



Arbitration CAS 2017/A/5460 Iván Bolado Palacios v. Fédération Internationale de Football Association (FIFA), Bulgarian Football Union (BFU) & PFC CSKA Sofia, award of 14 May 2018

Panel: Mr Mark Hovell (United Kingdom), Sole Arbitrator

Football

Refusal of FIFA to open disciplinary proceedings against a club under insolvency proceedings

Refusal to decide or negative decisions as appealable decisions

Insolvency occurring during FIFA proceedings

Lack of exhaustion of all legal remedies

1. The right of parties to argue that there has been a denial of justice in certain circumstances needs to be balanced with an adjudicatory body's right to investigate a claim and issue its decision. If the wording of a letter lacks a final ruling that would affect the addressee's interests, refers to no procedure being opened and says that an investigation is ongoing, the letter is not to be classed as a "decision".
2. There have been cases before the FIFA Dispute Resolution Chamber (DRC) where the respondent club has become insolvent during the proceedings there. CAS jurisprudence has directed the FIFA DRC to continue with such proceedings despite such insolvency procedures, so that the player can receive a judgement – is he owed money and if yes, how much. The player can then look to enforce that judgement against the insolvent club, not through FIFA's Disciplinary Committee, but through the insolvent club's insolvency practitioners or through the courts. This is rarely attractive; so in such circumstances, the player will look to see if his claim can be attached to any new club that comes along and succeeds the insolvent one.
3. Before a player can request the FIFA Disciplinary Committee (and later the CAS) to turn its attention away from a club which went into insolvency and instead put pressure on its apparent successor, to pay the insolvent club's debt to the player, the latter should bring his (new) claim against the apparent successor club (a different legal entity) following Article 22 of the FIFA Regulations on the Status and Transfer of Players (RSTP), through the FIFA DRC (not the FIFA Disciplinary Committee), respecting the time limitations of the RSTP. He should then seek to convince the FIFA DRC that the apparent successor club is actually the successor of the insolvent club and should, somehow, be responsible for the debt of the insolvent club. If the FIFA DRC finds against him, then he has a right to appeal that decision to the CAS.

I. PARTIES

1. Mr Iván Bolado Palacios (“the Player” or “the Appellant”) is an Equatoguinean citizen and professional football player, born in Santander, Spain on 3 July 1989. He currently plays for Deportivo Rayo Cantabria in Spain.
2. The Fédération Internationale de Football Association (the “First Respondent” or “FIFA”) is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the world governing body of international football. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and football players worldwide.
3. The Bulgarian Football Union (the “Second Respondent” or the “BFU”) is the governing body of organised football in Bulgaria, with its registered office in Sofia, Bulgaria. The BFU is affiliated to FIFA.
4. PFC CSKA EAD Sofia (the “Third Respondent” or the “Club”), is a football club with its registered office in Sofia, Bulgaria. The Club is currently competing in the First League, the highest division of professional football in Bulgaria. It is a member of the BFU, which in turn is affiliated to FIFA.

II. FACTUAL BACKGROUND

5. Below is a summary of the main relevant facts and allegations based on the parties’ written submissions. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although 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. First proceedings before FIFA

6. On 15 September 2014, PFC CSKA AD Sofia (“the Original Club”) filed a claim against the Player with the FIFA Dispute Resolution Chamber (the “FIFA DRC”), requesting that the FIFA DRC consider that the Original Club had just cause to terminate the playing contract signed between them (the “Employment Contract”) and that the Player be ordered to pay the Original Club the amount of EUR 20,000,000 as compensation plus interest, pursuant to clause 8.2 of the Employment Contract.
7. On 20 October 2014, the Player filed a counter claim before the FIFA DRC.
8. On 6 November 2014, the FIFA DRC rendered a decision (the “First FIFA Decision”), ruling that both these parties’ claims were inadmissible.

B. First proceedings before the Court of Arbitration for Sport

9. On 12 February 2016, the Player filed an appeal against FIFA's First Decision at the Court of Arbitration for Sport (the "CAS"). Those proceedings were assigned to the CAS roll as *CAS 2016/A/4450 Iván Bolado Palacios v PFC CSKA Sofia*. It should be noted that although the respondent was referred to as "PFC CSKA Sofia" in the title, the respondent's full corporate name was PFC CSKA AD Sofia. The full corporate name of the Club (i.e. the Third Respondent in the case at hand is PFC CSKA EAD Sofia (emphasis added by the Sole Arbitrator)).
10. On 24 January 2017, the sole arbitrator in *CAS 2016/A/4450* rendered an arbitral award, ruling as follows (the "First CAS Award"):
 - "1. *The appeal filed on 12 February 2016 by Mr Iván Bolado Palacios against the decision issued on 6 November 2014 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is partially upheld.*
 2. *PFC CSKA Sofia [the Original Club] is ordered to pay to Mr Iván Bolado Palacios the net amount of EUR 72,000 (seventy two thousand Euro) as outstanding remuneration with interest accruing as follows until the date of effective payment:*
 - *EUR 18,000, with 5% interest p.a. accruing as from 9 March 2012;*
 - *EUR 18,000, with 5% interest p.a. accruing as from 9 April 2012;*
 - *EUR 18,000, with 5% interest p.a. accruing as from 9 May 2012;*
 - *EUR 18,000, with 5% interest p.a. accruing as from 9 June 2012;*
 3. *PFC CSKA Sofia [the Original Club] is ordered to pay to Mr Iván Bolado Palacios a net amount of EUR 200,000 (two hundred thousand Euro) as compensation for breach of contract, with 5% interest p.a. accruing as from 23 July 2012 until the date of effective payment.*
 4. *The costs of the arbitration, to be determined and served to the parties by the CAS Court Office, shall be borne in a proportion of 20% (twenty per cent) by Mr Iván Bolado Palacios and in a proportion of 80% (eighty per cent) by PFC CSKA Sofia.*
 5. *PFC CSKA Sofia shall bear its own costs and is ordered to pay to Mr Iván Bolado Palacios the total amount of CHF 5,000 (five thousand Swiss Francs) as a contribution towards the legal fees and expenses incurred in connection with these arbitration proceedings.*
 6. *All other and further motions or prayers for relief are dismissed".*
11. On or around 31 January 2017, the counsel for the Player requested the Original Club to pay the amounts due to the Player under the First CAS Award, but was unsuccessful.

C. Second proceedings before FIFA

12. On 21 March 2017, the Player filed a claim at the FIFA Disciplinary Committee, requesting that the Original Club be sanctioned by FIFA under Article 64 of the FIFA Disciplinary Code.

13. Having not heard from FIFA regarding an update on the proceedings, the Player wrote to FIFA on 17 May 2017, 26 May 2017, 14 June 2017 and 5 July 2017. In all of these letters, the Player repeatedly requested FIFA to acknowledge receipt of the claim filed on 21 March 2017 and to initiate disciplinary proceedings against PFC CSKA Sofia [the Original Club] without any further delay.
14. On 7 September 2017, a legal counsel from the FIFA Disciplinary Committee wrote to the Player stating, *inter alia*, as follows:

“... we wish to underline that we have been informed by the Bulgarian Football Union (see enclosure) that the club PFC CSKA Sofia is undergoing insolvency proceedings. Therefore, we wish to inform the parties that, taking into account the provided information, currently we are not in a position to open disciplinary proceedings against the club PFC CSKA Sofia for failing to comply with the arbitral award of the Court of Arbitration for Sport (CAS) dated 24 January 2017, and for a possible violation of art. 64 of the FIFA Disciplinary Code. Nevertheless, we wish to inform the parties that we are closely investigating the current situation of the club PFC CSKA Sofia.

