



**Arbitration CAS 2016/A/4736 Cruzeiro Esporte Clube v. Clube Atlético Paranaense, award of 30 November 2016**

Panel: Mr Rui Botica Santos (Portugal), Sole Arbitrator

*Football*

*Solidarity contribution*

*Powers of the CBF to regulate the exercise of the right to training and/or solidarity mechanism compensation*

*Interpretation of legal provisions*

*Statute of limitation regarding claims for training and/or National Solidarity Mechanism compensation*

1. Article 13 of the Pelé Law recognises the CBF as part of the “National Sport System”, with Article 16 granting it the status of a private law juristic body with powers to operate autonomously within the parameters defined in its bylaws. Indeed, the formal conduct of sport is governed by national and international rules and by the rules specific to each sport, as accepted by the respective national sports administration bodies (Article 1.1 of the Pelé Law). The Pelé Law makes no provision limiting a club’s right to file an action for National Solidarity Mechanism. Matters regarding a club’s right to file an action for National Solidarity Mechanism are governed by the CBF Regulations, which came into force on 13 January 2015.
2. It is a universal principle that the interpretation of legal provisions must firstly take account of the letter of the provision in question and that only in cases of lacunae, or of obscurity of the provision, recourse should be made to other methods in order to interpret the provision, such as, its *ratio*, systematic integration, etc. In other words, these further tools of the interpretation of legal provisions should only be used if the literal meaning is not, per se, sufficiently clear.
3. The wording of Article 64 of the CBF Regulations is express, clear and unequivocal by stating that the limitation period commences “*on the registration of the contract with the new club*” and is of 2 years from the date of the registration of the player’s contract with the new club. The fact that the CBF, as the body responsible for regulation of this matter, decided by way of applicable law, to impose a solution that takes into consideration, not the moment of the violation of the right, but the moment when the said right arose, is not contrary to any imperative applicable legal provision. Firstly, because the Pelé Law does not stipulate any general limitation rule, or any provision regarding the calculation of a limitation period with regard to the National Solidarity Mechanism; and, secondly, because the general rule in Article 189 of the Brazilian Civil Code provides that “*the limitation period is ten years, when the law does not provide a lesser period*”. The said general law expressly permits the existence of special rules, such as Article 64 of the CBF Regulations.

## **I. THE PARTIES**

1. Cruzeiro Esporte Clube (“Appellant” or “Cruzeiro”) is a Brazilian football club based in Belo Horizonte, affiliated to the Confederação Brasileira de Futebol (“CBF”). The latter is a member of the Fédération Internationale de Football Association (“FIFA”).
2. Clube Atlético Paranaense (“Respondent” or “Atlético Paranaense”) is a Brazilian football club based in Curitiba, affiliated to the CBF.

## **II. THE FACTUAL BACKGROUND**

3. This matter is related to an appeal filed by Cruzeiro against the decision rendered by the Comitê de Resolução de Litígios da CBF (“CBF DRC”) on 21 June 2016 (“CBF Decision”) followed by a subsequent clarification decision on 12 July 2016 (“CBF Clarification Decision”), in result of a request for clarification from Cruzeiro (“*declaração de embargos*”) (the CBF Decision and the CBF Clarification Decision will be hereinafter jointly referred to as the “Appealed Decision”). The grounds of the CBF Decision were notified to the Parties on 24 June 2016 and the CBF Clarification Decision on 15 July 2016.
4. Below is a summary of the main relevant facts and allegations based on the Parties’ written submissions and relevant documentation produced. Additional facts and allegations may be set out, where relevant, in connection with the further legal discussion. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in this Award only to the submissions and evidence he considers necessary to explain his reasoning.

### **A. The football history of the player D.**

5. The Player D. (“Player”) is a Brazilian national born on 22 March 1983. According to the Player’s passport as sent by the CBF, the Player was registered with Atlético Paranaense as a professional, from 1 March 2001 to 21 July 2001 and thereafter from 23 July 2001 to 31 December 2006. He thereafter joined other Brazilian football clubs before joining Cruzeiro.
6. On 8 January 2013, Sport Club Internacional (“Internacional”) transferred the Player to Cruzeiro in exchange for R\$6,750,000 (“Transfer Fee”).
7. On 28 January 2013, the Player’s employment contract (“Employment Contract”) with Cruzeiro was registered at the CBF.

