



**Arbitration CAS 2016/A/4790 Genoa Cricket and Football Club S.p.A. v. Danubio Fútbol Club de Uruguay, award of 6 June 2017**

Panel: Mr Hendrik Willem Kesler (The Netherlands), President; Mr Jacopo Tognon (Italy); Mrs Svenja Geissmar (Germany)

*Football*

*Transfer of a player with a sell-on clause*

*Determination of the prevailing version of the transfer agreement*

*Interpretation of a contractual clause*

1. If neither the Italian nor the Spanish version of a transfer agreement contains any indication as to which version shall prevail in case of any ambiguities, the CAS panel is required to determine which version shall prevail, if any. In this respect, if the Italian version of the transfer agreement was signed by all parties involved and if the two draft versions of the transfer agreement that were exchanged between Genoa and Danubio were also drafted in the Italian language, the Italian version of the transfer agreement shall prevail. However the Spanish version may also be taken into account for interpretation purposes.
2. When the interpretation of a contractual clause is in dispute, the judge should seek to discover the true and mutually agreed upon intention of the parties, without regard to incorrect statements or manner of expressions used by the parties by mistake or in order to conceal the true nature of the contract (Article 18 para. 1 of the Swiss Code of Obligations). When the mutually agreed real intention of the parties cannot be established, the contract must be interpreted according to the requirements of good faith. The judge has to seek to determine how a declaration or an external manifestation by a party could have been reasonably understood depending on the individual circumstances of the case. The requirements of good faith tend to give the preference to a more objective approach. The emphasis is not so much on what a party may have meant but on how a reasonable man would have understood his declaration.

**I. PARTIES**

1. Genoa Cricket and Football Club S.p.A. (the “Appellant” or “Genoa”) is a football club with its registered office in Genoa, Italy. Genoa is registered with the Italian Football Federation (*Federazione Italiana Giuoco Calcio* – “FIGC”), which in turn is affiliated to the *Fédération Internationale de Football Association* (“FIFA”).

2. Danubio Fútbol Club de Uruguay (the “Respondent” or “Danubio”) is a football club with its registered office in Montevideo, Uruguay. Danubio is registered with the Uruguay Football Association (*Asociación Uruguaya de Fútbol* – “AUF”), which in turn is also affiliated to FIFA.

## II. BACKGROUND

3. Below is a summary of the main relevant facts, as established on the basis of the parties’ written and oral submissions and the evidence examined in the course of the present appeals arbitration proceeding. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal analysis.

### A. Background Facts

4. On 20 June 2008, Danubio and Genoa concluded a transfer agreement (the “Transfer Agreement”) for the transfer of D. (the “Player), a professional football player of Uruguayan nationality, from Danubio to Genoa for a transfer fee of EUR 1,000,000.

5. The English translation of clause 6 of the Italian version of the Transfer Agreement provided by Genoa, determines the following:

*“Genoa hereby commits to pay Danubio a further amount of Euro 500,000 (five hundred thousand) by no later than 30 days of the relevant event, provided that D. appears in 12 official games for at least 45 minutes with Genoa’s first team or with other Serie A or B European club, as long as D. is registered with Genoa”.*

6. The English translation of clause 6 of the Spanish version of the Transfer Agreement provided by Danubio, determines the following:

*“Genoa undertakes to pay Danubio a further amount of Euro 500,000 (five hundred thousand) within and no later than 30 days from the happening of the event if Polenta takes the field of play in 12 matches for at least 45 minutes in official games of the first team of Genoa or of other European A or B league clubs until when Polenta will be signed by Genoa”.*

7. Nothing in the Italian or the Spanish version of the Transfer Agreement indicates which version shall prevail in case of any discrepancy.

8. The Player was loaned by Genoa to FC Bari, a football club with its registered office in Bari, Italy, for the 2011/2012, 2012/2013 and 2013/2014 sporting seasons respectively and, subsequently, to Club Nacional de Football, a football club with its registered office in Montevideo, Uruguay, for the 2014/2015 sporting season. Throughout this period, the Player played 16 official matches for FC Bari in the Serie B in the 2011/2012 sporting season, 36 matches for FC Bari in the Serie B in the 2012/2013 sporting season, 33 matches for FC Bari in the Serie B in the 2013/2014 sporting season, and 26 matches for Club Nacional de Football in the Uruguayan First Division in the 2014/2015 sporting season.

9. On 10 August 2015, the Player was transferred by Genoa to Club Nacional de Football on a permanent basis.

**B. Proceedings before the Single Judge of FIFA’s Players’ Status Committee**

10. On 23 October 2013, Danubio filed a claim against Genoa before the Players’ Status Committee of FIFA (the “FIFA PSC”), maintaining that it was entitled to the amount of EUR 500,000 from Genoa since the prerequisites set out in clause 6 of the Transfer Agreement were complied with, plus 5% interest *p.a.* as from 31 April 2012<sup>1</sup> as well as procedural costs.

11. Genoa contested Danubio’s assertions in respect of its claim.

12. On 26 April 2016, the Single Judge of the FIFA PSC rendered his decision (the “Appealed Decision”), with, *inter alia*, the following operative part:

1. *“The claim of [Danubio] is partially accepted.*
2. *[Genoa] has to pay to [Danubio], within 30 days as from the date of notification of this decision, the amount of EUR 500,000, plus an interest at a rate of 5% per year on the said amount from 1 May 2012 until the date of effective payment.*
3. *If the aforementioned amount is not paid with the aforementioned deadline, the present matter shall be submitted, upon request, to FIFA’s Disciplinary Committee for consideration and a formal decision.*
4. *Any further claims lodged by [Danubio] are rejected.*
5. *The final costs of the proceedings in the amount of CHF 20,000 are to be paid by [Genoa] within 30 days as from the date of notification of the present decision, as follows:*
  - 5.1 *The amount of CHF 5,000 has to be paid directly to [Danubio].*
  - 5.2 *The amount of CHF 15,000 has to be paid to FIFA [...].”*

13. On 29 August 2016, the grounds of the Appealed Decision were communicated to the parties, determining the following:

- *“[...] [T]he Single Judge took note that the parties had antagonistic positions with regard to which agreement (i.e. the contract or the draft) was the basis of the present dispute. In this respect, the Single Judge duly took note that [Danubio] argued that the draft was the binding document and alleged never having seen the contract, whereas [Genoa] deemed the contract was the relevant document between the parties specifying that the draft was not signed by both parties and allegedly only used during the parties’ negotiations.*

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<sup>1</sup> The Panel considers Danubio’s reference to this date in its claim before the FIFA PSC to be an obvious typographic error since 31 April 2012 does not exist.