In this sense, we would like to underline that we will inform you as soon as we have any new relevant information at our disposal”.
15. On 9 October 2017, the Player wrote to FIFA outlining in detail what he believed to be evidence that justified FIFA initiating proceedings against the Club under Article 64 of the FIFA Disciplinary Code¹. The Player referred to CAS jurisprudence² regarding the issue of insolvent football clubs and stated the following:

“Consequently, we invoke CAS jurisprudence on the enforcement of CAS and FIFA decisions against clubs under insolvency, according to which [the FIFA Disciplinary Committee] should open enforcement proceedings when the club is under the management of a new company, as in the present case.

Lastly, we want to reiterate that FIFA’s lack of action constitutes a clear failure to fulfil its obligations under its own enforcement regime. FIFA’s omission is causing Mr. Bolado an actual loss, for the expenses he is incurring into in order to secure enforcement of the CAS award, and a potential loss of profits, should the Club not be able to settle its debts towards Mr. Bolado when [the FIFA Disciplinary Committee] finally decides to execute its own decision and abide by its own regulations”.
16. On 20 October 2017, the Player wrote to FIFA to request a response to his letter dated 9 October 2017, but FIFA did not reply.
17. On 23 November 2017, the Player wrote to FIFA to request a response to his letter dated 9 October 2017.
18. On 1 February 2018, FIFA wrote to the Player and the BFU stating as follows:

¹ For the sake of brevity the Sole Arbitrator has not summarised the contents of this letter, however he considered it in full. To the extent that anything contained in the letter is relevant in the decision rendered by the Sole Arbitrator, it has been mentioned in this Award.

² CAS 2016/A/4550 and CAS 2016/A/4576; and CAS 2011/A/2646.

“... we recall the content of our correspondence dated 7 September 2017... whereby we informed the parties that in light of the club PFC CSKA Sofia’s insolvency proceedings, the FIFA Disciplinary Committee was not in a position to open disciplinary proceedings against the club PFC CSKA Sofia for failing to comply with the arbitral award of the Court of Arbitration for Sport (CAS) dated 24 January 2017 and a possible violation of art. 64 of the FIFA Disciplinary Code.

On account of the above, we must inform you, that a general rule, the FIFA Disciplinary Committee cannot deal with cases involving clubs which have been declared bankrupt and/or are no longer affiliated to their association.

As a consequence of the foregoing, on behalf of the Chairman of the FIFA Disciplinary Committee, we regret having to inform you that we do not appear to be in position to proceed with the case of the reference in which the club PFC CSKA Sofia is involved since the club was declared bankrupt and became disaffiliated”.

III. PRESENT PROCEEDINGS BEFORE THE CAS

19. On 11 December 2017, in accordance with Article R47 of the Code of Sports-related Arbitration (the “CAS Code”), the Player filed a Statement of Appeal at the CAS. The Respondents included the Club, as opposed to the Original Club. The Sole Arbitrator notes that the Player did not expressly cite the decision rendered by FIFA which he was appealing. Rather, the Player was filing an appeal at the CAS *“with the aim of seeking redress against what constitutes a case of denial of justice represented by [the FIFA Disciplinary Committee’s] handling of the Article 64 Action”*. The Player requested the following prayers for relief:

“60. *For all the above reasons and those which will be detailed in the Appeal Brief and during this arbitration, and reserving the right to modify the following requests at a later stage, the Appellant respectfully requests the CAS:*

A.

- 1. to declare that the conduct of the FIFA Disciplinary Committee administration constitutes denial of justice;*
- 2. to declare that the present case of denial of justice warrants the resort by the Appellant to CAS on appeal;*
- 3. by making full use of the de novo power of CAS Panels, to refrain for referring the case back to FIFA and instead to decide on the Article 64 Action filed by the Appellant on 21 March 2017;*
- 4. when deciding on the Article 64 Action filed by the Appellant on 21 March 2017, to:*
 - (i) declare that the current the legal entity running PFC CSKA Sofia differs from the previous legal entity placed under administration by the order of 2 October 2015 (Decision 1581) issued by a Court in Sofia (Bulgaria);*
 - (ii) apply the CAS jurisprudence on the succession of a sports entity;*
 - (iii) declare that PFC CSKA Sofia has failed to comply with the CAS Award;*

- (iv) *order PFC CSKA Sofia to make the net payment granted by the CAS Award in favour of the Appellant, as well as the interests accrued; and*
- (v) *order FIFA to make full use of the possibilities offered by Article 64 FIFA Disciplinary Code, in terms of execution measures (Article 64(1)(c) and (d)), in order to render effective the enforcement of CAS Award 2016/A/4450, without delaying (i.e. allowing thus on the occasion of each new execution measure a deadline not exceeding the final deadline initially granted to pay the amount due) the adoption of the necessary execution measures ex Article 64(1)(c) and (d), namely:*
 - (a) *in the event of PFC CSKA Sofia's refusal to comply with the CAS Award:*
 - *deduction of points,*
 - *relegation to a lower division and/or*
 - *transfer ban;*
 - (b) *in the event of the Bulgarian Football Union's refusal to comply with the CAS Award: disciplinary measures (ex Article 12 FIFA Disciplinary Code), including the expulsion from a FIFA competition.*

B.

1. *to declare that FIFA has failed (i) to carry out the necessary investigation ex officio and (ii) to verify the version of the facts put forward by PFC CSKA Sofia and the Bulgarian Football Union and has thus breached Articles 109 and 110(2) FIFA Disciplinary Code.*
2. *as a consequence of B.1 above, to order FIFA to pay compensation set at an amount equivalent to the interests accrued from the filing of the Article 64 Action (21 March 2017) on the amount granted by the CAS Award, i.e. EUR 272.000 net, for the prejudice cause to the Appellant as a consequence of the unnecessary protracted proceedings.*

C.

1. *to declare that PFC CSKA Sofia and the Bulgarian Football Union have failed to meet their obligation "to collaborate to establish the facts", pursuant to Article 110(1) FIFA Disciplinary Code;*
2. *as a consequence of C.1 above, to order FIFA to impose the required sanctions on PFC CSKA Sofia and the Bulgarian Football Union.*

D.

1. *to order the Respondents to pay:*
 - (i) *the entire costs of the present appeal arbitration proceedings; and*
 - (ii) *the legal fees and expenses of the Appellant in relation to the present appeal arbitration proceedings, to be determined at a later stage.*

E. *IN THE ALTERNATIVE TO A, to order the FIFA Disciplinary Committee to open disciplinary (enforcement) proceedings against PFC CSKA Sofia and direct the FIFA Disciplinary Committee to:*

- (i) *complete the proceedings swiftly, and in any event within three (3) months from the issuance (not the notification) of the award;*
- (ii) *find that the current the [sic] legal entity running PFC CSKA Sofia differs from the previous legal entity placed under administration by the order of 2 October 2015 (Decision 1581) issued by a Court in Sofia (Bulgaria);*
- (iii) *apply the CAS jurisprudence on the succession of a sports entity;*
- (iv) *declare the PFC CSKA has failed to comply with the CAS Award and grant it a final deadline in which to pay the amount due; and*
- (v) *make full use of the possibilities offered by Article 64 FIFA Disciplinary Code, in terms of execution measures (Article 64(1)(c) and (d)), in order to render effective the enforcement of CAS Award 2016/A/4450, without delaying (i.e. allowing thus on the occasion of each new execution measure a deadline not exceeding the final deadline initially granted to pay the amount due) the adoption of the necessary execution measures ex Article 64(1)(c) and (d), namely:*
 - (a) *in the event of PFC CSKA Sofia's refusal to comply with the CAS Award:*
 - *deduction of points;*
 - *relegation to a lower division and/or*
 - *transfer ban;*
 - (b) *in the event of the Bulgarian Football Union's refusal to comply with the CAS Award: disciplinary measures (ex Article 12 FIFA Disciplinary Code), including the expulsion from a FIFA competition".*