### **B. The CBF Chamber Proceedings**

8. On 28 January 2015, Atlético Paranaense filed a claim before the CBF Chamber asking Cruzeiro to pay the equivalent to 18.36% regarding 5% of the Transfer Fee of the Player to Cruzeiro, as payment due for national solidarity mechanism (“National Solidarity Mechanism”).

9. On 21 June 2016, the CBF Chamber rendered the CBF Decision in favour of Atlético Paranaense and ordered Cruzeiro to pay the amount equivalent to 18.36% of 5% amount payable as National Solidarity Mechanism, plus 1% legal interest on arrears per month assessed from the notice of the CBF Decision, which quantum shall be determined in the settlement of *decisum*, as well as to pay the costs of the proceeding.
10. The CBF Decision accepted Atlético Paranaense's claim and rejected, by majority of the votes, Cruzeiro's arguments. The relevant parts of the decision read as follows:

*“RESULTADO: Por maioria de votos, rejeitada a preliminar arguida pelo Requerido Cruzeiro Esporte Clube em julgar extinta a presente Representação, sem julgamento do mérito, em face da prescrição e, por unanimidade de votos julgar procedente a representação, para condenar o Cruzeiro Esporte Clube a pagar o valor equivalente a 18,36% (...) do montante de 5% devido a título de Mecanismo de Solidariedade Interno-direito de formação, do contrato de atleta D., celebrado entre o Sport Club Internacional e o Cruzeiro Esporte Clube, quantia esta a ser acrescida dos juros legais de mora de 1% (...) ao mês aplicado a partir da citação deste procedimento, cujo quantum deve ser apurado em liquidação do decisum, e, ainda no pagamento das custas processuais. Custas pelo Requerido”.*

Free English translation as provided by the Appellant:

*“Outcomes: Preliminary pleaded by Cruzeiro Esporte Clube was rejected by majority of votes to rule extinct this Representation, without judging the merits, in view of the expiration; by unanimous vote to rule with grounds the representation to order to Cruzeiro Esporte Clube to pay the amount equivalent to 18.36% (...) on 5% amount payable as Internal Solidarity Mechanism – education right, of agreement of athlete D., signed by and between Sport Club Internacional and Cruzeiro Esporte Clube; Such amount shall be added by 1% (...) legal interest on arrears per month assessed from the notice of this proceeding, which quantum shall be determined in the settlement of decisum, as well as to pay the proceedings costs. Costs by Respondent”.*

11. The CBF Decision was approved by the majority of the members of the CBF Chamber with a dissenting vote whose relevant part reads as follows:

*“(…)*

*Deve, ainda, ser grifado que a inaplicabilidade temporal da Lei 9.615/98, pelo período de formação do atleta ventilada (...) não merece acolhimento, haja vista que intenção do legislador é a aplicação imediata quanto a transferência e rescisões contratuais ocorridas na vigência no novo texto legal inserida em 2011, mesmo que digam respeito a períodos de formação anteriormente a própria Lei Pelé e suas alterações.*

*Pelas razões expendidas, **voto vencido** para **destacar** a preliminar arguida pelo Requerido Cruzeiro Esporte Clube e a **acolher** para julgar extinta a presente representação, sem julgamento do mérito, em face da prescrição, com fulcro no dispositivo anteriormente elencado, **data venia** da dought majority, à qual acompanho para **Julgar Procedente a Representação**, para **condenar o Cruzeiro Esporte Clube** a pagar o valor equivalente a 18,36% (...) do montante de 5% devido a título de Mecanismo de Solidariedade Interno-direito de formação, do contrato de atleta D., celebrado entre o Sport Club Internacional e o Cruzeiro Esporte Clube, quantia esta a ser acrescida dos juros legais de mora de 1% (...) ao mês aplicado*

*a partir da citação deste procedimento, cujo quantum deve ser apurado em liquidação do decisium, e, ainda no pagamento das custas processuais.*

*(...)*”.

Free English translation as provided by the Appellant:

“(...

