



Arbitration CAS2015/A/4213 Khazar Lankaran Football Club v. Fédération Internationale de Football Association (FIFA), award of 5 January 2016

Panel: Prof. Petros Mavroidis (Greece), President; Mr Jan Räker (Germany); Mr Raymond Hack (South Africa)

Football

Sporting sanction imposed on a club due to the termination of a contract of employment without just cause

Power of a CAS panel to determine its own jurisdiction under Swiss law

Legal basis for an appeal against a FIFA decision

Notion of a “decision” according to CAS case law

Letter as a challengeable decision under Art. R47 CAS Code

Absence of an opportunity to obtain a binding and challengeable decision and denial of justice

- 1. The CAS is competent to determine its own jurisdiction and whether it may adjudicate the merits of the appeal. The so-called “Kompetenz-Kompetenz” of an international arbitral tribunal sitting in Switzerland is recognized by Article 186 para. 1 of the Swiss Law on Private International Law, which is applicable to CAS arbitration proceedings. In an appeal arbitration procedure, the CAS panel must address any jurisdictional issue, first by considering Article R47 para. 1 of the Code.**
- 2. The legal basis for an appeal against a FIFA decision is set out in Article 63 para. 1 of the FIFA Statutes, edition 2011. In accordance with this provision, the CAS has the power to adjudicate appeals against a sports organization (i.e. a federation, association or sports-related body) provided notably that an actual “decision” has been issued, that it is final (i.e. all other available stages of appeal have been exhausted) and that it is challenged in a timely manner.**
- 3. The applicable FIFA regulations, in particular the FIFA Statutes, do not provide any definition for the term “decision”. According to CAS case law, the form of the communication has no relevance to determine whether there exists a decision or not. In particular, the fact that the communication is made in the form of a letter does not rule out the possibility that it constitute a decision subject to appeal. 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. A decision is thus a unilateral act, sent to one or more determined recipients and is intended to produce legal effects. An appealable decision of a sport association or federation is normally a communication of the association directed to a party and based on an ‘*animus decidendi*’, i.e. an intention of a body of the association to decide on a matter. A simple information, which does not contain any ‘ruling’, cannot be considered a decision.**
- 4. There is no decision within the meaning of Art. R47 CAS Code if the party before the**

previous instance did not explicitly request a formal decision and the governing body's representatives had no reason to infer differently. A letter does not constitute a challengeable decision if it does not contain a ruling materially affecting the rights and the legal situation of the parties and if the drafters of the letter lacked the *animus decidendi*.

5. 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 interests of the parties.

I. PARTIES

1. Khazar Lankaran Football Club ("Khazar Lankaran" or the "Appellant") is a football club with its registered office in Lankaran, Azerbaijan. It is a member of the Association of Football Federations of Azerbaijan ("*Azərbaycan Futbol Federasiyaları Assosiasiyası*", "AFFA"), itself affiliated to the Fédération Internationale de Football Association since 1994.
2. The Fédération Internationale de Football Association ("FIFA") is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the governing body of international football at worldwide level. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players worldwide.

II. FACTUAL BACKGROUND

A. Introduction

3. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings, and evidence adduced. References to additional facts and allegations found in the Parties' written submissions, pleadings, and evidence will be made, where relevant, in connection with the legal analysis that follows. While the Panel has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, it refers in its award only to the submissions and evidence it deems necessary to explain its reasoning.

B. Background facts

4. On 12 November 2011, Mr Veldin Muharemovic, a professional player of Bosnian-Herzegovinian nationality, initiated proceedings with the FIFA Dispute Resolution Chamber (the "DRC") to obtain compensation for the damages incurred following Khazar Lankaran's unilateral termination of the employment relationship existing between them.

5. In a decision dated 20 August 2014, the DRC held, *inter alia*, the following:
 - the matter brought before it had to be assessed according to the 2010 edition of the Regulations on the Status and Transfer of Players (the “RSTP 2010”);
 - Khazar Lankaran had unilaterally terminated the employment contract with Mr Muharemovic without just cause on 4 August 2011 and must take responsibility for it;
 - in the recent past, Khazar Lankaran had been found to have wrongfully terminated its employment relationship with four of its players;
 - as a consequence and by virtue of Article 17 para. 4 of the RSTP 2010, Khazar Lankaran must be banned “*from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision*”.
6. As a result, on 20 August 2014, the DRC issued the following decision (the “Initial Decision”):
 - “1. *The claim of (...) Veldin Muharemovic, is partially accepted.*
 2. *(...) Khazar Lankaran FC, has to pay to the claimant, **within 30 days** as from the date of notification of this decision the amount of AZN 3,000.*
 - (...)
 6. *[Khazar Lankaran] shall be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision”.*
7. On 9 July 2015, the Court of Arbitration for Sport (the “CAS”) dismissed the appeal filed by Khazar Lankaran on 23 October 2014 against the Initial Decision, confirming thus the original decision of 20 August 2014 by the DRC.
8. On 26 August 2015, AFFA sent the following letter to Mr Omar Ongaro, FIFA Head of the Players’ Status and Governance:

“(…)

As you may know, our affiliated club Khazar Lankaran has a transfer ban for two registration periods starting from 22/12/2014 which means that transfer ban finishes on 31/08/2015.

