



**Arbitration CAS 2013/A/3360 Federação Cabo-verdiana de Futebol (FCF) v. Fédération Internationale de Football Association (FIFA), award of 31 January 2014**

Panel: Prof. Luigi Fumagalli (Italy), President; Mr Rui Botica Santos (Portugal); Mr José Juan Pintó (Spain)

*Football*

*Eligibility of a player*

*Disciplinary sanction against a club for fielding an ineligible player*

*Interpretation of the FIFA Disciplinary Code (FDC) in relation to the suspension of a player*

*Determination of a match suspension “served”*

*Consequence of the momentary cancellation of the reference to a red card on the FIFA website*

- 1. According to the FIFA Disciplinary Code (FDC), a match to which an ineligible player participate shall be declared lost by forfeit by the team to which the suspended player belongs.**
- 2. In light of the principles of interpretation recognised by CAS jurisprudence and by the Swiss Federal Tribunal, the rules of the FDC related to the suspension of a player are clear and their meaning transparent. The wording of Article 18.4 FDC ensures that a player sanctioned by a match suspension i.e. who receives a red card, cannot escape his obligation to serve a suspension even if the match in which the red card is received is subsequently abandoned, cancelled or declared lost by forfeit. The match suspension is in any case to be served.**
- 3. Article 19 FDC clarifies when a match suspension is “served”. A match suspension is not served – and therefore remains “pending” – if the match played is subsequently abandoned, cancelled or forfeited because of a reason for which the team to which the player belongs bears the responsibility. As an exception to this rule, though, a match suspension is considered to be served even in a match which is subsequently forfeited and irrespective of the responsibility for the forfeit, if the forfeit is caused by the fielding of an ineligible player. Even the player who should not have played, but was fielded and caused the forfeit of the match, is considered as having served the match suspension. The rule intends to deal with a practical issue and to avoid too harsh consequences for the player involved: play a match, cause the forfeit and have the suspension always pending.**
- 4. Based on the wording of the relevant rules, read in their context, it is not possible for a federation to invoke the fact that the FIFA website had mistakenly, at a certain moment, cancelled the reference to a red card given to a player to infer that the sanction was no longer in effect.**

## I. BACKGROUND

### A. The Parties

1. The Federação Cabo-verdiana de Futebol (hereinafter referred to as the “Appellant” or “FCF”) is the national football association in the Republic of Cabo Verde, based in Praia, Ilha de Santiago, Cabo Verde. The FCF is a member of the Fédération Internationale de Football Association.
2. The Fédération Internationale de Football Association (hereinafter referred to as the “Respondent” or “FIFA”) is the world governing body of football. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and players, worldwide. FIFA is an association under Swiss law and has its headquarters in Zurich (Switzerland).

### B. The Dispute between the Parties

3. The circumstances stated below are a summary of the main relevant facts, as submitted by the parties in their written pleadings or in the evidence offered in the course of the proceedings. Additional facts may be set out, where relevant, in connection with the legal discussion which follows.
4. On 7 May 2013, the Disciplinary Committee of FIFA (hereinafter referred to as the “Disciplinary Committee”) issued its decision No. 130279 (hereinafter referred to as the “Decision No. 130279”) with respect to F. (hereinafter referred to as the “Player”), a player of the national team of Cabo Verde. The operative part of the Decision No. 130279, notified to the FCF on 16 May 2013, reads (in its French original) as follows:
  - “1. Le joueur F. est déclaré coupable de comportement antisportif envers un officiel de match conformément à l’art. 49 al. 1 let. a du Code disciplinaire de la FIFA (CDF) lors du match joué le 24 mars 2013 entre les équipes représentatives de la Guinée équatoriale et du Cap Vert.
  2. Le joueur F. est suspendu pour quatre (4) matches.  
La première, la deuxième et la troisième suspension doivent être purgée des matches suivants:
    - Cap Vert v. Guinée équatoriale, le 8 juin 2013
    - Cap Vert v. Sierra Leone, le 15 juin 2013
    - Tunisie v. Cap Vert, prévu entre le 6 et le 10 septembre 2013 [...]”.
5. In summary, the Decision No. 130279 sanctioned the Player for some events (a “red card” for unsporting behaviour towards a match official) which had occurred during the qualifying match for the FIFA World Cup, Brazil 2014™ (hereinafter referred to as the “World Cup 2014”) played on 24 March 2013 between the national teams of Cabo Verde and Equatorial Guinea and imposed on him the suspension for the following four official matches to be played in the qualifying rounds for the World Cup 2014 by the national team of Cabo Verde. The Decision No. 13027 was issued pursuant to the FIFA Disciplinary Code in force as of 1 August 2011

(hereinafter referred to as the “FDC”).

