



**Arbitration CAS 2015/A/4193 Guyana Football Federation (GFF) v. Fédération Internationale de Football Association (FIFA) & St. Vincent and the Grenadines Football Federation (SVGFF), award of 5 January 2016**

Panel: Prof. Luigi Fumagalli (Italy), Sole Arbitrator

*Football*

*Eligibility of a player to participate in a world cup qualification match*

*Inadmissibility of the appeal before CAS due to the lack of exhaustion of internal remedies*

*Notion of appealable decision*

1. Any party intending to appeal against an alleged decision before FIFA appellate body must comply with the deadlines provided by FIFA applicable rules. Compliance with the deadlines is an express condition of admissibility of an appeal to the FIFA appellate body. Against this background, by failing to properly appeal to FIFA appellate body, a national federation has not exhausted the legal remedies available to it within FIFA's system. Pursuant to FIFA's applicable regulations and Article R47 of the CAS Code, the appeal to CAS is therefore inadmissible. "Access to justice" and the connected "right to be heard" or to a "fair trial" in the merits cannot take place and be invoked by a party without the observance of the proper rules governing the procedure for the exercise of rights.
2. According to the CAS case law, a letter qualifies as an "appealable decision" only if it affects the legal situation of the addressee, *i.e.* if it contains a ruling. Therefore, a letter which contains only an opinion of a sport governing body's administration, that has an informative character and does not prejudice any future decision by the competent deciding body, leaving the door open to such decision, is not an "appealable decision".

## **I. BACKGROUND**

### **A. The Parties**

1. The Guyana Football Federation (hereinafter referred to as "GFF" or the "Appellant") is the national governing body of football in the Republic of Guyana. GFF is a member of the Fédération Internationale de Football Association.
2. The Fédération Internationale de Football Association (hereinafter referred to as "FIFA" or the "First Respondent") 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.

3. The St. Vincent and the Grenadines Football Federation (hereinafter referred to as “SVGFF” or the “Second Respondent”) is the national governing body of football for St. Vincent and the Grenadines. SVGFF is a member of FIFA. SVGFF and FIFA are hereinafter jointly referred to as the “Respondents”.

## **B. The Dispute between the Parties**

4. The circumstances stated below are a summary of the main relevant facts concerning the dispute, 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.

5. On 14 June 2015, a match between the national teams of GFF and SVGFF was played in Georgetown (Guyana), corresponding to the return match of round 2 of the qualifiers for Central America to the 2018 FIFA World Cup Russia (hereinafter referred to as the “Match”). The Match ended with the result of 4-4 and the team of SVGFF was qualified for round 3 on the basis of the aggregate result and of the “away goal” factor. Mr Gavin James (hereinafter referred to as the “Player”) took part in the Match for SVGFF.

6. On 15 June 2015, GFF submitted to the FIFA Disciplinary Committee an “*Official Protest re the Use of Ineligible Player by St. Vincent & the Grenadines*” (hereinafter referred to as the “Protest”) as follows:

*“It has been brought to our attention that player #13 Garvin James of St. Vincent and the Grenadines who participated in the World Cup Qualification Match, Guyana vs. St. Vincent and the Grenadines on June 14<sup>th</sup>, 2015 at the Guyana National Stadium was not in possession of a St. Vincent and the Grenadines Passport as is required in Article 19.3 of the Regulations 2018 FIFA World Cup Russia.*

*It is to be noted the Passport presented was a British Passport #523204951.*

*On behalf of the Guyana Football Federation we herewith lodge a formal complaint and request your office investigate the matter”.*

7. In an email of 28 July 2015, GFF requested from FIFA an update regarding the Protest.
8. In a letter of 29 July 2015 (hereinafter referred to as the “Letter of 29 July 2015”) signed by its Director of Legal Affairs and its Head of Disciplinary & Governance, FIFA acknowledged the receipt of the correspondence sent by GFF “*concerning the status of the player James Gavin of the representative team of St. Vincent and the Grenadines and the status and outcome of the match played in the preliminary competition match for the 2018 FIFA World Cup Russia™ on 14 June 2015 between the representative teams of Guyana and St. Vincent and the Grenadines*”, and answered as follows:

*“we would firstly like to emphasise that, in accordance with art. 108 par. 1 of the FIFA Disciplinary Code (FDC), disciplinary infringements are, as a general rule, prosecuted ex officio. Equally, art. 108 par. 2 of the FDC stipulates that any person or body may report conduct that he or it considers incompatible with the*

*regulations of FIFA to the judicial bodies.*

*In this context, we would like to point out that, even though every person is entitled to report conduct considered incompatible with the regulations of FIFA, disciplinary proceedings are, as a general rule, proceedings involving the accused only, reason for which we are of the opinion that a person or body possibly reporting conduct in the sense of art. 108 par. 2 of the FDC would not appear to be a party to possible proceedings conducted against any person or legal entity as a consequence to such report.*

*Notwithstanding the above, we are now in a position to inform you that after careful examination of all requested information and documentation, it was considered that no further intervention was necessary in such context”.*

9. In a letter of 31 July 2015, GFF requested some clarifications from FIFA and a copy of disciplinary precedents relating to the application of Article 108 para 2 of the FIFA Disciplinary Code (hereinafter referred to as the “FDC”) mentioned by FIFA in the Letter of 29 July 2015.
10. On 6 August 2015, GFF, referring to its Protest, to the Letter of 29 July 2015 and to the fact that *“the Disciplinary Committee gave not explanation for its ruling and no reference was made to the ineligibility of the player for presenting a Passport other than that of the country of the participating member association ... he was representing”*, lodged with the FIFA Appeal Committee an appeal against the Letter of 29 July 2015 as follows:

*“The GFF herewith formally appeals to the Appeals Committee of FIFA, the decision, made via correspondence dated July 29 by the FIFA Disciplinary Committee to the complaint lodged by the Guyana Football Federation on June 16.*

*Our challenge was premised on the fact that the player in question, James Garvin, did not have a St. Vincent and the Grenadines Passport as required by the FIFA Regulation for the FIFA 2018 World Cup Russia ... We refer to Article 7 of the “General Provisions” states that, “The Regulations and all directives, decisions, guidelines and circulars issued by FIFA shall be binding for all the parties participating and involved in the preparation, organization and hosting of the 2018 FIFA World Cup™”.*

*Under Article 19, Paragraph 3 of the Regulations it states: “The only document considered to be valid proof of a player’s identity and nationality shall be a passport that explicitly states the player’s day, month and year of birth. Identity cards or other supporting official documents shall not be accepted as a valid means of identification. The participating member associations shall present each player’s valid national passport for the country of the participating member association to the FIFA Match Commissioner on the day before the match. A player without a valid passport shall not be entitled to play”.*

*See enclosed Player List for the SVGFF for the WCQ matches, which show Garvin’s Passport number being distinct from the others.*

*The GFF would like to further state that for the two WCQ matches, we did not play four of our players who did not have a Passport in their possession but who had met all the requirements for citizenship. If a stamp in their passports of the countries of their birth or some other form of documentation from the Guyana government, other than a Passport, would have sufficed, the GFF would have fielded those players and the outcome of the matches might have been different”.*

11. In a letter of 14 August 2015 (hereinafter referred to as the “Letter of 14 August 2015”), the Deputy Secretary to the FIFA Appeal Committee answered as follows:

*“... we wish to draw your attention to art. 118 ff. of the FIFA Disciplinary Code (FDC), which outline the*

*procedure to be strictly complied with as regards a possible appeal against a **decision** (emphasis added). In this context, we would like to first point out that your appeal was lodged against the above-mentioned letter [the Letter of 29 July 2015] and not against a decision (art. 118 FDC).*

*Notwithstanding the above and for the sake of good order, we would further like to point out that your intention to appeal against the letter was not submitted within the deadline granted in accordance with art. 120 par. 1 FDC.*

