustains that, irrespective of the security conditions and misconduct of the EST's supporters, the reports from the Referee, the Referee Assessor, the Match Commissioner, the Security Officer and the General Coordinator all point in the same direction: a few minutes after the disallowed goal from the 58<sup>th</sup> minute, the WAC players refused to resume play without the VAR. This refusal to play was the only reason for the long interruption of the Disputed Match and the WAC has not established that its players may have refused to play as they had fear for their security or that its players were after the 61<sup>st</sup> minute ready to resume play.
90. In this context, and with regard to the Appellant's argument that its players had not been summoned to resume play, the First Respondent argues that the award in case CAS 2015/A/3874 cannot be applied by analogy to the present case. Indeed, the factual background of the two cases would be completely different as in case CAS 2015/A/3874

there was a forced interruption of the match by the Referee for security reasons, that interruption was followed by severe security breaches and the players of Albania were threatened and physically assaulted by supporters and stewards alike leading to the players leaving the field of play. In the present case, the play was not interrupted due to security reasons but for a foul play suffered by an EST player. It would be uncontested, that the Disputed Match could not resume because the WAC players refused to continue playing unless the VAR was functioning, and the disallowed goal reviewed. It would be clear from all witness statements and testimonies that the WAC players did not change their mind during the long interruption. Thus, there would be objective and important differences between the present case and the situation at the origin of the case CAS 2015/A/3874.

91. The First Respondent maintains that there aren't any other excuses or justifications for the WAC players' behaviour. In particular, all arguments drawn from the absence or malfunctioning of the VAR would fall outside the scope of the present appeal, which is limited to the assessment of whether or not the Appellant committed a breach of Article 148 of the CAF Disciplinary Code. In any event, pursuant to the IFAB's VAR Protocol, neither the WAC players nor the officials had any right to request the review of the VAR. Finally, contrary to what the Appellant claims, there were no other reasons to end the Disputed Match prematurely other than the refusal of the WAC to continue play.
92. Concerning the alleged breach of the principle of equality of chances, the First Respondent notes that, according to the IFAB Laws of the Game, a match is not invalidated because of a malfunction of the VAR technology. Thus, even if the VAR had worked for the first half and had malfunctioned during the second half of the Disputed Match, this would still not be a valid ground to invalidate the match. Subsequently, the absence or malfunction of the VAR during the Disputed Match could not possibly lead to a breach of the principle of equal treatment, in particular, since both teams were equally affected.
93. In view of these arguments, the First Respondent submits the following prayers for relief:
  - i. *The Appeal shall be declared partially inadmissible.*
  - ii. *To the extent it is admissible, the Appeal shall be rejected and the decision of the CAF Appeal Board of 15 September 2019 shall be confirmed in its entirety.*
  - iii. *In any case, Wydad Athletic Club shall bear the costs of the arbitration and it shall contribute to the legal fees incurred by First Respondent at an amount of at minimum CHF 20,000.*

## **C. The Second Respondent's submissions**

### ***a. As to the exceptions on admissibility, res judicata and scope of the appeal***

94. As a preliminary point, the Second Respondent observes that the CAF's judicial bodies cannot have committed "a formal denial of justice" as argued by the Appellant as these judicial bodies had no jurisdiction whatsoever to rule over the WAC's "initial claims". Indeed, the Disciplinary Board would not be empowered to rule on a "claim" made by a party availing itself of any



right but would only rule on disciplinary offenses of which the person brought before it is suspected of being the perpetrator. Thus, the Appeals Board had no jurisdiction to rule on that “initial claim”, *i.e.* replay of the Disputed Match, as its competence would be limited exclusively to reviewing disciplinary decisions rendered by the Disciplinary Board.

95. Regarding the scope of the present appeal, the Second Respondent argues that a certain number of issues and requests for relief have already been definitively decided either by the First Panel or by the CAF’s judicial bodies. More particularly, the First Panel has definitively declared the invalidity of the CAF Executive Committee decision dated 5 June 2019 and has dismissed the WAC’s requests for relief related to the attribution of the title of the 2018/2019 CAF Champions League winner to the WAC and the allocation to the WAC of the USD 2.5 million award granted to the winner of the final of the 2018/2019 CAF Champions League. According to the Second Respondent, this decision has a *res judicata* effect. Further, the disciplinary bodies of the CAF have decided, also with *res judicata* effect, (i) on deficiencies attributed to the EST, mainly related to the organization of the game and to the conduct of its supporters and (ii) on accusations brought against the president of the EST for alleged insults and threats proffered against the president of the CAF. As none of the decisions sanctioning these two offenses have been appealed, they became final and binding. Thus, the scope of the present proceedings would be limited to the validity of the disciplinary sanction imposed upon the WAC by the competent CAF disciplinary bodies and would not cover any claim by the Appellant to the CAF dated 2 June 2019 about the absence of VAR during the Disputed Match.
96. In view of the above, the WAC’s request for relief to have the Disputed Match declared invalid, to be declared winner of the 2018/2019 CAF Champions league final or, in the alternative, to see the disputed return leg of the CAF Champions league final replayed in its entirety, would fall outside the scope of these appeal proceedings and would be inadmissible as they violate the principle of *res judicata*. Regarding this principle, the Second Respondent argues that, in the present case, the requirement of Swiss law are fulfilled as there is an identity of the parties and an identity of the subject matter of the dispute (same facts and same issues than the ones submitted to the First Panel and then dealt with by the CAF judicial bodies). As to the *res judicata* effect of the Disciplinary Board Decision 001, the EST contests that the Appellant had no legal standing to appeal that decision as, by virtue of Article 54 para. 1 of the CAF Disciplinary Code, all parties having a direct interest in a sanction/decision are entitled to lodge an appeal before the Appeals Board. In failing to do so, the WAC would now be prevented from submitting requests for relief that entail a supplementary sanction (cancellation of the Disputed Match and its replay) to be imposed on the EST.