*It should also be pointed out, the non-application of Law 9.615/98 in the education period of athlete deserves no acceptance. Lawmaker intended the immediate application at the transfer and contractual termination occurred in the effectiveness of the new legal text inserted in 2011, although referring to education period prior to Pelé Law and amendments thereto.*

*For exposed reasons, **dissenting vote to point out** the preliminary pleaded by Respondent Cruzeiro Esporte Clube, and **accept** to rule extinct this representation, without judging the merit, in view of expiration, based on the aforementioned provision, with **due respect**, of majority, which I follow to **Rule with Grounds the Representation to order Cruzeiro Esporte Clube** to pay the amount equivalent to 18.36% (...) on 5% (...) payable for Internal Solidarity Mechanism – education right of agreement of athlete D. entered by and between Sport Club International and Cruzeiro Esporte Clube; this amount to be added by 1% (...) legal interest on arrears per month assessed from the notice of this proceeding, which quantum shall be determined in decisium settlement, as well as the payment of proceedings costs.*

*(...)*”.

12. On 1 July 2016, the Appellant filed an “*embargos de declaração*” before CBF Chamber, in order to obtain a few clarifications regarding the CBF Decision. Under Article 1.026 et seq. of the Brazilian Code of Civil Procedure, the parties may file “*embargos de declaração*” against a decision rendered and which contains obscurity, lack of reasons for the findings or contradictions.
13. On 12 July 2016, the CBF Clarification Decision rejected the Cruzeiro’s request for clarification. The relevant parts of the decision read as follows:

“(...

*Importante ser esclarecido que não há obscuridade na decisão embargada, tendo em vista que fiquei vencido, nesta parte, acolhendo a prescrição arguida pelo embargante.*

*Não me cabe trazer na fundamentação de meu Voto, os argumentos da parte vencedora, até porque não concordei com aquela argumentação, razão pela qual fiquei vencido e, foram as minhas alegações demonstradas em minha fundamentação.*

*No entanto, apenas por amor ao debate, farei constar da fundamentação do presente embargos, os argumentos esposados, à época, pelo Auditor Luiz Guilherme Pires Barbosa e acompanhado pelos demais Auditores, que compõem o Comitê de Resolução e Litígios – CRL, tornado a tese vencedora, rejeitando a preliminar de prescrição.*

*Ora, a tese prescricional foi rebatida de plano, baja vista que o par. 3º, artigo 29-A da Lei Pelé – Lei nº. 9.615/98, que foi inserida pela Lei nº. 12.395/2011, estabelece que os valores devidos a título de mecanismo de solidariedade deverão ser distribuídos em até 30 (trinta) dias da efetiva transferência do atleta.*

*Desta forma, o Mecanismo de Solidariedade, tão-somente, é devido após o transcurso o prazo de 30 (trinta) dias, que o Clube para onde o Atleta foi transferido não pagar, o que ocorreu no caso em tela, tal prazo venceu em 14/02/2015, data final para pagamento, estando inadimplente a partir de 15/02/2015 e a presente cobrança foi distribuída a este comitê em 29/01/2015, dentro do prazo de dois anos que estabelece o artigo 64 do Regulamento Nacional de Registro e Transferência de Atletas de Futebol da CBF, sendo assim, não ocorrendo a prescrição arguida em preliminar.*

*Por outro lado, de igual modo, não existe omissão ou obscuridade, quando ao valor a ser pago pelo embargante, até porque o referido montante vai ser apurado em liquidação de **decisum**, bem como, foi indicado na decisão embargada, o contrato em que Mecanismos de Solidariedade Interno – direito de formação, deve ser aplicado, qual seja, o contrato do Atleta D., celebrado entre o Sport Club Internacional e o Cruzeiro Esporte Clube, tudo, constante da decisão embargada.*

*Assim sendo, pelas razões expendidas, conheço, mas rejeito os presentes embargos de declaração, por ausência de qualquer contradição, obscuridade ou omissão na decisão embargada.*

*(...)*”.

Free English translation as provided by the Appellant:

*“(...*

*It must be clarified, there is no obscurity in the appealed decision, as I was the dissident vote in this part, and accepted the ruling challenged by appellant.*

*I am not entitled to bring to the grounds of my Vote, the arguments by winning party, as I have not agreed with such arguments, therefore I issued the dissenting vote; my allegations were stated in my grounds.*

*However, just for the sake of discussion, I will include in grounds to this motion, the arguments used at the time by Auditor Luiz Guilherme Pires Barbosa, which was accompanied by other Auditors, in Resolution and Litigation Council – CRL, becoming the winning thesis and denying the preliminary of statute of limitation.*

*The statute of limitation these was refuted plainly, as the 3<sup>rd</sup> article, article 29-A of Pelé Law – Law 9.615/98 inserted in Law number 12.395/2011, provides that the amounts payable as solidarity Mechanism shall be distributed within 30 (thirty) days from the actual transfer of athlete.*