6. On the same day, 7 May 2013, the Disciplinary Committee issued another decision declaring the match of 24 March 2013 lost by Equatorial Guinea to Cabo Verde by forfeit, because Equatorial Guinea had fielded an ineligible player. Such decision was later confirmed by the Appeal Committee of FIFA (hereinafter referred to as the “Appeal Committee”) on 11 July 2013.
7. On 7 September 2013, the match between Cabo Verde and Tunisia was played in Radès, Tunisia (hereinafter referred to as the “Match”). The Player was fielded to play at the Match for the national team of Cabo Verde.
8. On 10 September 2013, disciplinary proceedings were opened against the FCF for having fielded the Player, indicated to be ineligible for the Match by the Decision No 130279, in violation of Article 55.1 FDC and Article 8 of the Regulations for the 2014 FIFA World Cup Brazil™ (hereinafter referred to as the “FWC Regulations”).
9. In a letter to FIFA of 11 September 2013, the FCF stated its position with regard to these disciplinary proceedings *inter alia* as follows:
  - “3) ... Cape Verde Football Federation must remember FIFA DC that the suspension of the player F. has occurred on the occasion of the game between Cape Verde and Equatorial Guinea held in Malabo on the 24th of March, 2013;
  - 4) And regarding this particular game, the Appeal Committee upheld the FIFA DC decision to award Cape Verde a 3-0 forfeit victory over Equatorial Guinea in their FIFA World Cup™ TM qualifier on 24 March and to impose a fine of CHF 12,000 against Equatorial Guinea after the FIFA DC considered Equatorial Guinea liable for the breach of article 55, paragraph 1 of the FIFA Disciplinary code and article 8 of the 2014 FIFA World Cup Brazil™ TM Regulations ...;
  - 5) Following this, there is no other option but to apply article 19, paragraph 5 (first part) of the FIFA Disciplinary Code which states that “A match suspension is regarded as no longer pending if a match is retroactively forfeited because a player took part in a match despite being ineligible (art. 55)”;
  - 6) Therefore, it is unquestionable that the suspension applied to player F. was no longer pending when he played the match against Tunisia last Saturday, on the 7th September of 2013”.
10. On 12 September 2013, the Disciplinary Committee issued the following decision (in its French original):
  - “1. La Fédération Capverdienne de Football est reconnue avoir enfreint l’art. 55 al. 1 du CDF et l’art. 8 du Règlement de la Coupe du Monde de la FIFA, Brésil 2014™.
  2. Le Match Tunisie – Cap-Vert du 7 Septembre 2013 est perdu par forfait par le Cap-Vert (3-0).
  3. La Fédération Capverdienne de Football est condamnée au paiement d’une amende de CHF 6000...”
11. On 13 September 2013, the FCF filed an appeal against the decision issued on 13 September 2013 by the Disciplinary Committee. The grounds in support of the appeal were lodged on 18 September 2013.

12. On 23 September 2013, the Appeal Committee issued a decision on the appeal filed by the FCF (hereinafter referred to as the “AC Decision”), holding (in its French original) that:

“1. *Le recours interjeté par la Fédération Capverdienne de Football est rejeté et la décision de la Commission de Discipline de la FIFA rendue le 12 septembre 2013 est confirmée dans son intégralité...*”.

13. In support of the AC Decision, the Appeal Committee noted the following:

“10. *A ce sujet, la Commission prend acte que l'Appelante ne remet pas en question les faits relatifs à la présente affaire, mais ne se plaint que de l'application erronée du droit par la Commission de Discipline de la FIFA ....*

11. *Par conséquent, la Commission se penche directement sur la question de savoir si oui ou non la Commission de Discipline de la FIFA a correctement appliqué le droit.*

12. *À ce sujet, la Commission se réfère à l'art. 55 al. 1 du CDF, qui stipule qu'une équipe sera sanctionnée d'un forfait (art. 31 du CDF) et paiera une amende de CHF 6000 au moins si un joueur prend part à une rencontre officielle alors qu'il n'était pas qualifié. Conformément à l'art. 31 al. 1 du CDF, une équipe sanctionnée par un forfait est réputée avoir perdu la rencontre 3-0. Selon l'al. 2 du même article, en cas de différence de buts supérieure obtenue sur le terrain, le résultat est maintenu.*

13. *En outre, concernant le cas d'espèce, la Commission tient compte de l'art. 8 du Règlement de la Coupe du Monde de la FIFA, Brésil 2014™, qui prévoit à son alinéa 1 que toute association doit constituer son équipe représentative pour la Coupe du Monde de la FIFA™ en tenant compte que tous les joueurs doivent, d'une part, avoir la nationalité du pays de l'association concernée et être soumis à sa juridiction et, d'autre part, être sélectionnables conformément aux Statuts de la FIFA, au Règlement d'Application des Statuts de la FIFA et à toute autre réglementation de la FIFA applicable. Selon l'alinéa 3 du même article, tout manquement à l'obligation de l'association de n'aligner que des joueurs sélectionnables entraînera les conséquences énoncées dans le CDF.*

14. *Enfin, avant toute analyse juridique, la Commission souhaite également rappeler, tel que l'avait fait la Commission de Discipline de la FIFA, que, comme toute autre association, l'Appelante est entièrement et exclusivement responsable de s'assurer qu'elle n'aligne que des joueurs qualifiés. C'est-à-dire qu'il est de la responsabilité de chaque association membre de savoir quels joueurs sont ou ne sont pas qualifiés pour prendre part à un match officiel ou amical.*

15. *Pour commencer, la Commission souligne que lorsqu'un match est ultérieurement déclaré perdu par forfait, les avertissements ainsi que les cartons rouges infligés lors d'un tel match ne sont pas annulés. À ce sujet, la Commission se réfère d'abord à l'art. 17 al. 5 du CDF qui stipule explicitement que les avertissements infligés lors d'un match ultérieurement déclaré perdu par forfait ne sont pas annulés. Dans la même optique, l'art. 18 al. 4 du CDF prévoit, d'une part, que l'expulsion, même prononcée au cours d'un match interrompu, annulé, et/ou déclaré perdu par forfait, entraîne une suspension automatique pour le prochain match et, d'autre part, que la durée de cette suspension peut être prolongée par la Commission de Discipline de la FIFA. La Commission tient à souligner que ces dispositions sont rédigées de façon très claire ne laissant ainsi aucune marge d'interprétation et doivent par conséquent être appliquées strictement. Plus précisément, en ce qui concerne le cas d'espèce, l'art. 18 al. 4 du CDF ne laisse place à aucune exception, contrairement à ce qu'allègue l'Appelante.*

16. *En effet, la Commission défend strictement l'avis qu'il serait tout à fait inconcevable « d'acquitter » un Joueur ayant commis une infraction grave selon l'art. 47 CDF du simple fait que – par chance pour lui*

– le match au cours duquel il a été expulsé, est ultérieurement déclaré perdu par forfait dû au fait qu'un joueur y a pris part alors qu'il n'était pas qualifié. Afin de corroborer son point de vue, la Commission souhaite donner l'exemple suivant : si un joueur se faisait expulser pour avoir craché sur un officiel de match écopant suite à cette action de 12 mois de suspension en application de l'art. 49 al. 1 let. C du CDF, il serait tout à fait impensable de lui donner la possibilité de jouer à nouveau comme si rien ne s'était passé, ce qui pourtant devrait être le cas si le raisonnement de l'Appelante était suivi.

