



Arbitration CAS 2017/A/5311 Club Real Atlético Garcilaso de Cusco v. Federación Peruana de Fútbol (FPF) & Club Sport Alianza Atlético de Sullana & Club Juan Aurich, award of 2 March 2018 (operative part of 29 November 2017)

Panel: Mr José Juan Pintó (Spain), Sole Arbitrator

Football

Sanctions against a club for fielding an ineligible player in two games of a tournament

Consequences of the lack of infringement of the regulations regarding a player's registration and eligibility to play

If it has been demonstrated that, in the two games of a tournament in which an allegedly ineligible player took part, (i) the player was validly registered with his club; (ii) the loan agreement between his club and the lending club had been duly extended and the respective TMS instruction duly entered; (iii) the ITC had always remained in the authorized national football federation, and (iv) there was no de-registration of the player neither in the tournament nor in the national football federation, the registration of the player was valid and he was eligible to play with his club the relevant matches within the relevant tournament. Consequently, the points that were taken from the appellant club in the tournament should be restored whereas the points granted to the opposing clubs during the relevant matches should be deducted.

I. PARTIES

1. Club Real Atlético Garcilaso de Cusco (hereinafter, “Garcilaso” or the “Appellant”) is a Peruvian football club with its registered office in Cusco. Garcilaso is a member of the *Federación Peruana de Fútbol* and participates in the *Torneo Descentralizado 2017* (hereinafter, the “Tournament”) organised by the *Asociación Deportiva de Fútbol Profesional* (hereinafter, the “ADFP”) under the guidance of the *Federación Peruana de Fútbol*.
2. The *Federación Peruana de Fútbol* (hereinafter, the “FPF” or the “First Respondent”) is the governing body of football in Perú with its registered office in Lima.
3. Club Sport Alianza Atlético de Sullana (hereinafter, “Alianza” or the “Second Respondent”), is a Peruvian football club with its registered office in Sullana, Perú. Alianza is also a member of the FPF and participates within the Tournament.
4. Club Juan Aurich (hereinafter, “Aurich” or the “Third Respondent”) is a Peruvian football club with its registered office in Chiclayo, Perú. Aurich is also a member of the FPF and participates in the Tournament.

II. FACTUAL BACKGROUND

5. A summary of the most relevant facts and the background giving rise to the present dispute will be developed based on the parties' written submissions, the evidence filed with such submissions, and the statements made by the parties and the evidence taken at the hearing held in the present case. Additional facts may be set out, where relevant, in connection with the legal discussion which follows. The Sole Arbitrator refers in the present Award only to the submissions and evidence it considers necessary to explain his reasoning. The Sole Arbitrator, however, has considered all the factual allegations, legal arguments, and evidence submitted by the parties during the present proceedings.
6. In the summer of 2016, the professional football player Carlos Ariel Neumann Torres (hereinafter, the "Player") was playing for Club Guaraní de Paraguay (hereinafter, "Guaraní") and was registered in the *Asociación Paraguaya de Fútbol*.
7. On 5 August 2016, the Player and Garcilaso entered into an employment contract (hereinafter, the "Employment Contract") valid as from 19 August 2016 until 19 August 2017. The relevant clauses of the Employment Contract read as follows (emphasis added):

“QUINTO.- DEL PLAZO DE VIGENCIA DEL CONTRATO.

*El presente contrato tendrá un plazo de vigencia determinado, de conformidad a lo establecido en el artículo 4° de la Ley N° 26566, (Régimen Laboral de los Jugadores Profesionales de Fútbol) es **de un año plazo que corre a partir del 19 de agosto del año en curso**, (días laborados- días efectivamente pagados), no siendo necesario por ello comunicación previa que ponga término al plazo fijo antes mencionado. (...).”*

Which can be freely translated into English as follows:

“FIFTH. – VALIDITY PERIOD OF THE CONTRACT.

*This contract will have a fixed validity period, in accordance with the provisions of Article 4 of Law No. 26566, (Labor Regime for Professional Football Players), **of one year running from 19 August of the current year**, (worked days - days effectively paid), not being necessary any prior notification for the termination of the aforementioned fixed term. (...).”*

8. On 20 August 2016, Guaraní and Garcilaso agreed on a loan agreement (hereinafter, the "Loan Agreement") by virtue of which the Player was temporarily transferred from the former to the latter until 30 June 2017. In its most relevant parts the Loan Agreement reads as follows (emphasis added):

“SEGUNDA: EL CLUB GUARANÍ cede temporalmente el JUGADOR al CLUB REAL GARCILASO, autorizando su inscripción en el registro federativo del CLUB hasta el 30 de junio de 2017, para la cual autorizará la transferencia internacional del JUGADOR a través del sistema de correlación de transferencias de FIFA denominado TMS.

[...]

CUARTA: Vencido el plazo de la cesión temporal, el CLUB REAL GARCILASO se obliga a reintegrar el registro federativo del JUGADOR al CLUB GUARANÍ”.

Which can be freely translated into English as follows:

“SECOND: CLUB GUARANÍ temporarily transfers the *PLAYER* to CLUB REAL GARCILASO, authorizing his registration in the federative register of the CLUB until 30 June 2017, for which the international transfer of the Player will be authorized through the FIFA transfer correlation system so-called TMS.

(...)

FORTH: Once the temporary loan period expires, CLUB REAL GARCILASO is obliged to return the federative registration of the *PLAYER* to CLUB GUARANÍ’.

9. On 26 August 2016, the *Asociación Paraguaya de Fútbol* issued the Player’s International Transfer Certificate (hereinafter, the “ITC”) in favour of the FPF.
10. From September to December 2016, the Player played the last phase of the *Torneo Descentralizado 2016* for Garcilaso.
11. On January 2017, Garcilaso registered the Player to take part in the Tournament 2017.
12. On 30 June 2017, the Loan Agreement reached its expiration date.
13. On 13 July 2017, Garcilaso entered an instruction within the FIFA Transfer Matching System (hereinafter, the “TMS”) extending the Loan Agreement until 19 August 2017.
14. On 14 July 2017, at 7:28 am, Guaraní also entered an instruction within the TMS responding affirmatively to the extension of the Loan Agreement until 19 August 2017.
15. On the same day, 14 July 2017, Garcilaso and the Player played against Alianza. Garcilaso won the match (2-1).

III. PROCEEDINGS BEFORE THE *COMISIÓN DE JUSTICIA ADFP*

16. On 17 July 2017, Alianza claimed before the *Comisión de Justicia de la Asociación Deportiva de Fútbol Profesional* (hereinafter, the “Comisión de Justicia ADFP”) that, according to Article 51 of the *Bases para el Torneo Descentralizado 2017* (hereinafter, the “Bases”), Garcilaso should lose the game 3-0 as it fielded an ineligible player (i.e. the Player) during the game and for breaching other registration rules for players.
17. On 23 July 2017, Garcilaso and the Player played against Aurich. Garcilaso also won the match (2-1).
18. On 24 July 2017, Aurich filed a claim before the *Comisión de Justicia ADFP* alleging that the ITC of the Player “(...) *estaba vencido al día treinta de junio de dos mil diecisiete y cuya regularización posterior a esta fecha por el Club Real Atlético Garcilaso del Cusco, que prorrogaba el plazo de la Cesión Temporal del Club de Origen Guaraní del Paraguay, se registró irregularmente de forma extemporánea, no respetando los plazos de los periodos establecidos por las Bases del Campeonato Descentralizado dos mil diecisiete, los cuales son: Primer Periodo del seis de enero (...) al treinta de marzo de dos mil diecisiete y el*

Segundo Periodo del primero al treinta y uno de agosto de dos mil diecisiete”.

Which can be freely translated into English as follows:

“(...) the ITC of the Player was expired since 30 June 2017 and its regularization, subsequent to that date, executed by Club Atlético Garcilaso de Cusco that extended the period of the Loan Agreement with the club of origin, Guaraní of Paraguay, was irregularly and extemporaneously registered, thus, not complying with the periods established by the “Bases del Campeonato Descentralizado dos mil diecisiete”, which are: First Period from six January (...) to thirty March two thousand seventeen and the Second Period from the first to the thirty-first of August two thousand seventeen”.