*Therefore, solidarity Mechanism is payable only after 30 (thirty) days term is elapsed. If the Club to which Athlete was transferred, has not paid, which in this cases, such term was expired on 02.14.2015, deadline for payment. Therefore, it is in default from 02.15.2015. This collection was distributed to this council on 01.29.2015, within two years term established by article 64 of National Registration and Transfer Regulation of Football Athletes of CBF. Therefore, the statute of limitation challenged preliminary has not occurred.*

*On the other hand, likewise, there is no omission or obscurity on the amount to be paid by appellant, as such amount was determined in settlement of **decisum**, as well as the agreement was indicated in the appealed decision, that Internal Solidarity Mechanisms – right to education – shall be applied, that is, agreement of Athlete Dagoberto Pelenier was entered by and between Sport Club Internacional and Cruzeiro Esporte Clube, as contained in appealed decision.*

(...).”

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

14. On 28 July 2016, the Appellant filed its Statement of Appeal before the Court of Arbitration for Sport (“CAS”), pursuant to Article R48 of the Code of Sports-related Arbitration (edition 2016) (“CAS Code”).
15. The Appellant requested within its Statement of Appeal that the dispute be submitted to a Sole Arbitrator. The Respondent, invited to comment on the Appellant’s request, remained silent.
16. On 15 August 2016, the Appellant filed its Appeal Brief together with documents and evidence it intended to rely on.
17. On 13 September 2016, the Respondent filed its Answer together with documents and evidence it intended to rely on.
18. On 15 September 2016, the CAS Court Office informed the parties that the President of the CAS Appeals Arbitration Division, taking into account the circumstances of the case, had decided to submit this matter to a Sole Arbitrator, pursuant to Article R50 of the CAS Code.
19. On 20 September 2016, the CAS Court Office informed the parties that the Division President had appointed Mr. Rui Botica Santos, Attorney-at-law in Lisbon, Portugal, as Sole Arbitrator in this matter.
20. On 22 September 2016, the Respondent informed the CAS Court Office of its preference to have this matter decided on the basis of the parties’ written submissions.
21. On 28 September 2016, the Appellant informed the CAS Court Office of its preference for a hearing to be held.
22. On 11 October 2016, the CAS Court Office informed the parties that the Sole Arbitrator had decided to hold a hearing and that, as preferred by the Parties, the hearing would take place in São Paulo, Brazil.
23. On 14 October 2016, the CAS Court Office issued an Order of Procedure, which was duly signed by both parties.

24. On 18 October 2016, a hearing was held in São Paulo, Brazil. The hearing was attended by Messrs. Breno Costa Ramos Tannuri and André Ribeiro, for the Appellant, and by Messrs. Gabriel Vazami and Pedro Felipe Gomes da Silva, for the Respondent.
25. The parties agreed to have the hearing conducted in Portuguese, and requested that this be put on record. No witnesses or experts were presented by the parties at the hearing.
26. At the conclusion of the hearing, the parties confirmed that they had no objection in respect to the manner in which the hearing had been conducted, in particular the principles of the right to be heard and to be treated equally in the arbitration proceedings.

#### **IV. THE PARTIES' POSITION**

27. In summary, the parties submit the following in support of their respective positions.

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

28. The law governing the registration and transfer of players in Brazil is the Regulamento Nacional de Registo e Transferência de Atletas de Futebol da CBF ("CBF Regulations"), which also sets rules governing the payment of training compensation and solidarity mechanism.
29. Pursuant to Article 64 of the CBF Regulations, a claim for National Solidarity Mechanism must be filed within 2 years following the registration of the player's employment contract with his new club at the CBF.
30. Article 64 of the CBF Regulations states as follows:

*"Prescreverá em dois (2) anos, a partir do registro do contrato com um novo clube, a faculdade do clube formador de postular perante o órgão competente os valores a que fazem jus por eventual direito de indenização de formação e/ou mecanismo de solidariedade".*

Free English translation as provided by the Appellant:

*"It will become time barred within 2 years as from the registration of the contract with the new club, the right of a club, which trained and educated a player to claim before the competent decision making body any amount due as "indenização por formação" and/or mechanism of solidarity".*

31. The Employment Contract was registered with the CBF on 18 January 2013.
32. The Respondent however filed its claim before the CBF Chamber on 29 January 2015, i.e. after the 2-year period fixed under Article 64 of the CBF Regulations had expired. The Respondent's claim filed before the CBF Chamber was time barred.

