Arbitration CAS 2016/A/4633 Barcelona Sporting Club v. Fédération Internationale de Football Association (FIFA) & Federación Ecuatoriana de Fútbol (FEF), award of 31 July 2017

Panel: Mr Juan Pablo Arriagada Aljaro (Chile), President; Mr Ricardo de Buen Rodríguez (México); Mr Rui Botica Santos (Portugal)

Football
Request for a stay of the disciplinary sanction against a club for failing to comply with a CAS award
Requirements a letter needs to meet in order to be qualified as decision
Possibility to stay or withdraw a deduction of points

1. **An appealable decision of a sport association or federation is normally a communication of the association directed to a party and based on an *'animus decidendi'*, i.e. an intention of a body of the association to decide on a matter. A simple information, which does not contain any 'ruling', cannot be considered a decision. The decisive criteria, thus, is whether or not the act in question impacts upon the legal situation of the appellant. If that is the case (independent of what the intentions of the relevant sports organisation were), there must be access to justice for the person concerned. A letter which includes (i) the names of the parties; (ii) a summary of the facts; (iii) the grounds for dismissing a request for a stay and (iv) the terms of the decision, clearly intends to affect the legal situation of its addressee, has legal effect and a direct material impact in the legal situation of the party requesting the stay.**

2. **The execution of a deduction of points can only be suspended in case the creditor (or the debtor with the agreement of the latter) in a contractual dispute, who initially requested to implement such enforcement measure pronounced because of the debtor's failure to comply with a previous decision, later asks the FIFA Disciplinary Committee for its suspension or withdrawal, provided that the creditor does it before the FIFA Disciplinary Committee has implemented the measure by ordering the relevant national association to deduct points to the debtor. On the contrary, if the creditor files this petition once the deduction of points has been ordered, such petition will not be admissible because the deduction of points has turned into a sanction which execution is out of the scope of control of the creditor (or the debtor) who, hence, is not legitimated or empowered to request the suspension or withdrawal of such sanction, unless exceptional circumstances so justify.**

I. THE PARTIES

1. Barcelona Sporting Club ("Barcelona" or the "Appellant") is an Ecuadorian professional football team, whose headquarters are located in Santiago de Guayaquil, Ecuador. It is a member of the *Federación Ecuatoriana de Fútbol*, which in turn is affiliated with the Fédération Internationale de Football Association.

2. Fédération Internationale de Football Association ("First Respondent" or "FIFA") is the governing body of football worldwide. Its seat is in Zürich, Switzerland and has legal personality under Swiss law.

3. *Federación Ecuatoriana de Fútbol* ("Second Respondent" of "FEF") is the governing body of football in Ecuador.

II. THE BACKGROUND FACTS

4. A summary of the most relevant facts and the background giving rise to the present dispute will be developed based on the parties' written submissions, the evidence filed with these submissions, and the statements made by the parties and the evidence taken at the hearing held in the present case. Additional facts may be set out, where relevant, in connection with the legal discussion that follows. The Panel refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning. The Panel, however, has considered all the factual allegations, legal arguments, and evidence submitted by the parties in the present proceedings.

5. On 13 July 2012, Barcelona and the Argentinean club Club Atlético Boca Juniors ("Boca") entered into a transfer agreement pursuant to which Boca transferred to Barcelona the federative and economic rights related to the football player X. for a total transfer fee of USD 1.004.000.

6. On 6 May 2013, due to the non-payment of the agreed transfer fee, Boca filed a claim against Barcelona before the FIFA Players' Status Committee ("PSC").

7. On 10 December 2013, the Single Judge of the PSC partially upheld Boca's claim and, among other findings, ordered Barcelona to pay Boca the amount of USD 1.004.000 plus an interest rate of 5% per year from May 17th 2013 (the "First FIFA Decision").

8. On 21 April 2014, Barcelona appealed the First FIFA Decision before the Court of Arbitration for Sport (CAS), that gave rise to the CAS procedure *CAS 2014/A/3574 Barcelona Sporting Club v. Club Atlético Boca Juniors.*

9. On 18 December 2014, the CAS rendered an award by virtue of which it dismissed the appeal filed by Barcelona and thus confirmed the First FIFA Decision (the "CAS Award").

10. On 4 March 2015, Boca sent a correspondence to FIFA informing the latter that Barcelona had not paid the amounts established in the First FIFA Decision.

11. On 17 March 2015, FIFA notified Boca's correspondence to Barcelona and the FEF, and informed all the parties that the case was going to be referred to the FIFA Disciplinary Committee ("FIFA DC").

12. On 30 April 2015, Boca requested the FIFA DC to inform about the status of the disciplinary proceedings.

13. On 23 June 2015, as its prior correspondence remained unanswered, Boca requested once again the FIFA DC to inform about the status of the disciplinary proceedings.

14. On 17 September 2015, the FIFA DC notified the Appellant through the FEF of the opening of disciplinary proceedings against it for the non-fulfilment of the CAS Award.

15. On 5 October 2015, the Deputy Secretary of the FIFA DC informed Barcelona, the FEF and Boca that the disciplinary case was going to be heard by the FIFA DC on 10 November 2015, unless Barcelona paid the outstanding amount before 25 October 2015.

16. On 27 October 2015, Boca informed the FIFA DC that Barcelona had not paid the outstanding amounts within the last term granted.

17. On 10 November 2015, Boca sent a correspondence to the FIFA DC in which it reiterated that the outstanding amount had not been paid yet by Barcelona.

18. On the same day, FIFA DC rendered its Decision 150694 PST ECU ZH. The operative part of this decision (the "Decision") reads as follows:

> *"1. El club Barcelona Sporting Club es considerado culpable por el incumplimiento de la decisión adoptada por el Tribunal Arbitraje [sic] Deportivo (CAS, por sus siglas en inglés) el 18 de diciembre de 2014 y es, por consiguiente, en violación del art. 64 del Código Disciplinario de la FIFA.*
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> *2. Se condena al club Barcelona Sporting Club a pagar una multa de 30,000 CHF (francos suizos). La multa deberá abonarse en los ciento veinte (120) días siguientes a la notificación de la presente decisión. […].*
>
> *3. El club Barcelona Sporting Club tiene un último plazo de 120 días a partir de la notificación de la presente decisión para saldar su deuda con el acreedor, el Club Atlético Boca Juniors.*
>
> *4. Si el pago no se efectúa dentro de este plazo, el acreedor podrá solicitar por escrito a la secretaría de la Comisión Disciplinaria de la FIFA la deducción de seis (6) puntos al primer equipo del deudor en el campeonato nacional. Una vez que esta solicitud haya sido realizada, los puntos deberán obligatoria y automáticamente ser deducidos, sin que la Comisión Disciplinaria de la FIFA tenga que tomar una decisión formal. La secretaría de la Comisión Disciplinaria de la FIFA dará a la asociación en cuestión la orden de ejecución de la deducción de puntos.*
>
> *5. Si, tras la deducción de los puntos conforme a lo estipulado en el punto 4., el club Barcelona Sporting Club sigue sin saldar su deuda, la Comisión Disciplinaria de la FIFA decidirá sobre una posible relegación del primer equipo del deudor a la categoría inmediatamente inferior.*

6. *Como miembro de la FIFA, se recuerda a la Federación Ecuatoriana de Fútbol que está a cargo de la correcta ejecución de la presente decisión y de suministrar a la FIFA los documentos que confirmen que ha procedido a la deducción de puntos en caso de solicitársele el particular. En el caso de que exista una ejecución incorrecta u omisión de la ejecución por parte de la Federación Ecuatoriana de Fútbol, la Comisión Disciplinaria de la FIFA adoptará las sanciones disciplinarias apropiadas que incluso pueden conllevar la exclusión de toda competición de la FIFA.*

7. *Las costas y gastos de este procedimiento ascendiendo a la cantidad de 3,000 CHF quedan a cargo del club Barcelona Sporting Club. Este monto se deberá abonar observando las modalidades de pago establecidas en el punto 2. ut supra.*

8. *El acreedor se compromete a informar a la Secretaría de la Comisión Disciplinaria de la FIFA sobre los pagos efectuados por el club Barcelona Sporting Club".*

Which can be translated[1] into English as follows:

"1. The club Barcelona Sporting Club is pronounced guilty of failing to comply with the decision passed by the Court of Arbitration for Sport on 18 December 2014 and is, therefore, in violation of art. 64 of the FIFA Disciplinary Code.