According to the stated, we would like to clarify with you whether FC Khazar Lankaran is able to make transfers after 31/08/2015 (ex., whether they are able to sign players, whose contracts have been finished before 31/08/2015)”.
9. On 28 August 2015, Mr Marco Villiger, FIFA Director of Legal Affairs, and Mr Omar Ongaro sent their response to AFFA. They stated therein that “*in accordance with the [Initial Decision], we inform you that the registration of new players for [Khazar Lankaran] will only be possible as of the beginning of the next registration period fixed by your association (cf. art. 17 par. 4 of the Regulations on the Status and Transfer of Players)*”.

10. On 8 September 2015, Khazar Lankaran invited Mr Marco Villiger to confirm its ability to register free players as from 31 August 2015 “in accordance with the 2010 edition of the Regulations, CAS jurisprudence and the established legal principle of non-retroactivity”.
11. On 11 September 2015, Mr Marco Viliger and Mr Omar Ongaro sent their written response to Khazar Lankaran, and indicated in pertinent part that:

“(…)

In this regard, we understand that you ask our services to reassess the position contained in our correspondence dated 28 August 2015, in accordance with which your club will only be in a position to register new players as from the beginning of the next registration period fixed by [AFFA].

However, we regret having to inform you that on the basis of your correspondence, we do not find any elements for a different appreciation of the situation. Therefore, we adhere to our previous position and kindly refer you to the contents of our aforementioned communication.

In fact, we must emphasise that the aim of the sporting sanction as per art. 17 par. 4 of the Regulations on the Status and Transfer of Players (hereinafter: the Regulations), was under the 2010 edition and is under the current edition of the Regulations that the club in question may not be able to reinforce its team for the championship following the registration period during which the club was banned from registering any new players. Furthermore, the envisaged full effects of such a registration ban can only be achieved if it has the designated direct impact on the competitiveness of the club in the relevant competitions. On the other hand, the purpose of the exception provided for in art. 6 par. 1 of the Regulations is to offer appropriate protection to unemployed players and there is no doubt that the rationale behind said exception is not to undermine the objective of a sporting sanction as per art. 17 par. 4 of the Regulations.

In summary, we deem that a club may not make use of the exception of art. 6 par. 1 of the Regulations (protection of unemployed players) in order to circumvent effects of a sporting sanction, by being permitted to register new players in view of the forthcoming season, the latter being precisely what the relevant sporting sanction on the basis of art. 17 par. 4 of both, the 2010 as well as the current edition of the Regulations, aims to avoid. The wording of the relevant provision as per the 2010 edition of the Regulations has been amended in order to avoid any uncertainty as to its interpretation and to confirm the established understanding without anyhow changing the spirit and purpose behind it.

Finally, please be informed that all of the above considerations are of general nature and as such without prejudice whatsoever.

We trust in your understanding of the situation and that these general considerations will have clarified the matter”.

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

12. On 17 September 2015, Khazar Lankaran filed its statement of appeal with the CAS with respect to FIFA’s letters of 11 September 2015 (the “Litigious Letter”).
13. Together with its statement of appeal, Khazar Lankaran filed a request for provisional measures in accordance with Article R37 of the Code of Sports-related Arbitration (the “Code”)

requesting to be allowed to immediately register free players in accordance with Article 6 para. 1 of the RSTP 2010.