33. The CBF Chamber however erred by overlooking Article 64 of the CBF Regulations. It erred in considering the 30-day deadline contained in Article 29-A of the Pelé Law as the deadline triggering the Respondent's claim for National Solidarity Mechanism.
34. Article 29-A of the Pelé Law only pertains to the deadline within which the new club must pay National Solidarity Mechanism to the clubs that contributed to the training and education of the Player.
35. The CBF Regulations complement the Pelé Law, particularly the latter's provisions on training compensation and solidarity mechanism (Article 29-A of the Pelé Law). Article 64 of the CBF Regulations is for purposes of National Solidarity Mechanism, a *lex specialis* which overrides the Pelé Law, the latter being a general rule which has nothing to do with limitation of actions pertaining to claims for solidarity mechanism.
36. The Respondent's claim therefore ought to have been declared inadmissible by the CBF Chamber on account of having been filed out of time.
37. The Appellant therefore makes the following prayers and requests:
  - FIRST – To dismiss in full the Decision and, consequently, Complementary Decision rendered by CBF CRL;*
  - SECOND – To confirm that the statement of claim lodged by the Respondent is time barred;*
  - THIRD – To uphold, in such scenario, that the Respondent has no right to request the payment of any amount due as contribution for having trained and educated the Player;*
  - FOURTH – To condemn the Respondent to the payment of the legal expense incurred by the Appellant during the ongoing arbitration; and*
  - FIFTH – To establish the costs of this arbitration procedure before the CAS shall be fully borne by the Respondent”.*

## **B. The Respondent's submissions**

38. The Respondent concurs with the findings made by the CBF Chamber.
39. Pursuant to Article 29-A of the Pelé Law, a club can only file a claim for National Solidarity Mechanism after 30 days following the player's transfer to the new club.
40. In other words, the new club must pay National Solidarity Mechanism to all the clubs involved in training and educating the player within 30 days following the player's transfer, failing which any club entitled to National Solidarity Mechanism may move the CBF Chamber with a claim for National Solidarity Mechanism.

41. Pursuant to Article 64 of the CBF Regulations, such claim is admissible if it is filed within 2 years from the date of expiry of the 30-day deadline for paying National Solidarity Mechanism.
42. In the case before hand, the Player's transfer to Cruzeiro was registered at the CBF on 18 January 2013. Therefore, Cruzeiro's 30-day deadline for paying the National Solidarity Mechanism expired on 18 February 2013. This is the date when Atlético Paranaense's 2-year deadline for filing a claim before the CBF Chamber as fixed under Article 29-A of the Pelé Law started running. Atlético Paranaense indeed met this statutory deadline by filing its CBF Chamber claim on 28 January 2015.
43. The CBF Regulations is a private law which cannot override a national law, in particular Article 6 of decree law 7.657/42, which states that *"the law in force shall have immediate and general effect, respect the perfect legal act, the right acquired and the final and unappealed decision"*. The "right acquired" under Article 6 of Decree law 7.657/42 refers to the deadline within which Atlético Paranaense was to claim National Solidarity Mechanism. This 2-year deadline, or right, started running 30 days following the Player's transfer to Cruzeiro, and cannot be altered by the CBF Regulations.
44. It would also be erroneous for the 2-year statutory limitation of action period to start running before the training club has even demanded payment of its share of the National Solidarity Mechanism.
45. Pursuant to Article 189 of the Brazilian Civil Code, the 2-year statutory limitation of action period starts running with effect from the date the training club's right is "violated", i.e. 30 days following the lapse of the new club's deadline for paying the National Solidarity Mechanism.
46. The Respondent therefore requests the CAS to:
  - "(i) Fully maintaining the Decision passed by the CRL/CBF in it meeting held on June 24<sup>th</sup> 2016;*
  - (ii) Condemning the Appellant to the payment, in favour of the Respondent, of all the legal expenses incurred; and*
  - (ii) Condemning the Appellant to the payment of all costs derived from the proceeding before this honourable CAS"*.

## V. JURISDICTION

47. Article 33.1 of the CBF DRC rules states as follows:

*"As decisões do CRL podem ser objeto, em última instância, de recurso a tribunal arbitral reconhecido pela Confederação Brasileira de Futebol – CBF"*.

Free English translation:

*"The decisions of the CRL may, in the final instance, be the subject of appeal to the arbitration tribunal recognised by the Confederação Brasileira de Futebol – CBF"*.