- *In light of the aforementioned, considering that [Genoa] invoked that the draft was only a basis for the contract negotiations and that the contract was duly signed by both parties, whereas the draft had not been signed by [Genoa], the Single Judge deemed that the contract was the agreement at the basis of the present dispute (written in Italian and Spanish language), which regulated the contractual relationship between [Danubio] and [Genoa] in connection with the transfer of the player.*
- *For the sake of good order, the Single Judge reiterated that the contract was written in two languages, i.e. Italian and Spanish without any indication to which of the two versions shall prevail over the other one.*
- *In continuation, the Single Judge observed that [Danubio] maintained that it was entitled to the amount of EUR 500,000 in accordance with article 6 of the contract, since the player, on 31 March 2012, allegedly played his twelfth match for the Italian Serie B club FC Bari, for at least 45 minutes.*
- *Notwithstanding the above, the Single Judge noted that [Genoa] disputed [Danubio's] entitlement to the amount of EUR 500,000 arguing that the player was only registered with [Genoa] in one match and, therefore, did allegedly not fulfil the conditions as set forth in art. 6 of the contract.*
- *At this stage, the Single Judge was eager to emphasise that the player's participation, for at least 45 minutes, in at least twelve matches until 31 March 2012 remained undisputed by the parties, however, [Genoa] invoked that the player was only registered with it until 28 August 2011 being on loan and transferred to other clubs as from the aforementioned date.*
- *In this context, the Single Judge referred to the content of the player's passport issued on 20 August 2014 by [FIGC] (at disposal in the FIFA Transfer Matching System [TMS]) and confirmed that the player was loaned from [Genoa] to FC Bari on three occasions, as follows:*
  - *from 29 August 2011 until 30 June 2012;*
  - *from 22 August 2012 until 30 June 2013 and*
  - *from 2 September 2013 until 30 June 2014.*
- *Subsequently, the Single Judge acknowledged that according to TMS the player was transferred internationally from [Genoa] to the Uruguayan club Nacional, first on loan on 21 August 2014 and one year after, i.e. on 10 August 2015, on a definitive basis.*
- *In conclusion, the Single Judge emphasised that according to the documents registered in TMS the player was registered with [Genoa] from 9 September 2008 until 7 August 2015.*
- *Having duly examined the argumentation and documentation put forward by both parties as well as the relevant information contained in TMS, the Single Judge emphasised that the will of the parties concerned with regards to clause 6 of the contract has to be interpreted.*

- *On account of the above and first of all, the Single Judge turned his attention to the wording of the contract and recalled [Genoa's] position that the condition in accordance with clause 6 of the contract was that the player was registered/signed (i.e. tesserato/fichado) with [Genoa].*
- *Moreover, the Single Judge was eager to emphasise that when a player is registered with a club on a definitive basis, the transfer right of such player remains exclusively with such club as long as a valid employment contract is in force. In other words, if a player is transferred on a temporary basis (i.e. loan) the player is still bounded [sic] to the club which owns the relevant transfer rights and with which he has still a valid employment contract.*
- *In view of the aforementioned, the Single Judge concluded that the player was still registered with [Genoa] during the timeframe in which he was loaned to FC Bari, taking into account that the latter was still the holder of the original transfer rights over the player based on their employment relationship.*
- *Equally, the Single Judge turned his attention to the structure of the contract and pointed out that, by adding the condition in the clause, that the player has to play twelve games either for Genoa or any other European club playing in an European first or second league, the parties implied that such clause shall be valid as long as the transfer rights of the player are in [Genoa's] possession, even if the player is on loan and playing for another club. Particularly, the Single Judge remarked that if the will of the parties was to take into account only the matches that the player would play with [Genoa] and not with other clubs, the parties would not have included the option that the player may also play for another club in clause 6 of the contract.*
- *In view of all the above, the Single Judge concluded that [Genoa's] argument that the expression "registered" or "fichado" or "tesserato" meant to exclude the periods of temporary transfer of the player to other European 1<sup>st</sup> or 2<sup>nd</sup> division clubs should be rejected.*
- *At this stage, the Single Judge concluded that the player played 12 official matches for at least 45 minutes for a 2<sup>nd</sup> division European Club (i.e. FC Bari) while still being registered with [Genoa].*
- *Therefore, the Single Judge underlined that in accordance with the basic legal principle of pacta sunt servanda, which in essence means that agreements must be respected by the parties in good faith, [Danubio] is entitled to receive from [Genoa] the additional amount of EUR 500,000 in accordance with article 6 of the contract. [...]"*

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

14. On 16 September 2016, Genoa lodged a Statement of Appeal with the Court of Arbitration for Sport (the "CAS"), pursuant to Article R48 of the Code of Sports-related Arbitration (edition 2016) (the "CAS Code"). In this submission, Genoa nominated Mr Jacopo Tognon, Attorney-at-Law in Padua, Italy, as arbitrator.
15. On 28 September 2016, Genoa filed its Appeal Brief, pursuant to Article R51 of the CAS Code. This document contained a statement of the fact and legal arguments giving rise to the appeal. Genoa challenged the Appealed Decision, submitting the following requests for relief:

“a) *REVIEWING the present case as to the facts and as to the law, in compliance with Article R57 of the CAS Code;*

*and*

b) *ASCERTAINING that the conditions provided for under clause 6 of the Transfer Agreement were not met;*

*and*

c) *ISSUING a new decision, which replaces the decision appealed against, confirming that the Appellant is not obliged to pay the Respondent any amount of money.*

*Moreover,*

d) *ORDERING the Respondent to bear all procedural costs pursuant to the FIFA Decision.*

*Alternatively,*

e) *ORDERING the Respondent to reimburse the Appellant the CHF15'000 procedural costs due to FIFA pursuant to the FIFA Decision.*

*Alternatively,*

f) *CANCELLING the Appellant's obligation to pay procedural costs of CHF15'000 due to FIFA pursuant to the FIFA Decision.*

*In any case,*

g) *ORDERING the Respondent to bear all procedural costs and expenses relating to this procedure.*

h) *ORDERING the Respondent to cover all Appellant's legal costs and expenses relating to this procedure in the amount that will be deemed appropriate”.*