14. On 23 September 2015, the CAS Court Office acknowledged receipt of the Khazar Lankaran's submissions, of its payment of the CAS Court Office fee and took note of its nomination of Mr Theodore Giannikos as arbitrator. The CAS Court Office also underscored that Khazar Lankaran had designated the statement of appeal as its appeal brief and, consequently, invited FIFA to submit its answer within 20 days. It noted that Khazar Lankaran chose English as the language of the arbitration. In this respect, it informed FIFA that unless it objected within three days, the procedure would be conducted in English. The CAS Court Office also invited FIFA to nominate an arbitrator from the list of CAS arbitrators within ten days. Finally, the CAS Court Office observed that Khazar Lankaran applied for provisional measures and granted FIFA a 10-day deadline to file its position on such request.
15. On 30 September 2015, FIFA confirmed to the CAS Court Office that it was nominating Mr Raymond Hack as arbitrator in the present arbitration procedure. It took this opportunity to emphasise that the Litigious Letter was *"nothing else than an informative communication addressed to [Khazar Lankaran] and does not constitute an appealable decision in accordance with art. R47 par. 1 of the Code of Sports-related Arbitration (...). In fact, no decision as to the interpretation of its original decision imposing a transfer ban on [Khazar Lankaran] was rendered by the competent decision making body of FIFA in the matter at hand"*.
16. On 2 October 2015, the CAS Court Office informed the Parties that Mr Theodore Giannikos had declined to serve as arbitrator in this procedure.
17. On 5 October 2015, FIFA filed its answer to Khazar Lankaran's request for provisional measures.
18. On 6 October 2015, Khazar Lankaran confirmed to the CAS Court Office that it was nominating Mr Jan Råker as an arbitrator, instead of Mr Theodore Giannikos.
19. On 6 October 2015 and on the basis of Article R55 para. 3 of the Code, FIFA asked the CAS Court Office that the time limit for the filing of its answer be fixed after the payment by Khazar Lankaran of its share of the advance of costs.
20. On 6 October 2015, the CAS Court Office informed the Parties that Article R55 para. 3 of the Code was not applicable as the present procedure was free of charge and, accordingly, confirmed that the time limit for FIFA to file its answer as set out in its letter of 23 September 2015 was maintained.
21. On 14 October 2015, FIFA filed its answer in accordance with Article R55 of the Code.
22. On 16 October 2015, the Parties were invited to inform the CAS Court Office whether their preference was for a hearing to be held.

23. On 20 October 2015, the Parties were notified of the order on Khazar Lankaran's request for provisional measures issued by the President of the CAS Appeals Arbitration Division. The operative part of such order reads as follows:
- “The Court of Arbitration For Sport rules that:*
- 1. The request for provisional measures filed by Khazar Lankaran FC on 17 September 2015 in the matter CAS 2015/A/4213 Khazar Lankaran FC v. FIFA is rejected.*
 - 2. The costs deriving from the present order will be determined in the final award or in any other final disposition of this arbitration”.*
24. On 22 and 23 October 2015, Khazar Lankaran, and FIFA confirmed to the CAS Court Office that they preferred for the matter to be decided solely on the basis of the Parties' written submissions.
25. On 30 October 2015 and on the basis of Article R44.4 of the Code, Khazar Lankaran requested the “CAS to proceed in an expedited manner with regard to the present case. At the same time, through this letter, [it] invite [FIFA] to give its consent to the expedited procedure”.
26. On 30 October 2015, the CAS Court Office acknowledged receipt of Khazar Lankaran's letter of the same day and required from the latter to clarify its request and, in particular, to propose a procedural calendar.
27. On 2 November 2015, Khazar Lankaran informed the CAS Court Office that the purpose of the present arbitral procedure was to obtain the confirmation a) that the ban imposed upon it by the DRC on 20 August 2014 had expired on 31 August 2015 and b) that it was entitled to register “free players” during the period running between 31 August 2015 and 2 January 2016, which corresponds to the opening of the winter registration period. It insisted on the fact that the “expedited procedure is extremely necessary to provide [Khazar Lankaran's] right (...) to register free players as soon as possible. Otherwise, there is a big likelihood that the award will be issued too late and even if [Khazar Lankaran's] right to register free players after 31 August, 2015 is confirmed, it will not have any positive effect, because the majority of the matches (if not all of them) would have been played”. It also requested the CAS to be allowed “in accordance with art. 223 of the Swiss Civil Procedure Code, to make an additional submission (via fax) to the case only with respect to the current **list of the players of Khazar Lankaran FC** as an answer to the allegations of [FIFA] on the same matter”.
28. On 2 November 2015, the CAS Court Office advised Khazar Lankaran that it needed to propose a specific timetable for the Panel to consider the possibility to proceed in an expedited manner. In this context, the CAS Court Office invited Khazar Lankaran to clarify its request by 4 November 2015.
29. On 3 November 2015, Khazar Lankaran proposed the following timetable:
- “9 November 2015 – the deadline for the final submissions of [Khazar Lankaran]*
12 November 2015 – the deadline for the final submissions of [FIFA]
19 November 2015 – the date needed for the final award”.