48. Pursuant to Article 75 of the CBF Statutes, the CBF recognises the CAS as an arbitral tribunal with power to render final and binding decisions by stating as follows:

Article 75 CBF Statutes:

*“Por força dos artigos 59 e 60 dos Estatutos da FIFA [artigos 66 e 67 dos Estatutos da FIFA da edição 2015], qualquer recurso contra uma decisão definitiva e vinculante da FIFA será submetido ao TAS (sigla francesa de Tribunal de Arbitragem Desportiva), com sede em Lausana, Suíça. (...)*

*Parágrafo único – A CBF assegurara o cumprimento integral e acatamento por parte de clubes, jogadores, árbitros, treinadores, médicos, preparadores físicos, auxiliares, agentes de partidas e agentes de jogadores de qualquer decisão definitiva adotada por órgão da FIFA ou pelo TAS”.*

Free English translation.

*“According to the provisions of articles 59 and 60 of the FIFA Statutes [articles 57 and 58 of the 2016 edition of the FIFA Statutes], all appeals against a final and binding decision of FIFA shall lie to TAS (the French acronym of the Court of Arbitration for Sport), which has its headquarters in Lausanne, Switzerland. (...)*

*Single paragraph – The CBF shall ensure strict compliance with and submission to any final decision of a FIFA body or TAS, by clubs, players, referees, trainers, physicians, physical trainers, assistants, match agents and players’ agents”.*

49. Article R47 of the CAS Code provides that:

*“An appeal against a 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”.*

50. The CBF Decision and the CBF Clarification Decision contain an explicit indication regarding the necessary procedures to appeal to the CAS.
51. It therefore follows that the CAS has jurisdiction as derived from the above provisions, which is further corroborated by the parties’ respectively signed Orders of Procedure.

## VI. ADMISSIBILITY

52. In accordance with Article 58.1 of the FIFA Statutes, “[a]ppeals 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” (emphasis added).
53. The grounds of the CBF Decision were notified on 15 June 2016 and the CBF Clarification Decision on 24 July 2016. The Statement of Appeal was filed on 28 July 2016. This was within

the required 21 days after the CBF Clarification Decision. The Appeal Brief was filed on 15 August 2016, which is within the time limit stipulated in Article R49 of the Code.

54. It must be also noted that, during the period in which the “embargos de declaração” is *sub judice* by the judging body, the effects of the decision rendered, as well as any time limit to appeal, is automatically suspended until a decision is passed (Article 1026 of the Brazilian Code of Civil Procedure).
55. It follows that the appeal is admissible. Furthermore, no objection has been raised by the Respondent.

## VII. APPLICABLE LAW

56. Article R58 of the CAS Code provides the following:

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

57. The Appealed Decision was issued by the CBF, a federation domiciled in Brazil and established under Brazilian laws. The Sole Arbitrator also points out the other relevant elements of the dispute that triggers the application of the Brazilian law: (i) the nationality of the parties; (ii) the dispute is related to the National Solidarity Mechanism established under the Brazilian law. It therefore follows that Brazilian law shall be applied in deciding the subject matter related to the Appealed Decision.
58. Both parties also confirmed and agree that the Brazilian law is the law applicable to this appeal and this confirmation has been expressed in the Order of Procedure.
59. Given that the CAS is an arbitral tribunal with its seat in Switzerland, the Sole Arbitrator must also ensure that the award is compliant with Swiss public policy.
60. It therefore follows that the dispute shall be decided in accordance with the relevant Brazilian laws and supplemented by Swiss law, if necessary.

## VIII. MERITS

### A. The Main Issues

61. Given the facts, arguments and evidence adduced in these proceedings, the Sole Arbitrator has identified the following issues for adjudication in order to resolve this dispute:
  - a) Is the claim lodged by Atlético Paranaense against Cruzeiro time-barred?

b) What are the legal consequences of the decision made on the previous point?