16. On 30 September 2016, Danubio nominated Ms Svenja Geissmar, General Counsel at Arsenal FC, London, United Kingdom, as arbitrator.
17. On 28 October 2016, pursuant to Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the parties were informed that the panel appointed to decide the present matter was constituted by:
  - Mr Hendrik Willem Kesler, Attorney-at-Law in Enschede, the Netherlands, as President;
  - Mr Jacopo Tognon, Attorney-at-Law in Padova, Italy; and
  - Ms Svenja Geissmar, General Counsel at Arsenal FC in London, United Kingdom, as arbitrators

18. On 10 November 2016, FIFA renounced its right to request its possible intervention in the arbitration.
19. On 17 November 2016, Danubio filed its Answer, pursuant to Article R55 of the CAS Code. Danubio's Answer contained multiple requests for disclosure of documents in possession of Genoa, FC Bari, Club Nacional de Football, FIFA and FIGC and a request for an additional period to set out its arguments considering the content of this documentation. Danubio also objected to the admissibility of a witness statement filed by Genoa with its Appeal Brief. Danubio submitted the following requests for relief in its Answer:
  - a) *That the appeal filed by Genoa Cricket and Football Club S.p.A. is set-aside and all petitions rejected;*
  - b) *Consequently, that the decision of FIFA's Single Judge of the Players' Status Committee on 26 April 2016 (case ref. mdo/13-03388) is upheld, late payment interest at a rate of 5% per year being granted as from the day the contractual amount of € 500.000 was due (April 31<sup>st</sup> [sic], 2012);*
  - c) *That Genoa Cricket and Football Club S.p.A. is ordered to pay Danubio FC the amount of CHF 5.000 as reimbursement of the advance of costs incurred in the proceeding with FIFA;*
  - d) *That Genoa Cricket and Football Club S.p.A. is ordered to pay FIFA the procedural costs for a total of CHF 15.000 or in the amount determined by the Panel.*
  - e) *That Genoa Cricket and Football Club S.p.A. is ordered to bear all the procedural costs of this arbitration;*
  - f) *That Genoa Cricket and Football Club S.p.A. is ordered to cover the legal costs and expenses incurred by Danubio FC in relation to the present arbitration procedure in the amount of € 15.000".*
20. On 18 and 21 November 2016 respectively, Genoa requested a hearing to be held, whereas Danubio expressed its preference for the award to be issued based only on the parties' written submissions.
21. On 30 November 2016, the CAS Court Office informed the parties that the Panel had decided to dismiss Danubio's requests for disclosure since it considered the grounds for the requests not to be sufficiently particularised, that the decision on the admissibility of the witness statement filed by Genoa would be taken by the Panel at the hearing, and that a hearing would be held.
22. On 1 December 2016, Danubio supplemented the reasoning corroborating its requests for disclosure as originally set out in its Answer.
23. On 5 December 2016, following an invitation from the CAS Court Office to comment on Danubio's requests for disclosure, Genoa applied for the requests to be dismissed.
24. Also on 5 December 2016, upon the request of the President of the Panel pursuant to Article R57 of the CAS Code, FIFA provided the CAS Court Office with a copy of its file related to

the proceedings leading to the Appealed Decision and certain “TMS-extracted” documents, including the Player’s “player passport”.

25. On 4 January 2017, the CAS Court Office informed the parties that the Panel had decided to dismiss Danubio’s renewed requests for disclosure of documents and that the reasons for this dismissal would be indicated in the final award.
26. On 11 and 18 January 2017 respectively, Danubio and Genoa returned duly signed copies of the Order of Procedure to the CAS Court Office.
27. On 26 January 2017, a hearing was held in Lausanne, Switzerland. At the outset of the hearing both parties confirmed that they did not have any objection as to the constitution and composition of the Panel.
28. In addition to the Panel, Mr Daniele Boccucci, Counsel to the CAS, and Mr Dennis Koolgaard, *Ad hoc* Clerk, the following persons attended the hearing:
  - a) For Genoa:
    - 1) Mr Paolo Lombardi, Counsel;
    - 2) Mr Luca Pastore, Counsel;
  - b) For Danubio:
    - 1) Mr Toni Roca Alomar, Counsel.
29. Although Genoa had submitted an affidavit of Mr Alessandro Zarbano, CEO of Genoa, and Danubio provided testimonies of Mr Arturo Del Campo, former president of Danubio, and Mr Leonardo Goicoechea, current vice-president of Danubio, before a notary public in Montevideo, Uruguay, neither of these witnesses appeared at the hearing. Therefore, no witnesses or expert witnesses were heard.
30. The parties were afforded full opportunity to present their case, submit their arguments and answer the questions posed by the Panel.
31. Before the hearing was concluded, both parties expressly stated that they did not have any objection to the procedure adopted by the Panel and that their right to be heard had been respected.
32. The Panel confirms that it carefully heard and took into account in its discussions and subsequent deliberations all of the submissions, evidence, and arguments presented by the parties, even if they have not been specifically summarised or referred to in the present award.

#### IV. SUBMISSIONS OF THE PARTIES

##### A. The Appellant

33. Genoa's submissions, in essence, may be summarised as follows:

- Genoa contends that the Spanish version of the Transfer Agreement does not contain a date and is not signed by all parties and that therefore the Italian version must prevail.
- Genoa also argues that, contrary to the information provided by FIFA, the Player was registered with three different clubs between 9 September 2008 and 7 August 2015: Genoa, FC Bari and Club Nacional de Football. Pursuant to article 5(2) of the FIFA Regulations on the Status and Transfer of Players (the "FIFA Regulations"), a player may only be registered with one club at a time. Genoa disagrees with the reasoning of the Single Judge of the FIFA PSC that the Player was still registered with Genoa during the timeframe he was loaned to FC Bari. It is further submitted by Genoa that a player may not be registered with a club without having an employment contract.
- Genoa is of the view that the phrase "registered with Genoa" does not require any interpretation whatsoever. Since the Player was not registered with Genoa at the time of his twelfth game with FC Bari, Danubio is not entitled to any fee on the basis of clause 6 of the Transfer Agreement.
- Although Genoa admits that clause 6 of the Transfer Agreement was badly drafted, as it contains loan conditions which are *prima facie* incompatible with the condition of the Player having to be "registered with Genoa", Genoa purports that the requirement that the Player had to be "registered with Genoa" was the prevailing condition in the clause.
- In analysing the sequence of drafts of the Transfer Agreement, Genoa submits that the parties finally/at the end of the negotiation agreed on the condition regarding the registration of the Player with Genoa, as the previous respective proposals of Genoa and Danubio were not acceptable for one another.
- Genoa concludes that the conditions of clause 6 of the Transfer Agreement were not fulfilled and that, consequently, the Appealed Decision must be set aside.
- Genoa also requests FIFA's decision to order it to pay Danubio CHF 5,000 and FIFA CHF 15,000 as procedural costs to be set aside and that the latter amount shall be paid by Danubio.