***b. As to the substance of the appeal***

97. The Second Respondent observes that in its Appealed Decision, the Appeals Board confirmed the Disciplinary Boards finding that the WAC abandoned the Disputed Match by refusing to resume play and the sanctions imposed on the WAC (loss of the Disputed Match by forfeit and financial sanctions which are not disputed in the present proceedings). Further, the Second Respondent argues that the WAC’s abandonment of the Disputed Match is

unquestionably proven. In support of its position, it submits that all evidence in the file, in particular the official reports from Referee, the Match Commissioner, the General Coordinator and the Security Officer, clearly confirm that the Disputed Match was only interrupted because the WAC's players refused to continue playing in the 61<sup>st</sup> minute of the game exclusively because of the absence of the VAR. This fact would be confirmed by the video footage of the Disputed Match. Thus, contrary to what the Appellant contends, the Disputed Match was not interrupted because the conditions for the game and security were not fulfilled. In fact, the security question was never an issue during the Disputed Match or during its long interruption. This issue was not even raised in the WAC's initial claim, dated 2 June 2019, which dealt exclusively with the lacking VAR. The alleged lack of visibility and the "*sequence of unforeseen consequences*" that allegedly has "*interrupted the normal course of events*" brought forward by the Appellant would also be a wrong pretext invented by the latter. Indeed, the smoke bombs only disturbed the TV cameras which were taking their footage from the stadium's upper stands. However, visibility was very clear on the pitch and neither the WAC nor the EST complained before, during or after the interruption of the game about the security conditions or about the visibility on the pitch. Thus, it would be clear that the Appellant refused to resume playing and that the Appealed Decision correctly found that the Appellant must be sanctioned with a forfeit and, accordingly, that it lost the Disputed Match.

98. The Second Respondent adds that the reason invoked by the WAC's players not to resume playing, *i.e.* the absence of the VAR, is unlawful as the VAR protocol explicitly states that "*a match shall not be invalidated*" for failure of the VAR technology, an erroneous decision involving the VAR, a decision not to analyse an incident or the analysis of an unlisted situation/decision. Moreover, the Appellant's argument regarding an alleged infringement of the principle of equality of chances would be ill-founded as both teams were deprived of the VAR during the second leg of the final whereas they could both profit from the VAR during the first leg of that final. Equality of chances could only have been jeopardized if in a specific match, the VAR had been used to analyse actions related to one team and not to the other – and this would definitely not be the case in the present matter.
99. Further, the Second Respondent argues that the WAC's behaviour was unsporting and deceptive as it was clearly communicated prior to the Disputed Match that the VAR was not available. Indeed, the WAC's players were perfectly aware, before the start of the game, that the VAR system was not operational because they had been duly informed by the First Referee. Second, the WAC's players were also informed, before the start of the game, that the Disputed Match could normally and legally be played without the VAR.
100. Based on the above, it would be clear that the Appellant bears the sole responsibility for the interruption of the Disputed Match and that the only reason that guided its decision not to resume the game was the absence of the VAR, although the WAC's players knew, before the start of the game, that it was not functional.
101. In these circumstances, the competent CAF bodies correctly declared the EST winner of the Disputed Match. Indeed, first, the Disputed Match was stopped by the relevant authority, *i.e.* the Referee. Second, the victory of the Disputed Match was decided after the WAC had been granted a reasonable period of time (80 minutes) to resume play although no regulation

obliged the Referee to wait that long. Finally, the decision to declare the EST winner of the Disputed Match was taken in accordance with the regulations in force, in particular Article XI (17) of the CAF Champion's League rules pursuant to which "*if for any reason, a team withdraws from the competition or does not show up in a game, with the exception of cases of force majeure as recognized by the Interclub Commission, refuses to play or leaves the playground before the regular end of the game without the authorization of the referee, it shall be considered to have lost and shall be definitively eliminated from that competition*".

102. According to the Second Respondent, it follows from the press release accompanying its partial award that the First Panel considered that the Disputed Match was only stopped due to the WAC's decision not to resume play and that the subsequent consequences must be exclusively borne by the Appellant. The CAF's Competent bodies confirmed this position by finding that the WAC lost the Disputed Match by forfeit and by adopting several measures, such as awarding the trophy to the EST immediately after the end of the Disputed Match in accordance with Article X of the CAF Champions League regulations, publishing an official press release announcing that the EST to be the winner of the 2018/2019 CAF Champions League, the payment to the EST of the bonus due to that winner and entering the EST, in such capacity, into the FIFA Clubs World Cup – 2019.

103. In view of all of these considerations, the Second Respondent requests the following relief:

*On the admissibility of the appeal: The appeal filed by the Wydad Athletic Club is inadmissible;*

*On the merits: In the alternative, the appeal filed by the Wydad Athletic Club shall be dismissed;*

*In any event: Wydad Athletic Club shall be ordered to make a contribution to the Espérance Sportive de Tunis's legal and other costs related to these proceedings, in an amount that the Panel deems appropriate.*

## **V. EVIDENTIARY PROCEEDINGS**

104. At the hearing, several witnesses were heard in their testimonies and cross-examined.

105. During his testimony, Mr. Ahmad Ahmad, the President of the CAF, stated that after having heard, 20 minutes before the start of the Disputed Match, that the VAR was not available, he had envisaged not to start the Disputed Match. He further stated that it was the CAF Executive Committee which had taken the decision to have the final of the CAF Champions League played with the VAR but did not confirm that a functional VAR would be a necessity. He further testified that he and other members of the CAF Executive Committee felt threatened during the interruption of the game as they had the feeling that the security was not sufficient within the stadium. He testified, *inter alia*, that the CAF Executive Committee had taken the decision to replay the Disputed Match (decision which was annulled by the First Panel), because the members of that Committee considered that the match conditions for the second leg were not met. During his cross-examination, Mr. Ahmad Ahmad acknowledged that the transport of the VAR to the stadium where the Disputed Match was played, was the CAF's responsibility. Moreover, he explained that he went down on the pitch not to interfere

but to talk to the two presidents of the clubs in order to bring them to reason and that he did not speak to the Referee or the Match Commissioner. In response to questions from the Panel, Mr. Ahmad Ahmad testified that at the end of the Disputed Match he was afraid for his life and that he felt threatened in his capacity as President of the CAF. He further testified that, after the long negotiations that were held during the interruption of the game, it was ultimately the coach of the WAC who declared that his team would not resume play if the action from the 58<sup>th</sup> minute could not be reviewed with the VAR and the disallowed goal validated. He eventually testified that the tension within the stadium rouse after the disallowed goal and, particularly, after the president of the WAC left the stands and went down on the pitch.