2. *The club Barcelona Sporting Club is ordered to pay a fine to the amount of CHF 30,000. The fine is to be paid within 120 days of notification of the present decision. […].*

3. *The club Barcelona Sporting Club is granted a final period of grace of 120 days as from notification of the present decision in which to settle its debt to the creditor, the Club Atlético Boca Juniors.*

4. *If payment is not made by this deadline, the creditor may demand in writing from the secretariat to the FIFA Disciplinary Committee that six (6) points be deducted from the first team of the club Barcelona Sporting Club in the domestic league championship. Once the creditor has filed this request, the points will be deducted automatically without a further formal decision having to be taken by the FIFA Disciplinary Committee. The order to implement the points deduction will be issued on the association concerned by the secretariat to the FIFA Disciplinary Committee.*

5. *If the club Barcelona Sporting Club still fails to pay the amount due even after deduction of the points in accordance with point 4. above, the FIFA Disciplinary Committee will decide on a possible relegation of the first team of the club Barcelona Sporting Club to the next lower division.*

6. *As a member of FIFA, the Ecuadorian Football Association is reminded of its duty to implement this decision and, if so requested, provide FIFA with proof that the points have been deducted. If the Ecuadorian Football Association does not comply with this decision despite being ordered to do so, the FIFA Disciplinary Committee will decide on appropriate sanctions on the member. This can lead to expulsion from all FIFA competitions.*

[1] Translation provided by the First Respondent and not contested by the rest of the parties.

7. The costs of these proceedings amounting to CHF 3,000 are to be borne by the club Barcelona Sporting Club and shall be paid according to the modalities stipulated under point 2. above.

8. The creditor is directed to notify the secretariat to the FIFA Disciplinary Committee of every payment made by the club Barcelona Sporting Club".

19. On 26 November 2015, Boca sent a correspondence to the FIFA DC in which it reiterated its previous correspondence of 10 November 2015 and requested the FIFA DC to apply the corresponding disciplinary sanctions to Barcelona.

20. On 27 November 2015, FIFA notified the Decision to the parties. The Decision was not appealed by Barcelona.

21. On 4 April 2016, Boca sent a letter to the Secretary of the FIFA DC by virtue of which it informed the latter that the Appellant had not paid the relevant amount within the 120-day term granted in the Decision, and requested the implementation of the sanctions envisaged by the Decision.

22. On 12 April 2016, Boca sent a correspondence to the FIFA DC by virtue of which it restated the content of its previous correspondence of 4 April 2016.

23. On 21 April 2016, the Deputy Secretary of the FIFA DC informed the FEF about the correspondence received from Boca on 4 April 2016, and requested the FEF to implement the sanction established in section 4 of the operative part of the Decision (i.e. the deduction of six points to the first team of Barcelona in the Ecuadorian national championship).

24. On 27 April 2016, Barcelona informed the FIFA DC through the FEF that it was holding negotiations with Boca in order to reach a settlement agreement for the payment of the amount due. In addition, Barcelona stated that because of the earthquake occurred in Ecuador and the state of emergency that had been declared in the country, this was a case of *force majeure*. Finally, Barcelona requested the FIFA DC to grant a "reasonable term" in order to conclude such negotiations and reach the aforementioned agreement. In the cover letter of this correspondence forwarded by the FEF, the latter confirmed that that Barcelona was holding negotiations with Boca and that they were also negotiating with the *Confederación Sudamericana de Fútbol* (CONMEBOL) the issuance of the guarantees that had been requested by Boca in order to execute the settlement agreement.

25. On 29 April 2016, Boca informed the FIFA DC that it had reached a payment agreement with Barcelona (the "Payment Agreement"), pursuant to which the latter committed to pay Boca the total amount of USD 1.154.530, which included the outstanding amount, its interests and the contribution toward its legal fees. In addition, it informed FIFA that Barcelona had already made a first payment of USD 400.000 against the total outstanding amount agreed. Therefore, Boca requested the FIFA DC to stay the application of the sanction envisaged in section 4 of the operative part of the Decision.

26. On 2 May 2016, Boca sent a copy of the Payment Agreement to the FIFA DC, that had been signed on 28 and 29 of April 2016 by Barcelona and Boca, respectively. In particular, Clause Fifth of the Payment Agreement reads as follows:

*"**QUINTO**: En razón del pago parcial efectuado y de la voluntad de pago expuesta por BARCELONA, BOCA solicitará a la Comisión Disciplinaria de FIFA la suspensión de la aplicación de la sanción en forma inmediata. Una vez acreditados todos los pagos indicados en la cuenta bancaria de BOCA, nada más tendrá que reclamar BOCA a BARCELONA con motivo del asunto **CAS 2014/A/3574 Barcelona Sporting Club v. Club Atlético Boca Juniors** y prestará su conformidad para disponer el archivo del expediente "**Club Barcelona Sporting Club, Ecuador (Decisión 150694 PST ECU ZH)**".*

Which can be freely translated into English as follows:

*"**FIFTH**: As a consequence of the partial payment made and of BARCELONA's willingness to pay, BOCA will request the Disciplinary Commission of FIFA the immediate stay of the implementation of the sanction. As soon as all the payments mentioned are made in the bank account of BOCA, BOCA will have nothing else to claim against BARCELONA in connection with the file **CAS 2014/A/3574 Barcelona Sporting Club v. Club Atlético Boca Juniors** and will give its consent to dispose the closure of the file "Club Barcelona Sporting Club, Ecuador (Decision 150694 PST ECU ZH)".*

27. On 19 May 2016, the Deputy Secretary of the FIFA DC sent a letter to Barcelona, the FEF and Boca that, in its most relevant part, reads as follows:

"En vista de lo anterior, les recordamos que si los importes debidos no son abonados dentro del último plazo concedido por la Comisión Disciplinaria de la FIFA, una vez que el acreedor haya solicitado la deducción de seis (6) puntos, los puntos serán deducidos de forma automática sin que ninguna decisión formal tenga que ser tomada por parte de la Comisión Disciplinaria de la FIFA. En este sentido, la carta por medio de la cual se solicita la implementación de la deducción de puntos es una mera medida de ejecución de la decisión firme y vinculante de la Comisión Disciplinaria de la FIFA.

En este sentido, tomamos nota de que el convenio de pago fue acordado por las partes después de que:

- *el plazo concedido por la Comisión Disciplinaria de la FIFA por medio de su decisión de fecha 10 de noviembre 2015 [sic] hubiese transcurrido;*
- *la solicitud - a instancias del acreedor en fecha 4 y 12 de abril de 2016 - de implementación de la deducción de puntos a la Federación Ecuatoriana de Fútbol fuese enviada, es decir 21 de abril de 2016.*

Por lo tanto, les informamos de que su solicitud de suspensión de la deducción de puntos no puede ser tenida en cuenta.

En consecuencia, instamos nuevamente a la Federación Ecuatoriana de Fútbol a que aplique inmediatamente el punto 4 de la decisión adoptada por la Comisión Disciplinaria de la FIFA el 10 de noviembre de 2015 y que deduzca seis (6) puntos del primer equipo del Barcelona Sporting Club.

Como miembro de la FIFA, la Federación Ecuatoriana de Fútbol es responsable de la implementación de la decisión, de conformidad con lo indicado en el punto 6 de la decisión de la Comisión Disciplinaria de la FIFA

antes mencionada. Por lo tanto, le rogamos que nos envíe de inmediato la prueba de la deducción de puntos. Asimismo, le informamos de que en caso de que su asociación no actúe de conformidad con lo anterior, la Comisión Disciplinaria de la FIFA pronunciará una sanción pertinente contra la Federación Ecuatoriana de Fútbol. Pudiendo resultar en la expulsión de todas las competiciones de la FIFA".

Which can be translated into English as follows:

"[…] In light of the foregoing, we remind you that if the amounts due are not paid within the final deadline granted by the FIFA Disciplinary Committee, once the creditor has requested the deduction of the six (6) points, the points shall be deducted automatically without a further formal decision having to be taken by the FIFA Disciplinary Committee. In this regard, the letter by means of which the deduction of points is requested is a mere measure of enforcement of the final and binding decision of the FIFA Disciplinary Committee.

In this respect, we note that the payment agreement was agreed by the parties after:

- *the deadline granted by the FIFA Disciplinary Committee by means of its decision dated 10 November 2015 had expired;*

- *the request – at the creditor's request on 4 and 12 April 2016 – for the implementation of the points deduction on the Ecuadorian Football Association had been sent, i.e. 21 April 2016.*

Therefore, we inform you that your request regarding the suspension of the deduction of the points cannot be taken into account.