17. En ce qui concerne l'interprétation et la portée de l'art. 19 al. 5 du CDF, la Commission précise que cette disposition donne la réponse à la question de savoir si oui ou non une certaine suspension de match peut être considérée comme exécutée – i.e. purgée – lorsqu'un match a été ultérieurement déclaré perdu par forfait en raison d'une suspension de match non purgée au sens de l'art. 55 du CDF, à savoir parce qu'un joueur y a pris part alors qu'il n'était pas qualifié. Selon l'art. 19 al. 5 du CDF, toute suspension de match est considérée comme exécutée, même celle du joueur qui y a pris part alors qu'il n'était pas qualifié, tel qu'il est mentionné explicitement dans la 2ème phrase de l'art. 19 al. 5 du CDF. Cette règle – qui découle d'une jurisprudence bien établie – a été conçue et intégrée dans le CDF afin de clarifier en particulier le « statut disciplinaire » du joueur qui a pris part à la rencontre alors qu'il n'était pas qualifié. Ainsi, l'art. 19 al. 5 du CDF stipule implicitement qu'il n'est pas question de sanctionner de façon double le fait qu'un joueur a omis de purger une certaine suspension de match.
18. Toute autre pratique – à savoir sanctionner de façon double le fait qu'un joueur a omis de purger une certaine suspension de match – mènerait en fait à un cercle vicieux. Tout d'abord, le match serait déclaré perdu par forfait, puis, la suspension serait maintenue pour le prochain match, alors que c'était justement la « suspension non purgée – même » qui avait menée à la sanction, soit le match perdu par forfait.
19. Au vu de ce qui précède, la Commission ne peut partager l'argumentation de l'Appelante, selon laquelle l'art. 19 al. 5 du CDF serait une exception à l'art. 18 al. 4 du CDF ayant pour conséquence que, selon l'Appelante, les suspensions restantes à purger par le Joueur, à savoir la 3ème et la 4ème, devraient être considérées comme exécutées.
20. Il en ressort de toutes les considérations et raisons évoquées ci-dessus que la décision rendue par la Commission de Discipline de la FIFA à l'égard de la Guinée équatoriale pour violation de l'art. 55 al. 1 du CDF a comme unique effet de déclarer le match perdu par forfait et n'a dès lors aucune conséquence sur les incidents disciplinaires qui se sont produits au cours de ce match qui s'est joué le 24 mars 2013.
21. En ce qui concerne les allégations de l'Appelante relatives au site internet de la FIFA, la Commission insiste que les informations qui peuvent y être trouvées ne peuvent faire foi et par conséquent n'ont aucun effet juridique et ne seraient être juridiquement contraignantes, ni pour la Commission de Discipline de la FIFA, ni pour le secrétariat de la Commission de Discipline de la FIFA, ni pour les associations et leurs équipes représentatives.
22. Nonobstant ce qui précède, la Commission relève qu'en tout état de cause, la « Lettre de confirmation D » relative à la procédure disciplinaire engagée à l'encontre du Joueur suite au carton rouge direct reçu lors du match joué le 24 mars 2013 entre la Guinée équatoriale et le Cap Vert ainsi que la décision 130279 CPV ZH de la Commission de Discipline de la FIFA y relative rendue le 7 mai 2013 à l'encontre du Joueur le suspendant pour quatre (4) matches ont été dûment notifiées au Joueur à travers l'Appelante (cf. art. 102 al. 2 et art. 103 al. 1 du CDF). En outre, la Commission tient à souligner que la décision 130279 CPV ZH était devenue définitive, faute d'avoir interjeté un recours contre celle-ci auprès de la Commission de Recours de la FIFA. À ce sujet, la Commission prend acte que ces faits n'ont nullement été remis en cause par l'Appelante.

23. *Enfin, la Commission constate qu'aucune lettre officielle de la part du secrétariat de la Commission de Discipline de la FIFA n'a été envoyée ni au Joueur, ni à l'Appelante, les informant que la sanction disciplinaire imposée au Joueur (ou une partie de celle-ci) ne devait plus être mise en œuvre et a dès lors été, pour ainsi dire, « annulée » ou, dans les termes utilisés par l'Appelante, « considérée comme exécutée ».*
  24. *La Commission estime que la situation légale est très claire et qu'il n'y a aucun doute quant à la non-qualification du Joueur pour le match opposant la Tunisie au Cap Vert le 7 septembre 2013 dans le cadre de la compétition préliminaire pour la Coupe du Monde de la FIFA, Brésil 2014™, tel que l'avait conclu la Commission de Discipline de la FIFA.*
  25. *Compte tenu des considérations qui précèdent, la Commission rejette toutes les allégations soulevées par l'Appelante.*
  26. *Par conséquent, la Commission soutient entièrement l'avis de la Commission de Discipline de la FIFA, qui a à juste titre considéré que l'Appelante s'était rendue coupable d'une violation de l'art. 55 al. 1 du CDF et de l'art. 8 du Règlement de la Coupe du Monde de la FIFA, Brésil 2014™ pour avoir aligné le Joueur lors de la rencontre qui s'est jouée le 7 septembre 2013 entre la Tunisie et le Cap Vert dans le cadre de la compétition préliminaire pour la Coupe du Monde de la FIFA, Brésil 2014™, alors que le Joueur était suspendu en vertu de la décision de la Commission de Discipline de la FIFA du 7 mai 2013 pour jouer (entre autres) ce match pour l'équipe représentative du Cap Vert.*
  27. *La Commission procède à examiner si les sanctions imposées par la Commission de Discipline de la FIFA sont en conformité avec le CDF.*
  28. *La Commission tient compte de l'art. 125 al. 3 du CDF, en vertu duquel les décisions ne peuvent être modifiées par la Commission au détriment de celui qui les attaque.*
  29. *En ce qui concerne les sanctions imposées par la Commission de Discipline de la FIFA, la Commission note que l'art. 55 al. 1 du CDF prévoit deux sanctions impératives. D'une part, le forfait, ce qui signifie que l'équipe concernée est réputée avoir perdu la rencontre 3-0 en application de l'art. 31 du CDF, à moins que l'alinéa 2 du même article ne s'applique, qui stipule qu'en cas de différence de buts supérieure obtenue sur le terrain, le résultat est maintenu, ce qui n'est pas le cas en l'espèce. D'autre part, une amende qui doit être d'un montant de CHF 6000 au moins.*
  30. *Au vu de ce qui précède, la Commission confirme la décision rendue par la Commission de Discipline de la FIFA, selon laquelle le match Tunisie – Cap Vert du 7 septembre 2013 est déclaré perdu par forfait par le Cap Vert (3-0), conformément à l'art. 31 al. 1 du CDF.*
  31. *En outre, en application de l'article susmentionné, l'amende à être imposée doit s'élever à au moins CHF 6000. Au vu de l'art. 125 al. 3 du CDF et le fait que l'amende imposée par la Commission de Discipline de la FIFA correspond à l'amende minimale qui doit être prononcée, la Commission n'a pas d'autre choix que de confirmer l'amende de CHF 6000 sans que d'autres considérations juridiques doivent être faites”.*
14. The AC Decision was notified to the FCF on 1 October 2013.