##### B. The Respondent

34. Danubio's submissions, in essence, may be summarised as follows:

- Danubio contests Genoa's allegation that the Spanish version of the Transfer Agreement was not signed by all parties. Danubio maintains that both the Spanish and the Italian version of the Transfer Agreement are relevant, but that since the Spanish version was signed first, the Spanish version shall prevail over the Italian.
- Danubio maintains that all different versions of the Transfer Agreement were drafted by Genoa and that agreements drafted in ambiguous terms shall be interpreted against the party that drafted them.
- Also Danubio acknowledges that the wording of clause 6 of the Transfer Agreement is not clear.
- Danubio submits that “[i]f the parties would have wanted to exclude the participation of the Player with other European teams as a condition for the payment of the EUR 500,000 bonus, they should have ensured themselves by suppressing that mention in the definitive version of the Transfer Agreement, which does not occur in the present case, evidence that the real intention of the parties was to maintain it”, nor was Genoa able to demonstrate that the “result of the negotiation between the parties” or their true intention was to exclude the participation with other European teams as a condition.
- Danubio argues that it could only trust in good faith that the Italian version would be a true and loyal translation of the Spanish one.
- Danubio's key point is that “if Genoa's thesis would be accepted, it would make the fulfilling of the condition “other European 1<sup>st</sup> or 2<sup>nd</sup> division league clubs” completely impossible, because the Player necessarily had to be registered with those clubs to play with them”.
- With reference to different regulations, Danubio maintains that the original employment contract of a player does not cease while being loaned to another club, “it is only suspended during the time of the loan, after which the relevant effects of the original contract (including the “registration” rights) come back into force”. Even throughout the loan, the club of origin keeps maintaining certain rights over the player, which demonstrates that the club loaning the player remains the original holder of the federative, economic and registration rights of the player. Danubio therefore concludes that since the Player fulfilled the condition of playing the requisite number of matches the bonus of EUR 500,000 must be paid by Genoa to Danubio.
- Danubio purports that “[w]hen negotiating the final part of the Clause, the parties' intention clearly was to limit the bonus in time”. The first draft wording suggested by Genoa, limiting the temporal scope of the clause to 30 June 2011, was rejected by Danubio because it would be very difficult for the Player to achieve the goal of 12 games in those first three years. Danubio's counter-proposal to delete the reference to 30 June 2011 was not accepted by Genoa as it could have been understood that Genoa would be compelled to pay the bonus even years after the Player left. Genoa and Danubio then came to a logical and fair time bound solution that benefitted both clubs: “the bonus would be due as long as the Player was contractually bound to Genoa”.

- Also an interpretation of the clause in good faith leads to the result that Danubio is entitled to receive a higher amount as transfer compensation once the Player showed that he was “*an established professional*” by playing a total of 85 games with FC Bari, all of it compensation for the initial lower price agreed and as participation in the development of the Player’s career.
- As to the procedural costs in the proceedings before FIFA, Danubio submits that there is no evidence that Genoa paid the amount of CHF 15,000 to FIFA and that Danubio can therefore not be obliged to “reimburse” Genoa with this amount.

## V. JURISDICTION

35. The jurisdiction of the CAS, which is not disputed, derives from article 58(1) of the FIFA Statutes (2016 edition), providing that “[a]ppeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question” and Article R47 of the CAS Code.
36. The jurisdiction of the CAS is further confirmed by the Order of Procedure duly signed by both parties.
37. It follows that the CAS has jurisdiction to decide on the present dispute.

## VI. ADMISSIBILITY

38. The appeal was filed within the deadline of 21 days set by article 58(1) of the FIFA Statutes. The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fees.
39. It follows that the appeal is admissible.

## VII. APPLICABLE LAW

40. Both parties refer to the applicability of Article R58 of the CAS Code and article 57(2) of the FIFA Statutes, pursuant to which the 2012 edition of the FIFA Regulations shall be applied.
41. Article R58 of the CAS 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”.*

42. Article 57(2) of the FIFA Statutes stipulates the following:

*“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”.*

43. The Panel is satisfied that primarily the various regulations of FIFA are applicable, particularly the 2012 edition of the FIFA Regulations, and, subsidiarily, Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA.

### **VIII. PRELIMINARY ISSUES**

#### **A. Validity of Mr Zarbano’s witness statement**

44. Danubio objected to the admissibility of Mr Zarbano’s witness statement because it was allegedly not Mr Zarbano’s free testimony and his statement had been prepared by Genoa’s counsel. Danubio also argued that the testimony had not been given before a notary public and that the signature on the witness statement could not be confirmed by an identification document. Danubio stated that Mr Zarbano is one of the persons that has a lot to win or to lose as a result of this arbitration. Therefore, his testimony cannot be taken into account and, if it is taken into account, the value to be given to it must be the lowest possible.
45. At the start of the hearing, the President of the Panel informed the parties that the Panel had decided to declare Mr Zarbano’s witness statement admissible, as it complied with all the requirements set out in Article R51 of the CAS Code, but that it would be for the Panel to assess the weight to be assigned to his witness statement.

#### **B. Danubio’s requests for disclosure of documents**

46. On 17 November 2016, Danubio submitted multiple requests for disclosure of documents, seeking a decision from the Panel to order Genoa, FC Bari, Club Nacional de Football, FIFA and FIGC to produce documents in their possession as follows:
- Danubio requested that Genoa be ordered to disclose: a) all contracts, including renewals and/or extensions entered into between Genoa and the Player since 2008, and translations if necessary; b) a copy of all contracts entered into between Genoa and FC Bari for the loan of the Player for the sporting seasons 2011/2012, 2012/2013 and 2013/2014; c) a copy of all contracts entered into between Genoa and Club Nacional de Football for the loan of the Player for the season 2014/2015; and d) proof of payment to FIFA of the procedural costs in the amount of CHF 15,000.
  - Danubio requested from FC Bari to be provided with a copy of all contracts entered into with the Player for the seasons 2011/2012, 2012/2013 and 2013/2014.
  - Danubio requested from Club Nacional de Football to be provided with a copy of all contracts entered into with the Player for the season 2014/2015.