*Furthermore, according to the information at our disposal, it appears that no appeal fee in the amount of CHF 3,000 was transferred within the deadline granted to FIFA's bank account in accordance with art. 123 par. 1 of the FDC.*

*Moreover, and as mentioned in our previous correspondence you do not appear to be a party to the relevant proceedings before the FIFA Disciplinary Committee and would therefore not be eligible to appeal (art. 119 para. 1 FDC).*

*Therefore, and bearing in mind the fact that the formal requirements for lodging an appeal seem not to have been fulfilled in the present matter with the consequence that the appeal would be declared not admissible, we herewith kindly invite the Guyana Football Federation to withdraw its appeal against the above-mentioned letter.*

*In this respect, we hereby inform you that the appeal will be deemed withdrawn, unless you notify us to the contrary by **19 August 2015 at the latest**" (emphasis in the original).*

## II. THE ARBITRAL PROCEEDINGS

### A. The CAS Proceedings

12. On 3 September 2015, GFF filed a 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 Letter of 14 August 2015, requesting that a sole arbitrator be appointed.
13. Together with the statement of appeal, GFF lodged also an application for interim relief, seeking:
  - a. *That the St. Vincent and the Grenadines Football Team (SVG) not be permitted to play any further qualifying matches against any opponent in the 2018 FIFA World Cup Russia preliminary stages until the hearing and determination of the issues raised herein.*
  - b. *That the scheduled kick-off of the match SVC v Aruba scheduled for 4<sup>th</sup> September 2015 be postponed pending the hearing and determination of this Appeal".*
14. On 4 September 2015, the CAS Court Office forwarded to the Respondents the Appellant's statement of appeal and application for provisional measures, informing them that the President of the CAS Appeal Arbitration Division would render, on the same day, an order *ex parte* on such application.
15. On the same 4 September 2015, the operative part of the order on the request for provisional and conservatory measures was issued as follows:

- “1. *The application for provisional and conservatory measures filed by the Guyana Football Federation on 3 September 2015 in the case CAS 2015/A/4193 Guyana Football Federation v. FIFA & St. Vincent and the Grenadines Football Federation is rejected.*
2. *The costs of the present order shall be determined in the final award or in any other final disposition of this arbitration”.*
16. In a letter dated 9 September 2015, FIFA *inter alia* submitted its “*preliminary remarks*” in support of a request that the appeal filed by GFF be declared inadmissible, asking that the arbitration be bifurcated and the CAS issue firstly a preliminary decision on the issue of admissibility.
17. On 10 September 2015, the CAS Court Office transmitted to the parties copy of the motivated order on the request for provisional and conservatory measures issued in its operative part by the President of the CAS Appeal Arbitration Division on 4 September 2015.
18. On 14 September 2015, following FIFA’s objection to the appointment of a sole arbitrator and the SVGFF absence of position to the Appellant’s request in this respect, the parties were informed that the President of the CAS Appeal Arbitration Division had decided to submit the present procedure to a sole arbitrator.
19. On 14 September 2015, the Appellant submitted its appeal brief, in accordance with Article R51 of the Code.
20. By communication dated 12 October 2015, the CAS Court Office informed the parties, on behalf of the President of the CAS Appeals Arbitration Division, that the Panel had been constituted as follows: Prof. Luigi Fumagalli, Sole Arbitrator.
21. In a letter of 15 October 2015, FIFA insisted in its request of bifurcation of the proceedings.
22. On 23 October 2015, the parties were informed that the Sole Arbitrator has decided to deal first with the issue of admissibility as raised by the First Respondent in its letter of 9 September 2015, and therefore to grant a deadline to the First Respondent to supplement its position and a subsequent equal deadline to the Appellant to submit a reply. The parties were also advised that the Sole Arbitrator would then decide whether a second exchange of submissions was necessary and/or whether he felt sufficiently informed in order to issue an award on the preliminary objections without a hearing.
23. On 2 November 2015, FIFA lodged with CAS a submission on the admissibility of the appeal.
24. On 19 November 2015, the Appellant submitted its reply on the admissibility of the appeal.
25. In a letter dated 11 December 2015, the parties were informed that the Sole Arbitrator, deeming himself sufficiently informed, had decided to issue an award on the preliminary objections without a hearing.