## II. THE ARBITRAL PROCEEDINGS

### A. The CAS Proceedings

15. On 11 October 2013, the Appellant filed its statement of appeal with the Court of Arbitration for Sport (hereinafter referred to as the “CAS”), pursuant to Article R48 of the Code of Sports-related Arbitration (hereinafter referred to as the “Code”), to challenge the AC Decision. In the statement of appeal, the Appellant, *inter alia*, designated Mr Rui Botica Santos as an arbitrator, and selected English as the language of the proceedings.
16. In an email of 23 October 2013, the Appellant requested that the appeal be dealt by expedited proceedings in accordance with Article R52 of the Code, and that an award, in its operative part, be rendered before 17 November 2013. At the same time, the Appellant expressed its preference for the dispute to be submitted to a sole arbitrator.
17. That same day, on 23 October 2013, the Appellant filed its appeal brief in accordance with Article R51 of the Code, together with 10 exhibits.
18. On 25 October 2013, FIFA informed the CAS Court Office that it did not agree with the Appellant’s request “*that the present matter be expedited*”. At the same time, the Respondent objected to the Appellant’s request that the dispute be submitted to a sole arbitrator: “*in view of the issue of principle which is at stake, we [FIFA] would prefer for a panel of three arbitrators to be able to exchange their views on this matter before issuing an award*”. Finally, FIFA indicated that English could be established as the language of the arbitration, “*as long as we [FIFA] are authorised to submit our enclosures in French – which was the language of the proceedings before the FIFA Disciplinary and Appeal Committee – without any translation into English*”.
19. In a letter of 28 October 2013, the CAS Court Office, noting the Respondent’s objection, indicated that the appeal would not be expedited pursuant to Article R52 of the Code. At the same time, the CAS Court Office informed the parties that a decision on the number of the arbitrators would be taken by the President of the CAS Appeals Arbitration Division.
20. On 30 October 2013, the Appellant confirmed its request that the arbitration be conducted in English, and further agreed to the Respondent’s request to submit its enclosures in French.
21. On 31 October 2013, the CAS Court Office informed the parties that the arbitration would continue in English, subject to the Respondent’s request that exhibit could be filed in their French original, and that the Deputy the President of the CAS Appeals Arbitration Division had decided that the matter by submitted to a panel of three arbitrators. At the same time, the CAS Court Office forwarded to FIFA the Appellant’s appeal brief.
22. In a letter dated 14 November 2013, the Respondent designated Mr José Juan Pintó as an arbitrator.
23. On 25 November 2013, the Respondent filed its answer to the statement of appeal, together with 12 exhibits.

24. By communication dated 3 December 2013, the CAS Court Office informed the parties, on behalf of the Deputy President of the CAS Appeals Arbitration Division, that the Panel had been constituted as follows: Prof. Luigi Fumagalli, President of the Panel; Mr Rui Botica Santos and Mr José Juan Pintó, arbitrators.
25. On 6 January 2014, the CAS Court Office, on behalf of the President of the Panel, issued an order of procedure (hereinafter referred to as the “Order of Procedure”), which was accepted and countersigned by the parties.
26. A hearing was held on 14 January 2014 on the basis of the notice given to the parties in the letter of the CAS Court Office dated 9 December 2013. The Panel was assisted at the hearing by Mr Brent J. Nowicki, Counsel to CAS. The following persons attended the hearing:
  - i. for the Appellant: Mr Alexandre Miguel Mestre, counsel;
  - ii. for the Respondent: Ms Christine Fariña, legal counsel at the FIFA Disciplinary & Governance Department.
27. At the hearing, the parties made submissions in support of their respective cases. In such context, and *inter alia*:
  - i. the Appellant
    - confirmed its interpretation of the rules of the FDC relevant in this case, insisting in their application according to their terms and in light of the principles governing their interpretation;
    - referred for such purposes to the behaviour of the Respondent, which modified its website after the match of 24 March 2013 had been forfeited, by removing the red card given to the Player on that match;
    - underlined the importance of the fundamental principle of good faith, enshrined in Swiss law, as the element allowing the Appellant to invoke the binding force for FIFA of the information published in its website;
  - ii. the Respondent
    - emphasized that no event had occurred after the decision of 7 May 2013, whereby the Player was suspended for four matches, affecting his condition;
    - stressed that the information contained in the Internet website is not legally binding for FIFA and its disciplinary bodies. Indeed, not all disciplinary decisions (including those suspending the Player) are published;
    - produced, with the consent of the Appellant and the authorization of the Panel, a printout of the FIFA website, as currently modified, to explain where the wrong information about the red card to the player had appeared;
    - indicated that the Appellant, having received a detailed decision concerning the suspension of the Player, could not simply rely on an examination of the website, but should have contacted FIFA to collect information about the status of the Player before fielding him at the Match.