19. The *Comisión de Justicia ADFP* requested from the *Oficina de Registro de la FPF* (hereinafter, the “Registration Office of the FPF”) information regarding the sporting relationship between Garcilaso and the Player.
20. On 25 July 2017, the Registration Office of the FPF informed the *Comisión de Justicia ADFP* of the following (emphasis added):

“1. Que el referido futbolista tiene un contrato vigente debidamente registrado, suscrito con el club Real Atlético Garcilaso el 19 de Agosto de 2016, por lo que su Certificado de Transferencia Internacional (en adelante CTI) tiene fecha 26 de Agosto de 2016, el mismo que vino en calidad de préstamo.

2. En fecha 14 de Julio de 2017, a las 7:28 am hora de Lima-Perú, el futbolista Neumann Torres se encontraba con la prolongación de préstamo registrada en TMS.

*3. Es preciso acotar que los préstamos internacionales de jugadores profesionales y cada una de sus prerrogativas, están contempladas por las normas que rigen el Transfer Matching System (TMS) y por lo tanto, **en una cesión de préstamo sólo se emite CTI en el pedido inicial y en el retorno del mismo, más no en las prolongaciones y finalizaciones, como ha ocurrido en el caso del Señor Neumann Torres, cuyo CTI no ha tenido ningún movimiento desde agosto del año 2016, por lo que su registro siempre se mantuvo en el club Real Atlético Garcilaso.***

*4. En virtud de lo explicado en el numeral 3, las solicitudes de CTI (fuera de contrato, mediante acuerdo o préstamos) tienen que tramitarse dentro de los periodos de inscripción, **más no las prolongaciones y finalizaciones de préstamos, que pueden darse aún fuera de los periodos de inscripción, pues no requieren la movilización del CTI o registro del futbolista**”.*

Which can be freely translated into English as follows:

“1. That the aforementioned player has a valid and duly registered contract, signed with club Real Atlético Garcilaso on 19 August 2016, and therefore his International Transfer Certificate (hereinafter CTI), that came as a loan, is dated 26 August 2016.

2. On 14 July 2017, at 7:28 am time in Lima-Peru, the loan extension of the football player Neumann Torres was registered in TMS.

*3. It shall be noted that the international loans of professional players and each of its prerogatives, fall under the rules governing the Transfer Matching System (TMS) and therefore, **in a loan transfer, the CTI is only issued during the initial period and in the return of the same, but not in the***

extensions and terminations, as it has occurred in the case of Mr. Neumann Torres, whose CTI did not have any movement since August 2016, so his registration always remained in club Real Atlético Garcilaso.

4. **By virtue of what is set out in paragraph 3 above, the CTI requests (outside the contract, through agreements or loans) have to be processed within the registration periods, but not the extensions and terminations of loans, which can be processed beyond the registration periods, because they do not require the transfer of the CTI or the registration of the football player**”.
21. On 1 August 2016, the *Comisión de Justicia ADFP*, issued two separate decisions with respect to the claims filed by Alianza and Aurich (hereinafter, the “Alianza Decision” and the “Aurich Decision”, respectively). The operative part of the Alianza Decision (053-CJ-ADFP-2017) reads as follows:

“SE RESUELVE: PRIMERO: Declarar FUNDADO el reclamo presentado por el Club Asociación Deportiva Alianza Sullana.- **SEGUNDO:** De conformidad a lo establecido por el Art. 51° de las Bases del Campeonato Descentralizado – 2017 **ADJUDIQUENSELE:** los tres puntos del partido disputado en contra el Club Real Atlético Garcilaso con fecha 14 de julio de 2017 al Club Asociación Deportiva Alianza Sullana con el marcador de tres (3) a cero (0) a su favor.- **TERCERO:** De conformidad a lo establecido por el Art. 51 de las Bases del Campeonato Descentralizado 2017 **SE LE RETIRA:** los tres puntos del partido disputado con fecha 14 de julio de 2017 contra el Club Asociación Deportiva Alianza Sullana con el marcador de tres (3) a cero (0) a su contra. **CUARTO:** Oficiése a la Jefatura de la Oficina de Registro – FPF- Administrador TMS, para que omita de la fecha al futuro realizar inscripciones en el TMS fuera de los periodos establecidos para dicho fin, una vez quede consentida y ejecutoriada la presente, **Regístrese y Comuníquese**”.

Which can be translated into English as follows:

“IT IS DECIDED: FIRST: To **UPHOLD** the claim filed by Club Asociación Deportiva Alianza Sullana. - **SECOND:** In accordance with Art. 51° of the “Bases del Campeonato Descentralizado” - 2017 **IT SHALL BE AWARDED** to Club Asociación Deportiva Alianza Sullana the three points of the match played against Club Real Atlético Garcilaso on 14 July 2017, with the score of three (3) to zero (0) in its favor. - **THIRD:** In accordance with Art. 51 of the “Bases del Campeonato Descentralizado 2017”, it **SHALL BE DEDUCTED** [from Club Real Garcilaso] the three points of the match played on 14 July 2017 against the Club Asociación Deportiva Alianza Sullana with the score of three (3) to zero (0) against it. **FOURTH:** Notify the Registration Office - FPF – TMS Administrator, so that it omits from this date, the registrations in the TMS beyond the periods established for that purpose, once this decision is consented and executed, **Register and Communicate it**”.

22. The grounds of the Alianza Decision can be summarized as follows:
- Garcilaso registered the extension of the Player’s Loan Agreement on 14 July 2017, outside the registration period established in Article 44 of the Bases.
 - Furthermore, Garcilaso failed to provide notice to the ADFP of such extension. Therefore, Garcilaso infringed Articles 44, 46 and 51 of the Bases.

23. The operative part of the Aurich Decision (N° 052-CJ-ADFP-2017) reads as follows:

“SE RESUELVE: PRIMERO: Declarar Ganador, del partido llevado a cabo el veintitrés de julio de dos mil diecisiete, por la Décimo Primera fecha del Torneo Apertura del Campeonato Descentralizado de Fútbol dos mil diecisiete entre los equipos Juan Aurich y Real Atlético Garcilaso del Cusco, al CLUB JUAN AURICH, otorgándole los tres (3) puntos con un marcador de 3-0 como resultado de haber hecho ingresar a jugar en el mencionado encuentro de fútbol al jugador CARLOS ARIEL NEUMANN TORRES estando inhabilitado para actuar en dicho partido de fútbol. SEGUNDO: Imponer Multa, al Club Real Atlético Garcilaso del Cusco equivalente a Dos Unidades Impositivas Tributarias. REGISTRESE Y COMUNIQUESE”.

Which can be translated into English as follows:

“IT IS DECIDED: FIRST: To declare [CLUB JUAN AURICH] as the Winner of the football match played on the twenty-third of July of two thousand and seventeen, corresponding to the eleventh date of the “Torneo Apertura del Campeonato Descentralizado de Fútbol” of two thousand seventeen, disputed between the clubs Juan Aurich and Real Atlético Garcilaso del Cusco, awarding CLUB JUAN AURICH three (3) points with a score of 3-0 as a consequence of having fielded the player CARLOS ARIEL NEUMANN TORRES in the aforementioned football match, when he was ineligible to participate in the same. SECOND: To impose a fine to Real Atlético Garcilaso del Cusco with the equivalent of Two Tax Units. REGISTER AND COMMUNICATE IT”.

24. The grounds of the Aurich Decision can be summarized as follows:

- The extension of the ITC of the Player was registered on 14 July 2017, i.e. outside of the registration periods of players as established in Article 44 of the Bases.
- Moreover, Article 8.3.3 of Annexe 3 of the FIFA Regulation on the Status and Transfers of Players (hereinafter, the “RSTP”) establishes that “loan extensions and permanent transfers resulting from loans shall also be entered in TMS at the appropriate time”. The *Comisión de Justicia ADFP* understands that “a su debido tiempo” is the one provided in Article 44 of the Bases that determines that the first and second period for the registration of players, which also coincide with the periods established in the FIFA TMS.

IV. PROCEEDINGS BEFORE THE *COMISIÓN DE JUSTICIA FPF*

25. Garcilaso appealed both decisions before the *Comisión de Justicia de la Federación Peruana de Fútbol* (hereinafter, the “Comisión de Justicia FPF”), essentially alleging that the ITC of the Player never returned to the *Asociación Paraguaya de Fútbol* because the Loan Agreement was extended from 1 July to 19 August 2017, and Guaraní never requested the ITC’s return.