106. The second witness to be heard was Mr. Constant Omari, 2<sup>nd</sup> Vice-President of the CAF. He stated that he was not in the stadium during the Disputed Match but in Kinshasa where he watched the Disputed Match on TV. He further stated that he was not surprised by the situation in the stadium since the EST supporters have a long history in troublemaking and would, whether their team wins or loses, always cause damages. He further noted that the tension in the stadium was visible and stated that the CAF Executive Committee took its decision on 5 June 2019 because the conditions for attributing the victory to the EST after the Disputed Match were not met as the quorum of the CAF Executive Committee and of the Emergency Committee was not met, entailing that the decision to declare the EST winner of the Disputed Match was flawed from a formal point of view. In response to a question from the Panel pointing out that the CAF Executive Committee decision dated 5 June 2019 only referred to “*political and strategical reasons*” to order the replay of the Disputed Match and did not mention any article of the CAF regulations that would have been infringed by the decision to declare the EST winner of the Disputed Match, Mr. Omari stated that, according to the CAF Statutes, the CAF Executive Committee has competence to decide upon all questions which are not of the competence of another CAF body and reiterated his view that the decision to declare the EST winner of the Disputed Match was flawed.
107. The third witness to be heard was Mr. Ahmed Yahya, Match Commissioner of the Disputed Match. He confirmed that the VAR is a primordial element for the final of the CAF Champions League and that he believes that the Disputed Match could have been played to the regular end if the VAR had been functional. He further testified that the Referee wanted to continue playing the Disputed Match, but that the WAC’s players refused to do so. He also stated that he does not know whether or not the Referee officially summoned the WAC’s players to order them to resume playing. He added that that even after the VAR had become functional, the WAC’s players refused to resume play and that after the long negotiations, to which he assisted, it was the coach of the WAC who declared that his team would not continue playing if the VAR could not be used to review the incidents at the 58<sup>th</sup> minute (the disallowed goal). He testified that it was the CAF Executive Committee’s decision to proceed to the awarding of the medals and that although there was room to be afraid for one’s security, the massive presence of security forces led to believe that the situation could be handled. Further, he stated that, during the negotiations, he did not hear a discussion about a possible replay of the Disputed Match. He stated that the sole cause of the end for the Disputed Match was the WAC’s refusal to resume play and that there could not be a doubt that the WAC would not restart playing. He pointed out that the Referee had, on several occasions, asked the WAC’s

players to continue playing and that the conditions for playing the Disputed Match were fulfilled, in the first period and in the second period, although during the interruption, the conditions worsened. However, according to Mr. Yahya, the Disputed Match could have resumed. He finally testified that when he asked the Referee to apply the rules, *i.e.* to whistle the end of the Disputed Match, he had no doubt that there was absolutely no possibility to make the players of the WAC resume playing.

108. The last witness to be heard was Mr. Papa Bakary Gassama, the Referee of the Disputed Match. He stated that, before the start of the Disputed Match, he informed the captains of the two teams that the VAR was not operational yet and that the Disputed Match could be validly played without the VAR. He testified that – after the Disputed Match had been interrupted – the WAC’s players repeatedly advised him that they would not resume playing without the VAR being functional. In response to the question why he did not immediately whistle the end of the Disputed Match once the WAC’s players refused to play, he stated that these were special circumstances as it was the final of the CAF Champions League and that officials were negotiating to find a way for the Disputed Match to continue. He further specified that the reason to end the Disputed Match was not because many people had entered the pitch in the course of the interruption, but because the WAC’s players had many times told him they did not want to resume play. In response to questions from the Panel, he stated that the visibility conditions during the game were sufficient and that he was sure that the players of the WAC would not come back to play as they refused to play if they could not review the disallowed goal. He finally testified that the captain of the WAC team had said that the President of the WAC had told them not to continue playing.

## VI. JURISDICTION

109. Article R47 of the Code provides, *inter alia*, as follows:

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

### A. Arbitration Agreement

110. Article 48 of the CAF Statutes reads as follows:

*“1. CAF authorizes appeals to the Court of Arbitration for Sport; an independent arbitration tribunal based in Lausanne (Switzerland), to resolve any disputes between CAF, national associations, members, leagues, clubs, players, officials, and licensed match agents and licensed players’ agents.*

[...]

3. *Only CAS shall be empowered to adjudicate on appeals against any decisions or disciplinary sanctions taken in the last instance by any legal body of CAF or FIFA, a national association, league, or club. [...]*”

111. The jurisdiction of the CAS, which has not been disputed by any Party, arises therefore out of Article 48 of the CAF Statutes, in connection with Article R47 of the Code, and the Parties expressly confirmed that the CAS had jurisdiction to decide the present appeal by signing the order of procedure.

112. In the light of the foregoing, the Panel finds that there is a valid basis for the CAS to hear the present appeal.

## **B. *Res Judicata* Principle**

113. Although not having formally disputed the CAS’s jurisdiction, the Respondents claim that some of the Appellant’s requests fall outside the Panel’s mandate because of the *res judicata* principle. In support of their submissions the Respondents submit that some of the requests have already been definitely rejected by the First Panel, and others run against the final and binding decision of the Disciplinary Board Decision 001. The conclusion that some of the requests for relief fall outside of the scope of this appeal would be confirmed by the fact that the Panel’s power of review is limited to the object of the dispute as it was dealt with by the previous instance, *i.e.* the Board of Appeals in its Appealed Decision, and would not cover the sanctions imposed against the EST by the Disciplinary Board Decision 001 as this decision was not appealed.