- 20. In his Statement of Appeal, the Player requested the proceedings to be submitted to a sole arbitrator, and also requested an expedited procedure.
- 21. On 19 December 2017, the CAS Court Office wrote to the parties acknowledging receipt of the Player's Statement of Appeal and informed the Player that pursuant to Article S20 of the CAS Code, the present arbitration was assigned to the Appeals Arbitration Division of the CAS and would therefore be dealt with according to Articles R47 *et seq.* of the CAS Code.
- 22. On 20 December 2017, FIFA wrote to the CAS Court Office stating, *inter alia*, that it objected to an expedited procedure and also objected to the appointment of a sole arbitrator, and wished for a panel of three arbitrators to be appointed to deal with the matter.
- 23. On 21 December 2017, in accordance with Article R51 of the CAS Code, the Player filed his Appeal Brief with the CAS with an amended set of prayers for relief as follows (emphasis

added by the Sole Arbitrator to identify the prayers for relief which were amended from the Statement of Appeal):

“60. *For all the above reasons and those which will be detailed in the Appeal Brief and during this arbitration, and reserving the right to modify the following requests at a later stage, the Appellant respectfully requests the CAS:*

A.

1. *to declare that the conduct of the FIFA Disciplinary Committee administration constitutes denial of justice;*
2. *to declare that the present case of denial of justice warrants the resort by the Appellant to CAS on appeal;*
3. **to order the Bulgarian Football Union and PFC CSKA Sofia to produce the documents requested in Section XIII (paragraphs 116 to 118) of the present Appeal Brief.**
4. *by making full use of the de novo power of CAS Panels, to refrain for referring the case back to FIFA and instead to decide on the Article 64 Action filed by the Appellant on 21 March 2017;*
5. *when deciding on the Article 64 Action filed by the Appellant on 21 March 2017, to:*
 - (i) *declare that the current the legal entity running PFC CSKA Sofia differs from the previous legal entity placed under administration by the order of 2 October 2015 (Decision 1581) issued by a Court in Sofia (Bulgaria);*
 - (ii) **apply the CAS jurisprudence on the succession of a sports entity *in order to declare that PFC CSKA Sofia under its new legal form remains the addressee of, and thus bound by, the Award in CAS 2016/A/4450***;
 - (iii) *declare that PFC CSKA Sofia has failed to comply with the CAS Award **in CAS 2016/A/4450**;*
 - (iv) *order PFC CSKA Sofia to make the net payment granted by **the Award in CAS 2016/A/4450** in favour of the Appellant, as well as the interests accrued; and*
 - (v) *order FIFA to make full use of the possibilities offered by Article 64 FIFA Disciplinary Code, in terms of execution measures (Article 64(1)(c) and (d)), in order to render effective the enforcement of CAS Award 2016/A/4450, without delaying (i.e. allowing thus on the occasion of each new execution measure a deadline not exceeding the final deadline initially granted to pay the amount due) the adoption of the necessary execution measures ex Article 64(1)(c) and (d), namely:*
 - (a) *in the event of PFC CSKA Sofia’s refusal to comply with the Award **in CAS 2016/A/4450**:*
 - *deduction of points,*

- *relegation to a lower division and/or*
- *transfer ban;*

(b) *in the event of the Bulgarian Football Union's refusal to comply with the CAS Award: disciplinary measures (ex Article 12 FIFA Disciplinary Code), including the expulsion from a FIFA competition.*

B.

1. **to order FIFA, the Bulgarian Football Union and PFC CSKA Sofia to produce the documents requested in Section XIII (paragraphs 116 to 118) of the present Appeal Brief.**
2. *to declare that FIFA has failed (i) to carry out the necessary investigation ex officio and (ii) to verify the version of the facts put forward by PFC CSKA Sofia and the Bulgarian Football Union and has thus breached Articles 109 and 110(2) FIFA Disciplinary Code.*
3. *as a consequence of B.1 above, to order FIFA to pay compensation set at an amount equivalent to the interests accrued on the amount granted by the Award **in CAS 2016/A/4450**, i.e. EUR 272.000 net, **from the filing of the Article 64 Action (21 March 2017) until actual enforcement of the Award in CAS 2016/A/4450** for the prejudice cause to the Appellant as a consequence of the unnecessary protracted proceedings.*

C.

1. **to order FIFA, the Bulgarian Football Union and PFC CSKA Sofia to produce the documents requested in Section XIII (paragraphs 119 to 120) of the present Appeal Brief.**
2. *to declare that **FIFA has colluded with the Bulgarian Football Union in order to protect the interests of the Club and to the prejudice of the Appellant.***
3. *as a consequence of C.1 above, **(and in addition of the compensation requested in B.3), to order FIFA to pay compensation set at an amount equivalent to the interests accrued on the amount granted by the Award in CAS 2016/A/4450, i.e. EUR 272.000 net, from the filing of the Article 64 Act (21 March 2017) until actual enforcement of the Award in CAS 2016/A/4450 for the prejudice caused to the Appellant as a consequence of the unnecessary protracted proceedings.***

D.

1. **to declare that PFC CSKA Sofia and the Bulgarian Football Union have failed to meet their obligation "to collaborate to establish the facts", pursuant to Article 110(1) FIFA Disciplinary Code;**
2. **as a consequence of D.1 above, to order FIFA to impose the required sanctions on PFC CSKA Sofia and the Bulgarian Football Union.**

E.

1. *to order the Respondents to pay:*

- (i) *the entire costs of the present appeal arbitration proceedings; and*
- (ii) ***jointly and severally** the legal fees and expenses of the Appellant in relation to the present appeal arbitration proceedings, to be determined at a later stage.*

E. *IN THE ALTERNATIVE TO A, to order the FIFA Disciplinary Committee to open disciplinary (enforcement) proceedings against PFC CSKA Sofia and direct the FIFA Disciplinary Committee to:*

- (i) *complete the proceedings swiftly, and in any event within three (3) months from the issuance (not the notification) of the award;*
- (ii) *find that the current the [sic] legal entity running PFC CSKA Sofia differs from the previous legal entity placed under administration by the order of 2 October 2015 (Decision 1581) issued by a Court in Sofia (Bulgaria);*
- (iii) *apply the CAS jurisprudence on the succession of a sports entity **in order to declare that PFC CSKA Sofia under its new legal form remains the addressee of, and thus bound by, the Award in CAS 2016/A/4450;***
- (iv) *declare the PFC CSKA has failed to comply with the CAS Award **in CAS 2016/A/4450** and grant it a final deadline in which to pay the amount due; and*
- (v) *make full use of the possibilities offered by Article 64 FIFA Disciplinary Code, in terms of execution measures (Article 64(1)(c) and (d)), in order to render effective the enforcement of CAS Award 2016/A/4450, without delaying (i.e. allowing thus on the occasion of each new execution measure a deadline not exceeding the final deadline initially granted to pay the amount due) the adoption of the necessary execution measures ex Article 64(1)(c) and (d), namely:*
 - (a) *in the event of PFC CSKA Sofia's refusal to comply with the CAS Award:*
 - *deduction of points;*
 - *relegation to a lower division and/or*
 - *transfer ban;*
 - (b) *in the event of the Bulgarian Football Union's refusal to comply with the CAS Award: disciplinary measures (ex Article 12 FIFA Disciplinary Code), including the expulsion from a FIFA competition".*

24. On 22 December 2017, the Club wrote to the CAS Court Office stating that it too objected to an expedited procedure and also objected to the appointment of a sole arbitrator, and wished for a panel of three arbitrators to be appointed to deal with the matter. The Club also stated:

“Finally, please note that this letter shall not be considered as any acceptance by my client, PFC CSKA-Sofia EAD, of the jurisdiction of CAS, the admissibility of this Appeal nor of the standing to sue and/or standing to be sued of any of the parties involved. My client reserves all its rights, in particular to make submissions, in fact and in law, on any of the aforementioned aspects and to the merits and other procedural aspects of this matter”.