26. On 10 August 2017, the Registration Office of the FPF sent the following report regarding the Player’s ITC to the *Comisión de Justicia FPF* (emphasis added):

“(…)

1. El futbolista Neumann Torres suscribió un contrato profesional con el club Real Atlético Garcilaso el 19 de Agosto de 2016, el mismo que se encuentra debidamente registrado en nuestra Federación con el respectivo Certificado de Transferencia Internacional (CTI) de fecha 26 de agosto de 2016 (...) requisitos indispensables para que los jugadores provenientes del extranjero puedan actuar en los torneos nacionales e internacionales conforme al artículo 39 de las Bases del Campeonato Descentralizado así como el Reglamento sobre el Estatuto y la Transferencia de Jugadores de la FIFA (en adelante el Reglamento). El registro deportivo del jugador procedía del Guarani (...), club que lo cedió en préstamo al club peruano, hasta el 30 de junio 2017.

2. En fecha 13 de Julio de 2017, el club Real Atlético Garcilaso ingresa una solicitud de prolongación de préstamo en el sistema TMS, el mismo que se hace efectivo el día 14 de Julio de 2017 a las 7:28 a.m. hora de Lima-Perú. **Es preciso dejar claro que desde el vencimiento del préstamo (30.06.2017) hasta un día antes de la renovación del mismo (13.07.2017) el futbolista (...) no era elegible para participar en el campeonato local en las fechas 8 y 9 del Torneo Apertura Copa Movistar 2017.**

(...)

4. (...) lo descrito en el numeral 2 del presente informe, está enmarcado en lo normado en el apartado 8.3.3 del Anexo 3 del Reglamento, cuando menciona que “las prolongaciones de préstamos y las transferencias permanentes derivadas de préstamos también deberán introducirse en el TMS a su debido tiempo”. **El término a su debido tiempo no hace referencia de ninguna manera a ninguno de los periodos de inscripción, por el contrario, hace referencia al momento en que el club debe considerar ingresar las solicitudes de prolongación de préstamo y transferencia permanente derivada de préstamo, con la finalidad que el jugador siga siendo elegible para participar en el torneo en el que se encuentra inscrito o registrado.**

5. Asimismo, adjunto al presente, copia de la comunicación de fecha 10 de agosto de 2017 (...) de Maja Kuster Hoffmann, Jefa del Estatuto del Jugador de la FIFA y Gaudenz Koprio, Senior Group Leader del Estatuto del Jugador de la FIFA en relación a la prolongación de préstamos fuera del periodo de inscripción”.

Which can be freely translated into English as follows:

“1. The football player Neumann Torres signed a professional contract with the club Real Atlético Garcilaso on 19 August 2016, which is the same that is duly registered in our Federation with the respective International Transfer Certificate (ITC) dated August 26, 2016 (...) essential requirements for the participation of foreign players in national and international tournaments according to article 39 of the Bases del Campeonato Descentralizado as well as the Regulations on the Status and transfer of Players. The sporting registration of the Player came from Guarani(...), club that temporarily transferred him to the Peruvian club, until 30 June 2017.

2. On 13 July 2017, Real Atlético Garcilaso enters a loan extension request in the TMS system, which becomes effective on 14 July 2017 at 7:28 a.m. time in Lima-Peru. **It is necessary to clarify that from the expiry of the loan (30.06.2017) until the day before its renewal (13.07.2017) the football player was not eligible to participate in the local championship in the games 8 and 9 of the [Tournament].**

(...)

4. (...) what it is described in section 2 of this report, is framed in section 8.3.3 of Annex 3 of the [RSTP], when it mentions that “loan extensions and permanent transfers resulting from loans shall also be entered in TMS *at the appropriate time*”. **The term at the appropriate time does not refer in any sense to any of the registration periods, on the contrary, it refers to the moment in which the club shall consider entering the requests of loan extension and permanent transfer resulting from loans, with the aim that the player remains eligible to participate in the tournament in which he is registered.**

5. A copy of the communication dated 10 August 2017 (...) from Maja Kuster Hoffmann, Head of the FIFA Players' Status Committee and Gaudenz Koprio, Senior Group Leader of the FIFA Players' Status Committee, in relation to the extension of loans outside the established registration periods is attached hereto”.

27. FIFA's communication referred to in the above mentioned report reads as follows (emphasis added):

“Después de haber estudiado en detalle la documentación recibida, notamos que su federación indica que “la Comisión de Justicia de Asociación Deportiva de Fútbol Profesional (ADPF- que organiza y administra el campeonato local) aduce que no existe norma que [le] permita prolongar los préstamos fuera de los periodos de inscripción y [le] intenta conminar a dejar de hacerlo”. Además, entendemos que su federación solicita “el sustento normativo a la posibilidad de realizar las prolongaciones, finalizaciones o transferencias permanentes derivadas de préstamo fuera de los periodos de inscripción.

Con respecto a su consulta (...) **la prolongación de préstamo con base en la existente inscripción de un jugador, no requiere una nueva inscripción del jugador. De hecho, el jugador todavía se encontraría inscrito en su federación en el sentido del art. 5 del Reglamento. Por lo tanto, dicha prolongación podrá ingresarse en el TMS al momento de la celebración de dicho acuerdo, es decir, independientemente hecho que el periodo de transferencia se encuentre abierto o no.**

De igual manera, nos gustaría resaltar que es competencia exclusiva y responsabilidad de la asociación interesada asegurar que sus propias normativas nacionales sean respetadas, aplicadas de manera uniforme y que los intentos de circunvenirlas sean evitados. Asimismo, nos gustaría enfatizar que, en cualquier caso, la asociación en cuestión es responsable de considerar debidamente la integridad deportiva de sus competiciones.

Por último, deseamos informarle que nuestras indicaciones son solamente de carácter general y por ende sin que impliquen prejuizgamiento alguno”.

Which can be freely translated as follows:

“After having studied in detail the received documentation, we note that your federation states that “the Comisión de Justicia de Asociación Deportiva de Fútbol Profesional (ADPF - which organizes and administers the local championship) argues that there is no rule that [allow] loan extensions outside the registration periods and [it] requests to cease them”. In addition, we understand that your federation requests “the legal framework that allows the possibility of entering the extensions, terminations or permanent transfers resulting from loans outside the registration periods”.

With regards to your query (...) **the extension of a loan based on the existing registration of a player, does not require a new registration of the player. In fact, the player would still**

be registered in your federation in the sense of art. 5 of the [RSTP]. Therefore, this extension may be entered in the TMS at the moment of the execution of said agreement, that is, regardless of whether the transfer period is open or not.

Likewise, we would like to emphasize that the interested association has the exclusive jurisdiction and responsibility to ensure that its own national regulations be respected, and that these be applied in a uniform manner and that the attempts to circumvent them be avoided. Moreover, we would like to emphasize that, in any case, the pertinent association is responsible for duly considering the sporting integrity of its competitions.

Finally, we wish to inform you that our statements are of a general nature and, thus, without implying any prejudice”.

28. On 11 August 2017, the *Comisión de Justicia FPF* confirmed by means of a unique decision the Alianza and Aurich Decisions (hereinafter, the “Appealed Decision”) as follows:

“POR LO TANTO: SE RESUELVE: 1) *Confirmar en todos sus extremos las Resoluciones N° 052-CJ-ADFP-2017 y 053-CJ-ADFP-2017”.*

(Freely translated: “*THEREFORE: IT IS DECIDED: 1) To confirm the Resolutions N° 052-CJ-ADFP-2017 and 053-CJ-ADFP-2017 in full*”).

29. The grounds of the Appealed Decision can be summarized as follows:

- The Loan Agreement expired on 30 June 2017, and the so-called “extension” of such agreement was entered on 14 July 2017. Therefore, the extension is nothing but a new loan agreement, different from the one that had expired.
- The rules governing the Tournament do not allow the participation of a player once his loan agreement has expired.
- Furthermore, Article 8.3.3 of Annexe 3 of the RSTP does not allow a foreign player, whose loan agreement has expired, to recover his eligibility to play in the Tournament through the execution of a second loan agreement.
- Therefore, considering that the only registered loan agreement expired on 30 June 2017 (i.e. without such contract having been entered before its expiry), the Player was ineligible to play in the matches against Alianza and Aurich is found to be ineligible.
- According to the Registration Office of the FPF *“desde el vencimiento del préstamo (30.06.2017) hasta un día antes de la renovación del mismo (13.07.2017) el futbolista Carlos Ariel Neumann Torres no era elegible para participar en el campeonato local en las fechas 8 y 9 del Torneo Apertura Copa Movistar 2017”.* Thus, the ineligibility of the Player is evident because it is impossible to extend a contract that has already expired.
- Garcilaso argued that the extension had retroactive effects. However, according to the legal principles, a contract with retroactive effects upon third parties does not exist.
- Thus, the agreement should not have been registered outside the registration periods, since it cannot be considered an extension but a new contract.