114. In this respect, the Panel observes, as a preliminary point, that the Respondents argument, according to which by failing to challenge the Decision 001 imposing sanctions on the EST the WAC accepted the consequences of that decision and cannot cure that failure by attacking the Appealed Decision, could be understood as being an objection against the WAC’s standing to appeal. However, a plea relating to the lack of standing to sue is, according to settled jurisprudence of the CAS (CAS 2017/A/5258), related to the merits of the case. This potential issue will therefore be addressed in the substantive part of this arbitral award, in so far as necessary.

### **1. *The Effects of Res Judicata in Arbitration***

115. The Panel observes that it is generally accepted that the choice of the place of arbitration also determines the law to be applied to arbitration proceedings. Since the *situs* of this arbitration is in Switzerland, it is the PILA that applies (DUTOIT B., *Droit international privé Suisse*, commentaire de la loi fédérale du 18 décembre 1987, Bâle 2005, N. 1 on Article 176 PILA; TSCHANZ P-Y., in *Commentaire romand, Loi sur le droit international privé - Convention de Lugano*, 2011, n° 1, p. 1627, ad art. 186 LDIP). Article 176 para. 1 PILA provides that the provisions of Chapter 12 of PILA regarding international arbitration shall apply to any arbitration if the seat of the arbitral tribunal is in Switzerland and if, at the time the arbitration

agreement was entered into, at least one of the parties had neither its domicile nor its usual residence in Switzerland.

116. The CAS is recognized as a true arbitral tribunal (ATF 119 II 271). It has its seat in Switzerland. Chapter 12 of the PILA shall therefore apply, the Parties in the present dispute having neither their domicile nor their usual residence in Switzerland.
117. In a decision dated 27 May 2014, the SFT held that public policy within the meaning of Article 190(2)(e) PILA is violated when some fundamental and generally recognized principles are contravened, leading to an insufferable contradiction with the sense of justice, such that the decisions appear incompatible with the values upheld in a state of law (ATF 140 III 278 at 3.1; ATF 132 III 389 at 2.2.1). An arbitral tribunal violates procedural public policy if it disregards the *res judicata* effect of a previous decision or if the final award departs from the opinion expressed in an interlocutory award disposing of a material preliminary issue (ATF 136 III 345 at 2.1, p. 348; ATF 128 III 191 at 4a, p. 194).
118. Further, according to the SFT, there is *res judicata* when the claim in dispute is identical to that which was already the subject of an enforceable judgment (identity of the subject matter of the dispute). This is the case when both proceedings involve the same parties and the same matter in dispute. The identity must be understood from a substantive and not grammatical point of view, so that a new claim, no matter how it is formulated, will have the same object as the claim already adjudicated (ATF 140 III 278 at 3.3; ATF 139 III 126 at 3.2.3).
119. In some circumstances (depending on the legal effects at stake arising out of the *res judicata*), the existence of a previous decision or judgment will entail the lack of jurisdiction of a subsequent arbitral tribunal. As recalled by the panel in case CAS 2018/A/5888, the SFT has held that “[q]uant à l'autorité de chose jugée, ce principe interdit au juge de connaître d'une cause qui a déjà été définitivement tranchée; ce mécanisme exclut définitivement la compétence du second juge” (ATF 127 III 279), which can be freely translated to English as follows: “With regard to the *res judicata* authority, this legal principle prevents the judge from entertaining a case that has been already and definitively decided; this mechanism excludes the competence of the second judge”. Indeed, under Swiss law, *res judicata* is part of the procedural public policy, and it applies both domestically and internationally (SFT 4A\_633/2014).
120. This aspect of the *res judicata* principle constitutes, as confirmed by the constant CAS case law (CAS 2013/A/3256 and CAS 2018/A/5800), the so-called “Sperrwirkung” (prohibition to deal with the matter = *ne bis in idem*), the consequence of which is that if a matter (with *res iudicata*) is brought again before the adjudicatory authority, the latter is not even allowed to look at it, but must dismiss the matter (insofar) as inadmissible. The second aspect of that principle being the so-called “Bindungswirkung” (binding effect of the decision), according to which the judge in a second procedure is bound to the outcome of the matter decided in *res judicata*.

## **2. No Res Judicata of Decision of Tribunals of Sport Bodies**

121. The Panel notes that according to Swiss law the principle of *res judicata* only applies to arbitral awards and court decisions. The types of decisions that enjoy *res judicata* effects are defined by law. It is not within the Parties' autonomy to extend the number or types of decisions that are vested with *res judicata* effect. If it were otherwise, a violation of the *res judicata* principle could not – contrary to jurisprudence of the SFT – constitute a violation of the *ordre public*. There is no provision in Swiss law that confers *res judicata* effects to decisions of association tribunals. Decisions of a judicial body of a sport federation, which are not arbitral tribunals, are mere embodiments of the will of the federations concerned (SFT 4A-374/2014, consid. 4.3.2 and SFT 4A\_222/2015, consid. 3.2.3.1). Hence, the Decisions 001 and 002 of the CAF Disciplinary Board cannot be vested with a *res judicata* effect in the sense of Article 59, para. 2 lit e of the CCP.