25. On 22 December 2017, the BFU wrote to the CAS Court Office stating that it too objected to an expedited procedure and also objected to the appointment of a sole arbitrator, and wished for a panel of three arbitrators to be appointed to deal with the matter. The BFU also reserved its position regarding the admissibility of the proceedings and merits of the claim.
26. On 27 December 2017, the CAS Court Office wrote to the parties, *inter alia*, inviting the BFU and the Club to confirm by 3 January 2018 whether they intended to pay their respective shares of the advance of costs in this matter.
27. On 29 December 2017, the CAS Court Office wrote to the parties stating, *inter alia*, on behalf of the Secretary General of the CAS, pursuant to Article R32 of the CAS Code, that the Club’s time limit to state whether it intends to pay its share of the advance of costs was extended until 8 January 2018.
28. On 29 December 2017, FIFA wrote to the CAS Court Office requesting that its time limit to file its Answer be fixed after the payment of the total advance of costs by the Player and/or the BFU and the Club.
29. On 3 January 2018, the BFU wrote to the CAS Court Office requesting an extension of the time limit for submission of its Answer and also to confirm whether it wished to pay its respective share of the advance of costs.
30. On 3 January 2018, the Player wrote to the CAS Court Office stating, *inter alia*, that it rejected FIFA’s request for the time limit for its Answer to be dependent on the payment of the advance of costs by the Player. The Player set out the grounds for his position.
31. On 4 January 2018, the CAS Court Office wrote to the parties as follows:

“As an initial matter, the [Player] is advised that the suspension of [FIFA’s] time limit to file its answer was granted in accordance with Article R55 of the Code. Therefore, such suspension is maintained.

Furthermore, the [Player] is advised that contrary to what it was stated in my letter of 19 December 2017, his application for legal Aid will be immediately submission to the ICAS Board for its consideration.

Finally, I note that the Appellant objects to the Second Respondent’s request for an extension of its time limit to file the answer until 28 January 2018. Consequently, such request will be decided by the President of the CAS Appeals Arbitration Division, or her Deputy, pursuant to Article R32 of the Code”.

32. On 4 January 2018, the Club wrote to the CAS Court office stating, *inter alia*, the following:

“Initial remarks

- 2 [The Club], is the legal entity currently operating a football club participating in the First Professional League in Bulgaria under the name “CSKA-Sofia”.

- 3 *From the documentation submitted by the Appellant, my client understands that these proceedings concern an attempt by [the Player] to execute the CAS Award 2016/A/4450 against my client.*
- 4 *However, [the Club] was not a party to the proceedings CAS 2016/A/4450 and has no further knowledge of these proceedings, as they appear to concern the old, historical club “CSKA” and the legal entity operating this old club, i.e. the legal entity “Professional Football Club CSKA AD”.*

Proceedings before the FIFA Disciplinary Committee

- 5 *My client furthermore understands that [the Player] has previously attempted to initiate proceedings before the FIFA Disciplinary Committee and has requested FIFA to take disciplinary action against [the Club].*
- 6 *From the documentation submitted to CAS, my client notes that it is [the Player’s] position today that FIFA has committed an act of denial of justice by failing to open such disciplinary proceedings.*
- 7 *In this respect, [the Club] observes that, apart from the main allegation concerning a denial of justice, [the Player] also makes the request that CAS shall take, in substitution for the disciplinary organs of FIFA, direct disciplinary action against my client.*
- 8 *However, apart from the fact that [the Club] would not have standing to be sued in any of these proceedings, such a request for direct discrimination action is inadmissible and unwarranted for various reasons, as will be explained in the subsequent considerations.*

Undue Combination of Different Procedures

- 9 *Most importantly, such a request unduly combines two fundamentally different procedures, which have nothing to do with each other and which concern different parties and different subject matters.*
- 10 *On the other hand, [the Player] alleges that FIFA committed a denial of justice by failing to initiate disciplinary proceedings in a timely manner.*
- 11 *This dispute, however, concerns only [the Player] and FIFA. [The Club] is not a party to this dispute and has no standing to be sued in this respect.*
- 12 *On the other hand, [the Player] also asks CAS to conduct disciplinary proceedings against [the Club], on behalf of FIFA.*
- 13 *In such disciplinary proceedings, however, [the Player] would not be a party.*
- 14 *Such disciplinary proceedings would only involve FIFA, on one side, and [the Club], as the accused party, on the other side. Likewise, in case of an Appeal against a decision, which the FIFA Disciplinary Committee could pass against [the Club], only [the Club] would have standing to appeal, and the Respondent in such Appeal proceedings would be FIFA only.*
- 15 *[The Player] would not have the status of a party in any stage of such disciplinary proceedings, and Appellant would not have any standing to request disciplinary sanctions against my client.*
- 16 *It results clearly from the above that these two types of procedures and disputes are fundamentally different both in relation to their substance and in relation to the involved parties.*

- 17 *For this reason alone, [the Player] cannot request that these proceedings shall be combined, i.e. [the Player] cannot request that CAS shall, in addition to the question of a denial of justice, also render a de novo decision in possible disciplinary proceedings against my client.*
- 18 *In other words, [the Player] cannot request that these CAS Appeal proceedings about an alleged denial of justice shall, at the same time, also substitute the disciplinary proceedings before the competent organs of FIFA.*

Violation of Procedural Rights

- 19 *In addition, if CAS were to decide on possible disciplinary measures against my client in the framework of these Appeal proceedings before CAS, this would seriously violate [the Club's] procedural rights.*
- 20 *As already indicated, in a possible disciplinary procedure concerning art. 64 of the FIFA Disciplinary code (i.e. a possible failure to respect a FIFA decision), [the Club] would have the procedural position of an accused party.*
- 21 *Accordingly, in such disciplinary proceedings, all the respective rights of defence would have to be awarded to [the Club], in particular:*
- *At the outset of such a disciplinary procedure, FIFA would have to send a letter of charge to [the Club], outlining the reasons for which disciplinary proceedings have been opened against [the Club];*
 - *Subsequently, [the Club] would have the right to submit a full defence against the position of FIFA, in order to respect the right to be heard of [the Club];*
 - *If FIFA then renders a disciplinary decision against [the Club], [the Club] would have the right to request a fully motivated decision from FIFA, explaining in detail the reason why FIFA holds [the Club] liable for contractual obligation of another legal entity;*
 - *This decision could then be reviewed in detail and [the Club] could consider a possible appeal to CAS.*
- 22 *If CAS would directly decide about disciplinary measures in these Appeal proceedings, instead of limiting its decision to the alleged denial of justice, all these procedural rights would be taken away from [the Club].*
- 23 *[The Club] would not only lose one instance (i.e. the procedure before the FIFA Disciplinary Committee), it would also effectively lose all its procedural rights of defence as an accused party, because [the Club] would suddenly be Co-Respondent of FIFA in Appeal proceedings before CAS.*
- 24 *In other words, [the Club] would no longer have the possibility to defend itself, as an accused party in disciplinary proceedings, against the position of the sanctioning body.*

...