30. According to Garcilaso, the *Comisión de Justicia FPF* did not formally notify the Appealed Decision but acknowledged it through a text message on 15 August 2017.

V. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

31. On 1 September 2017, pursuant to Articles R47 and R48 of the Code of Sports-related Arbitration (hereinafter, the “CAS Code”), Garcilaso filed a Statement of Appeal before the Court of Arbitration for Sport (hereinafter, the “CAS”) against the Appealed Decision rendered by the *Comisión de Justicia FPF* on 11 August 2017, requesting the following:

- “1. *Club Real Atlético Garcilaso de Cusco requests that the decision issued by the Justice Committee of the Peruvian Football Federation dated 11 August 2017, be set aside.*
2. *Club Real Garcilaso de Cusco request for relief will be set out in further detail in its Appeal Brief, hereby expressly reserving all its rights in this respect”.*

32. Moreover, the Appellant proposed to submit the case to a Sole Arbitrator and to conduct the present arbitration proceedings in English.

33. On 18 September 2017, the First Respondent agreed to submit the case to a Sole Arbitrator but requested to conduct the arbitration procedure in Spanish.

34. On the same day, the Appellant filed before the CAS its Appeal Brief, with the following requests for relief:

- “(i) *Set aside Resolution No. 034-CJ-FPF-2019, a decision rendered by the Justice Committee of the Peruvian Football Federation on 11 August 2017;*
- “(ii) *Declare that the registration of the Player Carlos Ariel Neumann Torres was valid and he was eligible to play the two matches declared forfeited, that took place on 14th and 23rd of July, respectively against Alianza Atlético and Juan Aurich;*
- “(iii) *Order the FPF to give back 6 points to Real Garcilaso, to be considered in the end of the Peruvian Championship, notably for the purposes of access to the Copa Libertadores.*
- “(iv) *Order the Respondents to pay the full amount of the CAS arbitration costs;*
- “(v) *Order the Respondents to pay a significant contribution towards the legal costs and other related expenses of Real Garcilaso, at least in the amount of EUR 40,000”.*

35. On 22 September 2017, the Appellant maintained its position of conducting the proceedings in English but agreed that the evidence and documents could be filed in Spanish without a translation into English.

36. On 25 September 2017, the CAS Court Office granted the Respondents 20 days to file their respective Answers to the Appellant’s appeal. Furthermore, the CAS Court Office informed the Parties that, pursuant to Article R29 of the CAS Code, English would be the language of the arbitration proceedings and that it would be for the Panel/Sole Arbitrator, once constituted, to decide the issue regarding the translation of into English of the Spanish

exhibits.

37. On 28 September 2017, the Appellant requested the CAS to expedite the case in accordance with Article R44.4 of the CAS Code and that a final decision be rendered no later than 15 November 2017.
38. On this same day, the Respondents were invited to inform the CAS whether they agreed on the expedited procedure or not.
39. The CAS Court Office did not receive any answer from the Respondents regarding the possibility of conducting the proceedings in an expedited manner.
40. On 29 September 2017, the CAS Court Office informed the parties that, pursuant to Article R50 of the CAS Code, the President of the CAS Appeals Arbitration Division had decided to submit the present case to a Sole Arbitrator.
41. On 16 October 2017, the First Respondent requested the CAS an extension of five days of the time limit to file its Answer.
42. On 17 October 2017, the CAS Court Office informed the parties that the First Respondent's time limit to file its Answer had been extended five days.
43. On 18 October 2017, the time limit granted to the Third Respondent to file its Answer to the Appellant's appeal ended without receiving such answer or any communication from this party.
44. On 19 October 2017, the time limit granted to the Second Respondent to file its Answer to the Appeal ended without receiving such answer or any communication from this party.
45. On 20 October 2017, the First Respondent filed its Answer to the Appellant's appeal, with the following requests for relief:
 - *To fully reject or to dismiss the Appeal of Club Real Garcilaso, ruling that it is inadmissible or unfounded.*
 - *To order the Appellant to pay the entire costs of the present arbitration*
 - *To order the Appellant to make a payment of 10 000 USD (ten thousand US American dollars in favor of FPF as a contribution to cover the legal, administrative and courier expenses”.*
46. On 23 October 2017, pursuant to Article R54 of the CAS Code and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that Mr. José Juan Pintó Sala, attorney-at-law in Barcelona, Spain, had been appointed as the Sole Arbitrator to settle the present dispute. Furthermore, the Parties were invited to inform the CAS Court Office whether they preferred a hearing to be held in this matter or for the Sole Arbitrator to issue an award based solely on the parties' written submissions. Lastly, the Parties were informed that the Sole Arbitrator considered that the operative part of the award could be rendered, at the latest, on 1 December 2017, taking into account that the Tournament would finish on 3 December 2017.

47. On 24 October 2017, the CAS Court Office acknowledged that the Second and Third Respondents did not file their Answers to the Appeal Brief within the granted deadline and, in fact, any communications whatsoever had been received from these parties. Furthermore, the CAS Court Office advised the parties that, pursuant to Article R56 of the CAS Code, they were no longer authorized to supplement or amend their requests or their arguments, produce new exhibits, or specify further evidence in which they intended to rely.
48. On 27 October 2017, pursuant to Article R28 of the CAS Code, the CAS Court Office informed the parties that the Sole Arbitrator had decided to hold a hearing on 9 November 2017 in Lima, Perú. Furthermore, the Appellant was invited to inform the CAS Court Office whether it agreed or not that the Respondents could present their respective positions in Spanish at the hearing without the need of a translation into English.
49. On 3 November 2017, the CAS Court Office acknowledged that the Appellant disagreed on the possibility that the Respondents could present their respective positions at the hearing in Spanish and, thus, were advised to be assisted by a translator during the hearing. Furthermore, the parties were informed that Ms. Rosa Monteiro Inza would assist the Sole Arbitrator as *ad-hoc* clerk in the present matter.
50. The hearing of the present procedure took place in Lima, Perú, on 9 November 2017. At the hearing, the Appellant was represented by its legal representatives, Mr. Antonio Moreira (in person), Ms. Veronica Boza (in person) and Mr. Bernardo Palmeiro (by video-conference). The First Respondent was represented by its Deputy Secretary General, Víctor Villavicencio, and by its legal representatives, Mr. Javier Quintana, Mr. Antonio Villegas and Mr. Juan José Hopkins. The Second Respondent was represented by its delegate, Mr. Carlos Dávila. The Third Respondent was represented by its delegate, Alberto Alva. The parties' representatives and witnesses were assisted by a Spanish-English translator, Ms. Vanessa Espino.
51. In addition, Mr. Antonio de Quesada, Counsel to the CAS, and Ms. Rosa Monteiro Inza, *Ad hoc* Clerk, assisted the Sole Arbitrator at the hearing.
52. At the outset of the hearing, the Parties confirmed that they had no objections as to the appointment of the Sole Arbitrator and nor did they object to the jurisdiction of the CAS.
53. After the respective opening statements, the following witnesses were examined by the parties and by the Sole Arbitrator in order of appearance:
 - Oswaldo Terrazas (representative of Garcilaso); and,
 - Javier Huarancca (official of Garcilaso in charge of the TMS).
54. At the hearing, the parties had the opportunity to present their case, to submit their arguments and to comment on the issues and questions raised by the Sole Arbitrator. At the end of the hearing, all Parties expressly declared that they did not have any objections with respect to the procedure and that their right to be heard had been fully respected.
55. On 29 November 2017, the CAS Court Office notified the Parties the Operative Part of the present Arbitral Award.

VI. SUMMARY OF THE PARTIES' SUBMISSIONS

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

VI.1. The Appellant (Club Real Atlético Garcilaso de Cusco)

57. The Appellant's submissions, in essence, may be summarized as follows:

58. Garcilaso is a one of a kind case of success and exponential growth in a short period of time, considering that in 2008 it was founded by students and in 2009 was promoted from the second to the first division. Moreover, in 2013, Garcilaso reached the quarterfinals of the Copa Libertadores and was ranked as the 103rd best football club by the International Federation of Football History & Statistics (IFFHS). However, Garcilaso is now a victim of its own success and its adversaries raise any excuse to hinder Garcilaso's successful track.