## **3. The Extent of the Res Judicata effect of the decision of the First Panel**

122. As a consequence of the above, only the decision rendered by the First Panel in the cases TAS 2019/A/6336 & 6338, could eventually be vested with *res judicata* effect. However, the award of the First Panel has no “Sperrwirkung” in relation to the case at hand.
123. The *res judicata* effect only goes as far as the panel (that issued the decision in question) wanted to decide on the matter in dispute. Issues that the First Panel deliberately left undecided are not covered by the *res judicata* effect (STAEHELIN D., in STAEHELIN/STAEHELIN/GROLIMUND, Zivilprozessrecht, 3<sup>rd</sup> ed. 2019, § 24 no. 11). In the present case, none of the Appellant's requests for relief (in these proceedings) have been finally and bindingly adjudicated by the First Panel.
124. Indeed, contrary to what the Second Respondent seems to allege, the First Panel has not finally rejected the WAC's request to be declared winner of the 2018/2019 CAF Champions League, allocated the premium of USD 2.5 million due to the winner of the final of the 2018/2019 CAF Champions League, or in the alternative, to have both legs of the final annulled and the final replayed on neutral field without regard to the result of the first leg match. In this regard, it follows from para 146 of the final award in case TAS 2019/A/6336 & 6338, that the First Panel held that it had to dismiss these requests for relief as the Disciplinary Board and/or the Appeals Board were the only competent bodies for adjudicating the facts at stake and appealed decision did not emanate from one of them (“*Les prétentions supplémentaires du WAC sont rejetées. Comme le Jury disciplinaire et le Jury d’appel sont les seuls organes compétents pour connaître des faits objets de la décision querellée, la Formation statuant sur appel contre une décision du Comité exécutif de la CAF ne peut pas altérer ou remplacer cette décision. Pour cette raison, la Formation ne peut pas remplacer la décision querellée en déclarant que le titre de vainqueur de la Ligue des Champions de la CAF 2018/2019 soit attribué au WAC, allouant au WAC la prime des USD 2.5 millions due au vainqueur de la finale ou subsidiairement de rejouer le match retour du 31 mai 2019 ou le match final en terrain neutre*”).
125. Further, the First Panel has not found, contrary to what the Second Respondent argues, that the responsibility for the interruption of the Disputed Match and the subsequent consequences must be exclusively born by the Appellant since it refused to resume play. In



fact, the First Panel had no authority to adjudicate on this subject and it only established that the Executive Committee was not competent to decide and therefore, the First Panel decided to set aside the Decision of the Executive Committee and to refer to the competent disciplinary bodies of the CAF.

126. Moreover, although the First Panel did, in the operative part of the final award, declare that the EST could keep the trophy of the CAF Champions League Total 2018/2019, as well as the medals allocated on 31 May 2019 to the EST and its players and ordered the CAF to pay to the EST the USD 2.5 million premium due to the winner of the final of the CAF Champions League Total 2018/2019, it follows from the reasoning set out in para. 147 of that award, that the decision on these two elements of the dispute would only stand as long as the Disciplinary Board or the Appeals Board had not decided differently (*“La Formation retient que l’appel de l’EST est recevable et admis, car la décision du Comité exécutif de la CAF est annulée. En conséquence, l’EST reste – jusqu’à ce que le Jury disciplinaire ou le Jury d’appel de la CAF en décident autrement – vainqueur de la Ligue des Champions de la CAF 2018/2019 et peut conserver le trophée de la Ligue des Champions de la CAF 2018/2019, ainsi que les médailles décernées le 31 mai 2019 aux joueurs de l’EST. Sous la même réserve, il est ordonné à la CAF de payer à l’EST la prime de USD 2.5 millions qui est due au vainqueur de la Ligue des Champions de la CAF 2018/2019”*).
127. Therefore, it cannot be concluded that the attribution of the title or the premium due to the winner have been bindingly and finally adjudicated by the First Panel and that therefore the Appellant’s request violate the principle of *res judicata*.
128. Further, it follows from the content of the First Panel’s award that it only decided upon whether or not the CAF Executive Committee was competent to adopt the decision appealed in the cases CAS 2019/A/6336 & 6338 and did not decide on the merits of the dispute. This clearly follows from the fact that the First Panel referred the matter back to the competent bodies of the CAF. To conclude, therefore, no issues of *res judicata* arise here.

## VII. ADMISSIBILITY

129. Article R49 of the Code provides as follows:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. [...]”*

130. In its relevant parts, Article 48.3 of the CAF Statutes provides that *“[a]ny appeal must be filed with CAS within ten (10) days following the notification of the decision”*.
131. The Appellant received notification of the Appealed Decision by email on 15 September 2019 and filed its statement of appeal on 25 September 2019.

132. By doing so, the Appellant respected the ten (10) day period set out in Article 48.3 of the CAF Statutes to file the appeal. Moreover, the Respondents did not object to the timely filing of this appeal.
133. In the light of the foregoing, the Panel finds that the appeal is admissible.

### VIII. THE MANDATE OF THE PANEL

134. According to Article R57 of the Code, the Panel has full power to review the facts and the law. However, these powers conferred upon the Panel are limited to the matter in dispute before it. The Respondents submit that the requests (iv) filed by WAC fall outside the Panel's mandate, because the Appealed Decision only deals with a sanction issued against WAC for breaching Article 148 of the CAF Disciplinary Code. According to the Respondents, the Panel's powers according to Article R57 of the Code cannot go beyond of what has been brought before or decided by the previous instance in the proceedings against the WAC. The Appellant objects to this and submits that once the case was referred back to the CAF by the First Panel, the CAF initiated proceedings in order to address all the outstanding claims of the WAC (including its requests under iv). Thus, when it appealed the Appealed Decision, the whole matter – just as it was before the CAF authorities – now is before this Panel.