Request

34 For all the reasons outlined above, [the Club] respectfully requests a bifurcation of these proceedings as follows:

- (i) CAS shall render a preliminary decision on whether FIFA has committed a denial of justice and limit these proceedings to [the Player] and FIFA as parties;
- (ii) If such a preliminary decision confirms that there has been a denial of justice, CAS shall refer this case back to FIFA, in accordance with Art. R57 para. 1 of the CAS-Code;

Subsidiary to (ii):

- (ii-A) If such a preliminary decision confirms that there has been a denial of justice and if CAS decides not to refer the case back to FIFA, new deadlines shall be established for my client to provide its respective position on all procedural matters, on the merits of this case and on all other pending matters, such as the payment of my client's share of the advance of costs.

35 For the same reasons, I also respectfully request that all pending deadlines for my client be suspended until a decision is taken on the requests made above".

33. On 5 January 2018, the Club wrote to the CAS Court Office reiterating its request for a panel of three arbitrators to be appointed. Further, the Club stated as follows:

"At the same time, the only matter, which could theoretically concern [the Club] in these proceedings, is the question of a possible enforcement of a decision against [the Club] and the respective disciplinary measures requested by the [Player]. This, however, is a purely disciplinary matter, for which no procedural costs are due (art. R65 of the [CAS Code]).

The required advance of costs appear to be due solely because [the Player's] Requests for Relief also concern an alleged denial of justice. However, as explained in our letter of yesterday, this aspect of the dispute does not concern my client, but is a dispute exclusively between [the Player] and FIFA, which should be decided on a preliminary basis.

For these reasons, my client respectfully submits that it cannot be required to pay any advance of costs.

Accordingly, [the Club] respectfully informs you that it cannot, at this stage, contribute to the advance of costs in proceedings, which (i) should be free of charge in what concerns the requests directed at [the Club], in which (ii) [the Club] does not have standing to be sued in the first place and which (iii) constitute nothing else than an unwarranted attempt of [the Player] to by-pass FIFA's enforcement system and national bankruptcy proceedings".

34. On 9 January 2018, the BFU wrote to the CAS Court Office stating, *inter alia*, that it agreed with the Club's request for the proceedings to be bifurcated, that the CAS did not have jurisdiction to hear this dispute, and requested a suspension of all deadlines until there was a decision regarding the bifurcation request.

35. On 9 January 2018, FIFA wrote to the CAS Court Office stating as follows:

“Firstly, and concerning the [Player’s] claim of a denial of justice in the present case, we wish to emphasize that such claim is unfounded given that FIFA has been investigating the complex legal situation of the [Club]. Such complexity is evidenced by a procedure at CAS that appears to be ongoing per the media releases issued by CAS on 16 and 26 June 2017 (cf. enclosed) which seem to also revolve around the issue of the Club’s complex legal situation.

Secondly, and despite the above, we agree to the [Club]’s request for the bifurcation of the proceedings, so that a decision be issued on the alleged denial of justice. Consequently, should no disciplinary proceedings have been opened by FIFA prior to the issuance of an arbitral award by CAS, and, should CAS uphold the [Player’s] claim, CAS should indeed refer the matter back to the competent judicial body to proceed with the disciplinary proceeding that is allegedly being denied, i.e. to the FIFA Disciplinary Committee, which would be in line with the awards already mentioned by both the [Player] and the [Club]”.

36. On 9 January 2018, the Player wrote to the CAS Court Office stating, *inter alia*, that he rejected the request for these proceedings to be bifurcated.
37. On 10 January 2018, the CAS Court Office wrote to the parties stating that in light of the parties’ disagreement regarding bifurcating the proceedings, the issue would be referred to the President of the CAS Appeals Arbitration Division (“Division President”) for her consideration.
38. On 11 January 2018, the CAS Court Office wrote to the parties stating that the Division President decided to refer the matter to a sole arbitrator, who would decide on the bifurcation request once appointed.
39. On 22 January 2018, the CAS Court Office wrote to the parties stating that the Player was granted Legal Aid. The CAS Court Office invited FIFA to submit its Answer within 20 days, and informed the BFU and the Club that its deadline to submit its Answers was suspended pending the sole arbitrator’s decision on bifurcation.
40. On 25 January 2018, in accordance with Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Sole Arbitrator appointed to this case was Mr Mark A. Hovell, Solicitor, Manchester, England.
41. On 1 February 2018, FIFA wrote to the CAS Court Office stating, *inter alia*, as follows:

“... please find enclosed a letter³ sent today on behalf of the Chairman of the FIFA Disciplinary Committee to the Appellant and the Second Respondent, informing them about the Disciplinary Committee’s impossibility to open disciplinary proceedings as a result of the bankruptcy proceedings of the club PFC CSKA Sofia which, due to their nature, prevent the commencement of any other possible enforcement procedure.

In view of this development, it appears that the requests for relief of the Appellant are baseless – and therefore the appeal has become moot – as it results evident that justice has not been denied in the present case – the Disciplinary Committee’s impossibility to deal with the case has been reiterated – and furthermore, the CAS can no longer “decide on Article 64 action filed by the Appellant on 21 March 2017”.

³ The contents of the letter referred to by FIFA have been summarised in the background facts section of this Award.

42. On 6 February 2018, the CAS Court Office wrote to the parties on behalf of the Sole Arbitrator stating as follows:

“The Sole Arbitrator has considered the submissions of all the parties to date, and notes in particular the request for bifurcation by the Respondents.

The basis of this case is a player bringing a claim against an alleged successor club (though the Sole Arbitrator notes the complicated legal situation involved and the arguments made by all sides). It appears that the former club has allegedly gone into insolvency, so the player believes his right of claim attaches to the Third Respondent, as the successor club.

The matter was put before the FIFA Disciplinary Committee on 21 March 2017, and the last correspondence from FIFA in those proceedings (prior to any correspondence at the CAS) appears to have been on 7 September 2017 in which it stated, inter alia, that it was “closely investigating the current situation of the club PFC CSKA Sofia”. The player claims that despite further correspondence submitted by him to FIFA since then, he has not heard anything further.

It is clear that the player is frustrated. He now wants the CAS to step into the shoes of FIFA and look at his claim. In the event that the CAS can look at his claim, he’s also brought into these CAS proceedings the alleged successor club and the relevant national association.

The Sole Arbitrator sees the sense in dealing with the bifurcation request at the first instance, however before he can do so he would like to ask FIFA the following questions:

- 1) Has FIFA formally ended its procedure at the FIFA Disciplinary Committee, which arose from the Appellant’s claim filed on 21 March 2017? If it has not, is it anticipated that the Appellant will receive a formal response and/or a decision in this respect? If so, when is this expected to be?*
- 2) Notwithstanding the above, in its correspondence to the CAS dated 1 February 2018, FIFA stated that “we do not appear to be in a position to proceed with the case of the reference in which the club PFC CSKA Sofia is involved since the club was declared bankrupt and became disaffiliated” (emphasis added). The Sole Arbitrator acknowledges the legal complexity in resolving the issues surrounding the club’s insolvency and/or successor club. However, to clarify, does FIFA acknowledge that the present CAS proceedings involve a ‘live club’ (i.e. the Third Respondent) and not a club that has been declared bankrupt and become disaffiliated?*

*FIFA is requested to submit its response to the above questions within **7 (seven) days**. In the meantime, FIFA’s time limit to file its answer of the merits is suspended”.*

43. On 13 February 2018, FIFA wrote to the CAS Court Office responding to the Sole Arbitrator’s questions as follows (emphasis added by the Sole Arbitrator):

*“Firstly... we confirm having formally informed the [Player] of the Disciplinary Committee’s impossibility to open disciplinary proceedings as a result of the bankruptcy proceedings of the Club PFC CSKA Sofia, pursuant to the [Player’s] claim filed on 21 March 2017. **The letter sent on behalf of the Chairman of the FIFA Disciplinary Committee dated 1 February 2018 can therefore be considered as a formal response.***

Furthermore... we reiterate that based on the information received, formal bankruptcy proceedings in accordance with Bulgarian national law were conducted before the Sofia City Court in Bulgaria. Such national bankruptcy proceedings supersede the FIFA Disciplinary Committee's capacity in enforcement proceedings and impedes any initiation of disciplinary proceedings based on art. 64 of the FIFA Disciplinary Code. Additionally, we acknowledge that a 'live' club has been summoned to the present proceedings insofar as the [Player] lodged an appeal against said club. However, and for the sake of clarity, since the credit that the [Player] is seeking to be enforced appears to have been borne from the "old" PFC CSKA Sofia which was the subject of bankruptcy proceedings that were conducted in accordance with Bulgarian national law, any action seeking the enforcement of said credit should be addressed against such "old" club in the correct forum".