Consequently, we urge again to the Ecuadorian Football Association to ***immediately*** *apply point 4 of the decision passed by the FIFA Disciplinary Committee on 10 November 2015 and that six (6) points are deducted from the first team of the club Barcelona Sporting Club.*

As a member of FIFA, the Ecuadorian Football Association is responsible for the implementation of the decision, in accordance with the above-mentioned point 6 of the aforesaid decision of the FIFA Disciplinary Committee. We therefore ask you to provide us immediately with ***proof that the points have been deducted****. Likewise, we inform you that if your association does not act in compliance with the above, the FIFA Disciplinary Committee will decide on the appropriate sanction against the Ecuadorian Football Association. This can lead to expulsion from all FIFA competitions".*

III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT ("CAS")

28. On 30 May 2016, the Appellant filed a Statement of Appeal before the CAS against FIFA and the FEF, challenging the "decision" rendered by the Deputy Secretary of the FIFA DC on 19 May 2016 (the "Appealed Resolution"). In its Statement of Appeal, the Appellant included an urgent application to stay the execution of the Appealed Resolution and the following requests for relief:

"(…)

I. We request the panel to order FIFA's Disciplinary Committee to suspend the six points deduction from Barcelona Sporting Club until further notice by Club Atletico Boca Juniors

II. We request the panel to order the Ecuadorian Football Federation to not comply with the orders given by FIFA's Disciplinary Committee to deduct six points from Barcelona Sporting Club".

29. On 8 June 2016, the CAS Court Office acknowledged receipt of the Appellant's Statement of Appeal. In its letter to the parties, the CAS Court Office granted the Respondents a 10-day deadline from receipt of such letter to file their position on the Appellant's request for a stay of the execution of the Appealed Resolution.

30. On 9 June 2016, the Second Respondent filed its position on the Appellant's request for the stay of execution of the Appealed Resolution.

31. On 10 June 2016, the First Respondent filed a brief before the CAS in which it objected to the admissibility of the appeal filed by the Appellant.

32. On 13 June 2016, the CAS Court Office invited the Appellant to file its comments on the admissibility of the Appeal within five days from receipt of such letter, and to confirm whether it agreed with the CAS issuing a preliminary decision on the admissibility of the Appeal or not, as requested by the First Respondent.

33. On the same day, the Appellant filed its comments on the admissibility of the appeal. In addition, the Appellant did not agree to the CAS to issue a preliminary decision on the admissibility of the appeal, on the basis that, in its view, this was indeed the heart of the Appeal.

34. On 14 June 2016, the CAS Court Office informed the parties that it would be for the Division President, or her Deputy, to decide on the matter of admissibility.

35. On 15 June 2016, the CAS Court Office informed the parties that the First Respondent's time limit to file its answer to the Appeal was suspended until the Panel, once constituted, decided whether to render a preliminary decision on the admissibility of the Appeal or not. In this same letter, the CAS also invited the First Respondent to submit its position on the Request for Stay until 22 June 2016.

36. On 22 June 2016, the First Respondent filed its position on the Appellant's request for the stay of execution of the Appealed Resolution.

37. On 24 June 2016, the Appellant filed its Appeal Brief before the CAS with the following requests annul the Appealed Resolution and hence *"if the Panel does rule the nullity of the resolution from May 19, 2016 the Appellant request the Panel to accept the suspension of the deduction of six points sanction against from the appellant's first team as requested by Boca Juniors on April 29, 2016".*

38. On 30 June 2016, the CAS invited the Second Respondent to submit its Answer to the Appeal with the CAS within twenty days as from the receipt of that letter.

39. On 6 July 2016, the Appellant spontaneously filed a brief with some submissions intended to reply to the other parties' comments.

40. On 7 July 2016, the CAS Court Office declared the Appellant's brief of 6 July 2016 as not admissible, and thus removed it from the CAS file.

41. On the same day, the CAS Court Office notified the parties that the Panel appointed to decide the present case had been constituted as follows:

- Mr Juan Pablo Arriagada, attorney-at-law in Santiago (Chile), as President of the Panel;
- Mr Ricardo de Buen, attorney-at-law in Mexico City (Mexico), as the arbitrator appointed by the Appellant; and
- Mr Rui Botica Santos, attorney-at-law in Lisbon (Portugal), as the arbitrator jointly appointed by the Respondents.

42. On 14 July 2016, the CAS Court Office informed the parties that Mr. Yago Vázquez Moraga, attorney-at-law in Barcelona (Spain), would act as *ad hoc* clerk in the present case.

43. On 18 July 2016, the CAS Court Office informed the parties that the Panel would decide on the admissibility of the Appeal in the final award, and thus that the suspension on the First Respondent's time limit to file its answer was lifted.

44. On 19 July 2016, the FEF filed its Answer to the Appeal without making specific requests for relief. In its Answer, the Second Respondent also stated that it agreed with the Appellant's request for a stay the Appealed Decision.

45. On 8 August 2016, FIFA filed its Answer to the Appeal with the following requests for relief:

"(…)

1. *Primarily, to declare inadmissible the appeal lodged by the Appellant.*
2. *Subsidiary, should the Panel decide not to the declare the appeal inadmissible, quod non, to reject the Appellant's request to consider null the letter sent by the secretariat to the FIFA Disciplinary Committee on 19 May 2016.*
3. *To order the Appellant to bear all costs incurred with the present procedure and to cover all legal expenses of the Respondent related to the present procedure".*

46. On 10 August 2016, the parties were invited to inform the CAS Court Office whether they prefer a hearing to be held on the present matter or not.

47. On 11 August 2016, the First Respondent informed the CAS Court Office that it did not wish to hold a hearing.

48. On 12 and 16 August 2016, the Appellant and the Second Respondent, respectively, informed the CAS Court Office that their preferred to hold a hearing.

49. On 8 September 2016, the Panel granted the Appellant's request to stay the execution of the Appealed Resolution. The ruling of the relevant *"Order on Request for a Stay"*, reads as follows:

"(…)

1. The request for a stay filed by Barcelona Sporting Club on 30 May 2016 in the case CAS 2016/A/4633 Barcelona Sporting Club v. FIFA & Federación Ecuatoriana de Fútbol concerning the decision/letter rendered/issued on 19 May 2016 by the Deputy Secretary of the Disciplinary Committee of FIFA is granted.

2. The costs deriving from the present order will be determined in the final award or in any other final disposition of this arbitration".

50. On 15 September 2016, the CAS Court Office informed the parties that the Panel had decided to hold a hearing in the present arbitration procedure that would be held in Mexico City, Mexico. Furthermore, the President of the Panel informed that FIFA would be allowed to participate at the hearing by videoconference, pursuant to Article R44.2 of the CAS Code of Sports-related Arbitration.

51. On 7 October 2016, the Appellant requested to the Panel – and to the other parties – to authorize its counsel to conduct his oral submissions in Spanish during the hearing or, alternatively, to allow the Second Respondent's counsel to act as his translator.

52. On 11 October 2016, the CAS Court Office sent the Order of Procedure to the parties, which was duly countersigned and returned by all of them.

53. On 12 October 2016, after the objection of FIFA, the CAS Court Office rejected the Appellant's petition to speak in Spanish during the hearing and instructed its counsel to procure the services of an independent interpreter. .

54. On 14 December 2016, the hearing of the present procedure took place in Mexico City (Mexico). At the hearing, the Appellant was represented by its counsel Mr. José Miguel Pérez García, and assisted by an interpreter. The First Respondent, who was represented by its Deputy Head of the FIFA Disciplinary Department, Ms. Wilma Ritter, and by its Legal Counsel in the FIFA Disciplinary Department, Mr. Jacques Blondin, attended the hearing by videoconference, pursuant Article R44.2 of the CAS Code of Sports-related Arbitration. The Second Respondent was represented by its counsel Mr. Andrés Holguín Martínez. In addition, Mr. Antonio de Quesada, counsel to the CAS and Mr. Yago Vázquez Moraga, ad hoc Clerk, assisted the Panel at the hearing.

55. At the outset of the hearing, both parties confirmed that they had no objections as to the constitution of the Panel and did not object to the jurisdiction of the CAS. During the hearing, the parties had the opportunity to present their case, to submit their arguments and to answer the questions posed by the Panel. Additionally, the Appellant´s attorney requested again to

the Panel – and to the other parties – authorization to conduct his oral submissions during the hearing in Spanish. The First and Second Respondent did not object to this petition, and consequently the Panel granted that permission.

