Arbitration CAS 2011/A/2343 CD Universidad Católica v. Fédération Internationale de Football Association (FIFA), award of 1 March 2012

Panel: Mr Ricardo de Buen Rodríguez (Mexico), President; Mr Efraim Barak (Israel); Mr Rui Botica Santos (Portugal)

Football
Disciplinary proceedings against a club gone into administration
Characterisation of a letter as a decision
Body responsible for closing FIFA disciplinary proceedings
Baseless proceedings
Amendments to original claims

1. **A letter in which FIFA informs the Appellant of its decision not to intervene in a specific procedure which the Appellant asked to initiate, rejects a specific request and resolves the petition of the Appellant in a mandatory manner is a decision within the meaning of the definition established by the Swiss Federal Tribunal. Moreover, if there are no internal remedies available against this decision, the latter is final and may be appealed with the CAS as it complies with all the requirements of Article R47 of the CAS Code.**

2. **Pursuant to the clear wording of the articles of the FIFA Disciplinary Code, normally and generally, a decision of closing the disciplinary proceedings should be taken by the FIFA Disciplinary Committee, within a proceeding and not only in an administrative preliminary manner. A club or any other party subject to the jurisdiction of FIFA which has a legitimate right, especially when such a legitimate right is based on a decision of a FIFA judicial body, is entitled to be given the opportunity to bring his full arguments and pleadings to the Disciplinary Committee before a decision is taken. This is essential, in order for the involved parties to be granted a fair procedure, with due legal certainty and preserving their corresponding basic right to be heard.**

3. **According to Article 107 of the FIFA Disciplinary Code, disciplinary proceedings against a club may be closed upon discretional decision of the Disciplinary Committee if this club declares bankruptcy. The acknowledgement and the use by the club's creditor of State bankruptcy proceedings is a main factor which may justify the closure of the proceedings at FIFA.**

4. **Article R56 of the 2010 CAS Code specifically determines that the amendment of requests is not authorized after the submission of the appeal brief. Therefore, the Appellant is not prevented from amending in the appeal brief the relief requested in the statement of appeal.**

Club Deportivo Universidad Católica (the "Appellant") is a football club in the city of Santiago, Chile, registered with the Football Association of Chile, which in turn is affiliated to FIFA.

Fédération Internationale de Football Association (FIFA; the "Respondent") is the global governing body of football. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and players, worldwide. FIFA is an association established under Swiss law with headquarters in Zurich, Switzerland.

On 26 February 2010, the Dispute Resolution Chamber (DRC) of FIFA issued a decision in favour of the appellant ordering the Spanish club Albacete Balompié S.A.D. ("Albacete") to pay the Appellant, as training compensation, the amount of EUR 305,833 plus an interest rate of 5%, as from 21 September 2006. Albacete had to pay the above-mentioned amount within 30 days.

On 4 May 2010, Albacete informed FIFA that the club was subject to an insolvency procedure before a Spanish Court.

On 4 August 2010, and due to the non payment of the awarded amount by Albacete, the Appellant requested that the case be forwarded to the FIFA Disciplinary Committee.

On 11 January 2011, the FIFA administration informed the Appellant, that a disciplinary case could not be established since Albacete had gone under administration. This decision (the "Appealed Decision"), was informed to the Appellant , by virtue of a letter sent via fax, signed by Mr. Marco Villiger, Director of Legal Affairs and Mr. Oliver Jaberg, Head of Disciplinary & Governance, which states the following:

> *"Estimados señores,*
>
> *A través del Departamento del Estatuto del Jugador de la FIFA hemos recibido el expediente concerniente al asunto antes señalado en fecha 20 de diciembre de 2010.*
>
> *De éste se desprende que el 26 de febrero de 2010, la Cámara de Resolución de Disputas tomó una decisión, misma que no fue acatada por el club Albacete Balompié.*
>
> *Con fecha 4 de mayo de 2010, el Club Albacete Balompié nos informó que se encuentra en situación de Concurso de Acreedores declarado por Auto de Juzgado de 1era instancia No. 003 Albacete de fecha 22 de abril de 2010. Copia de dicho Auto consta en el expediente. Como consecuencia de esto el club no es libre de realizar pagos.*
>
> *A pedido del club Deportivo Universidad Católica de Chile de fecha 4 de agosto de 2010, el Departamento de Estatutos del Jugador sometió el asunto arriba mencionado al departamento de Disciplinary & Governance de la FIFA.*
>
> *En vista de la situación legal en que se encuentra el Club Albacete Balompié, lastimosamente tenemos que informarle que no estamos en posición de intervenir en el presente asunto y de iniciar un procedimiento disciplinario por incumplimiento del Art 64 del Código Disciplinario de la FIFA.*
>
> *Le rogamos a la Real Federación Española de Fútbol entregar esta comunicación al club Albacete Balompié lo antes posible".*