## B. The Position of the Parties

26. The following outline of the parties' positions with regard to the preliminary issues raised by the First Respondent is illustrative only and does not necessarily comprise every contention put forward by the parties. The Sole Arbitrator, 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

27. The Appellant, in its submission of 19 November 2015, requested the Sole Arbitrator:

- “1. To vary the Order ... made on the 23<sup>rd</sup> October 2015 to determine the issue of admissibility independently of the substantive Appeal filed by the Appellant and to Order that the issue of admissibility of the substantive appeal be considered along with the substantive Appeal in single proceedings.
2. Alternatively, that the Appeal be declared admissible.
3. In any event, the application on admissibility of the substantive appeal made by the First Respondent, if top be considered separately, not be disposed without a full hearing at the seat of the Tribunal.
4. An Order that the costs incurred by this application be deferred and assessed as costs in the substantive Appeal”.

28. The relief sought by the Appellant in the merits, as indicated in the appeal brief of 13 September 2015, is the following:

- “1. To declare the appeal lodged by the Guyana Football Federation to be regular as to form.
2. To set aside/reverse/vacate the decision of the FIFA Appeal Committee made on the 14th day of August 2015.
3. To declare the protest/complaint of the Guyana Football Federation concerning the non-respect of the requirements stipulated by Article 19 of the 2018 FIFA WORLD CUP REGULATIONS valid and lawful.
4. To set aside the decision of the FIFA Appeal Committee made on the 14th August 2015 and accepting the protest/complaint of the Guyana Football Federation before the kick-off of the match of September 4th 2015 between St. Vincent and the Grenadines and Aruba because of the non-eligibility of the player GARVIN JAMES for the team of St. Vincent and the Grenadines when he played against Guyana on the 10th June 2015 with the result that St. Vincent and the Grenadines should be recorded as losing the match by penalty (3-0).
5. That the Appellant's Team be reintegrated into the 2018 FIFA World Cup Russia Qualifying matches instead and in place of St. Vincent and the Grenadines.
6. Alternatively, the decision and findings of the Disciplinary Committee be disclosed to the Appellant in full.
7. All costs of this appeal be borne by the Respondents”.

29. In other words, the Appellant, through the appeal to CAS, seeks the setting aside of the Letter of 14 August 2015, considered to be a “decision” issued by the FIFA Appeal Committee, which allegedly denied an appeal against another letter of FIFA (the Letter of 29 July 2015), understood to be a “decision” of the FIFA Disciplinary Committee dismissing the Protest of 15 June 2015.
30. According to the Appellant, its appeal is admissible and should be considered by the Sole Arbitrator in its merits, following a hearing to be held for the discussion of all the issues involved. In that respect, the Appellant contends *inter alia* that:
- i. a decision only on the admissibility issues and without a determination on the Appellant’s substantive claims “*would be contrary to the spirit in which this Tribunal [the CAS] was established; that is, for the effective and meaningful resolution of disputes in sport*”, with the consequence that “*the substantive complaint ... would remain undecided by any of the judicial bodies available to it under the FIFA judicial system*”, and would produce a “*denial of justice*”, while the Appellant “*is entitled to due process and a fair hearing of its complaint*”;
  - ii. a full hearing before the Sole Arbitrator is necessary since it “*would at least mean that the Respondents would have to respond to the merits of the Appeal which is likely provide the Appellant the opportunity to be informed of how its complaint [the Protest] was addressed*”.
31. In support of the admissibility of its appeal, the GFF submits the following answers to the objections raised by FIFA:
- i. as to the “*Payment of Advance Costs*”, the Appellant confirms that it has paid the full sums requested within the time limits provided;
  - ii. as to the “*Absence of a Decision by FIFA Disciplinary Committee*”, in the Appellant’s opinion, the First Respondent’s assertion is based on “*erroneous legal reasoning*”, and the following is not disputed:
    - “*the FDC [Disciplinary Committee] did make a decision. ... The FDC [Disciplinary Committee] advised the Appellant its complaint was addressed by its letter*”;
    - “*the Appellant was not invited to participate in any way whatsoever in any hearing conducted by the FDC [Disciplinary Committee]*”: indeed, “*the FDC [Disciplinary Committee] never informed the Appellant whether any hearing took place in relation to its complaint, nor did it provide the Appellant an opportunity to be heard at such hearing*”. In other words, “*a decision was made without the involvement of the Appellant*”;
    - “*the FDC [Disciplinary Committee] excluded the Appellant because it was of the opinion that the Appellant was not an interested party*”. However, the Appellant “*as the complainant*” was “*entitled to be heard and participate in any hearing that follows from its complaint. ... the presence of a complainant at any hearing is a central pillar to the principles of a fair hearing and justice*”. Actually, the fact “*that disciplinary proceedings are ex officio ... does not mean that such proceedings are ex parte*”. In that respect, the Appellant underlines that it is an “*interested party*”, since the issue it reported to FIFA in the Protest related to the advancement of its team in the qualifiers to the FIFA World Cup 2018, and the proceedings concerning its Protest “*can only be fair and consistent with the principles of natural justice if a complainant is permitted to participate in the proceedings in which it makes*