56. Furthermore, during its closing statements the Appellant requested the Panel to admit a new document, consisting in a letter issued by FIFA in connection with another disciplinary case (*No. 160339 asa* [name of the player]*, Argentina/Club Olimpia, Paraguay*) that, in its view, was relevant to the present proceeding (the "Olimpia Letter"). In its relevant part, such letter reads as follows:

"(…) Al respecto, hemos tomado debida nota de que el Club Olimpia informa la secretaría de la Comisión Disciplinaria de la FIFA de que el día 4 de agosto de 2016 las partes han llegado a un acuerdo para el pago de la deuda al jugador [name of the player] *y, en consecuencia, solicita a "la Comisión Disciplinaria de la FIFA dejar sin efecto la correspondencia remitida a la APF en fecha 24 de agosto de 2016, ordenando la devolución o mantenimiento de los puntos hasta hoy logrados por el Club Olimpia en el Torneo de Clausura 2016 del futbol paraguayo (…)".*

Asimismo, hemos tomado nota de que el jugador [name of the player] *confirma la celebración de dicho acuerdo de pago e informa que el club Olimpia efectuó el primer pago debido, solicitando "a la Comisión Disciplinaria de la FIFA dejar sin efecto la correspondencia remitida a la APF en fecha 24 de agosto de 2016, ordenando la devolución o mantenimiento de los puntos logrados por el Club Olimpia. Asimismo, se suspenden los plazos del reclamo referenciado, hasta el total cumplimiento del acuerdo citado".*

En vista de lo anterior, y atendiendo a las circunstancias particulares del presente caso, es decir teniendo en cuenta que el acuerdo de pago fue firmado antes de nuestra correspondencia del 24 de agosto de 2016 solicitando la deducción de puntos, les informamos que la orden para la deducción de puntos será excepcionalmente retirada.

Así, se solicita a la Asociación Paraguaya de Fútbol que ignore la correspondencia de la secretaria de la Comisión Disciplinaria de la FIFA del pasado día 24 de Agosto de 2016.

Finalmente, quisiéramos informarles que el procedimiento disciplinario contra el Club Olimpia es declarado ***suspendido****. Invitamos al Sr.* [name of the player] *a informar a la secretaria de la Comisión Disciplinaria de la FIFA tan pronto el acuerdo sea cumplido o en el caso de que el mismo se incumpla por parte del deudor, caso en que el procedimiento disciplinario será reanudado".*

Which can be freely translated into English as follows:

"(…) We have taken note that club Olimpia informs to the FIFA Disciplinary Committee that on 4 August 2016 the parties have reached an agreement for the payment of the debt to the player [name of the player] *and, in consequence, requests to "the FIFA Disciplinary Committee leave without effect the correspondence sent to the APF on 24 august 2016, ordering the devolution or the maintenance of the points won by the Club Olimpia until today in the Torneo de Clausura 2016 of the Paraguayan football (…)".*

Likewise, we have taken into account that the player [name of the player] *confirms the celebration of said payment agreement and informs that Olimpia Club made the first due payment, requesting "to the FIFA Disciplinary Committee leaving without effect the communication sent to the APF on date 24 august 2016,*

ordering the devolution or maintenance of the points won by the Olimpia Club. Additionally, the suspension of the deadlines of the referenced claim, until the total fulfillment of the cited agreement"

In view of the above, and attending to the particular circumstances of the present case, i.e. taking into account that the payment agreement was signed before our communication of 24 august 2016 soliciting the deduction of points, we inform that the order for the deduction of points is to be exceptionally withdrawn.

Therefore, the Asociación Paraguaya de Fútbol is requested to ignore the communication of the secretary of the FIFA Disciplinary Committee of 24 August 2016.

Finally, we wish to inform that the disciplinary procedure against Olimpia Club is ***suspended.*** *We invite Mr.* [name of the player] *to inform to the secretary of the FIFA Disciplinary Committee as soon as the agreement is fulfilled or, in case that it is breached by the debtor, the disciplinary procedure will be resumed".*

57. The First Respondent, objected to the admission of the Olimpia Letter. In addition, the First Respondent alleged that, in its view, the special particularities of that case entailed for the suspension of the disciplinary procedure and that, in any case, it was not relevant to the present case. The Second Respondent did not object to the admission of the cited document. After a short break for deliberation, the Panel decided to admit the Olimpia Letter and informed the parties, firstly, they would have the opportunity to make statements regarding the merit of that document and, secondly, that the reasoning for this decision would be explained in the award to be rendered.

58. Finally, at the end of the hearing, all the parties expressly declared that they did not have any objection with respect to the procedure and that their right to be heard had been fully respected.

59. On 20 December 2016, the CAS Court Office requested FIFA to produce a copy of the full file *(No. 160339 asa),* in which the Olimpia Letter was issued.

60. On 13 January 2017, FIFA filed a copy of the case file *(No. 160339 asa)* together with a brief in which it explained the main facts of such case and its conclusions with regard to the effects that it may have to the present case.

61. On 16 January 2017, the CAS Court Office invited the Appellant and the Second Respondent to file their comments, if any, with respect to last correspondence received from FIFA.

62. On 19 January 2017, the Appellant filed its comments to the FIFA file No. 160339 asa that had been produced by the First Respondent. The Second Respondent did not file any comment to the correspondence filed by FIFA.

63. The language of the present procedure is English.

IV. SUMMARY OF THE PARTIES' POSITIONS

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

A) The Appellant

65. The Appellant faced economic problems after the resignation of its previous Board of Directors. The new Board of Directors (formally recognized on 24 October 2015) found that Barcelona owed more than USD 12.000.000 and it had received several disciplinary notifications as a consequence of the several outstanding debts.

66. However, the Appellant was aware of its obligation to pay Boca and, for this reason, in March 2016 it sent one of its Directors to Buenos Aires in order to reach a settlement agreement with Boca. Even though Barcelona and Boca had reached the terms for the Payment Agreement, the latter requested some guarantees before the execution of the agreement. In addition, in the meantime Ecuador suffered a great earthquake that paralyzed all the activity of the club. Finally, on 29 April 2016, the parties signed the Payment Agreement (already reached in March 2016) and both, Barcelona and Boca, requested to the FIFA DC the suspension of the reduction of points.

67. The Appealed Resolution must be revoked on the basis that the creditor (i.e. Boca) requested the suspension of the six-point deduction and because both parties had reached a Payment Agreement, which allowed for the suspension of the aforesaid measure. Moreover, it must be considered that indeed both parties (i.e. Barcelona and Boca) were holding negotiations – and reached an agreement – before 21 April 2016, when FIFA decided to apply the six-point deduction.

68. The legal possibility to suspend the deduction of points is confirmed with the Olimpia Letter (in which FIFA requested the Paraguayan Football Federation to ignore and suspend its previous order of point-deduction due to the settlement agreement reached by the parties of that particular case).

69. Furthermore, the Appealed Resolution must be declared null and void due to the following reasons:

i. The Appealed Resolution was taken in breach of Article 62 of the FIFA Statutes, that provides that the FIFA judicial bodies *"(…) shall pass decision only when* ***at least three members are present****. In certain cases, the chairman may rule alone(…)"*. Despite the clarity of this provision, the Appealed Resolution was rendered by the Deputy Secretary of the FIFA DC alone.

ii. The Appealed Resolution was taken in breach of Article 82 of the FIFA Disciplinary Code, pursuant to which *"The committee meetings are deemed to be valid if at least three members are present"*. The Appealed Resolution breached this legal provision because: a) pursuant Arts. 81 and 84 of the FIFA Disciplinary Code, secretaries are not members of the FIFA DC and b) the decision was not taken by a minimum of three of its members.

iii. The Appealed Resolution was taken in breach of Article 115 of the FIFA Disciplinary Code, which reads as follows;

"Article 115 Form and contents of the decision

1. Without prejudice to the application of art. 116 below, the decision contains:

a) the composition of the committee;

b) the names of the parties;

c) a summary of the facts;

d) the grounds of the decision;

e) the provisions on which the decision was based;

f) the terms of the decision;

g) notice of the channels for appeal. (…)"

Even though the Appealed Resolution meets most of the requirements established in the said article (names of the parties, summary of the facts, grounds of the decision, provisions on which the decision is based, terms of the decision, etc.), which in turn proves that the Appealed Resolution is to be considered as a decision, it does not comply with lit. a) of this article which, in turn, makes the decision null and void.

iv. The Deputy Secretary of the FIFA DC did not have power to issue the Appealed Resolution: In accordance with Article 84 of the FIFA Disciplinary Code the powers of the secretaries are limited to administrative work. None of such powers allows to decide a request from a party. In particular, the Decision (in its section 4 of the operative part) granted the secretariat of the FIFA DC the power to implement the points deduction, but it did not confer the attribution to solve any other kind of request (such as the Barcelona and Boca's request of suspension). Therefore, the Deputy Secretary of the FIFA DC overstepped in his attributions and did not have power to issue the Appealed Resolution.