44. On 14 February 2018, the CAS Court Office wrote to the parties stating as follows:

"I refer to FIFA's letter of 13 February 2018 in which it was stated that "the letter sent on behalf of the Chairman of the FIFA Disciplinary Committee dated 1 February 2018 can be considered a formal response". [emphasis added by the CAS Court Office]

In light of the above and on behalf of the Sole Arbitrator, the Appellant is invited to inform the CAS Court Office by 16 February 2018 whether he wishes to continue with this appeal or, conversely, if he intends to file a new appeal against the formal response of FIFA dated 1 February 2018. In case the Appellant wishes to continue with this appeal, the Sole Arbitrator will rule on the issue of jurisdiction in a preliminary decision, pursuant to Article R55 of the Code".

45. On 14 February 2018, the Player wrote to the CAS Court Office stating:

"The Appellant respectfully requests the Sole Arbitrator to move forward with the proceedings.

The reasons underlying the Appellant's request are the following:

(i) Far from rendering the present appeal moot, as Respondent 1 claims, FIFA's letter of 1 February 2018 is further proof of its failure to abide by its own regulations and decisional practice and to uphold its own enforcement regime.

Unsurprisingly, the present appeal has prompted FIFA to draft and send a one-page letter in the hope that it would have the effect of an effortless motion to dismiss. However, the reasons that FIFA puts forward in its letter appear to be inconsistent with its correspondence of 7 September 2017 and incorrect about the information on which they allegedly rely.

At the same time, the abovementioned shortcomings of FIFA's position are connected. On the one hand, it has now become apparent that FIFA has certainly not "closely [investigated] the current situation of the club PFC CSKA Sofia", despite having informed the Appellant, in a letter of 7 September 2017 (Exhibit 2 to the Appeal Brief), that it would have done precisely so. And, on the other hand, FIFA nonchalantly states that its stance on the Appellant's Article 64 FDC action has been based "primarily (...) on the information [it] received from Mr Palacios' legal representative and the Bulgarian Football Union"; however, FIFA fails to provide to the Appellant whatever information it has obtained from the Bulgarian Football Union.

Therefore, in the Appellant's view, the consequences of FIFA's overall conduct remain the same: they amount to a failure to comply with (or at least very poor performance in relation to) its own enforcement regime and result from an arbitrary decision (see Section X.2.B and C of the Appeal Brief).

(ii) Even where the Sole Arbitrator were to decide that there is no longer cause for a denial of justice case against FIFA, the remaining motions for relief warrant the continuation of the present arbitration.

Finally, the Appellant would like to stress that the preparation of an appeal against the FIFA letter of 1 February 2018 would represent the fourth appeal to CAS in relation with the same (original) dispute; while taking the proceedings further (and refraining from referring the case back to the FIFA Disciplinary Committee), in the circumstances, would not in any way affect the right of defence of the Respondents”.

46. On 15 February 2018, the CAS Court Office wrote to the parties stating as follows:

“On behalf of the Sole Arbitrator, the Respondents are invited to file their comments, if any, on the attached letter by 20 February 2018. Upon receipt of such comments, the Sole Arbitrator will rule on the issue of jurisdiction in a preliminary decision, pursuant to Article R55 of the Code...”.

47. On 20 February 2018, FIFA wrote to the CAS Court Office stating, *inter alia*, as follows:

- There was no inconsistency between FIFA’s letter to the Player dated 7 September 2017 and its position that the Club’s situation would be closely monitored.
- Since the Club’s filing of insolvency proceedings, the appropriate forum for the Player to reclaim any outstanding amounts was the Sofia City Court in Bulgaria. It appears the Player was either late in filing a claim before the competent court, or negligent in failing to do so, and therefore attempted to file proceedings before the FIFA Disciplinary Committee. *“However, it is a well-established principle that national bankruptcy proceedings supersede the Disciplinary Committee’s capacity to initiate disciplinary proceedings based on art. 64 of the FIFA Disciplinary Code. As such, it is undisputable that the Disciplinary Committee was impeded from applying such article to the case at hand”.*
- It denied the Player’s allegations that FIFA failed to provide him with information provided by the BFU.
- The Player’s requests were relief were baseless, and the appeal moot, as justice could not have been denied in the present case. It was impossible for the FIFA Disciplinary Committee to apply Article 64 of the FIFA Disciplinary Code in the present case. FIFA also reiterated that the CAS did not have jurisdiction to hear this appeal.

48. On 26 February 2018, the Club wrote to the CAS Court Office stating its position regarding CAS jurisdiction. Its position has been summarised in section IV of this Award below.

IV. THE PARTIES’ SUBMISSIONS ON JURISDICTION

49. 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 Sole Arbitrator, however, has carefully considered all the submissions made by the parties, even if no explicit reference is made in what immediately follows.

A. The Player's Submissions

In summary, the Player submitted the following in relation to the issue of jurisdiction:

I. *A non-decision (and denial of justice) also constitutes a decision*

50. The Player submitted that the term 'decision' must be "*interpreted in a broad manner so as to not restrain the relief available to parties to first instance proceedings that the resort to the CAS Appeal Arbitration procedure represents*". The Player noted that the FIFA Statutes did not define what constituted a 'decision'.
51. The Player submitted that according to CAS jurisprudence, and in particular *CAS 2013/A/3148*⁴, the characteristics of an appealable decision in the meaning of Article R47(1) of the CAS Code are as follows:
- "a) *the form of the communication has no relevance to determine whether there exists a decision or not;*
 - b) *in principle, for a communication to be a decision, this communication must contain a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties;*
 - c) *a decision is unilateral act, sent to one or more determined recipients and is intended to produce legal effects; and*
 - d) *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".*
52. The Player also noted that:
- "... a communication in the form of a letter may also constitute a decision subject to appeal before CAS. In this respect, the heading of a letter does not necessarily rule out that the communication is to be regarded as a "decision". However, where the sports federation is simply limiting itself to providing information or to communicating a mere intention, there is not a first instance decision, which could in turn be appealed to CAS".*
53. According to CAS jurisprudence, for a letter to qualify as an appealable decision it must affect the legal situation of the addressee, i.e. if it contains a ruling. The main criteria for deciding whether a letter constitutes a 'decision' is the "*binding character of the letter and the 'animus decidendi'*".
54. The Player argued that in certain circumstances, "negative decisions" or "refusals to decide" can be considered appealable decisions. The Player cited *CAS 2013/A/3249*⁵ in this regard.

⁴ *CAS 2013/A/3148*, award of 5 September 2014.

⁵ *CAS 2013/A/3249*, award on jurisdiction of 31 March 2014.

55. The Player also submitted:

“Consequently, if a letter or a communication decides on the admissibility or inadmissibility of a request without addressing the merits of the case, it must be regarded as a decision in the sense of Article 58(1) of the FIFA Statutes and Article R47 of the CAS Code, or if a body delays the issuance of a decision beyond a reasonable period of time, there can also be a denial of justice, opening the way for an appeal against the absence of a decision.