28. At the conclusion of the hearing, the parties expressly stated that they did not have any objection in respect of their right to be heard and to be treated equally in these arbitration proceedings.

## **B. The Position of the Parties**

29. The following outline of the parties' positions is illustrative only and does not necessarily comprise every contention put forward by the parties. The Panel, indeed, has carefully considered, for the purposes of the legal analysis which follows, all the submissions made by the parties, even if there is no specific reference to those submissions in the following summary.

### *a) The Position of the Appellant*

30. In its prayers for relief, as indicated in the statement of appeal and confirmed in the appeal brief, the Appellant requested the CAS:

1. *To accept the present appeal against the challenged decision;*
2. *To set aside the challenged decision;*
3. *To issue an order to FIFA to:*
  - a) *nullify the results of the match that will be played between Tunisia and Cameroon next 13<sup>th</sup> October, 2013;*
  - b) *to cancel the second leg match between Tunisia and Cameroon scheduled for November 17<sup>th</sup>, 2013, pending a final decision by CAS;*
  - c) *and to replace Tunisia with Cape Verde in the 3<sup>rd</sup> round of the Brazil 2014 African Zone World Cup Qualifiers;*
4. *To establish that the costs of the arbitration procedure to date shall be borne by the Respondent;*
5. *To condemn the Respondent to the payment in favour of the Appellant of the legal expenses incurred.*

31. In support of its challenge, the Appellant submits that the AC Decision is "*completely wrong for misapplication of the facts to the applicable rules of the FIFA Disciplinary Regulations and therefore for misinterpretation of such applicable rules*".

32. In essence, it is the Appellant's contention that the FIFA Disciplinary Bodies, and the AC Decision in the end, wrongly applied the relevant rules of the FDC: Article 18.4, Article 19.5 and Article 55, which should be read together and their meaning reconciled. On the basis of a proper interpretation of those rules, it should be held, in the Appellant's opinion, that the Player was no longer suspended when he was fielded at the Match. More specifically, the Appellant, after explaining its interpretation of the mentioned rules and underlining the principles governing such interpretation, indicates that:

*"the correct interpretation of the rules applicable in the present case should lead to the logical sequence that follows:*

- (i) *The Disciplinary sanction of expulsion [Article 11 (c) of the FDC] imposed by the referee on F., a player of the national team of Cape Verde, led to the player's match suspension [Article 11 (d) of the FDC], namely, four matches – including the very next game, by virtue of a standard automatic sanction [Article*

*18(4), first part, of the FDC, which was then extended [Article 18(4), in fine of the FDC] by three more games, in a final total of four games, the lowest limit possible in this case because it concerned expulsion for unsporting behaviour towards a match official [Article 49(1)(a) of the FDR], with the maximum permissible limit being 24 games [Article 19(3)];*

- (ii) The FIFA Disciplinary Committee subsequently changed the result of the game in which F. was sent off, retroactively fixing the score at 3-0 to Cape Verde, because Equatorial Guinea's team line-up included ineligible payers [Articles 55 and 31 of the FDC];*
- (iii) From the date of this decision – when F. had already served 2 (two) of the 4 (four) suspensions that had been imposed – such suspension was no longer pending, not in force, being deemed to have been fully complied with [Article 19(5) of the FDC], so F. was “clean” – a situation which even led FIFA to update the information on its own website – and was able to be called on for the very next game, on 7 September, which is what happened, and he did indeed play;*
- (iv) By deciding that F., allegedly should in fact still fulfil 2 (two) more game suspensions, on the assumption that the disciplinary measure of 4 (four) games remained in force, thereby deeming F. ineligible for the 7 September match, the FIFA Appeal Committee upheld the decision of the FIFA Disciplinary Committee, punishing the Appellant with a 3-0 defeat under Article 55 of the FDC, with the immediate result of removal of the possibility of access to the World Cup playoffs, when, on sporting merit, the Appellant had already qualified for such access.*
- (v) The wrong decision of the FIFA Appeal Committee arises from not having interpreted some of the rules of the FDC essential to the resolution of the case, leading to a decision based on incomplete, incorrect or non-existent assumptions, and reasoning that is sometimes silent, sometimes incomplete, sometimes incorrect, and even unintelligible;*
- (vi) Even when it did deign to interpret any rules of the FDC, the FIFA Appeal Committee failed to put them together, sticking to a watertight analysis, isolated from each of the rules, thereby distorting the letter and the spirit of the rules per se and the applicable legal regime in terms of the required sequence of the various rules. The most glaring case is the absence of a combined interpretation of Articles 18 (4) and 19 (5) of the FDC, a basic exercise for the effective implementation of material justice in this case;*
- (vii) Basically, it can be verified that the poor normative interpretation that was done by the FIFA Appeal Committee has a voiding effect and is contrary to the meaning of the settled case law of this Court of Arbitration for Sport and related doctrine;*
- (viii) The contested ruling should be annulled in time and it should be ensured that no more sporting and financial damage accrues to the Appellant”.*

*b) The Position of the Respondent*

33. The Respondent, in its answer to the appeal brief, requested the CAS:

- i. To reject the reliefs sought by the Appellant.*
- ii. To confirm in its entirety the decision of the FIFA Appeal Committee.*
- iii. To order the Appellant to bear all costs incurred in connection with these proceedings and to cover all legal expenses of the Respondent in connection with these proceedings.*