70. Barcelona and Boca's requests to suspend the deduction of points were not mere communications but petitions, and thus they deserved a decision making process in light of the above cited provisions.

71. In addition, the FIFA DC does not have legitimacy to pursue the deduction of points since the "holder" of the disciplinary measure is Boca. This is clearly confirmed by section 4 of the operative part of the Decision, pursuant to which *"(…) the creditor* [Boca] *may request in writing to the Secretariat of FIFA the deduction of six points to the firs team of the debtor (…)"*. In turn this was also confirmed by the "execution" process that was started by Boca (and not by FIFA). In other words, the deduction of points is a right of the creditor, but not an automatic sanction subject to the will of the FIFA DC.

72. In this regard, it is evident that after reaching the Payment Agreement, Boca lost its interest to pursue the deduction of points and, as the holder of the right to request the deduction of points, it duly informed FIFA to suspend the implementation of the sanction. Furthermore, the suspension of the sanction would only affect to Boca, as *"there are no other affected parties in the case"* at stake.

73. With regard to FIFA's position that the implementation of the sanction is necessary to preserve "harmony" in the world of football, since section 2 of the operative part of the Decision already imposed a sanction (i.e. the imposition of a fine of CHF 30,000), this would be enough to this purpose, making it unnecessary to apply the deduction of points. Otherwise, this would be a double punishment.

74. Finally, on a subsidiary basis, the Panel shall mitigate the six-point deduction down to one-point deduction, taking into consideration that (i) Boca has already received guarantees regarding the payment of the outstanding amount and (ii) that the earthquake in Ecuador and the change of the club's Board of Directors prevented the Appellant to reach the Payment Agreement before.

B) The First Respondent

75. The Appealed Resolution is not a Decision but a mere correspondence of the Secretariat to the FIFA DC, providing the parties involved with certain information regarding the case at stake. If the Appellant wanted to contest the Decision rendered by the FIFA DC, it should have requested its grounds and filed an appeal against it. However, the Appellant did not appeal such decision and thus, the Decision of the FIFA DC is final and binding.

76. In section 4 of its operative part, the Decision clearly stated that *"(…) Once the creditor has filed this request, the points will be deducted automatically without a further formal decision having to be taken by the FIFA Disciplinary Committee"*. In other words, the ruling to have the points deducted was already assessed and decided by the competent FIFA body (the FIFA DC). As such, in the absence of payment and upon the explicit request of Boca, the Secretariat merely informed and ordered the automatic "implementation" of the point deduction provided in the Decision, through the letter of 21 April 2016. Consequently, this letter cannot be considered as a new decision.

77. *A fortiori*, the same applies to the Appealed Resolution, which merely confirmed the order that was initially given on 21 April 2016. Therefore, the Appellant is right when it says that the Appealed Resolution did not comply with Articles 82 or 115 of the FDC because, in fact,

these letters (21 April 2016 and 19 May 2016) are not decisions but common administrative correspondence.

78. The secretariat has no margin of appreciation and is limited to inform the relevant association about the creditor's requests and order the implementation of a decision of the FIFA DC. The Appealed Resolution (a letter from the FIFA administration) is a mere measure of execution of a final and binding decision passed by the FIFA DC. Therefore, such kind of correspondence does not have to comply with the requirements for a decision established under Articles 82 or 115 of the FDC. For these reasons, since such correspondence is a mere administrative act, the present Appeal should be declared inadmissible.

79. It is undisputed that the Appellant neither complied with the CAS Award, nor with the First FIFA Decision. Even though the Appellant was duly informed of the potential consequences of this non-fulfilment, it did not execute the payment of the outstanding amounts within the deadline granted by the Decision. This means that the Appellant did not respect the Decision. Therefore, the Decision passed by the FIFA DC correctly applied Article 64 of the FDC, which is aimed to put the debtor under pressure and to enforce final and binding decisions.

80. As it happens with "enforcement authorities", the FIFA DC cannot review or modify the substance of the previous decision and only assesses whether or not the financial amount at stake has been paid, or not, by the claiming party, or if for a certain reason the outstanding amount is not due anymore. In this regard, pursuant to Articles 85 and 85a of the Swiss Federal Act on debt enforcement and bankruptcy, the debtor can at any time request the enforcement authority to suspend the proceedings if the creditor has granted a deferral.

81. CAS jurisprudence has repeatedly confirmed that FIFA can impose sanctions upon direct and indirect members in the context of enforcement of decisions (cf. CAS 2012/A/3032, CAS 2012/A/2730 and CAS 2013/A/3358). Therefore, as the Appellant had not complied with the Decision, it is clear that the FIFA DC correctly applied Article 64 FDC to the case.

82. It is true that the spirit of Article 64 of the FDC is to enforce decisions that had been rendered by a body, committee or an instance of FIFA or the CAS in a subsequent appeal decision, in order to assure that the rights of players or clubs are respected. In view of this, the particular proceedings provided for under Article 64 of the FDC could be regarded as the enforcement proceedings pursuant to Swiss law and, consequently, the FIFA DC could be regarded as acting similarly as an "enforcement authority". However, FIFA disciplinary measures are to be considered not as an "enforcement" but rather as the imposition of a sanction against a member for breaching the associations' regulations. For this reason, it is irrelevant whether the creditor asked or not for the cancellation of the implementation of the disciplinary measure.

83. Moreover, in accordance with Article 64 of the FDC, the FIFA DC is competent to decide at its own discretion and under a standard of "comfortable satisfaction", if an infringement to said article has been committed. In the present case, it is uncontested that the Appellant, despite being granted with several deadlines of grace to pay the due amounts, blatantly

disrespected the First FIFA Decision, the CAS Award and the Decision itself. Therefore, the FIFA DC correctly applied Article 64 of the FIFA DC to the facts of the case at stake.

84. It is impossible to withdraw the order of deduction of points after it has been sent to the relevant association. The cancellation of an imposed sanction based on the fact that a debt has finally settled would be nothing less than a synonym of an ineffective enforcement procedure. The disciplinary measures provided by the FIFA Regulations serve as a deterrent against infractions committed by all football stakeholders. Suspending the effect of such a sanction in the present circumstances (where the Appellant blatantly disrespected a CAS decision and disregarded numerous FIFA correspondences reminding it of its obligations), it would represent an inappropriate example towards all the football actors. In other words, it would simply mean that the final deadline of grace would be absolutely ineffective, as a debtor would be entitled to pay a debt at any time – and well after the expire of the final deadline of grace – without facing further disciplinary measures.

85. Ultimately, the excuses brought by the Appellant are pointless and cannot justify the lack of payment or the suspension of the sanction. Indeed, this is not the first time that Barcelona is involved in this kind of problems and it repeatedly conducts itself with this dilatory conduct, (i.e. it reaches a settlement agreement after the expiration of the term for the payment). Just last year, FIFA had to sanction the Appellant due to another debt.

C) The Second Respondent

86. The intervention of the FEF is limited to receive and to send communications between Barcelona and FIFA.

87. Notwithstanding this, the FEF agrees with the Appellant's position for the following reasons:

i) It is true that Barcelona approached the FEF in order to get the guarantees that were requested by Boca to sign the Payment Agreement. Indeed, the FEF helped Barcelona to close the deal with Boca.

ii) FIFA is rightful when it states that the disciplinary process exists in order to protect its members. In fact, in a different case, the FEF indeed deducted points from Barcelona for not complying with some payments due to a coach. However, in the present case (a) the Appellant has complied with all the payments due to Boca (i.e. the system has already protected the involved member), (b) Boca has requested the suspension of the point-deduction and (c) there are no third parties affected if such suspension is granted. In other words, by no means the FIFA system is being jeopardized if the Appeal is upheld.

V. JURISDICTION OF THE CAS

88. Article R47 of the CAS Code of Sports-related Arbitration ("the Code") provides that a decision of a federation may be appealed with CAS if the statutes or regulations of the said body so provide. In the present case, the CAS jurisdiction derives from the Appellant's

acceptance of the FIFA Regulations by means of its affiliation with the FEF, who is a member of FIFA.