The following is the translation into English:

"Dear Sirs,

On 20 December 2010, we received the file on the above-mentioned case through the FIFA Player´s Status Department.

According to the file, on 26 February 2010 the Dispute Resolution Chamber took a decision that was not complied with by the club Albacete Balompié.

On 4 May 2010, the Club Albacete Balompié informed us that it had gone into administration as declared by the decision of the Court of First Instance no. 003 of Albacete on 22 April 2010. A copy of said decision is contained in the file. As a result, the club is not at liberty to make payments.

Further to Deportivo Universidad Católica de Chile´s request of 4 August 2010, the Player´s Status Department referred the above-mentioned matter to the FIFA Disciplinary & Governance Department.

In view of the legal situation in which the club Albacete Balompié finds itself, we regret to inform you that we are not in a position to intervene in this matter and institute disciplinary proceedings for infringement of art. 64 of FIFA Disciplinary Code.

We request the Spanish Football Association to forward this communication to the Club Albacete Balompié as soon as possible".

On 31 January 2011, the Appellant filed a statement of appeal with the Court of Arbitration for Sport (CAS), pursuant to the Code of Sports-related Arbitration (the "Code"), challenging the Appealed Decision. In the statement of appeal the Appellant requested CAS to:

a) accept this Appeal against the decision of FIFA from 11 January 2011, determining that the decision passed by the Dispute Resolution Chamber against Real Albacete Balompié is enforced by the FIFA Disciplinary Committee in accordance with the FIFA Disciplinary Code; and

b) determine, in case the mentioned club fails to pay the amount due to the Appellant during the disciplinary investigation, the enforceability of the measures established in the article 64 of the FIFA Disciplinary Code to Real Albacete Balompié.

On 9 February 2011, the Appellant filed its appeal brief, together with supporting documents. In the appeal brief the Appellant requests the CAS:

"1. To accept the appeal, determining to FIFA the opening of the disciplinary investigation against Albacete Balompié, according to the article 64 of the Disciplinary Code, due to the non payment of the training compensation regarding the player Nicolás Nuñez established by the DRC.

2. To determine that in case the disciplinary procedures are opened and even thought Albacete Balompié refuses to comply in full with the DRC decision, the Disciplinary Committee is obliged to apply the sanctions stipulated in the art. 64 of the Disciplinary Code.

We draw the attention to the fact that in case the request 1 is granted, the request 2 shall be also automatically granted because in the future the Disciplinary Committee, when analysing the possible imposition of sanctions, may sustain the same position currently taken by the FIFA administration, meaning that a new appeal to CAS should made, making the current procedures almost irrelevant.

3. To condemn FIFA to bear all costs of the case and legal fees to the Appellant".

On 8 March 2011, the Respondent filed its answer to the appeal, with the following requests:

"1. To declare the Appellants appeal inadmissible.

2. Alternatively, to reject the Appellant´s appeal in its entirety.

3. To order the Appellant to bear all costs incurred with the present procedure and to cover all legal expenses of the Respondent related to the present procedure".