30. On 3 November 2015, the CAS Court Office invited FIFA to state on or before 5 November 2015, a) whether it agreed to Khazar Lankaran's proposed expedited calendar, b) whether it rejected it or c) whether it wished to amend it. The CAS Court Office insisted that, ultimately, it was for the Panel to decide whether there would be second round of submissions.
31. On 3 November 2015, the CAS Court Office informed the Parties that the Panel to hear the case had been constituted as follows: Prof. Petros C. Mavroidis, President of the Panel, Mr Jan Råker and Mr Raymond Hack, arbitrators.
32. On 5 November 2015, FIFA informed the CAS Court Office that it did not agree with Khazar Lankaran's request to proceed in an expedited manner. As a consequence and on 6 November 2015, the CAS Court Office informed the Parties that the deadlines set forth in the Code would prevail.
33. On 15 December 2015, on behalf of the Panel, the CAS Court Office informed the Parties that the former deems itself sufficiently informed to render an award solely based on the Parties' respective written submissions, without the need of holding a hearing.
34. On 17 December 2015, both Parties returned their respective Order of Procedure.

IV. SUBMISSIONS OF THE PARTIES

A. The Appellant

35. Khazar Lankaran submitted the following requests for relief:

“Khazar Lankaran respectfully requests the Court of Arbitration for Sport to;

- I. Rule that the claim lodged by [Khazar Lankaran] as admissible;*
- II. Rule that pursuant to R65.2 of the CAS Code the present proceedings are exempt from any arbitration costs except for the Court Office fee of CHF 1,000 paid by [Khazar Lankaran];*
- III. Grant provisional measures pending the procedure on the merits of the case at CAS, i.e., to confirm that [Khazar Lankaran] is able to register players in accordance with article 6 para. 11 FIFA RSTP as from 31 August 2015, i.e. the date of closure of the second registration period, in which [Khazar Lankaran] was banned from registering new players in accordance with the art. 17 para. 4 of the Regulations;*
- IV. Order FIFA to take all necessary steps and/or refrain from any actions in order to enable [Khazar Lankaran] to register new players on a provisional basis within the shortest timeframe possible;*
- V. Rule that, on the merits of the case, that [Khazar Lankaran] was allowed to register new players as of 1 September 2015 since the registration ban pursuant to the 2010 edition of the FIFA RSTP came to an end at the expiry of the second transfer window for which [Khazar Lankaran] was banned from registering new players;*

VI. Order FIFA to pay an amount to be decided *ex aequo et bono* by the Panel for the legal costs incurred by [Khazar Lankaran];

VII. Order FIFA to reimburse [Khazar Lankaran] the amount of CHF 1,000 corresponding to the CAS Office Fee paid by the Appellant;

VIII. Order FIFA to bear its own expenses.

Alternatively, and only in the event that CAS would grant provisional measures but would subsequently reject the Appeal lodged by [Khazar Lankaran]:

I. *To establish that pursuant to Swiss law provisional measures cannot be terminated *ex tunc* and that as such [Khazar Lankaran], having benefitted from the provisional measures, cannot be imposed any new/further registration ban following a decision on the merits of the case by the CAS”.*

36. The submissions of Khazar Lankaran, in essence, may be summarized as follows:

- The Litigious Letter constitutes a final decision, which can be challenged before the CAS. There are no internal remedies that Khazar Lankaran could pursue before filing its statement of appeal with the CAS. In any event, *“even if internal remedies would exist, quod non, [Khazar Lankaran] cannot, given the circumstances of the case, be required to exhaust them”*.
- The Litigious Letter has the attributes of a challengeable decision as established by the Swiss and the CAS jurisprudence:
 - o The Litigious Letter is an *“act of individual sovereignty (FIFA) addressed to an individual ([Khazar Lankaran])”*.
 - o The Litigious Letter *“stated or formed a legal situation”*.
 - o *“The effects of the [Litigious Letter] are directly binding both with respect to the authority as to the party who receives the decision”*.
- Pursuant to Article 17 para. 4 of the RSTP 2010, Khazar Lankaran was banned from registering any new players, either nationally or internationally, *“for two registration periods”*. In concrete terms, the club was prevented *“from registering new players in the winter transfer window of 2014/2015 and the summer window of 2015/2016, as well as in between both transfer windows”*. Consequently, the ban imposed upon Khazar Lankaran by the DRC on 20 August 2014 has expired on 31 August 2015. From that moment on, the club is entitled to register free players, pursuant to Article 6 para. 1 of the RSTP 2010.
- On the basis of other CAS precedents (namely CAS 2012/A/2690) and according to the wording of Article 17 para. 4 of the RSTP 2010, the ban expired at the conclusion of the second registration period; *i.e.* on 31 August 2015.
- FIFA maintains that according to the Initial Decision, the ban imposed upon Khazar Lankaran lasts until the beginning of the third registration window following the start of the sanction. This position is only compatible with Article 17 para. 4 of the RSTP 2012, which, nevertheless, is not applicable to the present case. The fact that this provision was