89. In this regard, Article 64.5 of the FDC establishes that *"Any appeal against a decision passed in accordance with this article shall be lodged with CAS directly"*. In addition, Article 74 of the FDC also provides an arbitration clause in favour of the CAS, pursuant to which *"Certain decisions passed by the Disciplinary and Appeal Committees may be appealed against before the Court of Arbitration for Sport (cf. art. 63 of the FIFA Statutes as well as art. 64 and art. 128 of this code)"*. Finally, Article 58.1 of the FIFA Statutes (Ed. 2016) envisages the right to appeal before the CAS final decisions passed by FIFA's legal bodies

90. The jurisdiction of the CAS, which has not been challenged by any of the parties, has been also confirmed by the parties that have accepted the jurisdiction of this Court by signing the Order of Procedure.

91. In light of the above, and taking into account that, as it will be reasoned in the following section of the present award, the Panel considers that the Appealed Resolution is a "decision" in the sense of Article 47 of the Code, the CAS has jurisdiction to rule on the present case.

VI. ADMISSIBILITY

92. The admissibility of an appeal before CAS shall be examined in light of Article R47 of the CAS Code, which reads as follows:

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

93. In accordance with this article, the admissibility of an appeal with the CAS requires that the following requisites are met: (i) the object of the appeal shall be a decision of a federation, association or sports-related body; (ii) all the internal remedies available to the parties in the federative instance must be exhausted before filing the appeal; and (iii) the time limits established for the appeal must be observed.

(i) The object of this appeal

94. With regard to the first requirement (i.e. that the object of the appeal is a decision of a federation, association or sports-related body) the Panel observes that the same requirement is established in the FIFA Regulations, as it has been referred in the previous Section (i.e. Articles 64.5 and 74 of the FDC and Article 58.1 of the FIFA Statutes). In effect, the FIFA Regulations establish that the appeals before CAS shall be lodged against a decision passed by FIFA's legal bodies.

95. In the present case, the Appellant and the First Respondent disagree on the nature of the Appealed Resolution. The Appellant sustains that the Appealed Resolution is indeed a "decision" within the meaning of Article R47 of the CAS Code, because it gathers all the requirements provided in Article 115 of the FDC, with the sole exception of lit. a) -i.e. "the composition of the committee"-. On the contrary, the First Respondent challenges the admissibility of the appeal filed by Barcelona, because in its view the Appealed Resolution is not a decision, but a mere informative letter confirming a previous correspondence from FIFA, dated 21 April 2016. Therefore, the First Respondent concludes that the Appealed Resolution cannot be qualified as an appealable decision but as *"a mere measure of execution of a final and binding decision"* and thus that the Appeal filed by the Appellant shall be declared inadmissible.

96. In view of such challenge the Panel shall determine if the letter issued by the Deputy Secretary of the FIFA DC on 19 May 2016 shall be considered an appealable decision or not. To settle this matter the Panel has taken note that there is a consistent body of CAS jurisprudence that has established the requirements that a letter shall meet in order to be qualified as a "decision". In particular, a summary of this jurisprudence can be found in the award resolving the case CAS 2008/A/1633, pursuant to which:

a. "The existence of a decision does not depend on the form in which it is issued. For instance, in the awards of the cases CAS 2005/A/899 & 2007/A/1251 it is stated that:

"[…] the form of a communication has no relevance to determine whether there exists a decision or not. In particular, the fact that the communication is made in ***the form of a letter does not rule out the possibility that it constitutes a decision subject to appeal****" [Emphasis added].*

b. A communication intending to be considered a decision shall contain a ruling tending to affect the legal situation of its addressee or other parties. This position is held, among others, in the following awards:

- *CAS 2005/A/899 & 2007/A/1251:*

"In principle, for a communication to be a decision, this communication must contain ruling, whereby the body issuing the decision ***intends to affect the legal situation of the addressee*** *of the decision or other parties" [Emphasis added].*

- *CAS 2004/A/659:*

"35. The Panel has thus to consider if the letter of 5 July 2005 constitutes a decision in the sense of the code, susceptible to an appeal to the CAS, which is a necessary condition to the jurisdiction of the CAS to rule in the present matter*.*

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

ATF 101 Ia 73).

A decision is thus an ***unilateral act, sent to one or more determined recipients and is intended to produce legal effects****" [Emphasis added].*

- *CAS 2004/A/748:*

"In light of the above CAS precedents, the Panel finds that the IOC President's letter of 23 September 2004 contained in fact a clear statement of the resolution of the disciplinary procedure against Mr Hamilton. That statement had the additional effect of resolving the matter in respect of all interested parties: "the Disciplinary Commission [...] is being dissolved, and the IOC will not be pursuing sanctions regarding this matter". As a consequence of this ruling, the anti-doping case against Mr Hamilton was closed and Mr Hamilton could retain his gold medal; at the same time the other competitors (and in particular Mr Ekimov and Mr Rogers) could not benefit from the possible disqualification of Mr Hamilton. ***In other words, the legal situations of the addressee and of the other concerned athletes were materially affected.*** *[Emphasis added].*

It seems also evident from the text of the letter (the "IOC hereby informs you" and "the IOC will not be pursuing sanctions") that the IOC President intended such communication to be a decision issued on behalf of the IOC.

Accordingly, the Panel has no hesitation in finding that the IOC President's letter dated 23 September 2004 – without taking position on whether this Presidential action was within his powers or not – is a true "decision" of the IOC (hereinafter referred to as the "Decision of 23 September 2004") and, thus, can be appealed under Art. R47 of the Code".

c. *A ruling issued by a sports-related body refusing to deal with a request can be considered a decision under certain circumstances. This principle has been recognised, among others, in the following awards:*

- *CAS 2007/A/1251:*

"The Panel finds that by responding in such manner to ARIS' request for relief, FIFA clearly manifested it would not entertain the request, thereby making a ruling on the admissibility of the request and directly affecting ARIS' legal situation. Thus, despite being formulated in a letter, ***FIFA's refusal to entertain ARIS' request was, in substance, a decision****" [Emphasis added].*

- *CAS 2005/A/994 [recte 944]:*

"As this Panel already stated in its decision of 15 July 2005, ***if a body refuses without reasons to issue a decision*** *or delays the issuance of a decision beyond a reasonable period of time,* ***there can be a denial of justice, opening the way for an appeal against the absence of a decision*** *(CAS/A/899; see also CAS award of 15 May 1997, published in Digest of CAS Awards 1986-1998, p. 539; see also Jan Paulsson, Denial of justice in international law, Cambridge University Press, New York 2005, pp. 176-178). […] [Emphasis added].*

A decision from FIFA or one of its juridical bodies not to open a disciplinary procedure ***– or the mere absence of any reaction – must therefore be considered as a decision which is final within FIFA. It is thus subject to an appeal with CAS****. […] [Emphasis added].*

According to Swiss case law, ***there can be a denial of justice*** *(so-called "substantive" denial of justice - déni de justice matériel") even after a decision has been issued,* ***if such decision is arbitrary, i.e. constitutes a very serious breach of a statutory provision or of a clear and undisputable legal principle, or when it seriously offends the sense of justice and equity****" [Emphasis added].*

- *CAS 2005/A/899:*

"In principle, for a communication to be a decision, this communication must contain ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties. ***However, there can also be a decision where the body issues a ruling as to the admissibility or inadmissibility of a request, without addressing the merits of such request****" [Emphasis added].*

11. Based on the above, the Panel believes that an appealable decision of a sport association or federation «is normally a communication of the association directed to a party and based on an 'animus decidendi', i.e. an intention of a body of the association to decide on a matter […]. A simple information, which does not contain any 'ruling', cannot be considered a decision» (BERNASCONI M., When is a 'decision' an appealable decision?, in: RIGOZZI/BERNASCONI (eds.), The Proceedings before the CAS, Bern 2007, p. 273)".

97. As it can be seen from the foregoing, *"The decisive criteria, thus, is whether or not the act in question impacts upon the legal situation of the Appellant. If that is the case (independent of what the intentions of the relevant sports organisation were), there must be access to justice for the person concerned"* (CAS 2015/A/4162).

98. In the present case, the letter of 19 May 2016 rejected Barcelona's request for a stay of the implementation of the deduction of six points to the first team of Barcelona, reiterating the deduction of points that the secretary of the FIFA DC had requested to the FEF to implement, by means of his correspondence of 21 April 2016. In this regard, the Panel has also noted that this letter of 19 May 2016 included (i) the names of the parties; (ii) a summary of the facts; (iii) the grounds for dismissing Barcelona's request for a stay and (iv) the terms of the decision, thus meeting the main requirements that a decision shall meet with regard to its form and contents.