#### A. The matter before the Previous Instance

135. The Panel notes that the First Panel had referred the matter back to the “*competent CAF authorities to review the incidents which occurred in the Radès stadium on 31 May 2019, to order the appropriate disciplinary sanctions, if any, and accordingly to decide whether the second leg of the CAF Champions League Final 2018/2019 shall be replayed or not*”. Following this CAS decision, the CAF initiated proceedings on 3 August 2019. The CAF Disciplinary Board invited the WAC and the FRMF as well as the EST and the FTF to respectively supplement their initial claims dated 2 June 2019 and to file their observations concerning the incidents that occurred during the Disputed Match. Further, the WAC and the EST were invited to attend a hearing on 7 August 2019 at the CAF headquarters. It clearly follows from the above that the matter in dispute before the previous instance covered the requests submitted by the WAC in the present CAS proceedings.
136. Whether or not the respective authority was competent to decide on such requests is immaterial, since the matter in dispute is defined by the Parties' respective requests and the facts submitted by them. The Panel also notes that the Respondents contradict themselves when they argue that the disciplinary bodies of the CAF were not competent to order a replay of the match (because replaying a match is not listed in the catalogue of disciplinary measures) and at the same time maintain that ordering a replay of the match would be a “*supplementary sanction*” to the ones already imposed against the EST.
137. This above conclusion is further backed when looking at the contents of the Decision 002 (addressed to the WAC) in which the Disciplinary Board acknowledged that “*Le TAS a renvoyé le dossier aux organes compétents de la CAF [...] pour prendre les décisions qui s'imposent y compris de faire*

*rejouer le match si le jury l'estime nécessaire*" (free translation: "The CAS has sent the file back to the competent bodies of the CAF in order to take the necessary decisions, including a replay of the match").

## **B. Scope of the Appeal to the CAS**

138. The only remaining question, thus, is whether the mandate of this Panel is restricted because of some limitations flowing from the appeal filed by the Appellant. The Respondents argue that such is the case because the Appealed Decision does not deal with disciplinary measures to be imposed on EST and because the Appellant failed to appeal Decision 001.

### **1. The Appealed Decision implicitly decides upon the Appellant's requests**

139. The Panel notes that the Appealed Decision implicitly addresses whether or not the Disputed Match shall be annulled and/or replayed. As previously stated the Disciplinary Board acknowledged in the Appealed decision that "*Le TAS a renvoyé le dossier aux organes compétents de la CAF [...] pour prendre les décisions qui s'imposent y compris de faire rejouer le match si le jury l'estime nécessaire*" (free translation: "The CAS has sent the file back to the competent bodies of the CAF in order to take the necessary decisions, including a replay of the match"). This allows the conclusion that the Disciplinary Board in the Appealed Decision took a decision – at least implicitly – on the issue of the annulment/replaying of the Disputed Match. Hence, contrary to what the Respondents argue, the Appealed Decision by imposing sanctions against the WAC also disposed of the latter's claim to annul and replay the Disputed Match.

140. This conclusion is further confirmed by the fact that the Appealed Decision expressly justified its mandate by referring to the First Panel's partial award: "[i]t was then up to the competent bodies of CAF to look into the incidents that occurred in the Rades stadium on May 31, 2019, to take any appropriate disciplinary action as deemed necessary, and consequently to decide whether the Champions League second leg CAF 2018/19 must be replayed or not". This reference was then followed by the acknowledgement that the Disciplinary Board had examined the case in its meeting held on 7 August 2019.

### **2. Access to Justice**

141. The above conclusion is further backed by the following argument. If one were to assume that the CAF hid its finding with respect to the annulment / replaying of the match in Decision 001, this would seriously impact on the Appellant's right to access to justice. In this respect the Panel notes that the Decision 001 of the Disciplinary Board was only notified to the EST. If indeed, the CAF wanted to dispose of or adjudicate on the Appellant's claim (only) in the context of the Decision 001, one would have expected that such decision be notified to the parties concerned. In addition, it does not follow – in a transparent manner – that Decision 001 dealt with the Appellant's requests. Instead, when reading the operative part of the Decision 001 one cannot help but to conclude that the operative part is only addressed at EST. Consequently, at least at first sight, WAC would not even have had standing to appeal the Decision 001 (which was – in addition – not even notified to it).

142. The Panel further considers that the Disciplinary Board's choice to render two separate decisions on the matter in dispute concerning both Parties cannot infringe on the Appellant's right of access to justice. Such, however, would be the case if – as a consequence of the arbitrary decision of the CAF to issue two instead of a single decision – the WAC would be obliged to appeal not only the decision directed to it, but also the decision directed and notified to the EST only.
143. Therefore, in brief, the Panel concludes that: 1) WAC was not a party to the disciplinary proceedings against EST; 2) Decision 001 was not notified to WAC; 3) as a consequence, Decision 001 could not produce any effect towards WAC; 4) on the contrary, WAC was legitimated to appeal Decision 002 and to reiterate the same requests already submitted to the Appeal Board (including the request to annul and replay the Disputed Match); 5) WAC has rightfully notified the Appeal to EST as it could affect EST's position.

### **3. Balance of Interest**

144. As a final point the Panel notes that by following the above no harm is being done to any of the Parties. Even though the WAC only appealed the Appealed Decision, it not only directed its appeal against the CAF, but also against the EST. It follows from this that CAF and the EST clearly understood the scope of the Appellant's appeal, *i.e.* that WAC wanted to have a final and binding decision related to its claims that have been the matter in dispute already before the previous instance. If the WAC only wanted to appeal the disciplinary measure against it contained in the Appealed Decision it would not have called the EST before the CAS. Thus, EST was aware that the appeal must have a potential effect on its position and a *bona fide* interpretation of the appeal in light of the surrounding circumstance can only lead to one conclusion, *i.e.* that the whole matter as referred to by the First Panel to the CAF was now again before this Panel.

### **4. Conclusion**

145. The Panel finds that the Decisions 001 and 002 of the Disciplinary Board constitute two sides of the same coin and are intrinsically linked to each other. Thus, no limitations follow from the fact that the WAC only appealed the Appealed Decision. Consequently, the Panel finds that its mandate covers also the Appellant's requests (iv).

## **IX. APPLICABLE LAW**

146. Article R58 of the Code provides as follows:

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

147. Article 48.2 of the CAF Statutes states:

*“The Code of Sports-related Arbitration shall govern the arbitration proceedings. With regard to substance, CAS shall apply the various regulations of CAF and FIFA or, if applicable, of national associations, members, leagues and clubs, and, as a last resort, Swiss Law”.*

148. It follows from the above, that the Panel shall resolve the present appeal in accordance, primarily, with the CAF and FIFA regulations and, subsidiarily, Swiss law.