In other words, denial of justice occurs if the judicial body has failed to issue and communicate a decision following a party’s request, also taking into account the particular urgency existing in some cases. Even if the judicial body did issue a decision, it may still commit a substantial denial of justice if such decision is arbitrary or it offends the sense of justice and equity.

The underlying reasoning of the approach of CAS to the situations described is that the absence of any viable opportunity to obtain a legally binding and challengeable clarification might likely have to be treated as or like a denial of justice, which would be treated like a decision subject to an appeal at CAS, to the extent that such absence is fatal to the interest of the parties”.

56. The Player stated that the 7 September 2017 letter from the FIFA Disciplinary Committee did not constitute a decision and lacked the required *animus decidendi*. The Player then submitted further evidence regarding the Club’s legal situation, but never heard further from FIFA. This lack of action *“must be considered a denial of justice, both formal and substantive”*.
57. Further, the lack of action by the FIFA Disciplinary Committee *“must be considered as decision which is final within FIFA, pursuant to Article 58(1) of the FIFA Statutes, Article 64.5 [of the FIFA Disciplinary Code] and Article R47 of the CAS Code and it is thus subject to an appeal with CAS”*.

II. The statutory basis for jurisdiction

58. The Player also submitted that CAS jurisdiction derived from Articles 57 and 58 of the FIFA Statutes and from Article 47 of the CAS Code. Further, *“appeal to CAS against a final decision passed by a FIFA legal body is available”* pursuant to these articles. *“In this respect, Article 58 of the FIFA Statutes stipulates that an appeal against a final decision of FIFA maybe filed before the CAS provided that “all other internal channels have been exhausted”, which is broadly in line with Article R47 of the CAS Code”*.

B. FIFA’s Submissions

In summary, FIFA submitted that the CAS did not have jurisdiction to hear this matter, and stated the following:

59. In light of the Original Club’s insolvency proceedings, the FIFA Disciplinary Committee was not in a position to open disciplinary proceedings against the club as it could not deal with clubs which had declared bankrupt and/or were no longer affiliated to its national association. The Player was informed of this position on both 7 September 2017, and then again on 1 February 2018.

60. When responding to questions which the Sole Arbitrator put to FIFA, FIFA confirmed that the 1 February 2018 correspondence should be considered as its formal response (or final position) on the matter.
61. FIFA also stated that *“formal bankruptcy proceedings in accordance with Bulgarian national law were conducted before the Sofia City Court in Bulgaria. Such national bankruptcy proceedings supersede the FIFA Disciplinary Committee’s capacity in enforcement proceedings and impedes any initiation of disciplinary proceedings based on art. 64 of the FIFA Disciplinary Code”*.
62. Moreover, whilst the present appeal was directed against a ‘live club’ (i.e. the Club), the credit which the Player is seeking to enforce appears to be borne against the ‘old’ PFC CSKA Sofia (which was the subject of the aforementioned bankruptcy proceedings) so any appeal should be directed against that entity in the correct forum.
63. As a result of the above, the Player’s requests were relief were baseless, and the appeal moot, as justice could not have been denied in the present case.

C. The BFU’s Submissions

64. In very brief summary, the BFU submitted that the CAS did not have jurisdiction to hear this matter, and stated that the present appeal was *“inadmissible on a number of grounds, including inter alia lack of jurisdiction of CAS, lack of standing of the respondents to be sued in combined proceedings etc.”*.

D. The Club’s Submissions

In summary, the Club submitted the following in relation to the issue of jurisdiction:

I. There is no denial of justice

65. The nexus of this Appeal is a request by the Player for the FIFA Disciplinary Committee to enforce the CAS Award in *CAS 2016/A/4450* against *“the old, historical Bulgarian football club PFC CSKA Sofia”*. The requests for relief requested by the Player were only directed at the respondent in the abovementioned CAS case, i.e. the Original Club, not any successor clubs.
66. The Player then filed the Appeal at the CAS claiming that there was a denial of justice due to the lack of a response from the FIFA Disciplinary Committee administration. The Player argued that the alleged absence of a final decision was, in itself, a final decision. However, on 13 February 2018, the FIFA Disciplinary Committee confirmed that the correspondence sent by FIFA on 1 February 2018 constituted *“a formal response”* to the Player’s requests for relief at FIFA. Accordingly, there has not been a denial of justice as there has been a final decision by FIFA.
67. The present Appeal is not directed against FIFA’s ‘final decision’ of 1 February 2018, this Appeal is directed at an alleged denial of justice. As there has not been a denial of justice, there is no valid object for this Appeal (in the meaning of Article R47 of the CAS Code).

68. For these reasons, the CAS “cannot have jurisdiction to entertain this Appeal or, at the very least, this Appeal must be declared inadmissible”.

II. The CAS does not have jurisdiction to hear any requests directed against PFC CSKA-Sofia EAD

69. The Club noted that the requests for relief filed at the FIFA Disciplinary Committee by the Player were directed against the Original Club (i.e. the respondent in CAS 2016/A/4450) and not PFC CSKA-Sofia EAD. Yet, the Player is now seeking to enforce the decision in CAS 2016/A/4450 against PFC CSKA-Sofia EAD. The Club submitted that it had “no contractual link to the [Player] and/or to the old, historical club PFC CSKA Sofia”.
70. Accordingly, “in what concerns a possible enforcement of a decision against [PFC CSKA-Sofia EAD] as a “successor club”, CAS cannot have jurisdiction or, at the very least, any Appeal to that effect must also be declared inadmissible”.

V. JURISDICTION OF THE CAS

A. The legal position on jurisdiction

71. Article R47 of the CAS Code provides as follows:

“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 him prior to the appeal, in accordance with the Statutes or regulations of that body”.

72. Moreover, the Player relied on Articles 57 and 58 of the FIFA Statutes, which state as follows:

“57 Court of Arbitration for Sport (CAS)

1. FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents.
2. The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.

58 Jurisdiction of CAS

1. Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of notification of the decision in question.
2. Recourse may only be made to CAS after all other internal channels have been exhausted”.

B. The Sole Arbitrator's decision on jurisdiction

73. Further to the communication of the CAS Court Office dated 14 February 2018, this award solely concerns the issue of the jurisdiction of the CAS.

74. Article 186(1) of the Swiss Private International Law Act ("PILA") states as follows:

"1. *The arbitral tribunal shall decide on its own jurisdiction.*

...

2. *Any objection to its jurisdiction must be raised prior to any defense on the merits.*

3. *The arbitral tribunal shall, in general, decide on its jurisdiction by a preliminary decision*".

75. The Sole Arbitrator therefore has the so-called *Kompetenz-Kompetenz*, i.e. the authority to determine whether it has jurisdiction to adjudicate the merits of the case.⁶

76. The Sole Arbitrator notes that in the present Appeal, the Player requested, *inter alia*, the following prayers for relief:

"A.

1. *to declare that the conduct of the FIFA Disciplinary Committee administration constitutes denial of justice;*

2. *to declare that the present case of denial of justice warrants the resort by the Appellant to CAS on appeal...*".

77. The Player also stated that:

"Consequently, if a letter or a communication decides on the admissibility or inadmissibility of a request without addressing the merits of the case, it must be regarded as a decision in the sense of Article 58(1) of the FIFA Statutes and Article R47 of the CAS Code, or if a body delays the issuance of a decision beyond a reasonable period of time, there can also be a denial of justice, opening the way for an appeal against the absence of a decision.

In other words, denial of justice occurs if the judicial body has failed to issue and communicate a decision following a party's request, also taking into account the particular urgency existing in some cases. Even if the judicial body did issue a decision, it may still commit a substantial denial of justice if such decision is arbitrary or it offends the sense of justice and equity.