*a complaint*". As a result, being an interested party, the GFF was entitled "*to appeal against findings that it finds perverse*";

- iii. as to the "*Appealable Decision/Absence of a Decision by FIFA Appeals Committee*", the Appellant contends that "*the decision of the Appeals Committee was made and contained in ... the August 14 Letter*" and further contends that "*the decision is appealable*" in accordance with the principles set by the CAS jurisprudence. More specifically, "*the letter of August 14 ... conveyed to the Appellant in clear terms that it was not an interested party and could not appeal the decision of the FDC [Disciplinary Committee]. This was a confirmation of the similar determination made by the FDC [Disciplinary Committee]. The August 14 Letter contained the clear view of the Appeals Committee*" to confirm the decision issued by the Disciplinary Committee to deny the Protest filed by GFF. The CAS has therefore jurisdiction to determine all the issues between the parties, exercising the power granted by Article R57 of the Code;
  - iv. as to the "*Procedure*", the Appellant recognizes that it has "*made mis-steps*". However, the Appellant submits that those errors are not "*fatal*" to its appeal before CAS. For instance, the failure to pay the amount of CHF 3,000 for the appeal to the FIFA Appeal Committee was caused by "*an honest misunderstanding*", since it "*interpreted the payment of the fee as a payment to be made in due course*", and "*the error was because of the absence of legal advice and unfamiliarity with the arbitration process which had been engaged*". As a result, the Appellant emphasizes that it "*exhausted all avenues*" it had before filing an appeal with CAS.
- b) The Position of the Respondents
- i. *The Position of FIFA*
32. In its prayers for relief, the First Respondent requested that the Sole Arbitrator:
1. *To declare the Appellant's appeal as inadmissible.*
  2. *The order the Appellant to bear all the costs incurred with the present procedure.*
  3. *To order the Appellant to cover all legal expenses of the Respondent related to the present procedure*".
33. In essence, FIFA submits that the appeal lodged by GFF against the Letter of 14 August is not admissible, since it does not comply with the conditions set forth by Article R47 of the Code. In support of its request, FIFA advances a number of reasons:
- i. "*possible absence of payment of the entire advance of costs by the Appellants*";
  - ii. "*absence of any decision passed by the FIFA Disciplinary Committee*";
  - iii. "*absence of any appealable decision, failure to respect all the procedural requirements to appeal and absence of any decision passed by the FIFA Appeal Committee*"; and
  - iv. the Letter of 14 August 2015 is not a decision.
34. As to the first point, the First Respondent indicates, by way of a preliminary remark, that it is

not aware whether the Appellant paid the entire advances of costs as set by the CAS Court Office. Should this not be the case, the appeal would have to be deemed withdrawn pursuant to Article 64.2 of the Code.