- amended, clearly demonstrates that registration bans imposed under the RSTP 2010 expired at the end of the second registration period.
- If FIFA were to be followed, it would amount to the retroactive application of the RSTP 2012, which is incompatible with the legal principle of non-retroactivity.
 - The wording of Article 17 para. 4 of the RSTP 2010 is clear and there is no reason to depart from the plain text to interpret this provision.
 - The purpose of the ban imposed on Khazar Lankaran was to impact its competitiveness in the relevant competitions. This aim was effectively achieved as during approximately 11 months (the period between the notification of the Initial Decision on 21 October 2014 and 31 August 2015), *“the recent results of the team, the number of U-20 players involved in the first team, restructuring of the reserve team as a result of young players’ involvement to the first team, restructuring of the all group from U-16 to U-19 as a result of moving of the players’ to the higher age group demonstrates that the impact of the sanctions was enough to consider it sufficient in the spirit of the sanction as per art. 17 par. 4 of the Regulations”*.
 - The fact that Khazar Lankaran makes use of Article 6 of the RSTP 2010 is perfectly legitimate as this provision exists and the club does not try to circumvent the effects of the sanction imposed. The fact that Khazar Lankaran has asked FIFA to confirm its ability to register new players as from 31 August 2015 on the basis of the relevant Regulations and case law demonstrates that it is acting in good faith.

B. The Answer

37. FIFA submitted the following requests for relief:

“REQUESTS

1. *To declare the present appeal against the correspondence issued by the Administration of FIFA on 11 September 2015 inadmissible due to the lack of a challengeable decision.*
2. *Alternatively, to reject the present appeal as to the substance and to confirm, in its entirety, the contents of the aforementioned correspondence issued by the FIFA Administration.*
3. *In any event, to order [Khazar Lankaran] to bear all the costs incurred with the present procedure.*
4. *In any event, to order [Khazar Lankaran] to cover all legal expenses of the Respondent related to the present procedure”*.

38. The submissions of FIFA, in essence, may be summarized as follows:

- The appeal filed by Khazar Lankaran is inadmissible due to the lack of a challengeable decision. With its Litigious Letter, FIFA merely intended to provide *“some additional clarification with regard to the interpretation and aim of the sporting sanction as per the (2008, 2009 as well as) 2010 and the current edition of art. 17 par. 4 of the [RSTP]”*.

- By means of its Litigious Letter, FIFA confirmed to Khazar Lankaran that, by virtue of Article 17 para. 4 of the RSTP, it was entitled to register new players only as from the beginning of the next registration period, *i.e.* 4 January 2016. In view of its informative nature, the Litigious Letter does not bear the characteristics of an appealable decision. It also does not have the appearance of one.
- The fact that the Litigious Letter does not constitute a formal decision issued by one of FIFA's deciding bodies is made particularly clear by the *"last substantial paragraph of the letter dated 11 September 2015 which states "... the above considerations are of general nature and as such without prejudice whatsoever"*.
- The Litigious Letter was issued by the FIFA Administration, which does not have the authority to decide in any manner on the matter or to affect the legal situation of any one. The Litigious Letter does not contain any formal ruling and does not create any binding effects. *"In other words, it completely lacks any animus decidendi"*.
- If Khazar Lankaran deemed the Initial Decision unclear or incomplete, it should have formally requested the DRC to provide an explanation or rectification of its findings. *"Such an explanatory decision could then be appealed against in front of the CAS"*. The Litigious Letter was issued only to help Khazar Lankaran to assess the opportunity to file such a request with the DRC or not.
- Since Khazar Lankaran has not requested a formal decision from FIFA, it failed to exhaust the internal remedies.
- As to the substance, FIFA fully endorses the position expressed in the Litigious Letter, which is supported by the longstanding jurisprudence of the DRC as well as the corresponding practice. It insists on the following aspects:
 - the aim of the sporting sanctions as *per* Article 17 para. 4 of the RSTP (edition 2010 or else) is to prevent the club from reinforcing its team for the championship following the registration period during which the club was banned from registering any new players.
 - Such a ban can only develop its full effect if it has the designated direct impact on the competitiveness of the club in the relevant competitions.
 - The purpose of the exception provided for in Article 6 para. 1 of the RSTP is to offer appropriate protection to unemployed players. The rationale behind the exception is not to undermine the objective of a sporting sanction as *per* Article 17 para. 4 of the RSTP.
- Article 17 para. 4 of the RSTP 2012 has been amended *"unlike the Appellant is claiming, merely in order to avoid any uncertainty as to its interpretation and to confirm the established understanding without, however, anyhow changing the spirit and the purpose behind it"*.
- *"[All] of the registration bans for "two entire and consecutive registration periods" imposed on clubs by the*