34. In support of its request to have the appeal dismissed, the Respondent contends that *“the arguments advanced by the Appellant ... are derived from a strained and unjustifiable interpretation of the applicable and clear FDC rules”*. In the FIFA’s opinion, the AC Decision, indeed, *“correctly upheld the findings of the FIFA Disciplinary Committee that the Appellant violated the provisions of the FDC such that the forfeit of the Match as well as the fine imposed ... were the correct disciplinary sanctions”*.
35. In that respect, the Respondent submits that:
- i. the Player was duly suspended for four games including the Match, pursuant to Article 49.1 of the FDC;
  - ii. *“no intervening event or “new fact” ... affected the implementation of the match suspension for the Match”*: the interpretation of the FDC offered by the Appellant is *“entirely untenable”* and *“legally incorrect”*;
  - iii. the *“application of art. 19 par. 5 of the FDC is not appropriate to the instant dispute”*. The wording of Article 18.4 of the FDC is clear and ensures that a player who receives a red card cannot escape his obligation to serve a suspension even if the match in which the red card is received is subsequently declared lost by forfeit. Article 19.5 of the FDC covers a different situation and clarifies that a match suspension is served also in the event the match in which it was meant to be served is subsequently lost by forfeit because an ineligible player was fielded. As such, it aims at avoiding unfair consequences and possible double sanctions;
  - iv. *“the “no longer pending” wording of art. 19 par. 5 of the FDC is entirely clear”*: article 19.5 of the FDC refers to the match in which the suspension is to be served and not to the match in which the player was originally expelled; and the expression refers to a player’s suspension for a match no longer to be considered as *“pending”* if the match in which the suspension should have been served was subsequently declared to be lost by forfeit;
  - v. a *“purposive interpretation”* of Article 19.5 of the FDC should be followed, while the interpretation offered by the Appellant is *“totally at odds”* with the purpose of the rule;
  - vi. the *“Appellant was aware of the issue and decided to take a calculated risk”*, without making any inquiry with FIFA: *“it fully appreciated the conceivable consequences of its action ... and nevertheless proceeded”*;
  - vii. the *“material on the FIFA website”* is *“not legally binding”*, and cannot supersede the decisions of the FIFA disciplinary bodies and the effect of the rules of the FDC. In any case, the Appellant could not rely on such information without making inquiries with FIFA.
36. Finally, the Respondent contends that in any case part of the Appellant’s requests for relief (item 3) cannot be granted, as it is not possible to cancel the match played by Tunisia and Cameroon on 17 November 2013 and replace Tunisia with Cabo Verde in that match.

### III. LEGAL ANALYSIS

#### A. Jurisdiction

37. CAS has jurisdiction to decide the present dispute between the parties. In fact, the jurisdiction of CAS is not disputed by the parties and has been confirmed by the Order of Procedure.
38. In any case, the CAS jurisdiction is contemplated by the Statutes of FIFA (edition 2013, in force at the time the appeal to CAS was filed) as follows:

##### Article 66

1. *FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, clubs, Players, Officials and licensed match agents and players' agents.*
2. *The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.*

##### Article 67

1. *Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question.*
2. *Recourse may only be made to CAS after all other internal channels have been exhausted.*
3. *CAS, however, does not deal with appeals arising from:*
  - (a) *violations of the Laws of the Game;*
  - (b) *suspensions of up to four matches or up to three months (with the exception of doping decisions);*
  - (c) *decisions against which an appeal to an independent and duly constituted arbitration tribunal recognised under the rules of an Association or Confederation may be made.*
4. *The appeal shall not have a suspensive effect. The appropriate FIFA body or, alternatively, CAS may order the appeal to have a suspensive effect. [...].*

#### B. Appeal Proceedings

39. As these proceedings involve an appeal against a decision of exclusively disciplinary nature rendered by FIFA, brought on the basis of rules providing for an appeal to the CAS, they are considered and treated as appeal arbitration proceedings in a disciplinary case against the decision of an international federation, in the meaning and for the purposes of Article R65 of the Code.

#### C. Admissibility

40. The admissibility of the appeal is not challenged by the Respondent. The statement of appeal was filed within the deadline set in Article 67.1 of the FIFA Statutes. No further internal recourse against the AC Decision is available to the Appellant within the structure of FIFA.

Accordingly, the appeal is admissible.

#### **D. Scope of the Panel's Review**

41. According to Article R57 of the Code,

*the Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. ...*

#### **E. Applicable Law**

42. The law applicable in the present arbitration is identified by the Panel in accordance with Article R58 of the Code.

43. Pursuant to Article R58 of the Code, the Panel is required to 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.*

44. In the present case the “*applicable regulations*” for the purposes of Article R58 of the Code are, indisputably, the FIFA’s regulations, because the appeal is directed against a decision issued by FIFA, which was passed applying FIFA’s rules and regulations. More precisely, the FDC and the FWC Regulations shall be applied.

45. At the same time, the Panel notes that, pursuant to Article 66.2 of the FIFA Statutes,

*The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.*

46. As a result, in addition to the FIFA’s regulations, Swiss law applies to the merits of the dispute.

47. The provisions set in the FIFA rules and regulations which are relevant in this arbitration include the following:

##### **Article 18 FDC [“Expulsion”]**

- 1. An expulsion is the order given by the referee to someone to leave the field of play and its surroundings, including the substitutes’ bench, during a match. The person who has been sent off may be allowed into the stands unless he is serving a stadium ban.*
- 2. Expulsion takes the form of a red card for players. The red card is regarded as direct if it sanctions serious unsporting behaviour as defined by Law 12 of the Laws of the Game; it is regarded as indirect if it is the result of an accumulation of two yellow cards.*
- 3. An official who has been sent off may give instructions to the person replacing him on the substitutes’ bench. He shall, however, ensure that he does not disturb the spectators or disrupt the flow of play.*
- 4. An expulsion automatically incurs suspension from the subsequent match, even if imposed in a match*

*that is later abandoned, annulled and/or forfeited. The Disciplinary Committee may extend the duration of the suspension.*