## **X. MERITS**

### **A. Standing to Appeal**

149. As a preliminary point, the Panel has to address the question, which seems to have been raised by the Respondents, relating to the Appellant standing to appeal the Appealed Decision as it omitted to lodge a formal appeal against the Decision 001 imposing sanctions against the EST. In this regard, the Panel reiterates its point of view that the Decisions 001 and 002 of the Disciplinary Board are the two sides of the same coin and that it is manifest that, in its decisions, the Disciplinary Board has, as least implicitly, decided not to annul the Disputed Match, which would have been the precondition for a replay of that same match. Given that the Appellant did file a timely appeal against the Decision 002 before the CAF Appeals Board and did direct its appeal against the CAF and the EST, it brought the whole matter, including the question of the annulment of the Disputed Match and its eventual replay, validly before the appeal instance and then before the CAS. It did so on basis of Article 54 para. 1 of the CAF Disciplinary Code pursuant to which “[a]nyone who is affected by a decision and has direct interest and was party to the decision justifying amendment or cancellation of the decision may submit it to the Appeal Board”. Contrary to what the Second Respondent argued, it is not clear from the wording of this disposition that in the circumstances of the present case, the WAC would have had standing to appeal the Decision 001 as the Disciplinary Board did not consider it to a party to that decision. This finding is not overturned by the fact that the French version of this same provision, pursuant to which “[q]uiconque est touché par une décision et a un intérêt digne de protection à ce qu’elle soit modifiée ou annulée peut porter celle-ci devant le Jury d’appel” (free translation “whomever is affected by a decision and has an interest that merits protection in that it is amended or annulled may bring that decision before the Appeals Board”), does not expressly require an appellant to have been a party to the decision.

150. In any event, as follows from para. 141 and 142 above, the Panel considers that the artificial bifurcation of the matter into two different disciplinary proceedings leading to two different decisions (Decision 001 and Decision 002) cannot be to the detriment of the Appellant as the latter has a direct interest in and is directly affected by the decision of the Disciplinary Board not to annul the Disputed Match.

151. Thus, the Panel finds that the Appellant has standing to appeal the Appealed Decision in all of its aspects.

**B. Procedural Flaws at the Previous Instance**

152. Next, the Panel notes that the Appellant argues that the proceedings before the Disciplinary Board and the Appeals Board were affected by several procedural flaws, such as the absence of an adversarial proceedings and absence to be heard in all arguments and claims.
153. In this regard, it is sufficient to recall that it is widely recognised that the *de novo* power of review that is granted to CAS Panels by Article R57(l) of the Code allows, in principle, violations of procedural rights in first instance to be “cured” by CAS in appeal proceedings.
154. The Panel further adheres to the analysis in CAS 2009/A/1880-1881, where it was determined that:
- “[T]he Panel must point out that there is a long line of CAS awards, even going back many years, which have relied on Art. R.51 of the CAS Code (“The Panel shall have full power to review the facts and the law”) to firmly establish that the CAS appeals arbitration allows a full de novo hearing of a case, with all due process guarantees, which can cure any procedural defects or violations of the right to be heard occurred during a federation’s (or other sports body’s) internal procedure. Indeed, CAS appeals arbitration proceedings allow the parties ample latitude not only to present written submissions with new evidence, but also to have an oral hearing during which witnesses are examined and cross-examined, evidence is provided and comprehensive pleadings can be made. This is exactly what happened in the present CAS proceedings, where the Appellants were given any opportunity to fully put forward their case and to submit any evidence they wished”.*
155. Therefore, even in case the WAC’s right to be heard would have been violated in the proceedings before the competent CAF bodies, any such violation was in any event cured in the present arbitration before CAS under its *de novo* competence.
156. As regards the Appellant’s argument according to which in their respective decisions against the WAC both the Disciplinary Board and the Appeals Board committed a denial of justice by not addressing the WAC’s initial claims filed with the CAF Secretariat on 2 June 2019, the Panel finds that argument is ill-founded. Indeed, as already mentioned above, it is clear from the wording of both decisions that the Disciplinary Board as well as the Appeals Board were aware of the fact that they had to adjudicate on a possible replay of the Disputed Match, which was and still is one of the Appellant’s claims. This is further corroborated by the fact that even in its decision imposing sanction against the EST, the Disciplinary Board explicitly pointed out that it could decide to order the replay of the Disputed Match if it deemed such decision necessary. The simple fact that neither the Disciplinary Board nor the Appeals Board did explicitly dismiss the WAC’s claims and arguments does not change anything to the fact that, by imposing sanctions against the WAC (Disciplinary Board) respectively confirming these sanctions (Appeals Board), both judicial bodies implicitly did so.
157. Consequently, the Panel finds that the CAF judicial bodies have not left the WAC’s claim to a potential replay of the Disputed Match unanswered and, thus, did not commit a denial of justice.