DRC over the last years by decisions of 13 October 2010, 7 April 2011, 16 November 2012, 15 March 2013, 31 July 2013 and 9 May 2014 based on the 2008, 2009 and 2010 edition of the Regulations respectively (i.e. before the amendment of the provision's wording), have been inserted by the FIFA Administration in the transfer matching system (TMS) in line with [FIFA's] aforementioned consistent interpretation of art. 17 par. 4 of the Regulations. In particular, the relevant registration bans inserted in the TMS included the period following the closure of the second registration period until the opening of the third registration period fixed by the relevant association, i.e. the bans were only lifted in the TMS at the start of the third registration period following the respective decision of the DRC imposing the registration bans having become final and binding”.

- In view of the above and with respect to the scope and interpretation of Article 17 para. 4 of the RSTP 2010, there is a binding custom and practice of FIFA.
- The CAS precedent, on which relies Khazar Lankaran (i.e. CAS 2012/A/2690), is actually irrelevant for the following reasons:
 - o FIFA was not a party in that specific procedure.
 - o The members of the Panel who decided that case were not aware of FIFA's practice.
 - o “[In] CAS 2012/A/2690, the CAS considered that “... the ban ... expired at the conclusion of the second registration period” by explicitly referring to the “binding custom and practice of FIFA” as the decisive element for the possible deviation or not from the wording of art. 17 par. 4 of the 2010 edition of the Regulations. By making such reference to the binding custom and practice of FIFA, the CAS recognised, contrary to the argumentation of [Khazar Lankaran], that art. 17 par. 4 of the 2010 edition of the Regulations needed to be interpreted and therefore customary law to be applied in the matter since the said provision did not provide for an exhaustive regulation as to the period covered by the registration ban. In other words, the CAS could not have reached such conclusion without confirming at the same time that art. 17 par. 4 of the 2010 edition of the Regulations contained a loophole, i.e. a lack of answer to a question which can be expected to be governed within the said provision, as required under Swiss association law by part of the Swiss doctrine to admit customary law *contra legem* (...). Indeed, CAS confirmed that had binding custom and practice of FIFA for the termination of the registration ban at the beginning of the third registration period been demonstrated, as we have by means of the present Answer, then such interpretation would prevail”.

V. APPLICABLE LAW

39. Article R58 of the Code provides the following:

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

40. Pursuant to Article 62 para. 2 of the FIFA Statutes, which were in force in 12 November 2011 (i.e. when the case was submitted to the DRC) or pursuant to Article 66 para. 2 of the current

FIFA Statutes, “[t]he 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”.

41. As a result, subject to the primacy of the applicable FIFA regulations, Swiss Law shall apply complementarily.
42. It can be observed that, in their respective submissions, the Parties adopted the same approach; *i.e.* they agreed on the application of the relevant FIFA regulations, and subsidiarily, Swiss law.

VI. JURISDICTION AND ADMISSIBILITY

43. The CAS is competent to determine its own jurisdiction and whether it may adjudicate the merits of the appeal. The so-called “*Kompetenz-Kompetenz*” of an international arbitral tribunal sitting in Switzerland is recognized by Article 186 para. 1 of the Swiss Law on Private International Law, which is applicable to CAS arbitration proceedings (CAS 2009/A/1910; CAS 2005/A/952; CAS 2004/A/748; RIGOZZI/HASLER/NOTH, Introduction to the CAS Code; in Arbitration in ARROYO M. (ed), Switzerland: The Practitioner’s Guide, (2013) ad. Article R27, n°4, page 909).
44. As this is an appeal arbitration procedure, the Panel must address any jurisdictional issue, first by considering Article R47 para. 1 of the Code, which reads as follows:

“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body”.
45. The legal basis for an appeal against a FIFA decision is set out in Article 63 para.1 of the FIFA Statutes, edition 2011 (or Article 67 para. 1 of the FIFA Statutes, current edition), according to which “*Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question*”.
46. The Panel observes that, in accordance with the above provisions, the CAS has the power to adjudicate appeals against a sports organization (*i.e.* a federation, association or sports-related body) provided notably that an actual “*decision*” has been issued, that it is final (*i.e.* all other available stages of appeal have been exhausted) and that it is challenged in a timely manner.
47. In the present case, FIFA claims that the appeal must be dismissed as it is lodged against its letter of 11 September 2015, which cannot be considered a decision within the meaning of Article 47 of the Code and of the FIFA statutes.