## **B. The Legal Analysis**

### ***a) Is the claim lodged by Atlético Paranaense against Cruzeiro time-barred?***

62. The first question that the Sole Arbitrator has to answer is whether the claim lodged by the Respondent with the CBF Chamber on 28 January 2015 is time-barred.
63. In order to respond to this question, the Sole Arbitrator has to establish which Brazilian laws/regulations are applicable in this matter.
64. Given that both parties are members of the same national football association, the Pelé Law and the CBF Regulations are applicable to this case. If necessary and on a subsidiary level, the Pelé Law and the CBF Regulations may be complemented by other relevant general Brazilian laws.
65. According to Article 29-A para. II.3 of the Pelé Law, the percentage due to the clubs, which trained and educated the player, must be calculated in accordance with a certificate issued by CBF and the amount thereof distributed proportionally within 30 days of the effective transfer.
66. However, the Pelé Law does not contain any specific provision in relation to the payment mechanism in the event that a club fails to pay the relevant amount when it falls due. The Pelé Law makes no provision limiting a club's right to file an action for National Solidarity Mechanism.
67. Matters regarding a club's right to file an action for National Solidarity Mechanism are governed by the CBF Regulations, which came into force on 13 January 2015. Article 64 thereof provides as follows:

*“prescreverá em dois (2) anos, a partir do registro do contrato com um novo clube, a faculdade do clube formador de postular perante o órgão competente os valores a que fazem jus por eventual direito de indenização de formação / mecanismo de solidariedade”.*

Free English translation:

*“the right of the training club to make a claim before the proper body for the sums due to it pursuant an entitlement to training / solidarity mechanism compensation shall be time-barred two (2) years after the registration of the contract with a new club”.*

68. It is noted in this regard that Article 13 of the Pelé Law recognises the CBF as part of the “National Sport System”, with Article 16 granting it the status of a private law juristic body with powers to operate autonomously within the parameters defined in its bylaws. Indeed, the formal conduct of sport is governed by national and international rules and by the rules specific to each sport, as accepted by the respective national sports administration bodies (Article 1.1 of the

Pelé Law). Article 64 of the CBF Regulations was adopted within the ambit of the autonomy of sport and the powers of the CBF pursuant to the law and its bylaws.

69. After this short introductory note regarding the powers of the CBF to regulate the exercise of the right to training and/or solidarity mechanism compensation, the Sole Arbitrator shall now briefly review the parties' positions.
70. According to Cruzeiro, Article 64 of the CBF Regulations is clear in establishing that the limitation period commences with the registration of the player's contract with the new club and given the clarity of this provision, there is no need or room for interpretation. Article 64 of the CBF Regulations is a special law which prevails over the general law.
71. Atlético Paranaense, on its part, says that Article 64 of the CBF Regulations must be read together with Article 29-A of the Pelé Law. According to Atlético Paranaense, the limitation period commences on the first day of the violation of Atlético Paranaense's rights by Cruzeiro, which means 30 days after the transfer date. This reasoning is also supported by Article 25.5 of the FIFA Regulations on the Status and Transfer of Players ("FIFA Regulations"), which states that "(...) shall not bear any case subject to these regulations if more than two years elapsed since the event giving rise to the dispute. (...)". According to the Respondent, the event giving rise to the dispute is Cruzeiro's failure to pay the National Solidarity Mechanism 30 days after the registration of the Player's Employment Contract with CBF (Article 2.1 of Annex 5 of the FIFA Regulations).
72. Both parties agree that Article 64 of the CBF Regulations is applicable and that this regulation does not contain any specific provision regarding the application of Art. 64 of the CBF Regulations in time and, for this reason the Sole Arbitrator needs to decide whether Article 64 of the CBF Regulations is, or is not, to be interpreted in accordance with para. II.3 of Article 29-A of the Pelé Law. Both Parties have also pointed out that there exist no precedents on similar matters, at least to the best of their knowledge and to that of the Sole Arbitrator. They also stated that, to their knowledge, the CBF has never issued any circular or opinion in relation to the calculation of the limitation period under Article 64 of the CBF Regulations.
73. The Sole Arbitrator also notes that Atlético Paranaense has not pleaded any judicial or extrajudicial notice or step that could have suspended or interrupted the limitation period.
74. It is therefore for the Sole Arbitrator to decide the dispute regarding the calculation of the limitation period provided in Article 64 of the CBF Regulations, or more specifically, to determine when that limitation period commences.
75. It is a universal principle that the interpretation of legal provisions must firstly take account of the letter of the provision in question and that only in cases of lacunae, or of obscurity of the provision, recourse should be made to other methods in order to interpret the provision, such as, its *ratio*, systematic integration, etc. In other words, these further tools of the interpretation of legal provisions should only be used if the literal meaning is not, per se, sufficiently clear.