The Appellant's position and arguments can be summarized as follows**:**

- According to the rules applicable to the case (FIFA Statutes and FIFA's Disciplinary Code), FIFA is obliged to enforce a DRC decision and to open a disciplinary investigation.
- There is no rule in the Statutes and Disciplinary Code allowing FIFA to deny the opening of a disciplinary investigation due to insolvency procedures carried against the debtor club.
- FIFA and Universidad Católica are not parties of the insolvency proceedings and are not bound by decisions made by the Spanish ordinary court.
- FIFA is a private association, created under the Swiss legislation, subject to the Swiss Judicial system and not to Spanish ordinary courts.
- Training Compensation may only be charged by the Appellant within the FIFA framework; therefore the decision referring the Chilean club to ordinary courts in Spain is illegal and is in breach of the FIFA Statutes themselves.
- The FIFA decision refusing to enforce the DRC award constitutes a clear denial of justice.
- According to the FIFA Statutes, the DRC decision shall be mandatorily fulfilled by the parties involved.
- There are several stipulations in the FIFA rules regarding the need to maintain the independence of its members, to avoid third party influence and to refuse government intervention.
- FIFA does not accept external interventions and has strongly reacted in several cases in order to avoid such intervention. However in the Appellant´s case, no positive reaction took place.
- The examples brought regarding the FIFA´s position on external influence show the standard practice of the entity that, unfortunately, was not applied in the current case.

The Respondent's position and arguments can be summarized as follows**:**

- The Appellant's request for relief listed in his Statement of Appeal varies with regard to the one listed in its Appeal Brief, regarding the payment of cost, thus, only the requests mentioned in the Appellant's Statement of Appeal shall be taken into consideration.
- The FIFA letter dated 11 January 2011 cannot be regarded as a decision.

- As soon as national bankruptcy law obliges the relevant parties, in this case the debtor and the Appellant, to bring their disputes and claims related thereto before ordinary courts, the relevant matter may not be pursued in front of FIFA's decision making bodies.
- FIFA's jurisdiction ends in affairs which involve matters where the exclusive jurisdiction of the ordinary court is usually established, such as matters pertaining to insolvency and bankruptcy (law).
- This matter is not a matter of denial of justice, since the Appellant could have (and should have) brought its claim before the competent court at national level.
- The case in this affair is exactly what Art. 107 b) of the FIFA Disciplinary Code is referred to, which establishes that "proceedings may be closed if a party declares bankruptcy", and all the conditions established in the mentioned article are fulfilled, considering that the Spanish court declares Albacete Balompié S.A.D. to be in voluntary bankruptcy.
- The Political Interference mentioned by the Appellant in its appeal brief, and the examples given, have nothing to do with the present case.

Following a request from the Appellant, and after hearing the opinion of the Respondent, on 30 March 2011, the CAS Court Office informed the parties that the President of the Panel had decided there were no exceptional circumstances to justify a further exchange of written submissions, in accordance with article R56 of the Code, and that the Appellant's request for a second exchange of written submissions was denied.

A hearing took place on 22 June 2011, in Lausanne. At the closing of the hearing the parties expressed their satisfaction with the way the hearing was conducted and confirmed their satisfaction in respect to the right to be heard.

On 14 July 2011, the Appellant sent a correspondence to the CAS Court Office attaching a translated version of a decision rendered by the Court of Albacete on 22 May 2011, document that was not in the file before, and requesting its admissibility as new evidence since the decision had been rendered after the hearing in the present case took place.

On 18 July 2011, the Appellant sent to the CAS Court Office the version in Spanish of the Court of Albacete's decision dated 22 May 2011.

On 18 July 2011, the Respondent objected to the Appellant's new submissions by alleging that, pursuant to article R56 of the Code, the Parties shall not be authorized to supplement its arguments after the submission of the appeal brief and of the answer.

On 3 October 2011, the Appellant further sent a correspondence attaching a document that was not on the file before, requesting it be used as new evidence.

On 4 October 2011, the CAS Court Office, on behalf of the Panel informed that the written submissions phase had been closed and further written submissions were no longer admissible, giving the Respondent three days to express its opinion.

On 5 October 2011, FIFA sent a communication to the CAS Court Office, expressing that FIFA did not agree with the filling of submissions at that stage of the procedure.

After taking the positions of both parties in due consideration, on 17 October 2011, the CAS Court Office, on behalf of the Panel, confirmed to the parties the understanding that the written submissions phase had been closed and informed the parties that the Appellant´s new submission dated 3 October 2011 was inadmissible.

LAW

Jurisdiction

1. The CAS jurisdiction derives from Art. R47 of the Code, from Art. 62 and 63 of the FIFA Statutes. It follows that CAS has jurisdiction to rule on this dispute.