59. Surprisingly, Alianza and Aurich requested the ADFP and the FPF to declare the ineligibility of the Player in order to forfeit the matches played against them. Nevertheless, it is more surprising that the *Comisión de Justicia FPF* upheld such requests. This has had a huge negative impact in the motivation and reputation of Garcilaso.

A. *The Appealed Decision*

60. The Appealed Decision was issued in a totally adverse interpretation of the letter issued by the Registration Office of the FPF, which stated that: "*en una cesión de préstamo solo se emite CTI en el pedido inicial y en el retorno del mismo más no en las prolongaciones y finalizaciones, como ha ocurrido en el caso del Señor Neumann Torres, cuyo CTI no ha tenido ningún movimiento desde agosto del año 2016, por lo que su registro siempre se mantuvo en el club Real Atlético Garcilaso*" and that "*las prolongaciones y finalizaciones de préstamos (...) pueden darse aún fuera de los periodos de inscripción, pues no requieren la movilización del CTI o registro del futbolista*".

61. Furthermore, the Registration Office of the FPF only stated that the Player was not eligible to play from 30 June to 13 July 2017, which means that before and after this period the Player was eligible to play.

62. Though Garcilaso does not agree with this interpretation (i.e. that the Player was not eligible to play from 30 June to 13 July 2017), the truth is that Garcilaso did not field the Player during such period in order to prevent any type of infringement to any rule. In any case, the Sole Arbitrator is not being requested to consider the eligibility of the Player during the period between 30 June to 13 July 2017.

63. Moreover, FIFA concurs with the interpretation of the Registration Office of the FPF by

stating that: “*la prolongación de préstamo con base en la existente inscripción de un jugador, **no requiere una nueva inscripción del Jugador**” and that “*dicha **prolongación podrá ingresarse en el TMS al momento de la celebración de dicho acuerdo, es decir, independientemente del hecho que el periodo de transferencia se encuentre abierto o no**”.**

B. The registration of the Player

64. The Player was registered in the Tournament in accordance with Article 39 of the Bases and with the documents required therein (i.e. employment contract, photography of the player, medical allowance, valid identity document and the ITC), and such registration was accepted by the ADFP. The ADFP never requested the Loan Agreement for the registration of the Player in the Tournament. In fact, the regulations (i.e. the Bases) do not provide the filing of the loan agreement for the registration of a player. In light of the above, it is clear that the Player was duly registered as from August 2016.
65. At the time of the termination of the Loan Agreement, Guaraní and Garcilaso agreed an extension of such contract from 1 July 2017 to 19 August 2017, with the aim that the Player could participate in the complete *Copa Movistar*. Although the registration of the extension was not entered into the TMS until 14 July 2017, there is no doubt that an agreement for the loan extension existed between all the parties (Garcilaso, Guaraní and the Player) because:
- (i) Garcilaso entered the instruction for the extension of the Loan Agreement into the TMS;
 - (ii) Guaraní responded positively by also entering the instruction for the extension of the Loan Agreement into the TMS;
 - (iii) the ITC always remained in the FPF; and,
 - (iv) the Player remained in Perú training and honouring his Employment Contract with Garcilaso.
66. Thus, it should be understood that when the matches against Alianza and Aurich were played, Garcilaso had agreed on the extension of the Loan Agreement together with Guaraní and the Player. In light of the above, the Player was eligible for playing such matches.
67. It should be highlighted that the registration of the international transfers is ruled by the RSTP and the registration for players in the Tournament is ruled by the Bases.

The applicable articles of the RSTP for the registration of international players state the following:

- Article 5 of the RSTP establishes that a player must be registered at one association to play for a club, as only registered players are eligible to participate in organised football.
- Article 9 of the RSTP establishes that the “*players registered at one association may only be registered at a new association once the latter has received an International Transfer Certificate from the*

former association". This same principle is established in Article 8.1 par. 1 of the Annexe 3 of the RSTP.

- For the issuance of the ITC both clubs have to enter the necessary data into the TMS and, once entered, the new federation requests the ITC from the former federation.
- Article 8.2.1 par. 5 of the Annexe 3 of the RSTP, states that "*once the ITC has been delivered, the new association shall confirm receipt and complete the relevant player registration information in TMS*".
- In accordance with Article 9 of the RSTP "*[t]he ITC shall be issued free of charge without any conditions or time limit. Any provisions to the contrary shall be null and void*".
- Lastly, Article 8.3. par. 3 of Annexe 3 of the FIFA RSTP establishes that the "*loan extensions and permanent transfers resulting from loans shall also be entered in TMS at the appropriate time*". The "appropriate time" is not defined in the RSTP and, thus, it shall be understood that it varies from case to case depending on the duration of the loan agreement, the length of the Tournament, etc. Consequently, such extensions can be requested and be entered in the TMS outside of the transfer periods.

With regards to the registration of a player in the Tournament, the Bases state the following:

- Article 39 provides that, for the registration of a player, it is compulsory to file: (i) the employment contract; (ii) a photograph of the Player; (iii) valid identification document; and (iv) the ITC.
- As long as these documents are valid and are in possession of the FPF, the registration of the player is deemed effective.
- The Bases neither provide an article regarding giving any notice about loan extensions nor any requirement with regard to the registration of loan agreements.

68. For all the above, it shall be concluded that the sanction provided in the Appealed Decision is not supported by any national or international regulations and, therefore, shall be set aside in full.

VI.2. The First Respondent (Federación Peruana de Fútbol)

69. The First Respondent's submissions, in essence, may be summarized as follows:

70. The Loan Agreement expired on 30 June 2017, as has been accepted by Garcilaso. In fact, the Loan Agreement established that such document was entered without a definitive transfer option. Thus, the parties agreed that once the loan period was accomplished, the Player should re-join Guaraní.

71. In accordance with Article 1413 of the Peruvian Civil Code "*las modificaciones del contrato original deben efectuarse en la forma prescrita para ese contrato*" (which can be freely translated into English as "(...) *the amendments to the original contract shall be executed in the prescribed form of such agreement*"). In particular, in the text of the Loan Agreement there is no clause regarding a possible

extension. In fact, the Loan Agreement provides that “*vencido el plazo de cesión temporal, [Garcilaso] se obliga a reintegrar el registro federativo del jugador al [Guaraní]*”.

72. Garcilaso claims that the extension of the Loan Agreement is evident because Guaraní did not request the ITC back. However, in the First Respondent’s opinion, Garcilaso did not communicate it according to the pertinent regulations.
73. In addition, what the *Comisión de Justicia FPF* assessed was whether the Player was eligible or not to play the matches after the expiry of the Loan Agreement (i.e. 30 June 2017), rightly concluding that he was not eligible to play.
74. According to Garcilaso, the *Comisión de Justicia FPF* should have followed the interpretation of the Registration Office of the FPF in order to determine if the Player was duly registered at the time of the matches. In this regard, it is worth mentioning that the *Comisión de Justicia FPF* has full autonomy and independence in accordance with Article 49 of the FPF Statutes. Secondly, it has full discretion to freely assess the evidence and documents.
75. In light of foregoing, the *Comisión de Justicia FPF* considers it clear that when the Registration Office of the FPF states that “*desde el vencimiento del préstamo (30.06.2017) hasta un día antes de la renovación del mismo (13.07.2017) el futbolista Carlos Ariel Neumann Torres no era elegible para participar en el campeonato local en las fechas 8 y 9 del Torneo Apertura Copa Movistar 2017*”, this means that when the extension was executed, the Loan Agreement had already terminated. Moreover, “*las fechas 8 y 9 del Torneo Apertura Copa Movistar 2017*”, corresponded to the matches played against Alianza and Aurich and, therefore, the Sole Arbitrator shall conclude that the Player was not eligible to play in the aforementioned matches.
76. Furthermore, the successful evolution of Garcilaso is irrelevant for the case at hand and the FPF has no animadversion against the Appellant.
77. The *Comisión de Justicia FPF* only paid attention to the objective facts and considered correctly that it was not possible to extend the duration of a Loan Agreement that had already expired.
78. For all the aforementioned, the Sole Arbitrator shall confirm the Appealed Decision.