76. The Sole Arbitrator finds the wording of Article 64 of the CBF Regulation to be express, clear and unequivocal by stating that the limitation period commences “*on the registration of the contract with the new club*”. In this case, this fact occurred on 18 January 2013.
77. The provisions of Article 64 of the CBF Regulations cannot and should not be altered by interpretation. This would amount to acting against the letter of the provision and against the goal pursued by its legislator.
78. In any event, and in order to give detailed reasons for this opinion, the Sole Arbitrator considers it useful to review and comment on the arguments made and defended by Atlético Paranaense.
79. Atlético Paranaense argues that it would be a serious and manifest violation of the Pelé Law to ignore the application of the para. II.3 of the Article 29-A of this general sports law, which only considers the right to have been violated 30 days after the actual transfer of the player. It further argues that according to Article 189 of the Brazilian Civil Code, limitation periods run from the date of the violation of a right: “*once the right has been violated, the claim of the person entitled to the right arises, which lapses by limitation, in accordance with the time limits referred to in arts. 205 and 206*”.
80. Although the Sole Arbitrator expresses sympathy for the position of the Atlético Paranaense in terms of *jure constituendo*, the fact is that the CBF, as the body responsible for regulation of this matter, decided by way of applicable law, to impose a solution that took into consideration, not the moment of the violation of the right, but the moment when the said right arose.
81. This decision, which is always debatable as a regulatory option, is not contrary to any imperative applicable legal provision. Firstly, because the Pelé Law does not stipulate any general limitation rule, or any provision regarding the calculation of a limitation period with regard to the National Solidarity Mechanism; and, secondly, because the general rule in Article 189 of the Brazilian Civil Code provides that “*the limitation period is ten years, when the law does not provide a lesser period*”. The said general law expressly permits the existence of special rules, such as Article 64 of the CBF Regulations.
82. The CBF could have opted for another solution, but clearly and consciously chose the date of the registration of the contract of the player with the CBF, as the moment when the right arises, and not the moment when the debtor breaches the obligation.
83. It should further be noted that the limitation period established is 2 years from the date of the registration of the player’s contract with the new club. 30 days out of a 730-day time limit is not considered to be materially relevant and capable of violating any constitutional principle such as that the right of defence and the right to exercise a right.
84. The Sole Arbitrator regrets that the CBF did not specifically create a transitional provision regarding the application of Article 64 of the CBF Regulations. It probably did not do so because it considered that the time limit of two years after registration was a manifestly ample period for claims of this type.

85. It is true that, in this case, and probably in others, 30 days can or may make a great difference. This is because Article 64 of the CBF Regulations came into force on 13 January 2015, and the date from when Atlético Paranaense ought to have exercised its rights of action started running on 18 January 2015, the date on which the Player was registered.
86. It is also true that a 5-day deadline is short. However, it should be borne in mind that Atlético Paranaense, for reasons that are unknown, let many months pass without exercising any right of action, when it could well have done so. The adoption of a sports regulation of the relevance of the CBF Regulations was properly and widely debated by its members and its publication and commencement did not take its members by surprise. And even if they were taken by surprise, there were still five days in which to file a complaint, which does not involve any special technical and legal complexity.
87. Given the fact that the registration of the Player occurred on 18 January 2013, the Sole Arbitrator finds that Atlético Paranaense had until 18 January 2015 to claim its training/ National Solidarity Mechanism compensation. As the claim was filed on 28 January 2015, it is time-barred.
- b) *What are the legal consequences of the decision made on the previous point?***
88. In view of the above, the Sole Arbitrator considers that Atlético Paranaense's entitlement to National Solidarity Mechanism compensation with regard to the Player's transfer from Cruzeiro to Internacional on 18 January, is time-barred.
89. Since limitation of actions are procedural as opposed to substantive matters, it follows that Atlético Paranaense are as a matter of procedure barred from claiming National Solidarity Mechanism from Cruzeiro following the Player's transfer from Internacional – at least before the judicial bodies established at CBF level.
90. Any further claims or requests for relief are dismissed.

## **ON THESE GROUNDS**

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

1. The appeal filed by Cruzeiro Esporte Clube against the Confederação Brasileira de Futebol Dispute Resolution Chamber's decision dated 21 June 2016 and confirmed on 12 July 2016 is upheld.

2. The Confederação Brasileira de Futebol Dispute Resolution Chamber's decision dated 21 June 2016 and confirmed on 12 July 2016 is set aside.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.