2. According to Art. R57 of the Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which replaces the decision challenged or may annul the decision and refer the case back to the previous instance.

3. Regarding the Respondent's allegations, it is important to establish, as a necessary condition to the jurisdiction of the CAS in this case, that the Panel considers that the letter dated 11 January 2011 constitutes a decision in the sense of the Code, susceptible to an appeal to the CAS. The Panel's considerations regarding this topic will be explained in the chapter dealing with the merits of this award.

Admissibility

4. The Appealed Decision was issued and notified to the Appellant on 11 January 2011 and the statement of appeal was filed 31 January 2011, within the twenty-one days deadline specified in the FIFA Statutes and the Code. No further stages of appeal against the Appealed Decision were available at FIFA level. The appeal therefore complies with the requirements of Art. R48 of the Code. Accordingly, the appeal is admissible.

Applicable Law

5. According to Art. R58 of the Code,

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

6. In this case, therefore, for the evaluation of the Appealed Decision, FIFA rules and regulations have to be applied primarily, and Swiss law subsidiarily.

7. It is worth noting, in order to avoid any confusions or misunderstandings that even when reference will be made in the merits of this award to Spanish Law, this will be a mere reference due to the study of a specific order by a Spanish Court, whose existence is proven in the file, but this Panel will not apply Spanish Law in this award.

The merits of the dispute

A Does the letter of 11 January 2011 constitute a decision susceptible to an appeal to the CAS?

8. The Respondent considers that the letter of 11 January 2011 cannot be regarded as a decision subject to an appeal to the CAS.

9. This allegation should be examined, inter alia, in light of Art. R47 of the CAS Code, which reads as follows:

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

An appeal may be filed with the CAS against an award rendered by the CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules applicable to the procedure of first instance".

10. Also, Art. 63.1 of FIFA Statutes, states that:

"Appeals against final decisions passed by FIFA´s legal bodies and against decision passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question".

11. The following is the definition established by the Federal Tribunal in respect of the meaning of a "decision":

"the decision is an act of individual sovereignty to an individual, by which a relation of concrete administrative law, forming or stating a legal situation, is resolved in an obligatory and constraining manner. The effects must be directly binding both with respect to the authority as to the party who receives the decision (cf. ATF 101 Ia 73)".

12. FIFA's position on this topic is mainly based on the argument that the letter sent by the FIFA administration informing the Appellant that FIFA is not in a position to deal with the pertinent matter due to the legal situation of the debtor cannot be considered as a decision passed by one of FIFA's legal bodies.

13. This position and allegation of FIFA is rejected by the Panel and thus should be denied. Taking due care and considering the wording of the letter dated 11 January 2011 and its actual effect on the request of the respondent to open disciplinary proceedings against Albacete FC, and in the light of the above-mentioned definitions, the Panel concludes that the such letter is indeed a decision that can be the subject of an appeal to CAS, taking into account the following arguments.

14. The decision contained in the letter is a final decision of FIFA, wherein the following contents of the letter are important:

"In view of the legal situation in which the club Albacete Balompié finds itself, we regret to inform you that we are not in a position to intervene in this matter and institute disciplinary proceedings for infringement of art. 64 of the FIFA Disciplinary Code".

15. FIFA informs the Appellant of its decision not to intervene in a specific procedure which the Appellant asked to initiate, rejecting a specific request, and resolving the petition of the Appellant in a mandatory manner.

16. There are no internal remedies against this decision at FIFA, so it is indeed a final decision, and therefore complies with all the requirements of Art. R47 and may be appealed at CAS.

17. The core of the appealed decision is the decision of FIFA not to open a disciplinary procedure. Thus the core of the award in this case will be focused on this essential issue.

B. The obligation of FIFA to open a disciplinary procedure

18. Due to the correlation between all of them, in order to solve the dispute summarized in the heading of this item B., the first seven issues in which the Appellant's position is summarized and the arguments submitted by the Respondent in this respect will be jointly analysed.