VI.3. The Second Respondent (Club Sport Alianza Atlético de Sullana)

79. As it has been stated in section IV of this Award, even though Alianza was duly summoned and fully informed of the time-limit to file its Answer to the Appellant’s Appeal Brief, it did not file any written submission or any communication whatsoever before the CAS. However, Alianza attended the hearing and set forth the following arguments:
 - FIFA’s report contains a general overview of loan extensions but does not refer in any moment to the particular situation of the Player.
 - Annexe 3 of the RSTP states that if a loan agreement expires it cannot be extended as it had already terminated. Therefore, any extension of the Loan Agreement shall be considered as a new contract.

- Guaraní requested the return of the ITC.
- The extension of the Loan Agreement was not entered “at the appropriate time” due to an administrative mistake of Garcilaso. Therefore, the Player was ineligible to play.
- For all the above, the Appealed Decision shall be confirmed.

VI.4. The Third Respondent (Club Juan Aurich)

80. As it has been stated in section IV of this Award, even though Aurich was duly summoned and fully informed of the time limit to file its Answer to the Appellant’s Appeal Brief, it did not file any written submission or any communication whatsoever before the CAS. However, Aurich attended the hearing and set forth several arguments in line with the First and Second Respondents’ allegations.

VII. JURISDICTION

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

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

An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned”.

82. Furthermore, Article 74 of the *Reglamento Único de Justicia de la Federación Peruana de Fútbol* reads as follows:

“Las autoridades jurisdiccionales de la FPF son las Comisiones de Justicia y las Comisiones de Apelación. Las resoluciones de la Comisión de Apelación pueden ser objeto de recurso ante el Tribunal de Arbitraje Deportivo- TAS (cf. Art. 61 de los Estatutos de la FIFA Art. 135 del CDF)”.

Which can be translated into English as follows:

“The jurisdictional authorities of the FPF are the Comisiones de Justicia and the Comisiones de Apelación. The resolutions of the Comisión de Apelación can be appealed before the Court of Arbitration for Sport –CAS (cf. Art. 61 of the FIFA Statutes Art. 135 of the CDF)”.

83. The jurisdiction of the CAS, which has not been disputed by any party, arises therefore out of Article 74 of the *Reglamento Único de Justicia de la Federación Peruana de Fútbol*, in connection with the above-mentioned Article R47 of the CAS Code.
84. Therefore, the Sole Arbitrator holds that the CAS has jurisdiction to rule on this case.

VIII. ADMISSIBILITY

85. According to Article R49 of the CAS Code, “[i]n the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against (...)”.
86. The *Reglamento Único de Justicia de la Federación Peruana de Fútbol* does not establish any period for the filing of an appeal to the CAS.
87. The Appealed Decision was acknowledged by the Appellant on 15 August 2017, and its Statement of Appeal was filed on 1 September 2017, *i.e.* within the time limit required by Article R49 of the CAS Code.
88. Consequently, the Appeal filed by the Appellant is admissible.

IX. APPLICABLE LAW

89. Article R58 of the CAS Code reads as follows:
- “The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*
90. On the one hand, Garcilaso states that the applicable law for deciding the present dispute is first and foremost the Bases, and by virtue of article 3 contained therein, the *Reglamento Único de Justicia de la Federación Peruana de Fútbol* and the FIFA RSTP.
91. On the other hand, the FPF establishes that the applicable regulations are the “FPF Regulations and other rules, and at the same time, the rules and Regulations of Asociación Deportiva de Fútbol Profesional (ADPF)” and, additionally, the FIFA Statutes, the FIFA RSTP and, lastly, the Peruvian law.
92. Based on the aforementioned statements of the parties (where both of them call for the applicability of the Bases and the FIFA RSTP)¹ and on the content of article R58 of the CAS Code, the Sole Arbitrator considers that the present dispute shall be resolved applying the Bases, the FIFA RSTP and, subsidiarily, the Peruvian law.

¹ The parties called for the application of other general rules (*i.e.* the *Reglamento Único de Justicia de la Federación Peruana de Fútbol*, the FPF Regulations and other rules and Regulations of ADPF, and FIFA Statutes), however, in their submissions and statements, they did not specify any articles therein or the relevance of these provisions.

X. MERITS

93. According to Article R57 of the CAS Code, “[t]he Panel [*in casu*, the Sole Arbitrator] has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance”.
94. The Sole Arbitrator acknowledges that the Appellant has requested (i) to set aside the Appealed Decision; (ii) to declare that the Player was eligible to play with Garcilaso in the matches against Alianza and Aurich; and consequently, (iii) to “give back 6 points” to Garcilaso. For its requests, the Appellant essentially considers that the Appealed Decision wrongly sanctioned it and that the Player was validly registered in the Tournament when the matches at stake were played.
95. On the other hand, the FPF sustains that the Appealed Decision is correct because, in its view, the regulations’ infringement is evident considering (i) that the Loan Agreement expired on 30 June 2017 and (ii) that Garcilaso “registered” the Player again on 14 July 2017 (i.e. outside the transfer periods established in the Bases and the RSTP).
96. After analysing the file, the Sole Arbitrator considers that to resolve the present dispute, the following issues shall be addressed:
- A. Whether Garcilaso infringed any provisions of the Bases (especially with regards to the registration of the Player in the Tournament) or not; and which would be the sanction to be imposed, if it is the case.
 - B. Whether Garcilaso infringed any provisions of the FIFA RSTP (especially with regards to the registration of the Player in the FPF and to the extension of the Loan Agreement in the TMS) or not; and which would be the sanction to be imposed, if it is the case.
97. For the analysis of these issues the Sole Arbitrator firstly notes that the *Comisión de Justicia of the FPF* neither provided, nor specified, which articles of the Bases were considered violated by Garcilaso. Nevertheless, the Sole Arbitrator notes that the Appealed Decision confirmed the first instance decisions and, according to the Aurich Decision, Garcilaso violated Article 44 of the Bases and, pursuant to the Alianza Decision, Garcilaso violated Articles 44, 46 and 51 of the Bases.
98. These articles allegedly violated read as follows:
- “Artículo 44°. Plazo de inscripción de Jugadores.-
- Para que un Jugador pueda actuar en el presente Campeonato Descentralizado, el Club deberá inscribirlo conforme a los periodos de inscripción del TMS, determinados por la FPF y que para este año son:*
- 1er. periodo – 6 de Enero hasta 30 de marzo. (12 semanas)
 - 2do. periodo – Un mes que se contará desde el primer día hábil después del fin del Apertura (4 semanas) 01 de agosto al 31 de agosto.

De acuerdo a la reglamentación FIFA, los Jugadores pueden estar inscritos en un máximo de tres Clubes y participar solo en dos durante el periodo que va del 01 de enero al 31 de diciembre del año en curso.

La tramitación de la documentación se realiza exclusivamente por conducto regular. Solo el personal administrativo de la ADFP y de la FPF está autorizado para recibir y procesar dicha documentación.

Está prohibido que Directivos, personal administrativo o auxiliar de los Clubes realicen gestiones personales que impliquen el traslado de documentos y/o expedientes entre los diferentes organismos que participan en el proceso respectivo, caso contrario el trámite realizado no tendrá validez.

(...)

Artículo 46° Préstamo de Futbolista.-

Un Jugador que haya actuado en el Torneo de Verano y el Torneo Apertura, podrá jugar por otro Club en el Torneo Clausura, siempre que medie acuerdo expreso entre el Club cedente, el Club cesionario y el Jugador, que de acuerdo a la normatividad FIFA, se haya emitido el correspondiente Certificado de Transferencia y el Jugador sea inscrito dentro del plazo a que se refiere el Artículo 44°.

Cada Club solo podrá realizar 4 contrataciones al año acogéndose al presente artículo. Se entiende por actuación, la participación efectiva de un Jugador en un partido y no su simple consignación en la lista de Jugadores hábiles para el mismo. Todo préstamo de un futbolista de un Club a otro deberá ser registrado en la FPF mediante un Convenio, previo conocimiento de la ADFP y cuyo cumplimiento podrá ser exigido por ambas instituciones. En caso de incumplimiento de alguna cláusula del convenio el Club afectado efectúe (sic) las acciones correspondientes ante la Cámara de Conciliación y Resolución de Disputas de la FPF.