99. In addition, the Panel finds that the Appealed Resolution clearly ruled on the request filed by Barcelona, deciding that such request for a stay was not admissible *("Por lo tanto, les informamos que su solicitud de suspension de la deducción de puntos no puede ser tenida en cuenta")*. In particular, the Panel considers that this ruling, that clearly intended to affect the legal situation of its addressee (Barcelona), had legal effect and a direct material impact in the legal situation of Barcelona.

100. In this regard, the Panel shall reject the First Respondent's submission pursuant to which, ultimately, if the Appellant did not agree with the order for deduction of points issued by means of the letter of 21 April 2016, it should have had requested the grounds of this "decision" and have filed an appeal against it afterwards. And it cannot be admitted because the accurate analysis of the facts shows that the Appellant did not intend to challenge the validity or legality of this first order for deduction of points that at the time in which it was issued was totally correct. On the contrary, the request that was submitted to the FIFA DC was of a different nature, consisting of the suspension of the request for deduction of 6 points against Barcelona (*"las partes solicitan que se suspenda la solicitud de deducción de seis (6) puntos en contra del Barcelona Sporting Club"*). Therefore, taking into account the nature of such request, the resolution that the Appellant should have appealed was indeed the Appealed Resolution, and not the letter of 21 April 2016.

101. For all these reasons, the Panel concludes that, irrespective of its form (i.e. a letter), the letter sent by the secretary of the FIFA DC on 19 May 2016 is an appealable decision within the meaning of Article R47 of the CAS Code.

(ii) The exhaustion of all internal legal remedies

102. In order to determine that this prerequisite, that has not been brought into question by any of the Respondents, is met, the Panel shall determine if such internal legal remedy existed and, if this is the case, whether the Appellant had exhausted such remedies, or not, before filing the Appeal in front of the CAS.

103. The Panel has observed that the proceedings that brought to the Appealed Resolution derive from the application of Article 64 of the FDC (i.e. the reduction of points due to the Appellant's lack of payment). In this regard, para. 5 of this article provides that *"Any appeal against a decision passed in accordance with this article shall be lodged with CAS directly"*. The Panel understands that the possibility to file this direct appeal before CAS envisaged by Article 64.5 of the FDC shall not limited to the "decisions" that effectively imposes sanctions against a debtor (as provided in paras. 1 to 4 of this article), but to all "decisions" that may come from these proceedings or rule on incidental requests from the concerned parties, as it is the present case.

104. In this regard, as decided on CAS 2015/A/4162, *"The view held by the Panel is not contradicted by the fact that it was not – formally - the FIFA DC that issued the decision. First, Article 64 (5) of the FIFA Disciplinary Code merely indicates which kind of decision ratione materiae may be appealed to CAS (without specifying the competent FIFA body responsible for issuing the decision). Secondly, in the present case the Appealed Decision was signed by the Deputy Secretary of the FIFA DC on behalf of the latter"*.

105. Therefore, the Panel concludes that the Appealed Resolution is a "final decision" within the meaning of Article R47 of the Code, against which no further internal remedies were available to the Appellant pursuant Article 64 of the FDC.

(iii) Time limit for appeal

106. Pursuant to Article 58.1 of the FIFA Statutes (Edition 2016) *"Appeals against final decisions passed by FIFA's legal bodies […] shall be lodged with CAS within 21 days of notification of the decision in question"*.

107. The Appealed Resolution was communicated to the Appellant through the FEF on 24 May 2016, and the Statement of Appeal was filed with the CAS on 30 May 2016, hence within the 21-day deadline applicable. Therefore, the Panel declares the appeal admissible.

VII. APPLICABLE LAW

108. Article R58 of the Code provides as follows:

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

109. Considering that the object of the present Appeal is a decision issued by a FIFA body, the Panel shall also take into account that Article 57.2 of the FIFA Statutes provides that *"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"*.

110. In light of the abovementioned, the Panel rules that, as it has been sustained by the parties, the applicable law to the present dispute are the FIFA Regulations and, additionally, Swiss law.

VIII. PROCEDURAL ISSUE – THE ADMISSIBILITY OF THE "OLIMPIA LETTER"

111. During the hearing held in the present procedure, the Panel admitted the Olimpia Letter as new evidence produced by the Appellant. The Panel took this decision taking into account that, pursuant to Article R56 of the CAS Code *"Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer"*.

112. As it can be observed, this article stipulates that, in some cases, after the parties having submitted their main briefs (Appeal Brief and Answer to the Appeal), the President of the Panel may authorize the parties to supplement them or to produce new exhibits provided that "exceptional circumstances" concur in the case at stake.

113. In the present procedure, after the submission of his Appeal Brief the Appellant requested the Panel to admit of a new exhibit (the Olimpia Letter), on the grounds that (i) in its view this document was relevant for deciding the present dispute and (ii) it was aware of the existence

of the Olimpia Letter (that was dated on 29 August 2016) only a short time before the hearing, when a colleague from Paraguay informed him about its existence.

114. The First Respondent objected the admission of the Olimpia Letter arguing that the facts of that case were different to the present one and, therefore, this new evidence was irrelevant. As a matter of fact, the Panel invited FIFA to produce a copy of the complete case file (i.e. Disciplinary Proceedings 160339) in order to assess whether the facts that lead to the issuance of the Olimpia Letter differ from the facts at stake, as the First Respondent maintains (issue that will be assessed in the next section IX of the present award).

115. The Panel decided that the Olimpia Letter was admissible. First of all, because taking into account the date of the letter (29 August 2016) it was impossible for the Appellant to produce it with its Appeal Brief, and hence shall be considered as a new fact (*nova facta*). In addition, taking into account that through this letter the FIFA DC (or, at least, one of its secretaries) ordered a national federation to disregard its previous decision to deduct points to one of its affiliated clubs (i.e. something that FIFA, during these proceedings, has argued that is impossible to do) and that, indeed, in that case such deduction of points had been already implemented, the Panel considered that the Olimpia Letter (and the complete disciplinary file) was relevant for the resolution of the present case.

116. For all these reasons, the President of the Panel found that in the present case "exceptional circumstances" providing for the admissibility of this new piece of evidence existed, and thus the Olimpia Letter was admitted to the file.

IX. LEGAL DISCUSSION

117. Basically, the Appellant seeks the annulment of the Appealed Resolution and the issuance of a new decision declaring the suspension of the six-point deduction imposed by FIFA. To rule on this claim, the Panel shall take into account that, pursuant to Art. R57 of the CAS Code, *"The Panel has 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".*

118. In this regard, with respect to the alleged formal infringements of the FIFA Statutes (i.e. Article 62) and of the FIFA DC (i.e. Articles 82, 84 and 115 of the FDC) that the Appellant attributes to the Appealed Resolution, taking into account that the Panel has full power to review the facts and the law and to issue a new decision, and considering that in this second instance all the procedural defects, flaws and violations of rights which might have occurred in the previous instance can be cured by the CAS, in the interests of overall procedural economy and effectiveness, the Panel deems unnecessary to rule on these alleged procedural defects, as it can directly assess the main and essential issue sustained by the Appellant with its Appeal, consisting of whether its request for suspension of the six-point deduction ordered by the FIFA DC was admissible or not. Ultimately, this is the reason that can make its Appeal succeed.

119. In effect, the core of the present dispute relies on FIFA's denial to suspend the order of deduction of points that it had previously issued. The Appellant considers that the suspension of this measure should have been granted by FIFA, mainly because:

- before the order to implement the deduction of points was taken, Barcelona and Boca were holding negotiations (and, indeed, had already reached a verbal agreement);

- finally, Boca and Barcelona entered into a settlement agreement (the Payment Agreement), pursuant to which the Appellant made a first payment in amount of USD 400,000;

- Boca (and Barcelona too) requested FIFA to suspend of the deduction of points and;

- while FIFA is the holder of the sanction imposed in section 2 of the operative part of the Decision (i.e. the imposition of a fine in amount of CHF 30,000) and thus the only one entitled to decide on its enforceability, Boca is the holder of the sanction envisaged in section 4 of the operative part of the Decision, thus being Boca entitled to decide whether to enforce this sanction or not.

- In addition, the suspension does not affect any other party.

120. The First Respondent disagrees with the Appellant and maintains that:

- The Appealed Resolution was a mere administrative act confirming its previous order (dated 21 April 2016) to the FEF to implement the six-point deduction imposed by the Decision. Indeed, this decision was issued upon Boca's request.

- In this type of cases FIFA DC simply acts as a "kind" of "enforcement authority", and thus only assesses if the debt has been paid to the claiming party, which at the moment in which order was issued it had not happened yet. However, even though the spirit of Article 64 of the FDC is to enforce decisions, proceedings under Article 64 of the FDC are to be considered not as an enforcement but rather as the imposition of a sanction for breach of the association's regulations.