- Danubio requested from FIFA to be provided with a copy of the complete case file of the proceedings leading up to the Appealed Decision.
  - Danubio requested from FIGC to be provided with an official confirmation indicating the exact registration periods of the Player with Genoa and FC Bari respectively.
47. On 30 November 2016, the CAS Court Office informed Danubio that the Panel had decided to dismiss its requests for disclosure, save for the request to receive the complete case file from FIFA, since the grounds for the requests were not adequately particularised.
48. On 1 December 2016, Danubio supplemented the reasoning corroborating its remaining requests for disclosure. Danubio maintained that its requests were in compliance with Article R55 of the CAS Code as it “specified” the evidence on which it intended to rely, emphasising that those documents “*are crucial for the solution of the present dispute*”. Danubio explained that it wished to bring light to the core of the dispute: the reality of the loans of the Player to FC Bari and Club Nacional de Football, the economic and other terms in which they were agreed and, above all, the effective registration periods of the Player with each club. Danubio maintained that no further particularisation could be demanded from it and that the “*denial of the evidences for an argument with no legal basis in the Code entails the utmost serious infringement of this party’s defence right and of the basic principles of the right to a fair arbitration and to the equal treatment of the parties [...]*”. Danubio finally requested the following:
- a) *That the Panel’s decision not to accept the Respondent’s request for evidence is set aside, as it fully complies with provisions of article R55 of the Code, thus accepting all the evidence requested in points 21 to 25 of the Answer to the Appeal.*
  - b) *In case the above petition is not accepted, that the Panel accepts at least the evidence requested in point 25 of the Answer (certificate from the FIGC), as this specific evidence was duly “particularized”.*
  - c) *In case the petition of point b) above is not accepted, and based on article R56 of the CAS Code, Respondent respectfully requests the President of the Panel to authorize Respondent to produce a new Exhibit 18 consisting of an extract from the web Transfermarkt with the transfer history of the Player, whose purpose is simply to prove the exact (non-official) registration dates of the Player with Appellant and FC Bari, respectively.*
  - d) *Finally, in case all above petitions are not accepted, and even though the Code does not consider any “adequately particularization” for the petition of evidence, based on Article R56 of the CAS Code, Respondent respectfully requests the President of the Panel to authorize Respondent to supplement/amend its request in relation to the petition of evidence as follows:*

[As to the requests directed to Genoa:]

*Documents in point a. are requested to prove the exact duration of the employment relationship between Appellant and the Player.*

*Documents in point b. and c. are requested to know the exact terms (including financial) of the different loans of the Player to FC Bari and Club Nacional de Football, respectively.*

*Finally, document in point d. is requested to proof [sic] the payment of Appellant of the costs to FIFA in the amount of CHF 15.000 which are being requested from Appellant.*

[As to the request directed to FC Bari:]

*These documents are requested to know the exact economic terms of the labour contract of the Player with FC Bari, and more specifically if Appellant paid part of the Player's salary during the different loans to FC Bari.*

[As to the request directed to Club Nacional de Football:]

*These documents are requested to know the exact economic terms of the labour contract of the Player with Club Nacional de Football, and more specifically if Appellant paid part of the Player's salary during the loan of the Player to Club Nacional de Football.*

[As to the request directed to FIGC:]

*This documentation is requested to prove the arguments used by Appellant with FIFA, Appellant's apathy throughout the whole proceeding as well as the more than 25 communications sent by Respondent [...].*

[As to the request directed to FIFA:]

*As results from its wording, this final document intends to prove the exact registration periods of the Player with Genoa and FC Bari respectively".*

49. On 5 December 2016, Genoa informed the CAS Court Office that it "*firmly stands by the Panel's decision not to accept the Respondent's requests for disclosure*" and "*in relation to the newly-formulated requests of the Respondent, we respectfully submit that article R56 of the CAS Code be applied, and the Respondent shall not be authorised to supplement or amend its requests, or to produce new exhibits since the Appeal Brief and the Answer have already been filed within the statutory time limits, and there are no exceptional circumstances in the present case which may justify such authorisation*".
50. On 4 January 2017, the CAS Court Office informed the parties that the Panel had decided to dismiss Danubio's procedural requests for disclosure of documents and that the grounds for the dismissal would be communicated in the arbitral award.
51. The principal reason for the Panel to dismiss Danubio's requests was that Genoa did not contest that the Player was loaned to FC Bari and Club Nacional de Football and played a relatively high number of matches for these clubs. The Panel therefore did not deem it necessary to have the relevant loan agreements at their disposal. In particular, the Panel noted that the Player was at least under contract with Genoa until the end of the 2014/2015 sporting season.

52. The Panel did not consider it relevant whether or not FC Bari and/or Club Nacional de Football partially paid the Player's salary during the loan periods, the Panel therefore did not deem it necessary to have an insight into the Player's employment contracts with these two clubs.
53. Furthermore, the Panel observed that FC Bari, Club Nacional de Football, FIGC and FIFA were not called as parties in the present arbitration. In the absence of any evidence being provided by Danubio as to why it could not obtain the requested information from these entities itself, the Panel did not deem it appropriate to order these entities to produce the documents requested by Danubio.
54. Finally, the Panel did not deem it relevant whether or not Genoa had already paid the procedural costs in the amount of CHF 15,000 to FIFA, as, even if it had not, and even if the amount would be modified by the Panel, it would nonetheless remain due and the Panel could order Danubio to transfer this amount to Genoa. The potentially inaccurate expression "reimburse" used by Genoa, implying that it had already paid the amount of CHF 15,000 to FIFA, does not change this analysis.

## **IX. MERITS**

### **A. The Main Issues**

55. The main issues to be resolved by the Panel are:
- i. Does the Italian or the Spanish version of the Transfer Agreement prevail?
  - ii. Should Genoa pay Danubio an amount of EUR 500,000 in accordance with clause 6 of the Transfer Agreement?
- i. Does the Italian or the Spanish version of the Transfer Agreement prevail?*
56. Whereas Genoa submits that the Italian version of the Transfer Agreement should prevail, Danubio maintains that the Spanish version should prevail.
57. The Panel notes that it remained undisputed that the Italian version was signed on 20 June 2008 by Genoa, Danubio, the Player and the Player's parents. The Spanish version is undated and is signed by Genoa, Danubio and the Player's parents. The Spanish version thus lacks the Player's signature.
58. The Panel further notes that on 20 February 2009, referring to the Transfer Agreement dated 20 June 2008, Genoa and Danubio concluded an addendum to the Transfer Agreement, pursuant to which a new payment plan for the outstanding transfer fee was reached.