35. As to the second point, the First Respondent underlines, with respect to the “*steps before the FIFA Disciplinary & Regulatory Department*”, that no decision was rendered by the FIFA Disciplinary Committee, which could have enabled GFF to lodge an appeal to the FIFA Appeal Committee. In the Letter of 29 July 2015, in fact, GFF was simply informed that it lacked the quality of a party with respect to any disciplinary proceedings that could be opened against SVGFF: therefore, the Appellant had no procedural rights in respect of such proceedings.
36. As to the third point, concerning the procedure before the FIFA Appeal Committee, FIFA refers to the provisions in the FDC governing appeals from decisions passed by the Disciplinary Committee and submits that:
  - i. the Letter of 29 July 2015 is not a decision, since it did not contain any ruling of the Disciplinary Committee: there was not intention of any FIFA body to decide on the matter, and it did not affect the situation of GFF in any way;
  - ii. GFF did not have any standing to appeal the Letter of 29 July 2015, even if it contained a decision, since it was not a party to any disciplinary proceedings;
  - iii. GFF, when on 6 August 2015 filed an appeal, did not respect the mandatory deadline set by Article 120 para. 1 FDC, did not provide for the reasons in support of the appeal, and did not pay the required appeal fee;
  - iv. in the Letter of 14 August 2015, GFF was invited to state, within a given deadline, whether it wished to maintain the appeal against the Letter of 29 July 2015, failing which its petition would be deemed withdrawn. No reaction was received. Therefore, no decision was rendered.
37. As to the fourth point, regarding the requirements to lodge an appeal to CAS, the First Respondent emphasizes that:
  - i. the Letter of 14 August 2015 is not a decision, since it did not affect the legal situation of GFF, but only informed it that it could not file an appeal against the Letter of 29 July 2015 and that all procedural conditions for an appeal to the Appeal Committee had been missed. Therefore, the Appellant has not met the first requirement under Article R47 of the Code;
  - ii. the Appellant failed to exhaust the internal remedies available within FIFA, since it did not provide its position within the deadline mentioned in the Letter of 14 August 2015, and therefore its petition was deemed withdrawn. As a result, the Appellant has not met also the second requirement under Article R47 of the Code.
38. Finally FIFA underlines that it “*cannot be harmed – through an appeal before the CAS – due to the Appellant’s negligence in requesting the issuance of a formal decision of a FIFA deciding body. ... the Appellant’s appeal against the Letter [of 14 August 2015] also infringes the principle ‘venire contra factum proprium non valet’ which ultimately seeks to protect the trust that was reasonably placed on the behavior of*

*others as well as the presumption of good faith that imposes a duty of consistency with one's behavior and thereby limits the exercise of objective rights. In other words, the fact that the Appellant exercised a legal action – ... lodging the present appeal – in contravention to its conduct which, interpreted in an objective manner according to the laws, the customs and the good faith, leads to the conclusion that a right has been waived – in casu, the omission to request a decision from the FIFA Appeal Committee – breaches this general principle of law”.*

ii. *The Position of SVGFF*

39. The Second Respondent did not submit any answer to the appeal filed by the Appellant.

### III. LEGAL ANALYSIS

#### A. Jurisdiction

40. According to Article R47 of the Code, CAS has jurisdiction to hear:

*“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 ...”.*

41. More specifically, the jurisdiction of CAS is invoked by the Appellant on the basis of the Statutes of FIFA, which, in their April 2015 version and in their pertinent parts, read 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. [...]*

42. The jurisdiction of CAS is not disputed by the First Respondent, which however denies the

admissibility of the appeal.

43. Accordingly, the Sole Arbitrator has jurisdiction to issue the present award on the admissibility of the appeal filed by the GFF.