19. Before entering into the specific analysis of the facts of this case, which result in the decision in this award, the Panel considers it important to make a general observation of the issue at stake, *i.e.* the fact that a decision of such important consequences is taken by FIFA's secretariat or by an administrative decision rather than by the authorized and competent FIFA's judicial body i.e. the Disciplinary Committee. As will be further explained, the decision in this case is based on the specific elements and facts related to this case, however the following observation of this Panel is important in order not to create a misunderstanding or a wrong general guidance in respect of future cases, in which an administrative decision will bring about the closure of disciplinary proceedings in the very initial stage and without a formal decision of the

Disciplinary Committee. Pursuant to the clear wording of the articles of the FIFA Disciplinary Regulations, normally and generally, such a decision of closing the disciplinary proceedings due to the status of a specific Club under a specific national law, if indeed justified, should be taken by the FIFA Disciplinary Committee, within a proceeding and not only in an administrative preliminary manner. A club or any other party subject to the jurisdiction of FIFA which has a legitimate right, especially when such a legitimate right is based on a decision of a FIFA judicial body (in this case, the DRC) is entitled to be given the opportunity to bring his full arguments and pleadings to the Disciplinary Committee before such a decision, actually denying FIFA's jurisdiction is taken. This is essential, also and mainly in order for the involved parties, which under the FIFA Statutes and Regulations are bound to seek redress within the FIFA judicial system, to be granted a fair procedure, with due legal certainty and preserving their corresponding basic right to be heard, before taking a decision of this nature, determining at the end of his possibility to enforce his right within the FIFA Judicial system to which he is mandatory bound.

20. However, and without diminishing the above general principle, when coming to solve this specific case, in its specific circumstances, the Panel is bound to take into consideration and analyze the specific circumstances of this case and has done so, as explained below:

a) In accordance with what the Appellant declared during the hearing held on 22 June 2011, it confirms having submitted a claim for payment of the debt owed by Albacete to the Appellant, before the corresponding Spanish Judge. This is an important element to be taken into consideration in this specific case, which, in a way, confirms the acknowledgement by the Appellant of the existence and the feasibility of the option to seek redress before the Spanish Justice system and its willing to take this course of action as well as its willingness to be subject to it.

b) Having studied the arguments and evidence submitted by the parties within the written submissions' phase, specifically the decision of the Commercial Court of First Instance No. 003 of Albacete, Spain, the Panel has reached the conclusion that the Club Albacete is in fact subject to bankruptcy proceedings, and is therefore under the assumptions in Art. 107, b) of the FIFA Disciplinary Code for determining a disciplinary procedure baseless. This approach of the Appellant to the enforcement venue through the Spanish Legal System is essential in this case, since as already explained, in a different situation a party may still be granted the right and the possibility to convince the Disciplinary Committee not to close the proceedings. It should be emphasized in this regard, that Art. 107 stipulate that *"proceedings may be closed"*. Therefore, such termination decision, is discretional upon the Disciplinary Committee and thus should be taken by the Disciplinary Committee. However, in this case the acknowledgment and the use of the Appellant of the remedies provided by the Spanish System is a main factor which indeed may justify the closure of the proceedings at FIFA. It is relevant to clarify that the Panel hereby considers inadmissible all the new evidence sent by the Appellant after the end of the written submissions' phase, pursuant to art. R56 of the Code, especially the new documents sent on 14, 18 July 2011 and 3 October 2011.

c) The following are important parts of the resolution by the aforementioned Spanish Court:

- In item four of the Legal Grounds of said resolution, the Court determines that it moves to issue a resolution declaring Albacete to be under bankruptcy proceedings.
- In item 1 of the dispositive section of the resolution of the Spanish court it is mentioned, as well as several times elsewhere, that Albacete is in voluntary bankruptcy.

d) The above is enough evidence regarding the existence of the bankruptcy and that the assumption in Art. 107 b), is complied with in this case and thus could create a legitimate ground for the closing of the proceedings.

21. Besides the above, and contrary to the intentions of the Appellant, it is quite clear that the Respondent is prevented under Spanish Law, from forcing Albacete, in any way, to pay the amount owed, and it is clear that Albacete cannot pay because the State prevent it from doing so in an imperative act, and that the reason for the nonpayment is not because it does not want to do so. If indeed this (the plain non-willing) was the reason for the non payment, this would have been in fact be a reason for a disciplinary sanction. When the Appellant took the decision to try and execute the award through the methods and possibilities granted to it under the Spanish Bankruptcy System, the Appellant actually took upon itself the over whole structure of this system, including the understanding that they cannot impose on Albacete a payment using external venues out of the bankruptcy proceedings, and thus FIFA had legitimate grounds, in this case, to avoid the possibility of using parallel venues of enforcement.