59. In view of the fact that neither the Italian nor the Spanish version of the Transfer Agreement contains any indication as to which version shall prevail in case of any ambiguities, the Panel is required to determine which version shall prevail, if any.
60. In this respect, since the Italian version of the Transfer Agreement was signed by all parties involved and because the two draft versions of the Transfer Agreement that were exchanged between Genoa and Danubio were also drafted in the Italian language, the Panel finds that the Italian version of the Transfer Agreement shall prevail. The Panel will however also take into account the Spanish version for interpretation purposes.
61. Consequently, the Panel finds that the Italian version of the Transfer Agreement prevails.

**ii. *Should Genoa pay Danubio an amount of EUR 500,000 in accordance with clause 6 of the Transfer Agreement?***

62. The Panel finds that the facts relevant to resolve the present dispute are quite clear. Indeed, it is undisputed that the Player was loaned by Genoa to FC Bari throughout the 2011/2012, 2012/2013 and 2013/2014 sporting seasons respectively and, subsequently, to Club Nacional de Football for the 2014/2015 sporting season. The fact that the Player was loaned from Genoa to FC Bari and Club Nacional de Football is also evidenced by the TMS-extracted information provided by FIFA, including the Player's "player passport". The Player was transferred by Genoa to Club Nacional de Football on a permanent basis in August 2015.
63. Danubio's allegation that the Player played 16 official matches for FC Bari in the Serie B in the 2011/2012 sporting season, 36 matches for FC Bari in the Serie B in the 2012/2013 sporting season, 33 matches for FC Bari in the Serie B in the 2013/2014 sporting season, and 26 matches for Club Nacional de Football in the Uruguayan First Division in the 2014/2015 sporting season, remained uncontested by Genoa and is corroborated by publicly available data derived from the internet, submitted as evidence by Danubio.
64. The Player played only one official game for Genoa's first team in the 2010/2011 sporting season. The Player only played for 17 minutes in this match, as a consequence of which this match is not relevant for the assessment as to whether the conditions in clause 6 of the Transfer Agreement for the relevant payment were fulfilled.
65. The main question to be resolved by the Panel is how clause 6 of the Transfer Agreement is to be interpreted and whether the conditions in this clause are fulfilled, obliging Genoa to pay an additional sum of EUR 500,000 to Danubio.
66. In this respect, since the FIFA Regulations do not provide any guidance as to how to interpret contractual clauses and because Swiss law is subsidiarily applicable, the Panel resorts to article 18(1) of the Swiss Code of Obligations (the "SCO"), which determines the following:

*"When assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement".*

67. The Panel observes that there is consistent CAS jurisprudence on how to interpret contractual clauses, which it fully endorses:

*“When the interpretation of a contractual clause is in dispute, the judge should seek to discover the true and mutually agreed upon intention of the parties, without regard to incorrect statements or manner of expressions used by the parties by mistake or in order to conceal the true nature of the contract (Article 18 para. 1 CO). When the mutually agreed real intention of the parties cannot be established, the contract must be interpreted according to the requirements of good faith (ATF 129 III 664 consid. 3.1; 128 III 419 consid. 2.2 p. 422). The judge has to seek to determine how a declaration or an external manifestation by a party could have been reasonably understood depending on the individual circumstances of the case (ATF 133 III 61, consid. 2.2.1; ATF 131 III 606, consid. 4.1; ATF 129 III 118 consid. 2.5 p. 122; 128 III 419 consid. 2.2 p. 422). The requirements of good faith tend to give the preference to a more objective approach (ATF 129 III 118 consid. 2.5 p. 122; 128 III 419 consid. 2.2 p. 422). The emphasis is not so much on what a party may have meant but on how a reasonable man would have understood his declaration” (CAS 2015/A/4057, para. 68 of the abstract published on the CAS website);*

*“According to the interpretation given to this article by CAS jurisprudence, “(u)nder this provision, the parties’ common intention must prevail on the wording of their contract. If this common intention cannot be determined with certainty based on the wording, the judge must examine and interpret the formal agreement between the parties in order to define their subjective common intention (Winiger, Commentaire Romand – CO I, Basel 2003, n. 18-20 ad Art. 18 CO). This interpretation will first take into account the ordinary sense one can give to the expressions used by the parties and how they could reasonably understand them (Winiger, op. cit., n. 26 ad art. 18 CO; Wiegand, Obligationenrecht I, Basel 2003, n. 19 ad art. 18 CO). The behaviour of the parties, their respective interest in the contract and its goal can also be taken into account as complementary means of interpretation (Winiger, op. cit., n. 33, 37 and 134 ad art. 18 CO; Wiegand, op. cit., n. 29 and 30 ad art. 18 CO)” (CAS 2005/A/871, pg. 19, para. 4.29).*

*“By seeking the ordinary sense given to the expressions used by the parties, the real intention of the parties must – according to the jurisprudence of the Swiss Federal Court – be interpreted based on the principle of confidence. This principle implies that a party’s declaration must be given the sense its counterparty can give to it in good faith (“Treu und Glauben”: WIEGAND W., op. cit., n. 35 ad art. 18 CO), based on its wording, the context and the concrete circumstances in which it was expressed (ATF 124 III 165, 168, consid. 3a; 119 II 449, 451, consid. 3a). Unclear declarations or wordings in a contract will be interpreted against the party that drafted the contract (ATF 124 III 155, 158, consid. 1b): It is of the responsibility of the author of the contract to choose its formulation with adequate precision (In dubio contra stipulatorem – WINIGER B., op. cit., n. 50 ad 18 CO). Moreover, the interpretation must – as far as possible – stick to the legal solutions under Swiss law (ATF 126 III 388, 391, consid. 9d), under which the accrued protection of the weakest party” (CAS 2005/A/871, pg. 19, para. 4.30)” (CAS 2008/A/1518, para. 46-47 of the abstract published on the CAS website).*

68. The two translations into English of the Italian and the Spanish versions of the Transfer Agreement available to the Panel read, respectively, as follows:

*“Genoa hereby commits to pay Danubio a further amount of Euro 500,000 (five hundred thousand) by no later than 30 days of the relevant event, provided that D. appears in 12 official games for at least 45 minutes with Genoa’s first team or with other Serie A or B European club, **as long as D. is registered with Genoa**”* (emphasis added by the Panel).