## **B. Admissibility**

44. The First Respondent disputes the admissibility of the appeal under several points of view, each of them being sufficient, in its opinion, to justify the dismissal of the Appellant's claims. In essence:

- the Letter of 29 July 2015, which allegedly dismissed the Protest, is not a "decision" of the FIFA Disciplinary Committee: therefore, it could not be appealed to the FIFA Appeal Committee;
- the GFF did not have standing to appeal any decision taken by FIFA regarding the Protest, and not even the Letter of 29 July 2015, even if considered to be a "decision";
- even assuming that the GFF had standing to file an appeal against the Letter of 29 July 2015, considered to be a "decision":
  - √ the appeal was not timely filed,
  - √ the GFF did not provide the grounds for the appeal,
  - √ the GFF did not pay the appeal fee;
- the Letter of 14 August 2015, which allegedly dismissed the appeal against the Letter of 29 July 2015, does not contain a "decision" of the FIFA Appeal Committee;
- overall, the Appellant failed to exhaust all internal remedies available to it under the FIFA regulations and therefore cannot file an appeal to CAS.

45. Contrary to the First Respondent's objections, the Appellant indicates that the Letter of 29 July 2015 and the Letter of 14 August 2015 contained "decisions", dismissing the Protest, and that they were wrong in holding that the GFF did not have a standing in the proceedings which followed its Protest. Overall, the Appellant maintains that holding otherwise would amount to a denial of justice.

46. The Sole Arbitrator notes that it is not necessary for him to consider all points raised by the First Respondent, and chiefly whether the Letter of 29 July 2015 contained or not a "decision".<sup>1</sup> In fact, even assuming that such Letter of 29 July 2015 did contain a "decision", which is doubtful, and that the GFF had a standing in the proceedings which followed its Protest, which is also questionable, the Sole Arbitrator remarks that:

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<sup>1</sup> It is to be noted that FIFA questioned the possibility for the Sole Arbitrator to consider the appeal filed by GFF also under another point of view, by raising doubts as to the payment by the Appellant of the advance on costs for the CAS proceedings, failing which the appeal would be deemed withdrawn. Such objection is however devoid of merits, since such advances have been properly paid.

- i. GFF failed to properly file an appeal against such alleged “decision”; and
  - ii. the Letter of 14 August 2015 cannot be considered to be a “decision” dismissing such appeal.
47. According to Article 120 FDC:
- “1. *Any party intending to appeal must inform the FIFA Appeal Committee of its intention to do so in writing within three days of notification of the decision.*
  2. *Reasons for the appeal must then be given in writing within a further time limit of seven days, This seven-day period begins after the first deadline of three days has expired.*
  3. *If these requirements have not been complied with, the appeal is not admissible. ...”.*
48. In addition, pursuant to Article 123 FDC:
- “1. *Anyone wishing to lodge an appeal shall transfer an appeal fee of CHF 3,000 to FIFA’s bank account before expiry of the time limit for submitting the reasons for appeal.*
  2. *If this requirement has not been complied with, the appeal is not admissible. ...”.*
49. Under those rules, therefore, the GFF, upon receipt of the Letter of 29 July 2015, had (i) three days to announce its intention to file an appeal against it, and (ii) a total of ten days to provide the written reasons of the appeal and to transfer the appeal fee of CHF 3,000 to FIFA’s bank account. Compliance with such deadlines is an express condition of admissibility of the appeal to the FIFA Appeal Committee.
50. The Sole Arbitrator notes that, notwithstanding the clear rules within the FDC, GFF did not express, within three days of the receipt of the Letter of 29 July 2015, its intention to file an appeal against it, and did not pay, within ten days of the receipt of such letter, the appeal fee.
51. In that respect, the Sole Arbitrator notes that:
- i. on 31 July 2015, the Appellant did send a communication to FIFA (see § 9 above). In that letter, however, the GFF did not state in any way its intention to appeal from the Letter of 29 July 2015, but simply requested some information “*in order to allow us to consider all legal aspects that we can give to your letter of 29<sup>th</sup> July, 2015*”. The clear wording of the communication indicates that a position as to the legal implications of the Letter of 29 July 2015 had not been formed yet. This conclusion is confirmed by the reading of the letter of 6 August 2015, when, past the deadline set by Article 120 FDC, GFF expressly filed an appeal against the Letter of 29 July 2015, *inter alia* without making any reference to the communication of 31 July 2015. A different point is not even contented by the Appellant in these CAS proceedings;
  - ii. the failure to pay the required appeal fee is not disputed by GFF, which however submits that it was due to a “*misunderstanding*”, to the “*absence of legal advice*” and to the “*unfamiliarity*” with the applicable procedures. Such explanations, however, cannot be accepted: a national football association, even from a relatively small country, cannot claim unfamiliarity with the FIFA rules, which are absolutely clear in providing that the appeal