22. The Appellant argues that it and FIFA are not parties in the bankruptcy proceedings, and that therefore the said proceedings may not affect them. This Panel considers that this issue is irrelevant in respect of the participation of FIFA in the proceedings of the bankruptcy, because regardless of the participating parties, it is a fact that the State, through its judicial bodies is the one not allowing payment. As to the Appellant, this argument is, at least not accurate since it was confirmed that indeed the Appellant decided to take part in the bankruptcy proceeding and to seek redress within the framework of these proceedings.

23. The Appellant also states that FIFA is subject to Swiss Law and may not be subject to Spanish justice. This Panel considers that the fact that FIFA has determined that in this case wherein it may not intervene because it is already pending before a Spanish Court, does not mean, in any way whatsoever, that it is being subject to Spanish justice. Furthermore, the possibility granted to the Disciplinary Committee to close the proceedings is stipulated in the FIFA Disciplinary Regulations regardless of the national legal system within which the bankruptcy proceedings take place.

24. Also, reinforcing what the Panel established in the above issue, the decision regarding the right to receive the Training Compensation and the amount of said Compensation, is indeed under the exclusive competence of FIFA and that said previous decision was indeed taken by FIFA and not by Spanish Justice. However, at this stage this Panel deals only with the subject of the enforcement of such decision. In this respect it is clear that the FIFA Disciplinary Regulations, although normally regulates the issue of the enforcement on an exclusive basis, contain a clear exemption for cases of bankruptcy, and left the discretion to the Disciplinary Committee to close the proceedings in case it is justified because of the bankruptcy proceedings.

25. Due to the above, the Panel does not consider that in the circumstances of this case there was a denial of justice, despite of the fact that the decision to close the proceedings was taken by the FIFA secretariat.

26. Furthermore, even if indeed the decision of FIFA was made in a wrong way from the procedural point of view, still and considering the fact that this Panel deals with the issue *de novo,* the actual result of said wrong procedure does not call for the intervention of this Panel.

27. In this respect, it is noteworthy to remind again that:

"According to article R57 of the Code, the CAS has full power to review the facts and the law. The consequences deriving from this provision are described in the consistent CAS jurisprudence, according to which "if the hearing in a given case was insufficient in the first instance (…) the fact is that, as long as there is a possibility of full appeal to the Court of Arbitration for Sport, the deficiency may be cured" (CAS 94/129 […], award of 23 May 1995, par. 59). Later the CAS has reaffirmed this principle, holding that "the virtue of an appeal system which allows for a rehearing before an appeal body is that issues relating to the fairness of the hearing before the Tribunal of First instance «fade to the periphery»" (CAS 98/211 […], award of 7 June 1999, par. 8). More recently, the CAS has further relied on the Swiss Federal Tribunal case law, which held that "any infringement of the right to be heard can be cured when the procedurally flawed decision is followed by a new decision, rendered by an appeal body which had the same power to review the facts and the law as the tribunal of first instance and in front of which the right to be heard had been properly exercised" (CAS 2006/A/1177 […], award of May 2009, par. 7.3). For another recent case, see for instance, CAS 2008/A/1594 […], para. 109, "However, as CAS has complete power to review the facts and the law and to rule the case de novo, the procedural deficiencies which affected the procedures before FILA disciplinary bodies may be cured by virtue of the present arbitration proceedings (see e.g. CAS 2006/A/1175 […], paras. 61 and 62; CAS 2006/A/1153 […], para. 53, CAS 2003/O/486 […], para. 50)" (see CAS 2009/A/1920).

28. This constant jurisprudence should also be applied in this case, not only because of the curetting effect of the proceedings at CAS, but also because the practical result of FIFA's decision was a decision regarding what had been requested, and although said decision not to open a disciplinary procedure was procedurally wrong, still it did not deprive or nullify the right of the Appellant to proceed with the possibility of the collection of the amount owed by Albacete within the venue chosen by the Appellant itself.