### C. The Unavailability of the VAR

158. As to the Appellant's argument drawn from the absence of the functioning VAR at the start of the return leg of the final of the 2018/2019 CAF Champions League final, the Panel considers that the absence does not constitute a violation of the principle of equality of chances as both teams, *i.e.* the WAC and the EST, were affected in the same way by this absence. In any event, it is uncontested that the absence of the VAR or a malfunction of the VAR does, according to the IFAB VAR Protocol, not invalidate a match. Hence, contrary to what the Appellant maintains, the presence of the VAR was not a "*basic condition of the game*" in the sense that it would be a condition to the validity of the Disputed Match. Consequently, the argument of the Appellant according to which, if established, the WAC's players' refusal to play in the absence of the VAR would be legitimate because the match conditions were not met during the Disputed Match, has also to be rejected.
159. Concerning the Appellant's argument that, in the present case, the conditions for the application of Article 148 of the CAF Disciplinary Code were not met, the Panel finds, first, that it follows from the testimony of the Referee as well as the Match Commissioner, during the hearing, that the visibility conditions on the pitch were sufficient and did not justify an interruption of the game. This finding is corroborated, on one hand, by the fact that neither of the teams complained, during the game, about these visibility conditions and, on the other hand, by the video footage delivered by the TV-cameras placed at the level of the pitch.
160. The Panel finds, second, that it follows from the testimonies provided during the hearing by the President of the CAF, the Match Commissioner and the Referee that up until the interruption of the game in the 59<sup>th</sup> minute, the match conditions as well as security conditions might not have been perfect but did not justify an interruption of the Disputed Match. This finding is corroborated by the fact that none of the teams called upon the Referee or any other match official to order such interruption. Moreover, not only is it uncontested that during the interruption of play in the 59<sup>th</sup> minute the WAC's players requested the Referee to use the VAR to review the disallowed goal in the 58<sup>th</sup> minute, but the video footage provided by the Appellant, in particular from the 59<sup>th</sup> minute of the game onwards, provides clear proof that the WAC's players and its coach were requesting the Referee to vision the VAR. As to the WAC's players' refusal to resume play without the VAR, the Panel finds that the testimonies of witnesses heard during the hearing as well as the official reports submitted by the Parties establish to the Panels' comfortable satisfaction that such refusal was expressed in the 59<sup>th</sup> minute.
161. Given that the President of the CAF and the Match Commissioner both testified that, at the end of the negotiations, *i.e.* at a moment when the VAR was already operational, the coach of the WAC's team clearly stated that they would not resume play if the VAR could not go back to the disallowed goal from the 58<sup>th</sup> minute, the Panel is comfortably satisfied that the WAC's refusal to play persisted up until the end of these negotiations and the moment the Referee whistled the end of the Disputed Match.
162. The Panel considers that under these circumstances the Referee did not, contrary to what the Appellant submits, have the obligation to summon the WAC's players to restart the game.

First, it is clear from all the testimonies that at the end of the negotiations, the WAC's coach stated that his team would not resume play under the given conditions. Second, the Referee as well as the Match Commissioner testified that they were sure that the WAC's players would not resume play. Finally, and most importantly, the situation at hand and the events that occurred after the 59<sup>th</sup> minute of the game are by no means comparable to the situation that led to the award in case CAS 2015/A/3874. Indeed, the Disputed Match was not interrupted for security issues but for a foul play and it was the WAC's players who informed the Referee that they would not resume play under the given conditions. Further, the players were not sent off the pitch by the Referee, so it was not up to the Referee to summon them to come back to the pitch and resume play.

163. This conclusion is not invalidated by the argument according to which during the interruption of the Disputed Match the security conditions worsened to such an extent that the game could not resume. First, it is apparent from the video footage submitted to the Panel that although there were many unauthorised people on the pitch, the match officials seemed to have the situation under control and both teams could stay on the pitch. Second, the Match Commissioner testified that he had no doubts that the security conditions would have allowed a restart of the Disputed Match after the long interruption that occurred in the 59<sup>th</sup> minute.
164. This conclusion is not overturned either by the statement of the President of the CAF that he feared for his life. Indeed, he specified that he felt threatened in his function as President of the CAF and not as simple spectator of the Disputed Match. Further, the Panel understood the President of the CAF in the way that the security conditions went really bad after the Referee had whistled the end of the Disputed Match and spectators invaded the pitch and its surroundings.
165. Concerning the Referee's decision to whistle the end of the Disputed Match, the Panel notes that both the Match Commissioner and the Referee testified that it was the Referee's sole responsibility to whistle that end as the Match Commissioner had not given him the order to terminate the Disputed Match but had asked him to apply the rules.
166. In view of the above, the Panel holds that there are no elements allowing it to conclude that the match conditions were not met before the interruption of the Disputed Match in the 59<sup>th</sup> minutes and that there is no tangible evidence that the Referee has or should have whistled the end of the Disputed Match for any other reasons than the WAC's refusal to resume play. Thus, the Referee's decision to whistle the end of the Disputed Match cannot, contrary to what the Appellant's maintains, be considered as arbitrary and none of the provisions invoked by the Appellant, if applicable, could have required a replay of that game.
167. Accordingly, the Panel finds that, in the present case, the WAC's players decision not to resume play after the interruption of the Disputed Match in the 59<sup>th</sup> minute of the game constitutes an abandonment in the sense of Article 148 of the CAF Disciplinary Code pursuant to which “[i]f a team refuses to play a match or to continue playing one which it has begun, it will be sanctioned with a minimum fine of twenty thousand US dollars (\$20'000) and will, in principle, forfeit the match” and that the Appeals Board was correct in confirming, by its Appealed Decision, the Disciplinary Board's decision to declare that the WAC lost the Disputed Match by forfeit and



that the WAC had to pay a penalty of USD 20'000. The Panel notes that the Appellant has not submitted any arguments in relation to the third point of the operative part of the decision confirmed by the Appealed Decision – imposing a penalty of USD 15'000 for the usage of smoke bombs by its supporters – and did not bring any argument as to the proportionality of the sanctions imposed against it.

168. In view of all of the above considerations, the Panel concludes that the Appealed Decision is lawful and thus to be upheld and that the Appellant's appeal is to be dismissed.
169. Any other and further claims or requests for relief are dismissed.

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules that:**

1. The Court of Arbitration for sport has jurisdiction to rule on the appeal filed by the Wydad Athletic Club against the decision issued on 15 September 2019 by the Appeals Board of the Confédération Africaine de Football.
2. The appeal filed by the Wydad Athletic Club against the decision issued on 15 September 2019 by the Appeals Board of the Confédération Africaine de Football is dismissed.
3. The decision issued on 15 September 2019 by the Appeals Board of the Confédération Africaine de Football is confirmed.
4. (...).
5. (...).
6. All other motions or prayers for relief are dismissed.