**Article 19 FDC** [*“Match Suspension”*]

1. *A suspension from a match is a ban on taking part in a future match or competition and on attending it in the area immediately surrounding the field of play.*
2. *An official who is suspended in application of par. 1 is automatically banned from the dressing rooms in accordance with art. 20.*
3. *The suspension is imposed in terms of matches, days or months. Unless otherwise specified, it may not exceed twenty-four matches or twenty-four months.*
4. *If the suspension is to be served in terms of matches, only those matches actually played count towards execution of the suspension. If a match is abandoned, cancelled or forfeited (except for a violation of art. 55), a suspension is only considered to have been served if the team to which the suspended player belongs is not responsible for the facts that led to the abandonment, cancellation or forfeit of the match.*
5. *A match suspension is regarded as no longer pending if a match is retroactively forfeited because a player took part in a match despite being ineligible (art. 55). This also applies to the match suspension imposed on the player who took part in the match despite being ineligible.*
6. *If a suspension is combined with a fine, the suspension may be prolonged until the fine has been paid in full.*

**Article 31 FDC** [*“Forfeit”*]

1. *A team sanctioned with a forfeit is considered to have lost the match by 3-0.*
2. *If the goal difference at the end of the match is greater than three, the result on the pitch is upheld.*

**Article 49 FDC** [*“Misconduct against match officials”*]

1. *Including the automatic suspension incurred in accordance with art. 18 par. 4, the overall suspension imposed on any person receiving a direct red card shall be for:*
  - a) *at least four matches for unsporting conduct towards a match official ...*

**Article 55 FDC** [*“Ineligibility”*]

1. *If a player takes part in an official match despite being ineligible, his team will be sanctioned by forfeiting the match (cf. art. 31) and paying a minimum fine of CHF 6,000.*

**Article 8 FWC Regulations** [*“Eligibility of players”*]

1. *Each association shall ensure the following when selecting its representative team for the FIFA World Cup™:*
  - a) *all players shall hold the nationality of its country and be subject to its jurisdiction;*
  - b) *all players shall be eligible for selection in accordance with the FIFA Statutes, the Regulations Governing the Application of the Statutes and other relevant FIFA rules and regulations. ....*
3. *The associations shall be responsible for fielding only eligible players. Failure to do so shall lead to the consequences stipulated in the FIFA Disciplinary Code.*

## F. The Dispute

48. The object of these proceedings is the AC Decision, which sanctioned the Appellant, with the loss of the Match by forfeit, for having fielded the Player, who was ineligible following a suspension for four matches imposed on him by the Decision No. 130279. The Player, in fact, at the time of the Match, had served only two matches of suspension. The Appellant contends that the Player had regained his eligibility, pursuant to Article 19.5 of the FDC, read in conjunction with Article 18.4 of the FDC, because the match, in which he had received the red card that had caused his suspension, had been declared lost by forfeit. FIFA disputes such contention, and confirms that the AC Decision properly applied the relevant FIFA rules.
49. As a result, the dispute between the parties concerns in essence the interpretation of Article 19.5 of the FDC and its relations with the other provisions of the FDC. The facts of the case are undisputed. In the same way, it is undisputed that if the Player had not regained its eligibility for the Match, the AC Decision (as well as the decision of the Disciplinary Committee it confirmed) was correct in declaring the Match lost by the Appellant in accordance with Article 55.1 of the FDC and Article 8.3 of the FWC Regulations. In other words, the question is (only) the following: was the Player eligible to participate in the Match?
50. The Panel finds that he was not: the interpretation of the FDC provisions offered, with passion and talent by the Appellant's counsel, is not convincing.
51. The Panel preliminarily notes that the interpretation of the statutes and rules of a sport association (including the FDC) has to be rather objective and always to start with the wording of the rule, which falls to be interpreted. The adjudicating body – in this instance the Panel – will have to consider the meaning of the rule, looking at the language used, and the appropriate grammar and syntax. In its search, the adjudicating body will have further to identify the intentions (objectively construed) of the association which drafted the rule, and such body may also take account of any relevant historical background which illuminates its derivation, as well as the entirely regulatory context in which the particular rule is located (CAS 2008/A/1673; CAS 2009/A/1810; CAS 2009/A/1811; see also ATF 87 II 95 consid. 3; ATF 114 II 193, p. 197, consid. 5.a; decision of the Swiss Federal Court of 3 May 2005, 7B.10/2005, consid. 2.3; decision of the Swiss Federal Court of 25 February 2003, consid. 3.2; and ZEN-RUFFINEN P., *Droit du Sport*, Zurich, 2002, par. 168, p. 63).
52. In light of these principles, the Panel notes that the rules of the FDC relevant in this arbitration are quite clear and their meaning transparent.
53. First, the Panel remarks that Article 18.4 of the FDC expressly states that the subsequent abandonment, cancellation or forfeit of a match has no effect on the match suspension triggered by an expulsion during that match: the match suspension is in any case to be served. The plain conclusion, based on the wording of the rule, would be, in the case at hand, that the Player's suspension was not cancelled by the fact that the match of 14 March 2013 was subsequently forfeited.
54. The Appellant, however, draws a distinction between an "automatic" suspension and an

“extended” suspension in order to avoid the mentioned conclusion. In that respect, it submits that the rule (according to which the subsequent abandonment, cancellation or forfeiture of a match has no effect on the match suspension triggered by an expulsion during that match) covers only the suspension for the subsequent match (the “automatic” suspension mentioned in the first limb of the first sentence of Article 18.4 of the FDC): only this suspension would be necessarily served in case the match in which the expulsion is imposed is later abandoned, annulled or forfeited; the “extended” suspension (imposed according to the last sentence of Article 18.4 of the FDC) would, on the contrary, be affected by the subsequent cancellation, abandonment, or forfeiture of the match and should not be served.