fee of CHF 3,000 has to be transferred to FIFA's bank account "*before expiry of the time limit for submitting the reasons for appeal*" (emphasis added): no misunderstanding appears to be possible even in the absence of legal advice.

52. As a result, the Sole Arbitrator finds that the Appellant, by failing to properly appeal to the FIFA Appeal Committee from the Letter of 29 July 2015 (which the Appellant considers to contain a "decision" that it has standing to challenge), has not exhausted the legal remedies available to it within the FIFA system. Pursuant to Article 67.2 FIFA Statutes ("*Recourse may only be made to CAS after all other internal channels have been exhausted*") and Article R47 of the Code, the appeal to CAS is therefore inadmissible.
53. In any case, the Sole Arbitrator finds that, even should the appeal to the FIFA Appeal Committee found to be properly filed (which is denied), the Letter of 14 August 2015 does not contain a "*final decisions passed by [one of the] FIFA's legal bodies*" open to appeal according to Article 67.1 FIFA Statutes.
54. According to the CAS case law (CAS 2005/A/899; CAS 2008/A/1633; CAS 2013/A/3148; CAS 2013/A/3276; CAS 2013/A/3408; CAS 2014/A/3695), a letter qualifies as an "appealable decision" only if it affects the legal situation of the addressee, *i.e.* if it contains a ruling. Therefore, a letter which contains only an opinion of the FIFA administration, that has an informative character and does not prejudice any future decision by the competent deciding body, leaving the door open to such decision, is not an "appealable decision".
55. Indeed, the Letter of 14 August 2015 simply drew the attention of GFF to the content of some provisions set by the FDC and to the fact that its appeal appeared to be inadmissible, inviting GFF to withdraw the appeal **before** a formal decision in that regard be adopted. In other words, the door was left open for the GFF to obtain a formal decision by the FIFA Appeal Committee, even though with little hope of success, in light of the opinion stated by the FIFA administration.
56. As a result, the Sole Arbitrator concludes that the appeal to CAS against the Letter of 15 August 2015, which does not contain a "decision", is inadmissible.
57. Contrary to such conclusion, the Sole Arbitrator notes that it is not possible to invoke general principles, linked to the Appellant's right of "access to justice". Indeed, "access to justice" (and the connected "right to be heard" or to a "fair trial" in the merits) cannot take place without the observance of the proper rules governing the procedure for the exercise of rights. With all sympathy to the Appellant, a federation of limited resources, its condition is not *per se* a reason to disregard the applicable rules.
58. A final point, then, is to be made. As noted above (§ 25), the Sole Arbitrator decided, as communicated to the parties on 11 December 2015, to issue this award without a hearing, contrary to the Appellant's request. In so doing, the Sole Arbitrator considered that a full possibility had been granted to the Appellant to state its case, writing last on the issue of admissibility, and that the holding of the hearing for oral submissions only would have caused unnecessary additional costs to the parties.

**C. Conclusion**

59. In light of the foregoing, the Sole Arbitrator holds that the appeal brought by GFF is not admissible.

**ON THESE GROUNDS**

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

1. The appeal filed on 3 September 2015 by the Guyana Football Federation is not admissible.
2. (...)
3. (...)
4. All other motions or prayers for relief are dismissed.