En el Contrato que deberá presentar el Club contratante se tendrá que registrar todas las condiciones del préstamo, pudiendo pactarse incluso el pago de una indemnización por formación, si esta Cesión se convierte en definitiva. Igualmente, los Clubes podrán acordar una participación proporcional de la indemnización por formación, si el Jugador es transferido a un tercer Club. Ningún Club podrá ceder temporalmente a otro Club de su misma categoría, más de cuatro Jugadores, sean aficionados o profesionales.

Ningún Club podrá ceder temporal ni definitivamente a un Jugador que le haya sido cedido temporalmente por otro Club salvo autorización por escrito. La vigencia mínima de un préstamo será el tiempo entre dos periodos de inscripción

(...)

Artículo 51° Sanción por actuación de Jugadores no hábiles para participar en un partido.-

El Club que hace ingresar en cualquier momento del partido a un Jugador no inscrito, mal inscrito, sancionado o que exceda al cupo de extranjeros para que juegue, será sancionado con la pérdida de los puntos obtenidos en cancha, anotándose un marcador de cero (0) a tres (3) en su contra, salvo que hubiese perdido por mayor diferencia de goles, en cuyo caso el resultado del marcador será respetado”.

Asimismo, los puntos del partido serán adjudicados al Club rival debiendo presentarse el reclamo en el plazo que señala el inciso 4° del Artículo 113° del Reglamento de Justicia de la Federación Peruana de Fútbol”.

Which can be freely translated into English as follows:

“Article 44°. Registration period of Players:

In order that a Player may participate in the present Campeonato Descentralizado, the Club shall register him in accordance with the TMS registration periods, determined by the FPF, which are for the current year:

- 1st period – from 6 January to 30 March (12 weeks)

- 2nd period – one month that will run from the first business day after the end of the Apertura (4 weeks) 1 August to 31 August.

According to the FIFA regulations, the Players may be registered in three clubs maximum and participate only in two during the period that runs from 1 January to 31 December of the current year.

The documentation process is held exclusively through the regular channels. Only the administrative officials of the ADFP and of the FPF are authorized for receiving and processing such documentation.

It is forbidden that the Clubs’ Directors, administrative personnel or assistants conduct personal operations that imply the movement of documents and/or files between the different bodies that participate in the respective process, otherwise the process shall be deemed invalid”.

(...)

Article 46° Loan of a Player.-

A Player that has participated in the Torneo de Verano and in the Torneo Apertura, may play for another Club in the Torneo Clausura, if it is expressly agreed between the Club that loans the Player, the receiving Club and the Player, that, in accordance to the FIFA regulations, the corresponding ITC is issued and that the Player is registered within the period established in article 44°.

Each Club may only conduct 4 operations each year under this article. It is understood by participation, the effective performance of a Player during a match and not his simple call in the list of Players available for such match. Every loan of a player from one club to another shall be registered in the FPF by means of an Agreement, prior notice to the ADFP and which its fulfillment may be demanded by both institutions. In case of breach of any of the clauses of the agreement, the affected Club conducts (sic) the pertinent actions before the Conciliation and Dispute Resolutions Chamber of the FPF

In the Agreement that shall be filed by the contracting Club, shall be registered all the conditions of the loan, and the parties can even agreed a training compensation payment if the loan turns into definitive. Moreover, the Clubs may agree on a proportional participation on the training compensation if the Player is transferred to a third club. No Club shall temporary loan more than four Players to another Club of its own division, either amateur or professionals.

No Club shall loan, temporary or definitively, a Player that has been loaned to it by another club unless it is written authorized. The minimum term of a loan will be the time between two registration periods.

(...)

Article 51° Sanctions for the performance of Players not eligible to participate in a match.-

The Club who fields at any moment of a match a player not registered, or wrongly registered, sanctioned or that exceeds the foreign quota, shall be sanctioned with the loss of the points achieved in the match, by a score of zero (0) to three (3) against it, unless it is defeated by a greater goal difference, which in that case, the original score will be respected.

Likewise, the points of the match shall be awarded to the opponent Club which shall file the claim in the period established in article 113° para. 4° of the Reglamento de Justicia de la Federación Peruana de Fútbol”.

99. Furthermore, the Sole Arbitrator notes that the Appealed Decision states in the relevant part that (emphasis added) “[t]ampoco permiten que el jugador extranjero, con contrato de préstamo vencido, recupere la habilitación para participar en el torneo mediante la celebración por parte del club que representa, de un segundo contrato de préstamo, tal como se aprecia del **artículo 8.3.3. del Anexo 3 del Reglamento sobre el Estatuto y transferencia de jugadores FIFA**, cuya enumeración taxativa no alcanza a la hipótesis de un nuevo contrato de préstamo estando un torneo vigente”.

Which can be freely translated as follows:

“It is neither allowed that a foreign player, when his loan agreement has expired, recovers the eligibility to participate in the tournament by means of a second loan agreement with the club, as can be noted from article 8.3.3.3 of Annex 3 of the RSTP, which its strict interpretation does not reach the possibility of a new loan agreement whilst there is an ongoing tournament”.

100. Therefore, the Sole Arbitrator shall analyze if any of these provisions were violated in light of the facts occurred in the present case.
101. To this purpose, the Sole Arbitrator, after checking the file and revising the parties’ statements and the evidence brought to these proceedings, shall firstly point out that it deems proven in the present case that:
- Garcilaso and Guaraní agreed on a temporary transfer of the Player valid until 30 June 2017.
 - Garcilaso and the Player entered into an Employment Contract valid until 19 August 2017.
 - On 26 August 2016, the ITC of the Player was duly issued by the *Asociación Paraguaya de Fútbol* in favor of the FPF.
 - Garcilaso and Guaraní agreed on the extension of the Player’s temporary transfer until 19 August 2017 and entered the relevant instructions in the TMS on 13 and 14 July 2017.
 - The Player played with Garcilaso against Alianza after the loan extension was entered in the TMS.
 - The Player played with Garcilaso against Aurich after the loan extension was entered in the TMS.

102. Taking the aforementioned proven facts as starting point and putting them in connection with the provisions that are deemed infringed by the bodies of instance, the Sole Arbitrator shall make the following considerations:

- a) In accordance with Article 39 of the Bases, for the registration of the Player in the Tournament the following documents shall be provided to the ADFP: (i) the employment contract, (ii) a photograph of the player, (iii) a valid identification document, (iv) a medical certificate and (v) the ITC.

This being said, the Sole Arbitrator considers that at the time the matches took place (i) the Player had a valid employment contract (i.e. the Employment Contract) which ended 19 August 2017, (ii) the FPF had the photograph, ID document and medical certificate provided in due time (at least nobody has contested this) and (iii) the Player's ITC issued by the *Asociación Paraguaya de Fútbol* remained in the FPF.

- b) The Loan Agreement had been extended prior to the date in which the matches took place:

The FPF alleges that the extension of the Loan Agreement was not possible as such agreement had already expired when the extension order was introduced in the TMS. Therefore, in the FPF's view, the alleged extension of the aforementioned Loan Agreement must be considered as a new contract, while the Appellant sustains that both Garcilaso and Guaraní agreed upon the extension of said agreement by entering the corresponding instructions into the TMS.

In this regard, the Sole Arbitrator observes that in practice, the Loan Agreement did not expire *de facto*, since the Player kept in Garcilaso's discipline and additionally Guaraní and Garcilaso agreed on the extension of the Loan Agreement. Therefore, the will of the parties concerned therein (i.e. Garcilaso, Guaraní and the Player) was that the Player remained in the Appellant's squad.

Moreover the Sole Arbitrator finds that the extension of the Loan Agreement cannot be considered as a new contract since there is no evidence on the file that proves that Guaraní and Garcilaso agreed upon new conditions with respect to the previous Loan Agreement.

- c) The Loan Agreement's extension was duly entered in the TMS:

Article 8.3.3 of the Annexe 3 of the FIFA RSTP does not provide what the First Respondent stated in the Appealed Decision (see para. 99 above) or what the Second Respondent alleged at the hearing (see para. 79 – second bullet point – above).

Article 8.3.3 of the Annexe 3 of FIFA RSTP reads as follows (emphasis added):

*“3. Loan extensions and permanent transfers resulting from loans shall also be entered in TMS **at the appropriate time**”.*

The First Respondent considers that the “appropriate time” for entering the loan extensions in the TMS shall be understood as the transfer periods established in Article

44 of the Bases (which coincides with the international transfer periods established by FIFA for Perú). Therefore, in the First Respondent's view, the instruction for the extension of the Loan Agreement entered by Garcilaso was not aligned with the cited provision.