a) *The notion of decision*

48. The applicable FIFA regulations, in particular the FIFA Statutes, do not provide any definition for the term “*decision*”. The possible characterisation of a letter as a decision was considered in several previous CAS cases (CAS 2008/A/1633; CAS 2007/A/1251; CAS 2005/A/899; CAS 2004/A/748; CAS 2004/A/659).
49. The Panel endorses the definition of “*decision*” and the characteristic features of a “*decision*” stated in those CAS precedents:
- “*the form of the communication has no relevance to determine whether there exists a decision or not. In particular, the fact that the communication is made in the form of a letter does not rule out the possibility that it constitute a decision subject to appeal*” (CAS 2008/A/1633 para. 31; CAS 2007/A/1251 para. 30; CAS 2005/A/899 para. 63; CAS 2004/A/748 para. 90).
 - “*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*” (CAS 2008/A/1633 para. 31; CAS 2007/A/1251 para. 30; CAS 2005/A/899 para. 61; CAS 2004/A/748 para. 89).
 - “*A decision is thus a unilateral act, sent to one or more determined recipients and is intended to produce legal effects*” (CAS 2008/A/1633 para. 31; CAS 2004/A/748 para. 89; CAS 2004/A/659 para. 36).
 - “*an appealable decision of a sport association or federation “is normally a communication of the association directed to a party and based on an ‘animus decidendi’, i.e. an intention of a body of the association to decide on a matter [...]. A simple information, which does not contain any ‘ruling’, cannot be considered a decision*”. (CAS 2008/A/1633 para. 32; BERNASCONI M., “When is a ‘decision’ an appealable decision?” in: The Proceedings before the CAS, ed. by RIGOZZI/BERNASCONI, Bern 2007, p. 273).

b) *In the present case*

50. In order to assess the situation, it seems necessary to take into consideration the sequence of events as well as the wording used by the Parties in their respective correspondence:
- On 20 August 2014, the DRC issued the Initial Decision.
 - On 23 October 2014, Khazar Lankaran filed an appeal against the Initial Decision with the CAS.
 - On 9 July 2015, the CAS confirmed the Initial Decision.
 - On 26 August 2015, AFFA wrote to Mr Omar Ongaro in order to “*clarify with [him] whether FC Khazar Lankaran is able to make transfers after 31/08/2015 (...)*” (emphasis added).

- On 28 August 2015, Mr Marco Villiger and Mr Omar Ongaro sent their response to AFFA. They stated therein that *“in accordance with the [Initial Decision], we inform you that the registration of new players for [Khazar Lankaran] will only be possible as of the beginning of the next registration period fixed by your association (...)”* (emphasis added).
51. A textual reading of the letter to FIFA and the response provided suggests that AFFA had asked Mr Ongaro to *“clarify”* the consequences of the Initial Decision on Khazar Lankaran, in particular to say whether the latter was entitled to register new players as from 31 August 2015. In their response, Mr Marco Villiger and Mr Omar Ongaro *“informed”* AFFA that *“in accordance with the [Initial Decision]”*, Khazar Lankaran could register new players only as of the beginning of January 2016.
52. The Panel finds that AFFA was not requesting FIFA to issue a formal decision. Indeed, unlike other legal orders, there is nothing like a procedure embedded in the FIFA legal order, whereby ‘clarifications’ of decisions can be sought. Likewise, the Panel holds that Mr Marco Villiger and Mr Omar Ongaro had no reason to believe that AFFA was expecting anything else than the mere confirmation of the date on which would end the ban imposed upon its affiliate by the DRC. That much, nevertheless, had been decided already in the FIFA decision of 20 August 2014, and confirmed subsequently by the CAS. In addition, in their letter of 28 August 2015, Mr Marco Villiger and Mr Omar Ongaro made clear that their evaluation of the situation was based strictly on the Initial Decision. In other words, it appears that the FIFA Representatives had neither the competence to issue a ‘clarification’ decision, nor the *animus decidendi* to issue a new and independent ruling, distinct from the Initial Decision.
53. The second sequence of events relates to the Litigious Letter:
- On 8 September 2015 and with reference to the letter of 28 August 2015 and to the Initial Decision, Khazar Lankaran asked Mr Marco Villiger and Mr Omar Ongaro to *“confirm the possibility of registration of free players by Khazar Lankaran FC as from 31 August 2015 in accordance with the 2010 edition of the Regulations, CAS jurisprudence and the established legal principle of non-retroactivity”*.
 - On 11 September 2015, Mr Marco Villiger and Mr Omar Ongaro stated that they understand from Khazar Lankaran’s letter that it was asking *“our services to reassess the position contained in our correspondence dated 28 August 2015”* (emphasis added). They went on by stating the following:
 - *“However, we regret having to inform you that on the basis of your correspondence, we do not find any elements for a different appreciation of the situation. Therefore, we adhere to our previous position and kindly refer you to the contents of our aforementioned communication”*
 - *“Finally, please be informed that all of the above considerations are of general nature and as such without prejudice whatsoever.*

We trust in your understanding of the situation and that these general considerations will have clarified the matter” (emphasis added by the Panel).