*“Genoa undertakes to pay Danubio a further amount of Euro 500,000 (five hundred thousand) within and no later than 30 days from the happening of the event if Polenta takes the field of play in 12 matches for at least 45 minutes in official games of the first team of Genoa or of other European A or B league clubs **until when Polenta will be signed by Genoa**”* (emphasis added by the Panel).

69. Before looking at the exact wording of clause 6 of the Transfer Agreement, the Panel deems it important that two drafts of the Transfer Agreement were exchanged between Genoa and Danubio before a final wording of clause 6 was agreed upon. These drafts may aid the Panel in establishing the true and common intention of the parties with the final wording of clause 6 of the Transfer Agreement.

70. In a first draft of the Transfer Agreement in an English translation of the original Italian wording, clause 6 of the Transfer Agreement determined the following:

*“Genoa hereby commits to pay Danubio a further amount of Euro 500,000 (five hundred thousand) by no later than 30 days of the relevant event, provided that D. appears in 12 official games for at least 45 minutes with Genoa’s first team or with other Serie A or B European club **before 30 June 2011**”* (emphasis added by the Panel).

71. Danubio however did not agree with such wording, and provided Genoa with a different suggested wording in the Italian language, which can be translated into English as follows:

*“Genoa hereby commits to pay Danubio a further amount of Euro 500,000 (five hundred thousand) by no later than 30 days of the relevant event, provided that D. appears in 12 official games for at least 45 minutes with Genoa’s first team or with other Serie A or B European club”*.

72. The Panel notes that the two subsequent draft versions of the Transfer Agreement as well as the final version of the Transfer Agreement in the Italian language signed by Genoa and Danubio were identical in all respects, save for the last few words of clause 6.

73. Although the order in which the two draft agreements were circulated appears to be disputed between the parties, as well as the entity responsible for the drafting (*i.e.* on the one hand both drafts are made on the letterhead of Genoa which may well indicate that Genoa was responsible for the draft, on the other hand it does not make sense for Genoa to disagree with the content of its own draft), the Panel does not consider these elements to be decisive for resolving the present dispute as the fact remains that both those drafts were finally rejected by either Danubio or Genoa.

74. From this fact, the Panel draws the inference that the last few words of clause 6 were extensively discussed between the parties and that the wording used in the two draft versions

of the Transfer Agreement were not acceptable to either Genoa or Danubio and was thus the only remaining point of discussion.

75. The Panel is therefore put to the task of interpreting the meaning of clause 6 of the Transfer Agreement.
76. First of all, the Panel agrees with Genoa that the wording chosen by the Single Judge of the FIFA PSC in the Appealed Decision is unfortunate insofar as he concluded that *“the player was still registered with [Genoa] during the timeframe in which he was loaned to FC Bari, taking into account that the latter was still the holder of the original transfer rights over the player based on their employment relationship”*, because a player can only be registered with one club at a time. If a player is on loan, like in the matter at hand, the transfer rights remain with the original club whereas the player is temporarily “registered” for the loaning club. The Panel disagrees with the Single Judge of the FIFA PSC insofar as he maintains that a player remains “registered” with his original club while on loan.
77. Turning its attention now to the actual wording of clause 6 of the Transfer Agreement and in an attempt to reconcile the wording of clause 6 of the Transfer Agreement with the parties’ common and mutual understanding, the Panel notes that two different interpretations are submitted:
- On the one hand, Danubio argues that the clause is triggered if the Player *“appears in 12 official games for at least 45 minutes with Genoa’s first team or with other Serie A or B European club”*, i.e. the clause is triggered if the Player appears in 12 games for at least 45 minutes for any *“Serie A or B European club”* and not only games for Genoa count.
  - On the other hand, Genoa argues that the wording *“as long as D. is registered with Genoa”* suggests that a game would only count if the Player is not transferred or loaned to another club, i.e. only games played in the first team of Genoa count.
78. These contradicting views are supported by a witness statement of Mr Alessandro Zarbano, CEO of Genoa, on the side of Genoa, and by witness statements of Mr Arturo Del Campo, former president of Danubio, and Mr Leonardo Goicoechea, current vice-president of Danubio, on the side of Danubio.
79. The Panel finds it unfortunate that neither of these witnesses were present at the hearing as they may well have shed light on the factual circumstances surrounding the negotiations leading up to the conclusion of the Transfer Agreement. In view of the fact that the witness statements from both sides are contradictory and because neither of the witnesses was subjected to examination and cross-examination, the Panel finds that the weight to be allocated to the witness statements is very limited.
80. Be this as it may, if the first interpretation set out above would be correct, the reference in clause 6 to being “registered” with Genoa is unfortunate, as the Player cannot play official matches for other clubs as long as he is registered with Genoa.

81. However, if the second interpretation would be correct, the reference to “*other European A or B league clubs*” would be completely obsolete, since the Player cannot play for any other clubs as long as he is registered with Genoa.
82. Being faced with the situation that the content of the clause is clearly incongruous and that both interpretations are mutually exclusive, having considered both parties’ views and the different drafts and the Transfer Agreement in two different languages at length, in particular the Italian version, and following a good faith interpretation, the Panel finds that the mutually agreed intention of the parties was that games played for “*other European A or B league clubs*” also count in determining whether the conditions of clause 6 are satisfied.
83. The Panel finds that this interpretation is much more likely than the theory posed by Genoa, *i.e.* that the parties forgot to delete the reference to “*other European A or B league clubs*” from the final version of clause 6 after the reference to “registration” was introduced.
84. Rather, the reason for the final wording chosen appears to follow from the discussion between Genoa and Danubio regarding the temporal scope of the clause.
85. The first draft put a temporal limit on the clause, *i.e.* Genoa would have to pay Danubio an additional amount of EUR 500,000 whenever the Player would play 12 official matches for Genoa or any other first or second league club in Europe “*before 30 June 2011*”.
86. Danubio – apparently – disagreed and suggested to delete the reference to “*before 30 June 2011*” from the wording of clause 6.
87. This wording was however – apparently – not acceptable to Genoa.
88. Consequently, as a compromise, Genoa and Danubio then agreed to use the wording “*as long as D. is registered with Genoa*”, thereby making the temporal scope of the clause flexible but finite. The temporal scope of the clause was no longer limited to a specific moment in time (before 30 June 2011), but rather limited by a certain event (as long as the Player is registered with Genoa).
89. The Panel finds that the mutual intention of Genoa and Danubio with reference to the Player being “registered” with Genoa was obviously to limit the temporal scope of clause 6 to the moment that the Player was transferred by Genoa to another club on a permanent basis, *i.e.* until Genoa would no longer hold the “transfer rights” or “federative rights” of the Player. Clause 6 of the Transfer Agreement was only valid as long as the Player was “under contract” with Genoa.
90. Although Genoa objects to the existence and the validity of the term “transfer rights”, the Panel does not see any problem with the use of this term. Indeed, the terms “transfer rights” or “federative rights” on the one hand, and “economic rights” on the other hand, have been used for some time in football:

*“In a loan situation, the title to the economic rights and the title to register and field the player are plainly split between two clubs. Logically, contract rights which can be loaned can also be partially assigned. In*

*the Panel's view, as long as FIFA rules do not issue an express prohibition, clubs are allowed to treat those economic rights as assets and commercialize them in ways allowed by States' legal systems.*

*For the sake of clarity, the Panel wishes to spell out that, while it accepts the above notion of "economic rights", it deems unacceptable and unenforceable the distinct notions of "federative rights" – mentioned in the Contract and referred to by the parties (see supra) – insofar as such expression may be taken to mean that a club could bind and control a player without the player's explicit consent, merely by virtue of the rules of a federation. Indeed, the Panel is of the opinion that sports rules of this kind are contrary to universal basic principles of labour law and are thus unenforceable on grounds of public policy. In other terms, in the Panel's view, the player's consent is always indispensable whenever clubs effect transactions involving his employment and/or his transfer" (CAS 2004/A/635, para. 31-32 of abstract published on the CAS website).*

91. In the matter at hand, where the Player's consent was never an issue, Genoa acquired the "transfer rights" or "federative rights" of the Player from Danubio on 20 June 2008, until it transferred the Player to Club Nacional de Football in August 2015. Also the "economic rights" remained at all times with Genoa during this period. It was only the "title to register and field the player" that was "loaned" to FC Bari and Club Nacional de Football, in accordance with the regulations of FIFA and the above-mentioned CAS award.
92. The Panel finds that the interpretation set out above is also corroborated by the English translation of clause 6 of the Spanish version of the Transfer Agreement, as there no reference is made to "registration", but to the Player "being signed" by Genoa. Although this translation is disputed by Genoa, the Panel finds that, even if the correct translation would be "registration" as opposed to "being signed", this does not invalidate the reasoning set out in the previous paragraphs.
93. It follows from the above interpretation that the periods during which the Player was loaned to FC Bari and Club Nacional de Football are not excluded from the clause for, again, otherwise the reference to "other European A or B league clubs" would be completely obsolete. Particularly also because the content of clause 6 of the Transfer Agreement was so extensively discussed, the Panel deems it highly unlikely that the parties would make such an obvious mistake as forgetting to delete the reference to "other European A or B league clubs".
94. Finally, the Panel finds it unlikely that, although it is a fact that limiting the temporal scope of clause 6 to 30 June 2011 was unacceptable to Danubio, it would be acceptable for Danubio to limit the scope of the clause solely to matches played for Genoa for an indefinite period. The latter arrangement is, objectively seen, less favourable for Danubio than the former arrangement.
95. Accordingly, the Panel finds that the official matches played by the Player for FC Bari and Club Nacional de Football have to be taken into account in assessing whether the prerequisites of clause 6 of the Transfer Agreement are complied with.

96. In this sense, it remained undisputed that the Player played 16 official matches for FC Bari in the Serie B in the 2011/2012 sporting season in which he played at least 45 minutes, while on loan from Genoa.
97. The Panel finds that the conditions of clause 6 were therefore fulfilled on 31 March 2012, when the Player played his 12<sup>th</sup> official game for FC Bari in the match Pescara v. FC Bari.
98. Since the amount of EUR 500,000 had to be paid within 30 days of the relevant event, the Panel finds that the amount fell due on 30 April 2012.
99. Finally, in view of the fact that Genoa's appeal as to the substance of the case is dismissed, its requests for relief in respect of the procedural costs before the FIFA PSC are also dismissed. Genoa's requests that the Panel reduce the procedural costs in the amount of CHF 15,000 to be paid to FIFA, as imposed by means of the Appealed Decision because the Single Judge allegedly misread the facts of the case, misapplied the FIFA Regulations and took nearly three years to issue the Appealed Decision, is also dismissed. Despite Genoa's reference to the CAS award issued in CAS 2014/A/3620, which the Panel duly considered, the Panel does not deem it appropriate to reduce the procedural costs charged by the Single Judge of the FIFA PSC because the amount in dispute in the present proceedings was higher than in the CAS award relied upon by Genoa, warranting, in principle, higher procedural costs. Also, the Single Judge of the FIFA PSC required "only" about two and a half years to issue the Appealed Decision, as opposed to approximately four years in the precedent cited. Furthermore, in the proceedings before the Single Judge of the FIFA PSC the parties exchanged three rounds of written submissions. Finally, the Panel finds that the Single Judge of the FIFA PSC did not misread the facts or misapply the rules in a way that led to a wrong decision although he expressed himself in an unfortunate manner, as argued by Genoa.
100. Consequently, the Panel finds that Genoa must pay Danubio an amount of EUR 500,000 in accordance with clause 6 of the Transfer Agreement, with interest at a rate of 5% *per annum* accruing as from 1 May 2012 until the effective date of payment.

## **B. Conclusion**

101. Based on the foregoing, the Panel holds that:
  - i. The Italian version of the Transfer Agreement prevails.
  - ii. Genoa must pay Danubio an amount of EUR 500,000 in accordance with clause 6 of the Transfer Agreement, with interest at a rate of 5% *per annum* accruing as from 1 May 2012 until the effective date of payment.
102. Any further or different claims or requests for relief are dismissed.

## **ON THESE GROUNDS**

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

1. The appeal filed on 16 September 2016 by Genoa Cricket and Football Club S.p.A. against the decision issued on 26 April 2016 by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association is dismissed.
2. The decision issued on 26 April 2016 by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association is confirmed.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.