The Sole Arbitrator observes that the "appropriate time" for entering a loan extension in TMS is not expressly defined in the FIFA RSTP. However it is noted that FIFA, in its report dated 10 August 2017, specifically determines that "(...) *dicha prolongación podrá **ingresarse en el TMS al momento de la celebración de dicho acuerdo, es decir, independientemente hecho que el periodo de transferencia se encuentre abierto o no***". Furthermore, the Registration Office of the FPF stated in its letter of 25 July 2017, that "*las solicitudes de CTI (fuera de contrato, mediante acuerdo o préstamos) tienen que tramitarse dentro de los periodos de inscripción **más no en las prolongaciones y finalizaciones de préstamos, que pueden darse aún fuera de los periodos de inscripción, pues no requieren la movilización del CTI o registro del futbolista***".

Therefore, in light of (i) the aforementioned statements of FIFA and the FPF, (ii) the fact that the FIFA RSTP does not expressly require that the loan extensions are entered within the transfer periods and (iii) the TMS did not raise any objection when the loan extension was entered by the clubs concerned, the Sole Arbitrator considers that such loan extensions can be entered in the TMS outside these transfer windows.

d) The ITC remained at all time in the FPF:

According to Article 9 of the FIFA RSTP (emphasis added) "[t]he ITC **shall be issued free of charge without any conditions or time limit**". Furthermore, Article 4 of Annexe 3 of the FIFA RSTP establishes that "[u]pon expiry of the loan period, the ITC shall be returned, **upon request**, to the association of the club that released the player on loan". In other words, the ITC remains in force and in the federation where the player is participating (*in casu*, the FPF) until it is returned upon the request of the federation of the club that loaned the player (*in casu*, the *Asociación Paraguaya de Fútbol*).

In this regard, even when Mr. Javier Huarranca (official in charge of the TMS within Garcilaso) declared at the hearing that Garcilaso received the request from Guaraní to return the ITC, the evidence brought to these proceedings confirm that the ITC did not effectively return to the *Asociación Paraguaya de Fútbol*. Quite the contrary, both Garcilaso and Guaraní agreed upon the extension of the Loan Agreement by entering the corresponding instructions into the TMS.

This is additionally supported by FIFA in its letter of 10 August 2017 which stated that (emphasis added) "(...) *la prolongación de préstamo con base en la existente inscripción de un jugador, no requiere una nueva inscripción del jugador. De hecho, **el jugador todavía se encontraría inscrito en su federación en el sentido del art. 5 del Reglamento***".

Moreover, the Registration Office of the FPF also stated that (emphasis added): "... *en una cesión de préstamo sólo se emite CTI en el pedido inicial y en el retorno del mismo, más no en las prolongaciones y finalizaciones, como ha ocurrido en el caso del Señor Neumann Torres, **cuyo CTI***

no ha tenido ningún movimiento desde agosto del año 2016, por lo que su registro siempre se mantuvo en el club Real Atlético Garcilaso”.

e) Article 46 of the Bases is unrelated to the case at stake:

The Sole Arbitrator shall stress that article 46 of the Bases refers to cases in which a Player, who has played two stages of the Tournament (i.e. *Torneo de Verano* and *Torneo de Apertura*) with a certain club, is temporarily transferred to another club for the last stage of the Tournament (i.e. *Torneo Clausura*).

The Sole Arbitrator cannot see how this provision could be linked to the facts of the case at stake. The phrase “*todo préstamo de un futbolista de un Club a otro deberá ser registrado en la FPF mediante un Convenio, previo conocimiento de la ADFP y cuyo cumplimiento podrá ser exigido por ambas instituciones*” foreseen in this article cannot be read in an isolated way since, as can be inferred from its wording, the aforementioned provision is strictly related to domestic loans (i.e. loans between clubs of the ADFP).

f) Irrelevance of the matches 8 and 9 of the Tournament:

The FPF sustains that the Registration Office of the FPF considered that the Player “*no era elegible para participar en el campeonato local en las fechas 8 y 9 del Torneo Apertura Copa Movistar 2017*” and that such dates correspond to the matches that were played against Alianza and Aurich (see point 5, para. 8, of the First Respondent’s Answer). After checking the evidence produced to the proceedings, the Sole Arbitrator considers that this statement is not correct. According to the Appealed Decision the matches against Alianza and Aurich correspond to the tenth and eleventh dates of the *Torneo Apertura* of the Tournament. Furthermore, the public information in the website of the ADFP establishes that Garcilaso played “*las fechas 8 y 9 del Torneo Apertura*” against U. de Comercio and Universitario, which are not relevant to the case at hand. Therefore, the Sole Arbitrator also dismisses this argument.

103. Taking the aforementioned considerations into account and for the reasons already explained therein, the Sole Arbitrator understands that Garcilaso did not infringe any of the articles considered violated by the decisions of instance (Articles 44, 46 and 51 of the Bases and Article 8.3.3 of Annexe 3 of the RSTP), as it has been demonstrated that when the two matches took place, (i) the Player was registered with Garcilaso in the Tournament; (ii) the Loan Agreement between Garcilaso and Guaraní was extended and the respective TMS instruction was duly entered; (iii) the ITC always remained in the FPF, and (iv) there was no de-registration of the Player neither in the Tournament nor in the FPF.
104. Therefore, the Sole Arbitrator considers that the registration of the player Carlos Ariel Neumann Torres was valid and he was eligible to play, with Club Real Atlético Garcilaso de Cusco, the matches against Club Sport Alianza Atlético de Sullana, on 14 July 2017, and Club Juan Aurich, on 23 July 2017, within the *Torneo Descentralizado 2017*.
105. In light of the above, the Sole Arbitrator sets aside the Appealed Decision and orders the FPF to restore Garcilaso the 6 points that were taken from it in the Tournament by means of the

Alianza and Aurich Decisions, which were confirmed by the Appealed Decision.

106. As a consequence of the annulment of the Appealed Decision, the Sole Arbitrator orders the FPF to deduct from Alianza and Aurich, respectively, the 3 points that were granted to them by means of the Alianza and Aurich Decisions, which were confirmed by the Appealed Decision.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Club Real Atlético Garcilaso de Cusco against the Resolution No. 034-CJ-FPF-2017 rendered by the *Comisión de Justicia de la Federación Peruana de Fútbol* on 11 August 2017 is upheld.
2. The Resolution No. 034-CJ-FPF-2017 rendered by the *Comisión de Justicia de la Federación Peruana de Fútbol* is set aside and is replaced by the present arbitral award as follows:
 - 2.1. The registration of the player Carlos Ariel Neumann Torres was valid and he was eligible to play, with Club Real Atlético Garcilaso de Cusco, the two matches against Club Sport Alianza Atlético de Sullana, on 14 July 2017, and Club Juan Aurich, on 23 July 2017, within the *Torneo Descentralizado 2017*.
 - 2.2. In light of the above, the Federación Peruana de Fútbol is ordered to:
 - (i) Restore Club Atlético Garcilaso de Cusco the six points taken in the *Torneo Descentralizado 2017* by means of the Resolutions No. 052-CJ-ADFP-2017 and 053-CJ-ADFP-2017, rendered by the *Comisión de Justicia de la Asociación Deportiva de Fútbol Profesional*, and confirmed by the Resolution No.034-CJ-FPF-2017 issued by the *Comisión de Justicia de la Federación Peruana de Fútbol*;
 - (ii) Deduct from Club Sport Alianza Atlético de Sullana the three points granted in the *Torneo Descentralizado 2017* by means of the Resolution No. 053-CJ-ADFP-2017 rendered by the *Comisión de Justicia de la Asociación Deportiva de Fútbol Profesional*, and confirmed by the Resolution No.034-CJ-FPF-2017 issued by the *Comisión de Justicia de la Federación Peruana de Fútbol*;
 - (iii) Deduct from Club Juan Aurich the three points granted in the *Torneo Descentralizado 2017* by means of the Resolution No. 052-CJ-ADFP-2017 rendered by the *Comisión de Justicia de la Asociación Deportiva de Fútbol Profesional*, and confirmed by the Resolution No.034-CJ-FPF-2017 issued by the *Comisión de Justicia de la Federación Peruana de Fútbol*.
3. (...).

4. (...).
5. All other or further motions or prayers for relief are dismissed.