The underlying reasoning of the approach of CAS to the situations described is that the absence of any viable opportunity to obtain a legally binding and challengeable clarification might likely have to be treated as or like

⁶ See, for example, CAS 2010/A/2091 or CAS 2013/A/3249.

a denial of justice, which would be treated like a decision subject to an appeal at CAS, to the extent that such absence is fatal to the interest of the parties”.

78. Conversely, the Respondents unanimously rejected that the CAS has jurisdiction to hear this dispute. FIFA stated that it, for a variety of reasons including the fact that the club in *CAS 2016/A/4450* – which it argued was not the same club as the Club in this Appeal - was undergoing insolvency proceedings in Bulgaria which impeded FIFA from initiating any disciplinary proceedings based on Article 64 of the FIFA Disciplinary Code. The Club also argued that it was not the same party as the respondent in *CAS 2016/A/4450*.
79. Accordingly, there is no dispute between the parties that there was no underlying decision being appealed in this Appeal. Rather, this Appeal is a denial of justice claim, which the Appellant submits should be treated akin a decision subject to appeal at the CAS.
80. Stepping back from the issue of jurisdiction, the Sole Arbitrator wishes to state that he understood the Player’s significant frustration. The Player first filed a claim at FIFA against his former employer (leaving aside the issue of whether the respondent in *CAS 2016/A/4450* was the same as the Club) in September 2014. Over three and a half years (and numerous proceedings at FIFA and the CAS – all undoubtedly at significant cost) later, he is still awaiting the repayment of the monies owed to him.
81. Unfortunately, despite appreciating his frustration, the Sole Arbitrator believes that the Player acted too hastily in filing the present Appeal. There are also many additional problems with the Player’s Appeal to the CAS, which result in the lack of CAS jurisdiction in the matter at hand.
82. Firstly, the Sole Arbitrator notes the delay at the FIFA Disciplinary Committee stage in resolving the Player’s claim in the present case was somewhat understandable given the complex legal situation surrounding the Club and in particular the insolvency of the respondent club in *CAS 2016/A/4450*. The Sole Arbitrator took note of the other ongoing CAS proceedings in this regard⁷. In reality, the Player turned to the FIFA Disciplinary Committee in March 2017 and within 6 months, it told him that it could not open proceedings against the Original Club due to its insolvency, but that it was still investigating the situation.
83. Not all insolvent clubs are wound up and cease to exist. Some insolvency procedures (such as administration, company voluntary arrangements or Chapter 11) are aimed at rescuing the club. Hence, here FIFA would want to continue investigating. Finally, in February 2018, FIFA concluded that it can do no more and gave that final decision to the Player. This entire FIFA Disciplinary Committee process took less than 1 year.
84. Accordingly, the Sole Arbitrator rejects the Player’s argument that FIFA delayed issuing a decision “*beyond a reasonable period of time*” and that the delay constituted a denial of justice for reasons of offending “*the sense of justice and equity*”. There is simply no evidence before the Sole

⁷ As notified in the CAS Media Releases regarding PFC CSKA Sofia EAD dated 16 and 27 June 2017.

Arbitrator that FIFA deliberately delayed this process to deny the Player justice or that the Player was harmed in some material way.

85. Secondly, for the Sole Arbitrator to have jurisdiction of the Appeal, there must be “*a decision of a federation*” and “*the Appellant has exhausted the legal remedies available to him prior to the appeal*” in accordance with Article R47 of the CAS Code.
86. The Sole Arbitrator notes the Player’s arguments regarding when ‘refusals to decide’ or ‘negative decisions’ can be considered as appealable decisions. Whilst the Sole Arbitrator acknowledges that parties could have the right to argue that there had been a denial of justice in certain circumstances, this needs to be balanced with an adjudicatory body’s right to investigate a claim and issue its decision. In the case at hand, the Sole Arbitrator finds that the wording of FIFA’s letter of 7 September 2017 lacks a final ruling that would affect the Player’s interests. It does refer to no procedure being opened, but it does also say that the investigation is ongoing. This contrasts with FIFA’s letter of 1 February 2018 (which is not under appeal) whereby a final decision to close the procedure is contained. The Sole Arbitrator does not class the FIFA letter of 7 September 2017 as a “decision”.
87. Thirdly, the Sole Arbitrator notes the Club’s position that neither it nor the Second Respondent have any standing to be sued here. The Sole Arbitrator notes that the origin of this case is that the Player was employed by the Original Club and it breached the Employment Contract. That dispute (one between a player and a club with an international dimension, pursuant to Article 22 of the FIFA Regulations on the Status and Transfer of Players (“RSTP”)) was assigned to the FIFA DRC.
88. There have been cases before the FIFA DRC where the respondent club has become insolvent during the proceedings there. CAS jurisprudence (see *CAS 2011/A/2586*, award of 3 October 2012, and *CAS 2012/A/2754*, award of 8 February 2013) has directed the FIFA DRC to continue with such proceedings despite such insolvency procedures, so that the Player can receive a judgement – is he owed money and if yes, how much. The player can then look to enforce that judgement against the insolvent club, not through FIFA’s Disciplinary Committee, but through the insolvent club’s insolvency practitioners or through the courts.
89. This is rarely attractive, as typically any assets of that club which are realised are applied against the fees of the insolvency practitioner and any remaining monies are applied against the claims of the creditors, sometimes with certain creditors such as the tax or social authorities having a preference. It may result in the player only receiving a few cents in the Euro on his debt.
90. So in such circumstances, the player will look to see if his claim can be attached to any new club that comes along and succeeds the insolvent one.
91. In the case at hand, the Original Club only went into insolvency after the FIFA DRC and the CAS had given their judgements. As such, the Player has the CAS decision and seeks to enforce it. Unfortunately for him, the Original Club then went into insolvency and ultimately the FIFA Disciplinary Committee said it could do no more, as a result of Article 64 of the FIFA Disciplinary Code. However, what the Player appears to be requesting is that the FIFA

Disciplinary Committee (and now the CAS through the matter at hand) should turn its attention away from the Original Club and instead put pressure on its apparent successor, the Club, to pay the Original Club's debt to the Player. This however, is a new claim against a different legal entity. The Player should bring his claim against the Club following Article 22 of the RSTP, through the FIFA DRC (not the FIFA Disciplinary Committee), respecting the time limitations of the RSTP. He should then seek to convince the FIFA DRC that the Club is the successor of the Original Club and should, somehow, be responsible for the debt of the Original Club contained in the CAS award in *CAS 2016/A/4450*. If the FIFA DRC finds against him, then he has a right to appeal that decision to the CAS.

92. This is the procedure the Sole Arbitrator would have expected the Player to follow and, as such, notes that even if FIFA's letter of 7 September 2017 could somehow be taken as a decision, the Player has not exhausted all his legal remedies and should, as he is seeking a remedy against the Club, have taken his new dispute to the FIFA DRC first before coming to the CAS.
93. For all these reasons, the Sole Arbitrator determines that the CAS lacks the jurisdiction to consider this Appeal.
94. In light of this decision, the Sole Arbitrator finds that there is no need to address any of the other claims of the Player, nor does he have the jurisdiction to decide on the merits of the present Appeal.
95. Any further claims or requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Court of Arbitration for Sport has no jurisdiction to decide the present dispute between Iván Bolado Palacios and FIFA, the Bulgarian Football Union and PFC CSKA EAD Sofia.
2. The arbitration procedure with the reference CAS 2017/A/5460 Ivan Bolado Palacios v. FIFA, Bulgarian Football Union & PFC CSKA Sofia is terminated and shall be removed from the CAS roll.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.