54. Here too, the Panel finds that, by means of its letter of 8 September 2015, Khazar Lankaran was not explicitly requesting a formal decision and the FIFA Representatives had no reason to infer differently.
55. The Panel concludes that the Litigious Letter does not constitute a challengeable decision, as it does not contain a ruling affecting the rights of Khazar Lankaran. As a matter of fact, the Panel finds that the Litigious Letter is not a ruling materially affecting the legal situation of the Parties. On the contrary, the content of the Litigious Letter is perfectly consistent with point n° 6 of the operative part of the Initial Decision, which provides that “[*Khazar Lankaran*] shall be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision” (emphasis added by the Panel). Such a wording suggests indeed that the ban imposed upon Khazar Lankaran would actually be lifted at the very end of the second registration period and not (like Khazar Lankaran contends) at the conclusion of the second registration period; *i.e.* on 31 August 2015. Whether the decision taken by the DRC is compatible with Article 17 para. 4 of the RSTP 2010 is irrelevant when assessing the nature of the Litigious Letter.
56. It also seems evident from the text of the Litigious Letter that Mr Marco Villiger and Mr Omar Ongaro did not intend such communication to be a decision issued on behalf of the FIFA. They lacked the *animus decidendi*. The FIFA Representatives carefully chose their words and insisted on the purely informative nature of their letter of 11 September 2015. In an unambiguous manner, they confirmed that they maintained the “*position*” expressed to AFFA and did not find any reason to have “*a different appreciation of the situation*”. The Litigious Letter does not raise any new question nor implement new measures, which may suggest that it considered the Initial Decision as being incomplete in some manner. From the beginning, the FIFA Representatives have always expressly declared that the Initial Decision was final and kept referring to it as being binding for Khazar Lankaran as well as for FIFA.
57. For all the above reasons, the Panel holds that the Litigious Letter dated 11 September 2015 is not a final decision.
58. For the sake of completeness, it shall be returned to a point that was made above, and which shall be emphasized. The Panel could not find in the FIFA Regulations a specific provision allowing a party to file a request for clarification of a decision issued by FIFA. 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 (see CAS 2005/A/944 para. 58, 71; MAVROMATI/REEB, *The Code of the Court of Arbitration for Sport, Commentary, Cases and Material*, Alphen aan de Rijn (NL) 2015, R47 para. 24).
59. However, the absence of this procedure is not fatal to the interests of Khazar Lankaran or other clubs/addressees of FIFA decisions that might find themselves in similar position. Khazar Lankaran had several other options at its disposal if it wanted to clarify the actual length of the effective ban imposed upon it, should it consider, of course, that point n° 6 of the operative part of the Initial Decision contained some uncertainty in this regard:

- As stated here above, the wording of point n° 6 of the operative part of the Initial Decision expressly states that the ban would last two entire and consecutive registration periods. If Khazar Lankaran was of the opinion that such a ban was incompatible with Article 17 para. 4 of the applicable RSTP, it could have raised this issue within its appeal lodged with CAS on 23 October 2014. The CAS would have then either supported or rejected Khazar Lankaran's position.
- From the moment it was notified of the Initial Decision, Khazar Lankaran had ample time to request from FIFA a formal decision on the effective length of the ban. Nothing in the applicable Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber or other FIFA Regulations prevents a club to submit such a petition as long as the formal requirements are met (see Article 9 of such Regulations).
- Finally, Khazar Lankaran could have requested the issuance of an International Transfer Certificate (ITC) for the registration of any particular player who is subject to the exception in Article 6 para 1 RSTP. In case of rejection of its ITC request due to the ban, Khazar Lankaran could have brought the matter before the FIFA competent decision-making body for a decision (see Article 6 of Annexe 3 to the RSTP 2010 or 2012).

c) Conclusion

60. The Panel concludes that the Litigious Letter dated 11 September 2015 is not a final decision. Based on Article R47 of the Code and the applicable FIFA Regulations, the present appeal shall be declared inadmissible.
61. This conclusion makes it unnecessary for the Panel to consider the other requests submitted by the parties. Consequently, all other prayers for relief are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Khazar Lankaran Football Club against the letter of FIFA dated 11 September 2015 is inadmissible.
2. (...)
3. (...)
4. All other motions or prayers for relief are dismissed.