29. With regard to the Appellant's argument that the order by the Spanish Court was not issued to FIFA and therefore FIFA is not bound by it, even if this may be true in respect of proceedings taken against Albacete, in other Leal Systems out of Spain, still FIFA is entitled to consider this order within the scope of its discretion whether to close the proceedings, because this order was issued regarding all creditors of Albacete, and the fact that FIFA is aware of said situation is something FIFA may not cease considering, whether officially notified or not.

C. Independence of members and political interference

30. In the following paragraphs the Panel will address the three last items of the summary of the position submitted by the Appellant, because these are somehow related.

31. The Appellant brought forward some arguments regarding the existence of several FIFA statutes and regulations binding the independency of the members of the FIFA, in order to demonstrate that FIFA in the past, in several occasions, has severely reacted against external interventions. The Appellant argues that in this case it has not done so, despite the fact that there are several examples proving the contrary.

32. Regarding the above, based on all arguments already given by the Panel with regard to the appealed decision, the Panel finds that this argument, as a matter of fact and as a matter of its relevancy in the specific situation of this case, was not established. The Panel also is of the opinion that a legitimate decision of a National Court under its competence within its territory of jurisdiction, dealing with commercial situations and circumstances which may bring a specific football club (or several football clubs) to bankruptcy cannot be considered as an external intervention similar to the cases on which the Appellant tried to rely.

D. Only the requests mentioned in the Appellant's Statement of Appeal shall be taken in consideration?

33. FIFA claims that the Appellant's requests for relief listed in its Appeal Brief vary in respect to the ones listed in its Statement of Appeal regarding the payment of costs, thus, only the requests mentioned in the Appellant's Statement of Appeal shall be taken into consideration. The Panel finds that this request should be denied. Article R56 of the Code (as amended in the 2010 edition) states the following:

"Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, nor to produce new exhibits, nor to specify further evidence on which they intend to rely after the submission of the Appeal brief and of the answer".

34. In this respect the Panel refers to CAS 2007/A/1434-1435 where it is determined that:

"The Panel observes that the CAS Code does not prohibit the amendment in the appeal brief of the relief requested in the statement of appeal. Such a significant procedural limitation could be enforced only if it had been expressly foreseen by the CAS Code as it is the case, for instance, with regard to the submission of new arguments which are explicitly not allowed after the filing of the appeal brief and of the answer, except when agreed to by all parties (see article R56 of the CAS Code). Amendments to original claims are very common in international arbitrations, as long as they are submitted within the time limit provided by the applicable regulations (see for instance articles 18 ff of the ICC Rules of Arbitration). Likewise, article R51 of the CAS Code allows the specification in the appeal brief of requests for evidentiary measures not contemplated in the statement of appeal.

In addition, the statement of appeal and the appeal brief are not to be considered as two separate and independent briefs. They must be considered together, as jointly containing the expression of the position of the appellant".

35. The Panel notes that based on article R56 of the 2010 Code this is even more so if compared to article R56 of the 2004 CAS Code which was applied in the above case. The provision in the 2010 CAS Code specifically determines that the amendment of requests is not authorized after the submission of the appeal brief, i.e. the Appellant is not prevented from amending its requests in the appeal brief.

36. Furthermore, in the present case this argument is immaterial, because as it will be determined later in this award, due to the fact that this appeal deals with an issue of a disciplinary nature, pursuant to R65.2 of the Code, the costs of the arbitration proceedings are borne by the CAS, and due to the circumstances of the case each party shall bear its own costs.

E. Conclusions

37. Based on all the above reasons, this Panel concludes that:

- The letter dated 11 January 2011 is a decision in the meaning of Article R47 of the Code and thus can be appealed to the CAS.
- Said decision is, specifically, the denial of FIFA to open a disciplinary procedure.
- Considering the specific circumstances of the case, and the arguments of the parties, which have been analyzed in detail, the Panel finds that the Appeal should be dismissed in its entirety.

The Court of Arbitration for Sport rules:

1. The appeal filed by Club Deportivo Universidad Católica against the decision issued on 11 January 2011 by FIFA is dismissed.

2. The decision issued on 11 January 2011 by FIFA is upheld.

(…)

5. All other motions or prayers for relief are dismissed.