- Taking into account that the decision to deduct points was already decided by the FIFA DC in a final and binding Decision, the secretary had no margin of appreciation and his role was limited to inform the FEF about the creditor's request and thus order it the implementation of the decision of the FIFA DC.

- Indeed, it is impossible to withdraw the order for point deduction after it has been sent to the relevant association. The cancellation of such an imposed sanction based on the fact that the debt would have been finally settled would mean that the final deadline of grace would be absolutely ineffective, as the debtor would be entitled to pay a debt at any time without facing further disciplinary measures. In turn this would make the deterrent effect of the sanction ineffective.

- Suspending the effect of such a sanction in such a case where the Appellant blatantly disrespected a CAS decision and disregarded numerous FIFA´s correspondence

reminding it of its obligations would represent an inappropriate example towards all the football actors. In this regard, FIFA's interests as the governing body shall prevail over any interest that the Appellant may have, and it must be weighed against the interests of any third parties.

121. Before giving the grounds of its decision, the Panel wants to clarify that it totally agrees with FIFA's position and considers that the decision of potential point-deduction established in the Decision was duly taken by the FIFA DC. In this regard, the Panel wants to point out that the Appellant's behaviour in the previous instance is inadmissible. The Appellant had several opportunities to pay its debt to Boca. It was not until the "last minute" when Barcelona decided to face (even if partially) the payment owed. However, the scope of the present appeal is not to decide if the Appellant deserved this point-deduction or not, but to establish if it was possible to suspend its implementation given the circumstances at stake.

122. Pursuant to section 4 of the operative part of the Decision[2]:

"4. If payment is not made by this deadline, the creditor may demand in writing from the secretariat to the FIFA Disciplinary Committee that six (6) points be deducted from the first team of the club Barcelona Sporting Club in the domestic league championship. Once the creditor has filed this request, the points will be deducted automatically without a further formal decision having to be taken by the FIFA Disciplinary Committee. The order to implement the points deduction will be issued on the association concerned by the secretariat to the FIFA Disciplinary Committee".

123. Therefore, the Decision conferred to the FIFA DC's secretariat the power to implement the six-point deduction upon the creditor's request. In this regard, the Panel agrees that there was no need for a formal decision to implement such sanction and the Deputy Secretary of the FIFA DC had the power to order such implementation.

124. From the literality of section 4 of the operative part of the Decision, it is not clear if the measure of the six-point deduction could be suspended upon request of Boca (or the Appellant) or not, once it has been already implemented. In this regard, FIFA states that it is impossible to withdraw the order for point deduction after it has been served to the relevant association.

125. In this regard, FIFA recognizes that the deduction of points is intended to enforce decisions by means of putting the debtor under pressure to finally comply with the decision at stake. From this perspective, the First Respondent recognizes that *"the particular proceedings provided for under art. 64 of the FDC could be regarded as the enforcement proceedings pursuant to Swiss Law and consequently the FIFA Disciplinary Committee could be regarded as acting similarly as an 'enforcement authority'"*. In this regard, the First Respondent has made reference to the Swiss Federal Act on Debt Enforcement and Bankruptcy, according to which *"the debtor can also at any time request the enforcement authority to suspend the proceedings if the debtor can produce documents proving that the creditor has granted a deferral"*.

[2] Translation provided by FIFA and not contested by any of the parties.

126. Therefore, in the Panel's view the spirit of this measure is not only to sanction a breach of the FIFA Regulations (which, indeed, has been already sanctioned by means of the imposition of a fine), but also to assure that the decisions passed by the FIFA bodies or by the CAS *"are respected and ergo the rights of players or clubs finally be guarded"*. In this context, one could hold that, given the fact that the point deduction can be seen as a *"measure of execution"* addressed *"to execute the payment of the amount due to the club"* (as stated by FIFA in its Answer to the Appeal), the creditor should be entitled to request the stay of the execution of such measure, at least before it has been implemented. Following this line, from the point of view of the creditor, it may be better to suspend the execution of this measure if its implementation may jeopardise the solvency of the debtor (for example, due to the loss of profits that may imply the deduction of points, due to the economic consequences of the sporting performance).

127. Notwithstanding this, the Panel cannot leave out the fact that, at the same time, once the creditor has requested the implementation of the point deduction and the Deputy Secretary of the FIFA DC has ordered to the relevant national association the execution of such point deduction, this "measure of execution" which first purpose was to promote the payment of a debt, becomes a sanction (i.e. the sanction envisaged in 64 of the FDC for cases in which someone fails to comply with a financial decision passed by a body, a committee or an instance of FIFA, or by CAS). Therefore, the Panel concludes that, indeed, in these cases this deduction of points has a dual nature (i.e. it is a measure of execution that can turn into a sanction) that ultimately depends on the procedural moment at stake.

128. In this regard, the Panel agrees with FIFA and considers that the execution of the deduction of points can only be suspended in case the creditor (or the debtor with the agreement of the latter) that initially requested to implement such measure later asks the FIFA DC for its suspension, provided that the creditor does it before the FIFA DC has implemented the measure by ordering the relevant national association to deduct points to the debtor. On the contrary, if the creditor files this petition once the deduction of points has been ordered, such petition will not be admissible because the deduction of points would have turn into a sanction which execution is out of the scope of control of the creditor who, hence, is not legitimated or empowered to request the suspension of such sanction.

129. The Panel is aware that, at first sight, the Olimpia Letter could seem in contradiction with this rule, because in the case to which the Olimpia Letter refers, the FIFA DC decided to withdraw a deduction of points that had been previously ordered and implemented by the relevant national association. However, as it will be explained below, indeed this is a case that clearly confirms the aforementioned position.

130. In particular, in that case the parties (creditor and debtor) reached a settlement agreement on 4 August 2016 (once the creditor had requested to the FIFA DC the implementation of the points deduction). This agreement was notified to the FIFA DC on this same day and, additionally, on 5 August 2016, the debtor requested the FIFA DC to suspend the deduction of points that had been previously requested by the creditor, until the settlement agreement reached would have been completely fulfilled. However, the FIFA DC overlooked this correspondence of 4 and 5 August, and on 24 August 2016, ordered to the national association to implement the point deduction to the debtor.

131. However, once the FIFA DC became aware of this mistake (i.e. that the settlement agreement between the parties and the request for suspension of the deduction of points had been sent to the FIFA DC before the Deputy Secretary of the FIFA DC had ordered the deduction of points to the national association), it decided to withdraw the deduction of points that it had previously ordered and to suspend the disciplinary proceedings until the settlement agreement would have been fulfilled.

132. Therefore, the Panel agrees with the First Respondent and considers that section 4 of the operative part of the Appealed Decision shall be interpreted in the sense that, once the creditor has requested the implementation of the points deduction established therein, the execution of this measure can be only suspended in case the creditor (or the debtor with the agreement of the creditor) requests so before the Deputy Secretary of the FIFA DC has ordered the deduction of points to the corresponding national association. On the contrary, once the implementation of the points deduction has been ordered by the Deputy Secretary of the FIFA DC, this measure has turned into a sanction which execution or enforcement do not depend at all on the creditor's or on the debtor's will. As a consequence, the Panel considers that, as a general rule, once the order of deduction of points has been requested by the creditor and has been already notified by the FIFA DC to the relevant association, such measure becomes a binding sanction that cannot be stayed, suspended or withdrawn, unless exceptional circumstances so justify (like those considered by the Olimpia Letter).

133. In this context, taking into account that in the case at stake the settlement agreement was executed by the parties on 28 and 29 April 2016, and that it was not until 29 April 2016 when the creditor requested the FIFA DC to suspend the execution of the points deduction that had been previously ordered by the FIFA DC on 21 April 2016 (i.e. the request for suspension was filed 8 days after the sanction had been implemented), the Panel considers that the petition of the Appellant and of the creditor was not admissible, and thus that the decision of the Deputy Secretary of the FIFA DC was correct and lawful.

134. In light of the foregoing, the Panel rules that the Appeal filed by the Appellant shall be dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Barcelona Sporting Club on 30 May 2016 against the decision issued by the FIFA on 19 May 2016 is admissible.

2. The appeal filed by Barcelona Sporting Club on 30 May 2016 against the decision issued by the FIFA on 19 May 2016 is dismissed.

3. The decision issued by the FIFA on 19 May 2016 is confirmed.

4. The Order on Request for a Stay rendered by the CAS on 8 September 2016 is lifted.

5. (…).

6. (…).

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