55. The Panel finds however the interpretation suggested by the Appellant to be unreasonable and not dictated by the wording of Article 18.4 of the FDC. Indeed, the distinction, if any, between “automatic” suspension and “extended” suspension appears to the Panel to be linked, in the system of the FDC, to the existence of different kinds of infringements equally sanctioned with a red card during the game, but leading to the distinct consequences, differently severe, and to the discretion of the disciplinary bodies to impose sanctions. It means that a red card is always followed by at least a suspension for the next match, but allows the imposition of longer suspensions when the red card was given for serious infringements (see Articles 48 and 49 of the FDC). However, when imposed, a suspension for one or more matches allows no distinction between the first, the second or any additional match the player is not eligible to play at. In addition, a different interpretation would have the absurd consequence to limit the “curing” effect of the subsequent cancellation of the match only to the most severe disciplinary infringements which occurred during the match, and even to the most deplorable, which would end up with the same treatment (one match suspension) as the minor ones.
56. Second, the Panel remarks that under Article 19.5 of the FDC a match suspension is regarded as “*no longer pending*” if a match is retroactively forfeited, pursuant to Article 55 of the FDC, because a player took part in a match despite being ineligible. This also applies to the match suspension imposed on the player who took part in the match despite being ineligible. The Appellant maintains that as a result of such provision the subsequent forfeit of the match played on 14 March 2013 implied that the “extended” suspension imposed on the basis of a red card incurred in that match was no longer pending, and therefore that the Player was eligible to play at the Match. In support of this conclusion, the Appellant requests that the Panel read Article 19.5 of the FDC together with Article 18.4 of the FDC.
57. The Panel finds that such interpretation has no basis in the text of the FDC.
58. Article 19.5 of the FDC, according to its wording and read in the context of the other paragraphs of Article 19, in fact, makes it clear that the reference to the match retroactively forfeited therein contained (forfeit as a result of which the suspension is no longer pending) is the match in which the suspension is to be served and not (as the Appellant claims) the one in which the expulsion was imposed. In fact, under Article 19, dealing with the serving of a match suspension, the following rules apply:
  - i. only matches actually played count towards the execution of a match suspension (Article 19.4, first sentence);

- ii. however, if a match is played but is later abandoned, cancelled or forfeited, a match suspension is considered as served only if the match abandonment, cancellation or forfeit is not caused by the team to which the suspended player belongs. In other words, a match suspension is not served (and therefore remains “pending”) if the match played is subsequently abandoned, cancelled or forfeited because of a reason for which the team to which the player belongs bears the responsibility for the abandonment, cancellation or forfeit (Article 19.4, second sentence);
  - iii. as an exception to this rule, though, a match suspension is considered to be served (is “no longer pending”) even in a match which is subsequently forfeited and irrespective of the responsibility for the forfeit, if the forfeit is caused (under Article 55 of the FDC) by the fielding of an ineligible player (Article 19.4, second sentence). Even the player who should not have played, but was fielded and caused the forfeit of the match, is considered as having served the match suspension. Such rule intends to deal with a practical issue and to avoid too harsh consequences for the player involved: play a match, cause the forfeit and have the suspension always pending.
59. The foregoing makes it clear that Article 19.5 of the FDC provides for an exception to Article 19.4 and not, as the Appellant tries to establish, to Article 18.4 of the FDC – a rule set in a different context.
  60. In addition, the interpretation offered by the Appellant would have unacceptable consequences. On its basis, in fact, and for instance, at a match to be forfeited because an ineligible player played, such player could commit any infringement, even the most lamentable, earning him a red card, but without triggering any “extended” suspension, after the forfeit of the match. A situation which clearly cannot be allowed – and a plain interpretation of the rules do not allow.
  61. In the case at hand, the foregoing means that the Player’s suspension was not cancelled by the fact that the match of 14 March 2013 was subsequently forfeited (Article 18.4 of the FDC): in other words, at the Match the Player was still ineligible, and therefore, by playing, he caused the loss of the Match pursuant to Article 55 of the FDC. However, the forfeit of the Match did not affect his serving of the third match suspension he had received (Article 19.5 of the FDC).
  62. Contrary to such conclusion, based on the wording of the relevant rules, read in their context, it is not possible for the Appellant to invoke the fact that the FIFA website had, at a certain moment, cancelled the reference to the red card given to the Player at the match of 14 March 2013. Indeed, in the course of this arbitration, and at the hearing, FIFA conceded this to be a mistake, which was subsequently corrected. The Panel notes the point and invites FIFA to pay more attention to the information conveyed through its website.
  63. However, the Panel remarks that the removal from the website of the mention of the red card imposed to the Player at the match of 14 March 2013 cannot be invoked as an element of interpretation (based on the FIFA’s behaviour) of the relevant FDC provisions (Articles 18 and 19): their content, as discussed above, is clear and allows no different conclusions, based on assumptions derived from the reading of some unverified information contained in the FIFA website. In fact, the Panel underlines that the Appellant received a detailed decision (the AC

Decision), listing the matches in which the Player was to serve the suspension, and was therefore not allowed to deduct from the simple fact that at a given moment a red card no longer appeared as shown to the Player at the match of 14 March 2013 the consequence that the sanction imposed by the AC Decision was no longer in effect. Even conceding the inaccuracy of the website, it was simply not possible for the Appellant to assume that a disciplinary sanction had been condoned without contacting FIFA and for making additional investigations to verify the point. The Appellant decided to turn a blind eye and to take a risk: it cannot now claim that it was in good faith and blame FIFA for the inaccuracies of its website.

#### **G. Conclusion**

64. In light of the foregoing, the Panel holds that the appeal brought by the Player is to be dismissed. The AC Decision is confirmed.

### **ON THESE GROUNDS**

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

1. The appeal dated 11 October 2013 filed by the Federação Cabo-verdiana de Futebol against the decision taken by the Appeal Committee of the Fédération Internationale de Football Association (FIFA) on 23 September 2013 is dismissed.
2. The decision taken by the Appeal Committee of the Fédération Internationale de Football Association (FIFA) on 23 September 2013 is confirmed.
3. (...)
4. (...)
5. All other prayers for relief are dismissed.